

Inter-Agency Standing Committee  
Workshop for Humanitarian Coordinators

**International Humanitarian  
Norms & Principles  
Guidance Materials**

**January 2010**

## **Please Note**

These guidance materials are for use as a reference for the following Workshops:

- Use of Legal Frameworks in Humanitarian Coordination; and
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- Humanitarian Diplomacy: Negotiating and Advocating using International Norms and Principles.

They should not be used or copied or referred to as IASC policy, or as the policy of the IASC member agencies or standing invitees. Please refer to key sources listed in the text for such authority.

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## Introduction to the Guidance Materials

These Guidance Materials provide a background of reading for participants in the Humanitarian Coordinators (HCs) Workshop *Use of Legal Frameworks in Humanitarian Coordination* and the Humanitarian Coordination Pool Workshop *Humanitarian Diplomacy: Negotiating and Advocating using International Norms and Principles*. They are also prepared for Resident Coordinators undertaking humanitarian functions.

Following the introduction section, Humanitarian Coordinators and International Norms and Principles, each section follows a standard format, as outlined below:

### Why is it important for my work as HC

This section provides key links between the body of law or principle to the Humanitarian Coordinator's Terms of Reference, in particular their role advocating and negotiating international norms and principles.

### Main elements

Key elements of the body of law explored are outlined. Please note that this is not a comprehensive outline of all elements of each body of law. Instead only issues directly relevant to the HC, coordination, advocacy and negotiation are outlined. For further detailed explanations of the body of law see **More information on the topic** (below).

### Hot Issues

International law continues to evolve and develop. Humanitarian Coordinators need to be aware of difficult issues of ongoing debate that remain unresolved or continue to be disputed. This guidance material does not provide the "correct" answer for these controversies, but lists them as important issues that HC must be aware of.

### Key texts included in Legal Compendium:

In addition to the Guidance Materials, participants will be provided with a compendium of key legal texts.

### More information on the topic

This guidance material is intended as an entry point to more comprehensive sources of information available across the humanitarian community. This section provides website, online documents and links to organizations to allow HCs to further explore key issues and bodies of international law, beyond the limited space in these guidance materials.

# 1. Humanitarian Coordinators and International Norms and Principles

International norms and principles are central to the function of the Humanitarian Coordinator (HC) both as a reference point and authority for humanitarian action, advocacy and negotiation. The following background document outlines a series of key areas which will be covered in the workshops being developed by the IASC for Humanitarian Coordinators and the HC Pool. Its particular focus is the daily role of HCs at a national level in advocating and negotiating international norms and principles. It is not intended to cover all bodies of law and references, but rather highlight areas of importance to HCs while attempting to provide direction on where resources from OCHA and the rest of the humanitarian system may be found.

## The United Nations

As a designated Humanitarian Coordinator, a Resident Coordinator (RC) carrying out humanitarian functions, or as an RC in a development context, the key starting point for an understanding of the interface with international law is the United Nations Charter. In its introduction the Charter declares:

### *We the Peoples of the United Nations Determined:*

- *to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and*
- *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*
- *to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*
- *to promote social progress and better standards of life in larger freedom*

The UN Charter reflects the sovereignty of States and their rights to be free from interference in their regulation of the domestic domain. The exception exists in the power of the Security Council, under Chapter VII of the UN Charter, to define and respond to threats to international peace. Membership to the United Nations provides recognition to States as sovereign equals and in return States regulate their behaviour internationally by avoiding the use of armed force and internally by promoting human rights. The obligation on States to protect, promote and ensure the rights of people within the State - in effect a duty of care for its populace - forms the foundations of 'good international citizenship'.<sup>1</sup> In humanitarian crises the responsibility of States is not only to the international system, but also to its citizens through the treaties it has signed or are recognized as customary international law.

The General Assembly has declared that it is the primary responsibility of States to provide assistance to victims of natural disasters and other similar emergencies that occur within their territory, including initiation, organization, coordination and implementation of humanitarian assistance. However, while recognizing the sovereignty of States, the Assembly has warned that abandonment of the victims of such situations without humanitarian assistance 'constitutes a threat to human life and

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<sup>1</sup> G. Evans and M. Sahnoun (eds), *The Responsibility to Protect – Report of the International Commission on Intervention and State Sovereignty* (2001) 8.

an offence to human dignity”<sup>2</sup> The Guiding Principles for Internally Displaced Persons also highlight the primary duty and responsibility of States to provide protection in addition to humanitarian assistance, encompassing a broader conception of human security. It affirms the right of the displaced to seek such security without repercussions or punishment for demanding those rights.

The Purpose of the Charter outlined in its first Article anticipates the role of the United Nations in *solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*. The UN General Assembly further clarified the approach of the United Nations system to humanitarian response in its Resolution 46/182 of 1991, in which it created the function of the Emergency Response Coordinator (ERC) and the Inter Agency Standing Committee (IASC). In 1994 the IASC formalized the position of the Humanitarian Coordinator, as a designated representative of the ERC.

## **The Humanitarian Coordinator**

When faced with the threat of a full-blown crisis, the ERC, in consultation with IASC members, may identify the need to designate a Humanitarian Coordinator, who becomes the most senior UN humanitarian official on the ground for the emergency, accountable to the ERC for ensuring a quick, effective and well-coordinated assistance. The HC negotiates access for urgent humanitarian assistance in crisis, champions the protection of affected populations, and forms the centre to coordinate international response to disasters and conflict crises. He/she works in stressful, complex and complicated conditions.

As the most senior United Nations humanitarian official representing the ERC, the HC is the central interface with local governments in crises. The HC draws the elements of the humanitarian community, the United Nations, non-governmental organizations, IOM, and the Red Cross and Crescent Movement together to coordinate rapid response to crises, linking local communities and governments. The quality of his/her actions can influence the survival and protection of thousands of affected people.

RC/HCs, HCs and RCs who perform humanitarian functions are acting in extraordinary circumstances, which can diverge greatly from the usual work of the Resident Coordinator and the United Nations Country Team (UNCT). Disaster and emergencies create complexity and stress which require fundamentally different competencies related to leadership to be brought into play. Issues raised with governments may change resulting in different types of advocacy and negotiation, particularly around access and protection.

International legal norms are founded on long standing morals, customs and traditions which often pre-exist these laws at a local level. These are often stated as the rationale for response by individuals, communities and governments that respond in crises to assist their neighbours. Success in negotiating and advocating for access and protection may depend on highlighting local customs as much as international treaties.

International laws are commonly integrated into legislation of countries and complement existing national law. International laws and norms which exist in periods of peace and calm may be restricted in crises leaving only non-derogable human rights in states of emergency. Certain bodies of law come into play in armed conflict (International Humanitarian Law), or national laws and restrictions are adapted to suit massive scale of international responses (International Disaster Response Laws, Rules and Principles).

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<sup>2</sup> General Assembly Resolution 46/182, General Assembly Resolution 43/131.

The Humanitarian Coordinator has an important role to play in championing international principles, in particular humanity, neutrality, impartiality and independence. The same principles of humanity also drive international support and concern resulting in major international responses. Customary international law reflects fundamental concepts, accepted and acted on by most States, and while not legally binding, influence and limit States. They should apply regardless of whether a State has signed a particular treaty.

Different stakeholders become critical in crises including humanitarian NGOs, the Red Cross/Red Crescent Movement, civil society and other non-State actors. In addition to specific legal instruments, it is critical for the HC to have an understanding of the mandates and principles of each stakeholder, and how they position themselves in relation to particular humanitarian principles and norms.

## **Humanitarian Coordinator – Terms of Reference**

In 2009 the IASC endorsed Terms of Reference for the Humanitarian Coordinator which outlines their role in relation to negotiating and advocating international principles and norms, specifically for them to:

- *Expend all necessary efforts to obtain free, timely, safe and unimpeded access by humanitarian organizations to populations in need, where appropriate, by leading and/or promoting negotiations with relevant parties, including non-State actors;*
- *Promote the respect of international humanitarian and human rights law by all parties, including non-State actors, by coordinating the advocacy efforts of relevant organizations and using private and/or public advocacy as appropriate;*
- *Expend all necessary efforts to ensure that Member States, regional organizations, UN entities (including integrated UN presences), civil society, the private sector, the media and other relevant actors take humanitarian concerns into due account, by coordinating the advocacy efforts of relevant organizations and using private and/or public advocacy as appropriate.*

The tasks outlined in the TORs are reinforced by specific competencies developed for Humanitarian Coordinators.

## **Humanitarian Coordination Competencies**

In 2009 the IASC endorsed Humanitarian Coordination Competencies to capture a common understanding of the competencies required of Humanitarian Coordinators and of Resident Coordinators performing humanitarian coordination functions. They are also used for selection of candidates for the HC Pool. They mirror and build on seven of the eight Resident Coordinator competencies, with indicators contextualized to humanitarian action, and introduce three additional competencies which have direct application in humanitarian contexts: Formulating Strategies-Applying Humanitarian Principles and Norms; Fostering Humanitarian Teamwork; and Negotiation and Advocacy.

The ERC uses the Competencies as a benchmark for decision-making in designating HCs, both from the HC Pool and in other circumstances (for instance when, following a major sudden-onset disaster, the ERC considers whether to designate the sitting RC as HC). The ERC also participates in the United Nations Development Group (UNDG) led process of selection of RCs and uses the Competencies as a benchmark in considering the suitability of candidates being submitted to the Inter-Agency Assessment Panel (IAAP) for RC positions in disaster-prone countries, as they are likely to be required to perform humanitarian coordination functions. Since all UN members of the IASC are also members

of undg they also use the HC Competencies as one of the benchmarks for considering the suitability of candidates being submitted to the IAAP for RC positions in disaster-prone countries.

The following two competencies are specific to the Humanitarian Coordinators' function in relation to International Humanitarian Principles and Legal Norms:

<b>Formulating Strategies, Applying Humanitarian Principles and Norms</b>
Demonstrates a broad-based understanding of the growing complexities of humanitarian issues and activities. Creates a strategic vision of shared goals based on humanitarian principles and norms, and ensures broad acceptance of it. Develops a roadmap which enhances humanitarian action.
<b>Effective Behaviour</b>
1. Develops strategic plans for the achievement of the humanitarian goals, in collaboration with the humanitarian country team, building in appropriate contingencies.
2. Demonstrates an excellent understanding of humanitarian principles, standards and mandates.
3. Develops strategy with view to improved access, delivery of assistance and protection of affected populations.
4. Develops strategy taking agency mandates into account.
5. Demonstrates an excellent understanding of the complex interrelationships of factors which impact on international humanitarian assistance.
6. Anticipates new trends and identifies opportunities to promote the goals of the humanitarian community.
7. Addresses underlying complex issues that have the potential to impact the implementation of the vision.
8. Takes an active role in developing and articulating a clear and coherent identity for the entire humanitarian community and builds commitment to this inside and outside of the UN.

<b>Advocacy and Negotiation</b>
Can effectively influence or persuade others of a course of action. Is an effective advocate of humanitarian principles on behalf of the humanitarian community. Is able and prepared to adopt a number of ways to negotiate to gain support and influence diverse parties, with the aim of securing improvements for humanitarian access, provision of assistance, and to ensure protection of the affected population.
<b>Effective Behaviour</b>
1. Scans the strategic external environment, identifies opportunities and threats, stakeholders, and those likely to oppose change, and seeks out allies and builds partnerships.
2. Uses an appropriate advocacy mode of action to achieve immediate and sustainable change in the short, medium, and in the long term.
3. Uses a range of active advocacy approaches.
4. Advocates for the inclusion of humanitarian principles in existing structures and processes.
5. Uses complex and multi-layered influencing strategies to negotiate access, enable humanitarian assistance, and ensure protection.
6. Negotiates skilfully in difficult situations and settles differences with minimum noise. Is aware of and understands his/her own negotiation styles and preferences. Is assertive and decisive, as well as diplomatic. Wins concessions without damaging relationships.
7. Understands motivations of counterparts, the tactics commonly used in negotiations and the appropriate means to counter them. Fashions creative solutions that satisfy all parties.
8. Acts fairly and unbiasedly and is able to build trust between negotiation partners.

## 2. Introduction to International Law

### 2.1 Sources of International Law

#### Why is it important for my work as HC

Sources of international law provide HCs with reference points to undertake discussions with governments and non-State actors to assist them to undertake their obligations and assist affected populations to achieve their rights. It is important to be familiar with the main sources of international law, i.e. treaties, customary law, peremptory norms, and “soft law”, to enhance advocacy and negotiation of key international norms and principles. This is critical to develop a link between national customs, norms and standards, and international norms which are often seen as an external imposition.

#### Main elements

**The Statute of the International Court of Justice** is generally recognised as a definitive statement of the sources of international law. It lists among other things:

- International conventions, i.e. treaties;
- International custom, as evidence of a general practice accepted as law, i.e. Customary international law;
- The general principles of the law recognized by civilized nations; and
- Judicial decisions and the most highly qualified juristic writings, as subsidiary means for the determination of rules of law.

#### Hierarchy of Norms

On the question of preference between sources of international law, rules established by treaty will take preference if such an instrument exists. It is also argued however that international treaties and international customs are sources of international law of equal validity - new custom may supersede older treaties and new treaties may override older custom. Certainly, judicial decisions and juristic writings are regarded as auxiliary sources of international law. The other situation in which a rule would take precedence over a treaty provision would be where the rule has the special status of being a peremptory norm or *jus cogens* (see below).

It may be argued that the practice of international organizations, most notably that of the United Nations, as it appears in the resolutions of the Security Council and the General Assembly, are an additional source of international law.

It has been argued that there is a hierarchy of legal norms, in decreasing order of authoritativeness:

- *Jus cogens*, or peremptory norms of international law;
- The United Nations Charter;
- International conventions and customary international law;
- Security Council resolutions adopted under Chapter VII of the UN Charter;
- International contracts or operational mandates of international forces or institutions; and
- Soft law and other resolutions, declarations, and decisions of international organizations.<sup>3</sup>

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<sup>3</sup> Françoise Bouchet-Saulnier, **The Practical Guide to Humanitarian Law**, Medecins Sans Frontieres, p 135.

## Treaties

**Treaties** are formal agreements between States (or between States and intergovernmental organisations, or between intergovernmental organisations). Their name may vary: charters, protocols, covenants, or agreements to indicate, for instance, the political significance of a “Charter”, or the technical nature of a “Protocol”. However, legally speaking, there is no difference between these words: they are binding contracts between the parties.

Treaties can be loosely compared to contracts: both are ways for willing parties to assume obligations, and a party to either that fails to live up to its obligations can be held liable under international law for that breach. The central principle of treaty law is expressed in the maxim *pacta sunt servanda* - “pacts must be respected or treaties are binding”.

Treaties may be bilateral (with two parties) or multilateral (involving many parties). In today’s world, there are thousands of treaties. Some are key, such as the United Nations Charter, while others may have a very limited scope, such as a treaty on technical cooperation between two States.

Treaties are only binding on those States that have ratified them. Treaties usually require two separate procedures to come into force: signature followed by ratification. While signature does not bind a State, it does oblige the State to behave in a way which does not defeat the object and purpose of the treaty pending the State’s ratification of the instrument. At the national level, ratification is usually effected by means of an act of parliament, although it may also be done through other means, such as a referendum.

In respect of certain treaties and in accordance with prescribed procedures, States may make reservations to exclude or modify the application to them of certain provisions of a treaty. The main condition is that such reservations do not run counter to essential substantive elements of the treaty. Some treaties exclude reservations, or allow them only for some articles of the treaty.

A multilateral treaty will enter into force once the number of ratifications required by the treaty is reached.

A State must comply with treaties to which it is a party and which are in force. Implementing treaties may require that a State modifies its national legislation and/or practices, trains civil servants, etc. Resources and willingness are key to that purpose.

Under International Human Rights Law, the State is the primary duty bearer to protect, respect and promote all human rights of its citizens.

## Customary International Law

**Customary international law** is also an important source of law. It consists of unwritten rules, created by the practice of States, carried out in the belief that they are under a legal obligation to behave in that way (*opinio juris*). The same rule can sometimes be found in a treaty and form part of customary law.

Customary rules are binding on all States, regardless of whether the State ratified a treaty setting out the same rule. Examples of customary norms: prohibition of slavery, prohibition of torture, prohibition of genocide, prohibition of indiscriminate attacks against the civilian population, prohibition of “*refoulement*”, etc.

The main advantage of customary rules is that they are binding on all States. However, while treaty rules are clear and it is straightforward to determine what States are bound by a particular treaty, it is harder to determine whether a particular rule has attained customary law status as well as what its precise content is.

## Peremptory Norms

A **peremptory norm** (also called *jus cogens*, Latin for "compelling law") is a fundamental principle of international law which is accepted by the international community of States as a norm from which no derogation is ever permitted.

There is no clear agreement regarding precisely which norms are *jus cogens* nor how a norm reaches that status, but it is generally accepted that *jus cogens* includes the prohibition of genocide, maritime piracy, slaving in general (to include slavery as well as the slave trade), torture, and wars of aggression and territorial aggrandizement.

## Soft Law

**"Soft" international law** is an important body of non-binding standards usually adopted at the multilateral level (declarations, bodies of principles, standard minimum rules, etc.). Soft law often elaborates and further develops treaty provisions and can lead to the adoption of new legal standards. At a certain stage, standards that have been repeated many times in resolutions, declarations, etc. might be considered as constituting customary rules. These standards may then be codified into a binding treaty.

## Hot Issues

- Judgements by international courts such as the International Court of Justice are authoritative, and provide important guidance on emerging international norms. There are important cases where their judgments are not accepted by one State in the dispute, but the international community considers the finding of the Court as binding (eg. Nicaragua v USA case, Palestinian Wall case).
- States may develop their own interpretation of international law which may be at odds with internationally accepted interpretations of treaties.
- International law takes precedence over national law. In practice, however, the situation is not that simple. National judges, for instance, are sometimes reluctant to allow international norms to prevail over national legislation. In some countries, international law can have effects only if it is formally incorporated into national legislation.
- That violation of law may not always lead to sanctions by the international community, in particular judicial sanctions. The partial application of sanctions may be seen as biasing stronger States who violate international norms.
- If a customary rule is breached by a State that consistently objects, that rule still remains binding. The objecting State, of course, would dispute this and argue that their actions nullify the customary nature of a rule.

## More information on the topic

### Web sites:

	<p><b>United Nations Treaty Collection: Treaty Reference Guide</b>  <a href="http://untreaty.un.org/English/guide.asp">http://untreaty.un.org/English/guide.asp</a>            This document defines terms related to treaties, and is a good guide on those basic concepts.</p>
	<p><b>The United Nations portal on all aspects of international law.</b>  <a href="http://www.un.org/en/law/index.shtml">http://www.un.org/en/law/index.shtml</a></p>
	<p><b>American Society of International Law Guide to Electronic Resources for International Law. Useful portal to access information on international law.</b>  <a href="http://www.asil.org/treaty1.cfm">http://www.asil.org/treaty1.cfm</a></p>

## 2.2 States and Other Actors under International Law

### Why is it important for my work as HC

Understanding how States are recognized and which entities have obligations under international law is essential for HCs to understand in order to provide a background for coordination, and to be able to carry out accurate and credible advocacy and hold actors to their obligations.

### Main elements

#### Who is Bound by International Law?

Only States can be parties to treaties and have obligations under international law. Exceptionally, international humanitarian law is also binding on organised armed groups. Other corporate entities are also being considered as “organs of society” with responsibility under international law.

## What is a State?

The terms “country”, “nation”, “State” and “government” are often used interchangeably. However, from an international law perspective, the only correct term is “State”.

Four objective criteria need to be met for a State to exist:

- A permanent population;
- A defined territory – even though borders or part of a territory may be disputed;
- A sovereign government - in other words a government not subject to the authority of another one; and
- The capacity to enter into relations with other States. This criterion is sometimes merged with the existence of a sovereign government.

In addition, a subjective criterion is key to the statehood: the recognition by other States. This is a criterion for which political considerations will have a strong influence. States may have different views on whether a particular entity should be recognised as a State having split away from an existing recognized State (e.g. Eritrea, East Timor, etc.). As a result, the solution found in a regional organisation may differ from a solution adopted at United Nations level. In the latter case, membership of the United Nations will require a vote from both the General Assembly and the Security Council.

Under IHRL the State is the primary duty bearer to protect, respect and promote all human rights of its citizens.

## International Organisations

International organisations play an increasingly important role in the relationships between States. An international organisation is one created by an international treaty or which has membership consisting primarily of States. Strictly speaking, the most accurate term is “intergovernmental organisations”. They are considered as having international legal personality: in other words, they can have rights and obligations under international law. UN General Assembly Resolution 46/82 provides the foundation for coordination of humanitarian activities in support of States and created the Inter-Agency Steering Committee post of the Emergency Relief Coordinator.

International organizations usually enjoy immunities, facilities and privileges on the territory of States, especially member States. For the United Nations, the 1946 and 1947 Conventions are the key texts.

Organised armed groups participating in non-international armed conflicts also have obligations under international law. Moreover, it is increasingly accepted that when they have control over a population and are exercising elements of governmental authority, such groups should comply with human rights law.

## Red Cross and Red Crescent Movement

The components of the International Red Cross and Red Crescent Movement hold a special status:

- Both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) have international legal personality, and are usually treated by States in the same manner as intergovernmental organisations;
- National Red Cross and Red Crescent Societies enjoy a specific status known as “auxiliary to the public authorities in the humanitarian field”.

## Other Actors

Other actors, such as individuals, non-governmental organisations (NGOs), commercial companies, etc. do not have international legal personality under international law. Some exceptions exist in relation to Human Rights Law. This body of law grants individuals rights and establishes mechanisms which enable them to bring complaints against States. It also creates individual criminal responsibility for a number of serious violations.

However, these actors are largely subject to the States' national laws. This is the case, in particular, for NGOs, acting in the context of emergency response.

States have the primary responsibility to ensure that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

### Hot Issues



- In certain situations, there can be disputes as to whether an entity has attained Statehood, and this may be a delicate political issue.
- Sometimes Transnational Corporations are contributing to human rights violations and responsibilities of the host and the home State of the corporation are often blurred.

### Key texts included in Legal Compendium:

- Charter of the United Nations (T - 1945)
- Convention on the privileges and immunities of the United Nations (T - 1946)
- Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement (V - 1986)
- Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (V - 2007)]

### More information on the topic:

#### Web sites :

	<b>American Society of International Law Guide to Electronic Resources for International Law.</b> Useful portal to access information on international law. <a href="http://www.asil.org/treaty1.cfm">http://www.asil.org/treaty1.cfm</a>
	<b>Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</b> , U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) <a href="http://www1.umn.edu/humanrts/links/norms-Aug2003.html">http://www1.umn.edu/humanrts/links/norms-Aug2003.html</a>

## 3. International Principles

### 3.1 Humanitarian Principles

#### Why is it important for my work as HC

Supporting compliance by humanitarian actors with humanitarian principles is an essential element of effective coordination of humanitarian action and central to the role of a Humanitarian Coordinator. Humanitarian principles provide the fundamental underpinning for humanitarian action. Operating in accordance with humanitarian principles is the basis for establishing acceptance by all relevant parties for humanitarian activities to be carried out. Humanitarian principles are thus central to establishing and maintaining access to affected populations.

An HC must undertake efforts to support consistent compliance by UN agencies and other humanitarian actors with humanitarian principles in order to establish and maintain humanitarian access and ensure the overall coherence of the humanitarian response. An understanding of humanitarian principles, as well as means of ensuring compliance with them, is critical knowledge for HCs coordinating humanitarian response.

#### Main elements

#### What are Humanitarian Principles and where do they come from?

The principles are:

**Humanity:** Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and to ensure respect for the human being.

**Impartiality:** Humanitarian action must be carried out on the basis of humanitarian need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, religious beliefs, 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.

The central role of these principles for humanitarian action by the UN stems from General Assembly (GA) Resolution 46/182 (1991) which endorsed the principles of humanity, neutrality and impartiality; sought to strengthen the coordination of humanitarian assistance in the UN system; and established the ERC's mandate. GA Resolution 58/114, (2003) added independence as another important principle underpinning humanitarian action.

These four principles (and three additional ones of particular relevance to the Red Cross Red Crescent Movement, i.e. Unity, Voluntary Service and Universality) were originally codified in the Fundamental Principles of the Red Cross and Red Crescent Movement.

## How are Humanitarian Principles Relevant in Practice?

Recognizing that humanitarian action is often carried out in politically sensitive and military contexts, humanitarian principles provide guidance to ensure that humanitarian action can be distinguished from the activities and objectives of other actors and is not considered improper interference in States' domestic affairs.

In practical terms, ensuring that humanitarian action is conducted on the basis of these principles helps to facilitate our acceptance by all relevant actors on the ground and, therefore, helps to ensure access to affected populations as well as the safety of humanitarian personnel and beneficiaries. In turn, maintaining sustained access to affected populations also positions us to ensure adherence to humanitarian principles in the delivery of humanitarian aid. For example, maintaining presence in affected areas to directly undertake or monitor the distribution of goods to beneficiary populations is important to minimize the diversion of aid and thus to maintain the impartial character of the assistance being provided.

In practice, respect for and adherence to these principles is commonly challenged. States coping with natural disasters or complex emergencies may be suspicious of offers of international assistance, viewing them as improper interference in domestic affairs. Parties to conflict may not be familiar with humanitarian principles or may question the role of humanitarian agencies. In settings where integrated missions exist, the structural relationship of HCs and OCHA to the political and military components of integrated UN missions may affect perceptions of our independence, impartiality and neutrality.

### Hot Issues

- Humanitarian actors may face restrictions or conditions imposed by parties to conflict or affected States which affect the provision of humanitarian assistance in a principled manner. For example, an affected State may refuse the distribution of food to persons in need in areas controlled by rebel groups or may insist that such distributions be channelled only through government entities. This would compromise the impartiality of humanitarian aid.
- Independence and impartiality may be further complicated when non-traditional aid providers, such as armed forces, provide material aid in order to win the "hearts and minds" of affected populations. This carries the high risk of blurring the distinction between humanitarian action and other assistance which is not exclusively humanitarian in character nor provided in a neutral and impartial manner. The IASC Guidelines on the Use of Military and Civil Defence Assets underscore that such assets, including armed escorts, must be utilized only as a last resort in humanitarian operations.
- In insecure environments, in an attempt to meet their responsibilities to provide for the safety and security of humanitarian actors, host States may offer - or even try to insist on providing - military or police escorts. This may have immediate benefits in terms of being able to physically reach certain populations. However, neutrality, impartiality and independence would be at risk as a result.
- Perceived alignment by humanitarian actors' with a party to a conflict undermines perceptions of their neutrality and independence, compromises acceptance for humanitarian action by all parties to a conflict and puts humanitarian actors at risk of being subject to targeted attacks. This naturally affects the ability of humanitarian actors to reach all populations in need of assistance.

- Inconsistent compliance with humanitarian principles on the part of humanitarian organizations across various contexts, as well as within the humanitarian community, can result in a fragmented, rather than coherent and coordinated humanitarian response strategy. It may also mean that other actors may increasingly dismiss humanitarian principles as optional or impractical rather than essential to effective humanitarian action.
- The UN has multiple simultaneous roles and objectives in situations of armed conflict. Humanitarian actors are often expected to align their activities with overarching political objectives being supported by the UN. There is a risk that humanitarian actors of the UN may be perceived to be partial and political.

### Key texts included in Legal Compendium:




- Statutes of the Movement (1986).
- Strengthening of the coordination of humanitarian emergency assistance of the United Nations GA Resolution A 46/182 (1991) and GA Resolution 58/114 (2004).

### More information on the topic

Humanitarian principles have been applied in policy concerning humanitarian operations. See for example:

- IASC Civil-Military Guidelines and Reference for Complex Emergencies, OCHA, 2008.
- Policy Instruction on OCHA's Structural Relationships Within An Integrated UN Presence, 2009.

### On-line publications:

	<p><b>Jean Pictet's Commentary of the Fundamental Principles, 1979</b>  <a href="http://www.icrc.org/Web/eng/siteeng0.nsf/html/EA08067453343B76C1256D2600383BC4?OpenDocument&amp;Style=Custo_Final.3&amp;View=defaultBody2">http://www.icrc.org/Web/eng/siteeng0.nsf/html/EA08067453343B76C1256D2600383BC4?OpenDocument&amp;Style=Custo_Final.3&amp;View=defaultBody2</a>          This Commentary is the key document on the Red Cross and Red Crescent Fundamental Principles.</p>
	<p><b>Humanitarian advocacy in Darfur: the challenge of neutrality,</b>          Humanitarian Policy Group (HPG) Policy Brief 28, October 2007          Available on <a href="http://www.odi.org.uk/resources/download/341.pdf">http://www.odi.org.uk/resources/download/341.pdf</a></p>
	<p><b>Humanitarian Exchange Magazine No. 25 - Neutrality, December 2003</b>  <a href="http://www.reliefweb.int/rw/lib.nsf/db900sid/SSHN-77TKJR/\$file/odihpn-dec2003.pdf?openelement">http://www.reliefweb.int/rw/lib.nsf/db900sid/SSHN-77TKJR/\$file/odihpn-dec2003.pdf?openelement</a>          The special issue of Humanitarian Exchange focuses on neutrality in humanitarian action. Articles explore the concept of neutrality in many facets: neutrality in the public position adopted by organisations regarding political disputes; neutrality in the actual effect of their interventions (does it advance the war aims of one or other party?); and the perception by others of the neutrality of an organisation.</p>

## 3.2 The Code of Conduct for NGOs and RC/RC Movement in Disaster Relief and the Sphere Humanitarian Charter

### Why is it important for my work as HC

The Code of Conduct for NGOs and RC/RC Movement in Disaster Relief, and the Sphere Humanitarian Charter, have been adopted by a large number of humanitarian NGOs and reiterate many of the same fundamental humanitarian principles underpinning humanitarian action. Neither, however, is binding on States or the United Nations.

While many UN agencies derive their mandates from specific treaties or conventions, or States which are bound by treaty obligations, many non-governmental organizations rely on humanitarian principles as reference points for their undertaking humanitarian action. The Code of Conduct provides an important reference for the HC in his/her role as facilitator between the various elements of the humanitarian system. It provides a common ground on many principles to begin a dialogue on humanitarian action.

### Main elements

#### Background

The Code of Conduct for the Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief was developed in 1992 following the crisis in the Great Lakes Region by the Steering Committee for Humanitarian Response (SCHR) to set ethical standards for organizations involved in humanitarian work. In 1994, SCHR adopted the code and made the signing of it a condition for membership in that consortium.

Its purpose is to apply ten agreed principles to regulate the actions of the Red Cross and Red Crescent Movement and NGOs. The Code attempts to regulate the action of the organisation in their disaster relief operations. Its principles are also used as a reference by many non-governmental humanitarian agencies in their responses to complex emergencies.

The Code of Conduct is a voluntary code which is self-enforced by each of the signatory organizations. There is no mechanism for checking compliance of an organisation signing the Code. Therefore, there is no formal sanction when the conduct of a signatory does not conform to the Code.

#### Contents of the Code

The Code includes ten principles which fall into two types: Articles 1 through 4 are core humanitarian principles required for humanitarian response. The remaining articles are more aspirational and are important to improving the quality of both humanitarian and developmental work.

The humanitarian imperative based on the principle of humanity, together with other core principles, impartiality, and independence, stress that humanitarian response must be based on need alone. They are derived from the Fundamental Principles of the International Red Cross and Red Crescent Movement. However, the principle of neutrality, which is directly related to the special international role of the Red Cross, is not included in the Code of Conduct.

## Principles of Conduct

- 1) The humanitarian imperative comes first;
- 2) Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone;
- 3) Aid will not be used to further a particular political or religious standpoint;
- 4) We shall endeavor not to be used as an instrument of government foreign policy;
- 5) We shall respect culture and custom;
- 6) We shall attempt to build disaster response on local capacities;
- 7) Ways shall be found to involve program beneficiaries in the management of relief aid;
- 8) Relief aid must strive to reduce vulnerabilities to future disaster as well as meeting basic needs;
- 9) We hold ourselves accountable to both those we seek to assist and those from whom we accept resources; and
- 10) In our information, publicity and advertising activities, we shall recognize disaster victims as dignified human beings, not hopeless objects.

The Code also includes annexes containing recommendations for international organisations, affected States, and donor governments. Of course, as none of them have signed the Code, they are not bound by the annexes.

## Sphere Humanitarian Charter

The Code of Conduct was also included in the Sphere Humanitarian Charter and Minimum Standards for Disaster Response. A Sphere Humanitarian Charter further developed these principles and set down Sphere standards and accompanying indicators. In particular, the Humanitarian Charter champions the:

- Right to Life with Dignity (International Human Rights Law);
- Distinction of Civilians from Combatants (international Humanitarian Law); and
- Non-refoulement and the ban on forcible or coerced displacement (Refugee Law, the Internally Displaced Persons Guidelines, and International Human Rights Law)

## Hot Issues

- The ten principles of conduct of the Code are sometimes in contradiction and tension, in particular the humanitarian imperative and independence.

## Key texts included in Legal Compendium:


Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (V - 1994)

## More information on the topic

**Text, explanations and list of signatories of the Code of Conduct:**

<http://www.ifrc.org/publicat/conduct/index.asp>

## On-line publications:

	<b>The Humanitarian Charter and Minimum Standards for Disaster Response, 2004.</b> <a href="http://www.sphereproject.org">http://www.sphereproject.org</a>
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## 4. International Human Rights Law (IHRL)

### 4.1 General Aspects of IHRL

#### Why is it important for my work as HC

Human rights are inherent to every human being. Violations of human rights are often amongst the principal root causes and consequences of humanitarian emergencies, whether it is in the context of natural or man-made disasters. During crises, pre-existing trends of human rights violations as well as vulnerabilities of certain groups are exacerbated when protection support systems erode. HC's should know and understand the existing human rights framework to ensure that monitoring and reporting of the human rights situation, as well as any necessary advocacy for the respect, protection and fulfilment of human rights of all affected populations, is carried out as appropriate.

Human rights are at the core of humanitarian protection and are recognised as a cross-cutting factor in humanitarian preparedness and response efforts. Protection of human rights is intrinsic to a more effective, sustainable and comprehensive humanitarian response. Human rights law is the critical normative guide for human rights-related approaches that should inform humanitarian response. Moreover, promoting respect for human rights is both an objective and a core activity of the whole UN as established in the UN Charter.

#### Main elements

#### What are Human Rights?

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. They are inherent to all human beings and are founded on respect for the dignity and worth of each person. Human rights are expressed, promoted and guaranteed by law, specifically through national laws, bilateral, regional and international treaties, norms and standards, customary international law, general principles of law and other sources of international law.

#### International Human Rights Law

The creation of the UN provided the forum for the development and adoption of international human rights norms and instruments. The United Nations Charter defines as one of the main purposes of the Organization to promote and encourage respect for human rights and fundamental freedoms for all without discrimination of any kind. Furthermore, since 1945, a series of international human rights treaties and other instruments have been elaborated. Other instruments have been adopted at a regional level reflecting the particular human rights concerns of the region. Many countries have adopted constitutions, bills of rights and other laws which protect and promote human rights. Often the language used is drawn directly from the international human rights instruments.

International human rights law consists of **binding instruments**, such as treaties, statutes, covenants, conventions and protocols, and **non binding instruments**, like declarations, guidelines, standard rules, recommendations and principles. Despite their non-binding effect, such instruments have a legal and political force and provide guidance to States.

## The Universal Declaration of Human Rights

The Universal Declaration of Human Rights adopted on 10 December 1948 was the first instrument to include the rights and freedoms of individuals in an international instrument. Since 1948, the Universal Declaration has been translated into more than 365 languages and is one of the best known and most often cited human rights documents in the world. The Declaration inspired many human rights instruments. References to the Declaration have been made in national laws and constitutions, charters and resolutions of regional intergovernmental organizations as well as in treaties and resolutions adopted by the United Nations system. Today, the Declaration is widely considered to embody existing legal obligations under international customary law.

## Core International Human Rights Instruments and Treaty Bodies

There are nine core international human rights treaties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

Acronym	Core international human rights instruments	Treaty bodies
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
<b>ICCPR</b> <b>ICCPR-OP1</b> <b>ICCPR-OP2</b>	International Covenant on Civil and Political Rights Optional Protocol to the International Covenant on Civil and Political Rights Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Human Rights Committee (CCPR)
<b>ICESCR</b> <b>ICESCR-OP</b>	International Covenant on Economic, Social and Cultural Rights Optional Protocol of the Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
<b>CEDAW</b> <b>OP-CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women Optional Protocol to the Convention on the Elimination of Discrimination against Women	Committee on the Elimination of Discrimination Against Women (CEDAW)
<b>CAT</b> <b>OP-CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee Against Torture (CAT) Subcommittee on Prevention of Torture
<b>CRC</b> <b>OP-CRC-AC</b>	Convention on the Rights of the Child <a href="#">Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict</a>	Committee on the Rights of the Child (CRC)

<b>OP-CRC-SC</b>	<a href="#">Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</a>	
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers (CMW)
<b>ICPPED</b>	International Convention for the Protection of All Persons from Enforced Disappearance	Not yet in force
<b>CRPD</b> <b>OP-CRPD</b>	Convention on the Rights of Persons with Disabilities <a href="#">Optional Protocol to the Convention on the Rights of Persons with Disabilities</a>	Committee on the Rights of Persons with Disabilities (CRPD)
<b>CRC</b> <b>OP-CRC-AC</b> <b>OP-CRC-SC</b>	Convention on the Rights of the Child <a href="#">Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict</a> <a href="#">Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</a>	Committee on the Rights of the Child (CRC)
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers (CMW)
<b>ICPPED</b>	International Convention for the Protection of All Persons from Enforced Disappearance	Not yet in force
<b>CRPD</b> <b>OP-CRPD</b>	Convention on the Rights of Persons with Disabilities <a href="#">Optional Protocol to the Convention on the Rights of Persons with Disabilities</a>	Committee on the Rights of Persons with Disabilities (CRPD)

Each of these treaties has established treaty bodies, i.e. committees of independent experts to monitor implementation of the treaty provisions by its States parties. States parties are obliged to report regularly to the treaty bodies. Some committees are also empowered to examine individual complaints against governments for human rights violations.

The main functions of treaty bodies are to:

- Examine reports submitted by the States parties to the treaty in question and issue guidance to the States in the form of “Concluding Observations”;
- Consider individual complaints in cases where the relevant treaty provides for that possibility and where the State in question is a party to the procedure;
- In the case of the committees monitoring the Convention Against Torture and the Convention on the Elimination of All Forms of Discrimination Against Women, to undertake, with the consent of the State involved, targeted investigations regarding States which give particular cause for concern; and
- Issue authoritative interpretation of the rights contained in the treaties in the form of “General Comments”.

## Scope of Application

Human rights are applicable at all times whether in time of peace, of state of emergency (i.e. natural disaster) and/or armed conflict. The rights established in human rights treaties are to be enjoyed by all persons on the territory or subject to the jurisdiction of a State party, including non-citizens such as refugees, stateless persons, and migrants. Although certain human rights can be derogated from in times of public emergency, many human rights guarantees can never be suspended, e.g. **the prohibition of the use of torture**. Moreover, in accordance with the International Covenant on Civil and Political Rights, derogation from human rights obligations declared in a situation of public emergency that threatens the life of the nation must be officially proclaimed, must not be inconsistent with the State's obligations under international law, must not involve discrimination and must include only measures strictly required by the exigencies of the situation.

States may also enter reservations to some provisions of international human rights treaties, insofar as they do not go against the spirit and nature of the treaty.

In times of armed conflict, IHRL and international humanitarian law apply in a complementary and mutually reinforcing way. IHRL is also closely interlinked with international refugee law.

## State Obligations

Compliance with international human rights is a State obligation. States are bound to 'respect', 'protect' and 'fulfil' the rights contained in treaties they are a party to.

### Respect

States are obliged to ensure that human rights are fully respected in the context of State policies, laws and actions. This obligation requires States to ensure that none of its ministries or public servants violate or impede enjoyment of human rights by their policies or actions.

### Protect

States are obliged to ensure that enjoyment, by everyone without discrimination, of all their human rights is protected from abuse by third parties – i.e. from the actions of individuals and groups at all levels of society, including corporations, institutions and public and private bodies. This protection should be through the introduction of laws to protect human rights, and the provision of affordable and accessible redress procedures in the event of abuse of the rights.

### Fulfil

States are obliged to take the necessary steps to ensure the realisation of human rights in practice through the adoption of legislative and other measures, such as the provision of education and other public services and policies designed to ensure access for everyone to basic needs. The obligation to fulfil includes the obligations to facilitate, promote and provide. In the context of economic, social and cultural rights, States are obliged to take all measures to achieve the progressive realisation of the rights. However, States obligations are less firm than other rights. Some obligations are required to be implemented immediately, such as the elimination of discrimination, the provision of free and compulsory primary education for all, access to the minimum essential food which is nutritionally adequate and safe, access to basic shelter, housing and sanitation, and an adequate supply of safe drinking water.

## Non-State Actors

While non-State actors are not, as such human rights duty bearers, certain groups such as economic actors and non-State armed groups sometimes voluntarily agree to respect human rights responsibilities. Indeed, non-State actors are increasingly encouraged to do so. Examples include the

Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines issued by the Special Rapporteur for the enjoyment of the highest attainable standard of physical and mental health, A/63/263; and the Framework for Business and Human Rights issued by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/8/5. There are many examples of armed groups agreeing to respect human rights standards, either generally or regarding specific groups, such as children. Non-State groups may have also committed to human rights standards through a peace agreement.

Furthermore, non-State actors may have specific legal obligations deriving from international human rights treaties. For example, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict provides that non-State actors should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. Failure to do so may entail international criminal responsibility.

On this basis, it is possible to undertake human rights advocacy with non-State actors even though they are generally not bound by human rights law.

### Hot Issues

- Progressive realization of economic, social and cultural rights continues to be invoked by States as the “excuse” for not taking any step towards the implementation of their legal obligations. In times of emergencies, the expectation that the international community will provide for the economic and social needs of a population is even bigger. Even in such circumstances, States continue to have legal obligations towards the implementation of all sets of rights. State responsibilities in this respect should be reiterated by HCs and the humanitarian community.
- There is sometimes a fine and moving line of what can be considered human rights responsibilities of non-State actors under international human rights law. HCs should not equate engagement with non-State actors for the protection of human rights with the attribution of human rights legal obligations, i.e. when HCs engage with non-State actors, it does not automatically mean they consider non-State actors as duty bearers. As a general practice engagement with non-State actors is encouraged to further human rights protection. HCs should request ad hoc legal advice as necessary and develop on that basis the arguments to be used in their interaction with non-State actors.

## 4.2. UN Human Rights Mechanisms and Bodies

### Why is it important for my work as HC

In some instances, undertaking advocacy and intervening on human rights violations and sensitive protection issues may, especially if carried out by persons who do not have the necessary knowledge and expertise, have negative consequences on humanitarian activities as well as for the very people whose situation it seeks to improve. International human rights mechanisms, particularly independent bodies like Special Procedures of the Human Rights Council, or an authoritative human rights advocate such as the United Nations High Commissioner for Human Rights, can support humanitarian response by publicly speaking and reporting on situations that sometimes humanitarian actors on the ground cannot openly denounce without compromising humanitarian space. Being aware of the role and functions of human rights mechanisms can help HCs to fully use their potential in support of effective humanitarian response. Moreover, the recommendations of human rights mechanisms and general comments of treaty bodies can be used to guide a rights-based approach to humanitarian response.

It is in this respect important to feed these mechanisms with quality information and interact with them on a regular basis. Sometimes, the reports, communications and statements of human rights

mechanisms are the only official UN record on the human rights situation as relevant to the humanitarian emergency.

Humanitarian response informed by the outcome of the work of human rights mechanisms (reports, concluding observations of treaty bodies, recommendations) has an additional layer of legitimacy vis-à-vis national authorities, populations affected and the international (humanitarian and human rights) community.

## Main elements

In addition to **treaty bodies** (see above in section 4.1.) in charge of monitoring the implementation of the core human rights instruments, other UN bodies and organs play a role in the promotion and protection of human rights. Below are some of the more pertinent amongst these.

### The Office of the High Commissioner for Human Rights (OHCHR)

Created in 1993, the High Commissioner seeks to lead the international human rights movement by acting as a moral authority and voice for rights-holders. The High Commissioner makes frequent public statements and appeals in situations of human rights crises. OHCHR engages in dialogue and builds constructive cooperation with governments to strengthen national human rights protection. The mandate of the High Commissioner also includes mainstreaming human rights and supporting and advocating a human rights-based approach in the work of the UN system. OHCHR is the Secretariat of the Human Rights Council and supports special procedures, treaty bodies and the Universal Periodic Review mechanism. In addition, together with UNHCR and UNICEF, OHCHR is one of the three potential lead agencies of the Protection Cluster at the field level.

### The Human Rights Council (HRC)

The Human Rights Council (HRC) is an inter-governmental body within the UN system consisting of 47 Member States elected by the UN General Assembly for a period of 3 years. The Human Rights Council was created in 2006 by the General Assembly and replaced the former Commission on Human Rights. Its functions are, *inter alia*, to promote the full implementation of human rights obligations undertaken by States and to contribute to the prevention of human rights violations and respond promptly to human rights emergencies.

A key mechanism of the HRC is the **Universal Periodic Review (UPR)**, a mechanism to review the human rights situation of all UN 192 Member States in 4-year cycles. The review of each country is based on three reports. One is a national report prepared by the government while the other two are produced by the Office of the High Commissioner for Human Rights (OHCHR), i.e. the compilation of UN information and the summary of stakeholders' information. UN agencies and programs, civil society organisations and others participate in the review process by submitting information that is then included in the reports prepared by OHCHR and discussed during the review. The UPR is a cooperative mechanism based on an interactive dialogue between the State reviewed and Member States of the Human Rights Council. It provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

The **Human Rights Council Advisory Committee** is the Council's "think-tank" providing it with expertise and advice on thematic human rights issues. Composed of 18 independent experts, the main function of the Advisory Committee is to provide research-based expertise to the Human Rights Council in thematic areas related to the promotion and protection of human rights identified by the Council. States, UN specialized agencies and other intergovernmental organizations, national human rights institutions and NGOs can participate to the work of the Advisory Committee.

The **Complaint Procedure** is a confidential procedure to bring to the attention of the Human Rights Council consistent patterns of gross and reliably attested human rights violations. Any individual or group claiming to be the victim of such human rights violations can submit a communication, as could any other person or group claiming to have direct and reliable knowledge of such violations. After review by the Working Group on Communication, admissible communications are transmitted to the Working Group on Situations, which reports the matters to the Human Rights Council with recommendations on the course of action to take.

## Special procedures

“Special procedures” refer to the mechanism established by the former Commission on Human Rights and assumed by the Human Rights Council to examine, monitor, advise and publicly report on a human rights situation in a specific country (**country mandates**) or on a thematic issue (**thematic mandates**).

In 2009, there were 39 special procedures: 8 country mandates and 31 thematic, including special rapporteurs, independent experts, representatives of the Secretary General and working groups (all known as “special procedures mandate-holders”). Special procedures publicly report to the Human Rights Council and some to the General Assembly. Their reports focus on:

- Thematic studies;
- The country visits undertaken; and
- The communications sent to concerned governments on allegations of human rights violations and replies received.

Thematic studies of special procedures also focus on humanitarian contexts. An example is the report on the right to education in emergency situations of the Special Rapporteur on the right to education (A/HRC/8/10). Together with the general comments of treaty bodies, the recommendations of special procedures, both those contained in thematic reports and in reports on country visits, provide expert and authoritative guidance on the concrete and specific steps that needs to be taken to implement human rights on the ground.

Special procedures are *independent* authoritative “human rights voices” that can speak publicly and openly on protection and human rights concerns in emergency situations. This can be done through press releases and statements they can issue; through communications and urgent appeals they send to concerned governments; and through the advocacy work they do in the course of a country visit. The Representative of the UN Secretary-General on the human rights of internally displaced persons referred to in section 7 of the guidance materials is one of the 31 thematic special procedures.

## The General Assembly

The General Assembly negotiated and adopted the human rights treaties and generates human rights guidance and soft law on an ongoing basis. A number of special procedures of the HRC report to the General Assembly on a regular basis.

## The Security Council

The Security Council plays an important role in drawing attention to human rights situations which threaten international peace and security and in taking action in response thereto. The Human Rights Council may request that the Security Council takes action when human rights violations occur. Protection of civilians is also discussed before the Security Council with the Secretary General making statements on a regular basis. The Security Council has, over the last 10 years, increasingly incorporated human rights concerns as issues which constitute a threat to international peace and security. A number of Security Council resolutions have, therefore, addressed human rights issues, in particular relating to protection of civilians, as well as the situation of women, children, and journalists in situations of armed conflict or in post-conflict situations.

### 4.3. Regional Human Rights Systems

#### Why is it important for my work as HC

Regional human rights systems are an important layer for the protection and promotion of human rights. In some continents, regional human rights systems may be more known and accessible to rights-holders, hence more relevant than international human rights mechanisms.

In addition to human rights standards, some regional systems developed an impressive body of case-law that can provide valuable legal guidance in specific and concrete situations.

Knowing the features of the regional human rights system pertinent to the country of operation, its weak and strong aspects, is a fundamental asset for effective humanitarian response.

#### Main elements

Several inter-governmental organizations at the regional level have set up binding and non-binding human rights standards and related promotional, monitoring and judicial mechanisms. The table below lists the main ones.

Region	Organization	Main human rights instruments	Human rights institutions and mechanisms
Africa	African Union (AU)	African Charter on Human and Peoples' Rights, 1981	African Commission on Human and Peoples' Rights (ACHPR), 1986 African Court on Human and Peoples' Rights (AfCHPR), 2004
Americas	Organization of American States (OAS)	American Convention on Human Rights, 1969	Inter-American Commission on Human Rights (IACHR), 1978 Inter-American Court of Human Rights, 1978
Arab States	Council of the League of Arab States	Arab Charter on Human Rights, 2004 <sup>4</sup>	
Asia	Association of Southeast Asian Nations (ASEAN)	No treaty or declaration adopted	ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009
Europe	Council of Europe (COE)	European Convention on Human Rights, 1950	European Court of Human Rights, 1959 Commissioner for Human Rights, 1999
	European Union (EU)	Charter of Fundamental Rights, 2000	Court of Justice of the European Union (CURIA), 1952 Fundamental Rights Agency (FRA), 2007

<sup>4</sup> The UN High Commissioner for Human Rights expressed her concerns about the incompatibility of some provisions of the Arab Charter with international norms and standards. These concerns included the approach to death penalty for children and the rights of women and non-citizens. See press release at: <http://www.unhchr.ch/huricane/hurricane.nsf/view01/6C211162E43235FAC12573E00056E19D?opendocument>

## 4.4. Human Rights at the National Level

### Why is it important for my work as HC

Human rights are implemented at the country level. This is where international human rights standards are to make a difference and turned into entitlements, which right-holders can claim. Human rights standards are designed to be implemented at the national level. National realities and how States comply or not with human rights standards are the first and primary context HCs should look at when advocating for human rights protection.

In some countries, constitutions and laws may grant higher or lower levels of human rights protection in certain areas and more or less rights to people under their jurisdictions than international human rights standards. In some cases, more protection can be an anticipation of future development of international human rights standards.

### Main elements

States can implement their human rights obligations through several types of measures, including:

- **Legislative:** making the necessary legal changes to promote and protect human rights;
- **Executive:** protecting and promoting rights across all parts of governance of society;
- **Policy-making:** ensuring that national policy and programmes and supporting budgets reflect the human rights commitments;
- **Judicial:** ensuring access to justice and other remedies for redress of human rights violations;
- **Institutional:** setting up functioning institutions to facilitate the implementation of human rights standards and policies. States are encouraged to establish independent national human rights institutions.
- **Educational:** ensuring that all levels of the educational system support and promote a human rights culture, and **nourishing a strong civil society** capable of playing a vigorous part in building and supporting that culture.

### National Human Rights Institutions

National human rights institutions are independent bodies established at the national level for the protection and promotion of human rights. There are many types of national human rights institutions. These may include single or multi-member institutions (e.g. ombudsperson or commissions) and their roles and functions may differ from place to place: those whose primary orientation is to advise governments on matters of human rights policy; those that handle individual complaints; and those that work on specific issues (e.g. specialised institutions in charge of issues, such as discrimination, the rights of persons with disabilities, women's rights, refugees and IDPs, children's rights) or on all human rights.

National institutions can play an important role in upholding and reinforcing the rule of law and the administration of justice; advocating for legal and institutional reform and improving security institutions, such as the police and prison administration; advocating for the development of public policy or reform related to specific rights; and monitoring the protection of rights, including those of refugees, IDPs and stateless persons.

National human rights institutions are guided by the "Principles relating to the status of national institutions for protection and promotion of human rights", commonly known as the Paris Principles.

The six key criteria of the Paris Principles are:

- Independence guaranteed by statute or constitution;
- Autonomy from government;
- Pluralism, including in membership;
- A broad mandate based on universal human rights standards to both promote and protect all human rights at the national level;
- Adequate resources, which is a State obligation to ensure; and
- Act as a bridge between civil society and the government.

### Hot Issues

- The level of independence of a national institution from its respective government may vary from country to country or from one government to the next, and could have an impact on the quality and reliability of the information provided by the national institution.
- A national institution accredited as formally complying with the requirements of the Paris Principles has to act in accordance with its mandate, maintain its independence in practice and act impartially in the exercise of its functions. This is measured for example through its de facto credibility, the integrity and professionalism of its members; through public perception, and interaction with human rights defenders and civil society.

## 4.5. Human Rights Principles and the Rights-Based Approach

### Why is it important for my work as HC

Human rights principles and the rights-based approach provide the framework for the human rights work of HCs and more broadly the work of all humanitarian actors.

Human rights principles and the rights-based approach are both programming and advocacy tools. When applied to programming, they are instrumental to inform humanitarian response with human rights considerations. In advocacy work, they offer entry points for principled positions based on an accepted framework.

### Main elements

A human-rights based approach identifies **rights-holders** and their entitlements and corresponding **duty-bearers** and their obligations. It works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. For a more effective, sustainable and comprehensive response, humanitarian action should be rights-based.

The human rights system is underpinned by the following principles:

### Universality and Inalienability

Human rights are universal and inalienable. All people everywhere in the world are entitled to them. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. Human rights are also inalienable in that they should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

## Inter-dependence and Indivisibility

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination are indivisible, inter-related and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

## Equality and Non-discrimination

All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

## Participation and Inclusion

Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, cultural, economic, political and social development in which human rights and fundamental freedoms can be realized.

## Accountability and Rule of Law


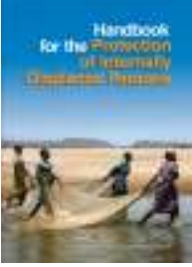

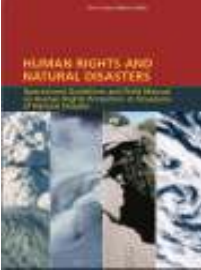

States and other duty-bearers are accountable for the observance of human rights. When they fail to comply with their obligations under human rights instruments, rights-holders are entitled to claim redress through the appropriate rules and procedures.

## Hot Issues

- The concept that all human rights are indivisible may appear to be challenged in emergencies, when rights are “triaged” or prioritized, with an emphasis on survival rights, non-derogable rights and rights linked to saving life, alleviating suffering and maintaining human dignity. Nevertheless, the fact that operational measures are taken to protect certain rights as a matter of priority does not affect the indivisibility of human rights as a whole.
- HCs need to address all “survival rights” but advocate for a holistic human rights interpretation.

## More information on the topic

### Online publications:

	<p><b>Human Rights Guidance note for Humanitarian Coordinators</b>, IASC, 2006.  <a href="http://www2.ohchr.org/english/countries/field/docs/HRguidance-coordinators.pdf">http://www2.ohchr.org/english/countries/field/docs/HRguidance-coordinators.pdf</a></p>
	<p><b>Handbook for the Protection of Internally Displaced Persons</b>, Global Protection Cluster Working Group, Provisional release  <a href="http://www.humanitarianreform.org/Default.aspx?tabid=294">http://www.humanitarianreform.org/Default.aspx?tabid=294</a></p>
	<p><b>Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action</b>, IASC, 2002  <a href="http://www.allindiary.org/uploads/B9-IASC_Protection_manual_-_growingtheshelteringtree.pdf">http://www.allindiary.org/uploads/B9-IASC_Protection_manual_-_growingtheshelteringtree.pdf</a></p>
	<p><b>Human Rights and Natural Disasters: Operational Guidelines and Field Manual (Pilot Version March 2008)</b>  <a href="http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-7EE9KM/\$file/brookings_HR_mar08.pdf?openelement">http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-7EE9KM/\$file/brookings_HR_mar08.pdf?openelement</a></p>
	<p><b>Humanitarian Coordinator and Resident Coordinator Checklist of Housing, Land and Property Rights &amp; Broader Land Issues throughout the displacement Timeline from Emergency to Recovery</b>, 2009  <a href="http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/HC%20Checklist%20on%20HLP%20and%20Land%20Issues_Final2.doc">http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/HC%20Checklist%20on%20HLP%20and%20Land%20Issues_Final2.doc</a></p>

## Websites:

**Office of the High Commissioner for Human Rights** <http://www.ohchr.org> – international human rights standards, mechanisms and bodies; thematic human rights areas; country information; OHCHR publications

**Universal Human Rights Index of UN documents** <http://www.universalhumanrightsindex.org/> - instant access on all countries to human rights information from the United Nations system, based on the observations and recommendations of the UN Treaty Bodies monitoring the implementation of the core international human rights treaties (since 2000) and the Special Procedures of the Human Rights Council (since 2006)

**African Commission on Human and Peoples' Rights** <http://www.achpr.org/>

**Inter-American Commission on Human Rights** <http://www.cidh.oas.org/default.htm>

**Council of Europe** <http://www.coe.int/>

**The Rule of Law in Armed Conflicts Project** <http://www.adh-geneva.ch/RULAC/index.php> - an initiative of the Geneva Academy of International Humanitarian Law and Human Rights to support the application and implementation of international law in armed conflict

<http://www.humanrightstools.org> - collection of tools on human rights

**Amnesty International** <http://www.amnesty.org> - one of the main NGOs working on human rights

**Human Rights Watch:** <http://www.hrw.org> - one of the main NGOs working on human rights

## 5. International Humanitarian Law (IHL)

### 5.1 General Aspects of IHL

#### Why is it important for my work as HC

IHL forms the foundation of humanitarian action in armed conflict and it is critical for a Humanitarian Coordinator to understand its sources, principles and obligations. Linked to this is an understanding of what constitutes armed conflict and the variety of laws, protections and obligations for both parties to the conflict and humanitarian actors which exist in international and non-international armed conflict. HCs need to understand the key aspects that underpin protection and assistance for civilians in armed conflict, particularly the neutral, independent and impartial role of the International Committee of the Red Cross (ICRC) in accessing victims and especially its role as the promoter and guardian of IHL.

#### Main elements

In the event of an armed conflict, both IHL and IHRL apply in a complementary and mutually reinforcing manner. IHL builds and complements protections enshrined in human rights law. IHL will be applicable as the body of law for certain issues pertaining specifically to situations of armed conflicts. They both aim to protect human life and dignity, prohibit discrimination on various grounds, and protect against torture or other cruel, inhuman and degrading treatment. They both seek to guarantee safeguards for persons subject to criminal justice proceedings, and to ensure basic rights including those related to health, food and housing. They both include provisions for the protection of women and vulnerable groups, such as children and displaced persons.

Human Rights Law protects the individual at all times; while IHL applies only in situations of armed conflict. In some cases, IHL will detail specific rules and their interpretation, and in other cases it will be IHRL, depending on which branch of law is more detailed and adapted to the situation.

IHL specifically protects those who do not take a direct part in the fighting – civilians, medical and religious military personnel- and those who no longer take a direct part in the fighting, such as wounded, shipwrecked, sick or detained fighters/combatants, such as prisoners of war. These categories of persons are entitled to respect for their lives and for their physical and mental integrity. IHL provides also for the respect of essential judicial guarantees and for a non-discriminatory treatment.

IHL is the body of law that lays down detailed rules governing the treatment and conditions of deprivation of liberty of prisoners of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the exchange of messages with their families.

Those rules are essential to ensure an effective humanitarian action in time of conflict and HCs need to advocate for their respect.

#### Scope and Nature of IHL

IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict by:

- Protecting those who are not, or are no longer, directly participating in hostilities ; and
- Regulating the means of warfare – in particular weapons – and methods of warfare, such as military tactics.

In order to achieve these aims, the following basic principles may be highlighted:

### Principle of Distinction

The corner stone of the law on the conduct of hostilities is the principle of distinction. In order to protect those who are not participating in the hostilities, the parties to a conflict must at all times distinguish between the civilian population and combatants. Civilians may not be directly attacked.

Attacks may also only be launched against military objectives, and not civilian locations or objects such as public buildings, school or hospitals. Whether an object constitutes a military objective can be difficult to determine. Particularly in the case of so-called dual-use objects, i.e. objects that can be used both for civilian and for military purposes, such as strategically located bridges or power stations.

### Principle of Proportionality

The principle of proportionality seeks to strike a balance between two diverging interests, one dictated by considerations of military necessity and the other by the requirements of humanity. It prohibits attacks at legitimate military objectives 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.

### Precautions

Parties to a conflict must further take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects, in particular hospitals and humanitarian convoys, and may not launch an attack which may be expected to cause such incidental damage which would be excessive in relation to the military advantage anticipated.

### When Does IHL Apply?

IHL applies only in times of armed conflict. It does not apply in times of internal tensions or disturbances such as isolated acts of violence. IHL applies only once a conflict has begun.

IHL distinguishes between international and non-international armed conflict:

**International armed conflicts** exist whenever there is a resort to armed force between two or more States. International armed conflicts are subject to a wide range of rules, including the four Geneva Conventions and Additional Protocol I.

The law of international armed conflict further applies to all cases of partial or total occupation, even if the occupation meets with no armed resistance.

**Non-international armed conflicts** are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State party to the Geneva Conventions. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation. A more limited range of rules apply to non-international armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in the Additional Protocol II.

Still the issue of qualifying a situation may be less simplistic than it seems. Situations of internal disturbances or tensions may at times create more severe humanitarian consequences than some situations of low intensity internal armed conflicts. Often, it is also practically difficult to determine exactly the level of internal organisation of the non-State party to the conflict.

It is not always clear when separate incidents (such as assemblies, rallies, demonstrations, riots, isolated acts of armed violence) become related and, viewed together, are precursors to an armed conflict. What is clear, however, is that a pattern of this kind poses serious problems for the authorities in terms of maintaining public safety and law and order. Disturbances and tensions can eventually lead to situations that threaten the life of the nation and lead the government to proclaim a state of emergency (see IHRL).

The line separating disturbances and tensions from a non-international armed conflict can sometimes be blurred and the only way to categorize specific situations is by examining each individual case. The levels of organization of the armed groups involved as well as the intensity of the armed violence are the key determining factors. This categorization has direct consequences for the armed forces and civil authorities as it does for the victims of the violence. It determines which rules apply and the protection they provide differs according to the legal qualification of the situation (armed conflict or other situation of violence) and the applicable legal framework (IHL and IHRL).

According to the International Criminal Tribunal for the former Yugoslavia:

*"an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between such groups within a State. International humanitarian law applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal armed conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."*

In case of the military involvement of another State in a non-international armed conflict, the legal qualification of the situation will depend on whether the State supports the government or the non-State party to the conflict. In the latter case, the law applicable in international armed conflict will apply between the intervening foreign State and the government fighting the non-State actor.

Only factual elements are taken into consideration to qualify adequately a situation. Political elements as well as official statements by parties to the conflict will have no effect both on the qualification and the applicability of the relevant norms of IHL.

In both international and non-international armed conflicts, under the Geneva Conventions, the general rule is that IHL applies until the "general close of military operations." There are, nevertheless, exceptions to this general rule. First, the obligation to repatriate persons protected under the Third (POWs) and Fourth (Civilians) Geneva Conventions is triggered by the "cessation of active hostilities." Second, the obligations imposed upon occupying powers by the Civilians Convention extend beyond the "general close of military operations."

The clearest method of ending an armed conflict is by means of a peace treaty. This method of terminating conflicts, however, is increasingly rare--particularly given the sharp decline in formal declarations of war. Even in the absence of a peace treaty, there may be a complete cessation of hostilities; and the de facto resumption of normal peaceful relations between the parties. Nevertheless, active hostilities may cease in a variety of ways, some temporary and some permanent, including an armistice, a cease-fire, or a truce. The general applicability of IHL terminates if active hostilities cease and there is no probability of a resumption of hostilities in the near future.

## **Who Determines the Existence of a Conflict?**

Different entities determine the existence of a conflict, for different purposes and with different consequences.

The Security Council is authorized by the UN Charter to make a determination of the existence of a threat to the peace, breach of the peace or act of aggression. Such a finding brings into play the Chapter

VII enforcement mechanisms of the Charter. The resolution making such a finding is binding on all UN Member States.

A Security Council determination of the existence of a threat to the peace, breach of the peace or act of aggression is not the same as a finding of the existence of an armed conflict. However, it may be an indirect evidence of the existence of such a situation, for example if the resolution calls upon the parties to the conflict to respect the Geneva Conventions – whose application, of course, presupposes the existence of an armed conflict.

International and/or national courts may be required to make a determination of the existence of a conflict. This can occur *ex post facto* when they try individuals for alleged violations of international humanitarian law – for war crimes to be committed it is necessary to have a war. The international criminal tribunals for the former Yugoslavia and for Rwanda have therefore developed important jurisprudence on the notion of armed conflict that provides useful guidelines when analyzing other situations. Of course, it is not only in relation to criminal matters that courts may have to determine whether a particular situation amounts to an armed conflict. The question may also arise in civil claims, for example to determine whether a war exemption clause in an insurance contract is applicable.

Thirdly, the parties to the conflict themselves also make a determination of the situation in which they find themselves. This might be required constitutionally. For example parliamentary authorization may be required for going to war. Or it may take the form of a more discrete determination, for example, by the provision of "armed conflict" as opposed to "law enforcement" rules of engagement to the armed forces.

Finally, the ICRC also and constantly makes a determination of whether a particular situation amounts to an armed conflict. This "qualification" of a situation is necessary both to determine whether international humanitarian law is applicable and for the ICRC to commence its traditional activities.

In principle the ICRC does not pronounce itself publicly on its legal determination of an armed conflict given the sensitivity of many contexts, but may do so on rare occasions. Determination remains, however, an essential part of an on-going confidential dialogue with the parties concerned on their obligations under international law. The ICRC qualifies every situation of violence in the world it works in or aspires to work in. Although the determination is not legally binding, it reminds the parties of their legally binding obligations under IHL. For this purpose, once the ICRC has made the determination that a situation amounts to an armed conflict, it shares with the parties a memorandum of basic rules and principles of IHL to be respected, and offers, if not already done, its services with a view to protecting and assisting persons affected by armed conflict.

For obvious reasons this can be an extremely sensitive issue, particularly in non-international armed conflicts, where there is a tendency by States to deny the application of international humanitarian law, who often claim the violence is terrorism or purely related to narco-trafficking, but not armed conflict.

## Sources

International Humanitarian Law is part of international law, which is the body of rules governing relations between States. IHL is rooted in the rules of ancient civilizations and religions.

Universal codification of IHL began in the nineteenth century. The bitter and dramatic experiences of the wars at the beginning of the twentieth century have led to major developments of IHL, for the sake of the protection of:

- Wounded, sick and shipwrecked soldiers;
- Prisoners of war; and
- The civilian population.

A major part of IHL is contained in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. A third Additional Protocol was adopted in 2005 and provides for the possibility of using an additional distinctive emblem – the red crystal. Many rules contained in these treaties are today considered to form customary international humanitarian law (see ICRC Customary International Law study below).

### Article 3 Common to the Four Geneva Conventions

Common Article 3 of the four Geneva Conventions of 1949 represents the minimum core rules to be respected at all times by all parties to an armed conflict. It provides that persons taking no active part in the fighting or no longer taking part in the fighting, must in all circumstances be treated humanely and without discrimination.

### The 1977 Additional Protocols

The 1977 Additional Protocols further expand the categories of protected persons and clarify the rules on the conduct of hostilities, such as the prohibition of direct attacks against civilians, the prohibition of indiscriminate attacks and the principle of proportionality.

Protocol I also expands the definition of international armed conflict to include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.

Protocol II applies to non-international armed conflict that takes place on the territory of a State party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise control over a part of a country's territory.

Many treaties and sets of rules add to the Geneva Conventions and their Additional Protocols, e.g.:

- The Biological Weapons Convention (1972);
- The Chemical Weapons Convention (1993);
- The Ottawa Convention on anti-personnel mines (1997);
- The Optional Protocol to the Convention on the Rights of the Child in the involvement of children in armed conflicts (2000); and
- Convention for the Protection of Cultural Property in the Event of Armed Conflict. (1954) and Second Protocol (1999).

### Jus In Bello and Jus Ad Bellum

IHL, as the law of armed conflict, is the law placing limitations on the conduct of hostilities in armed conflict (jus in bello). IHL does not regulate whether a State has actually the right to resort to force (jus ad bellum), which is governed by a distinct part of the international law set out in the Charter of the United Nations.

### Jus Ad Bellum

Until the end of the First World War, resorting to armed force was regarded not as an illegal act but as an acceptable way of settling differences. The adoption of the United Nations Charter sought to outlaw war. "The member of the Organization shall abstain, in their international relations, from resorting to the threat or the use of force (...)".

The UN Charter foresees some exceptions where resorting to the use of force is accepted:

- The right to individual or collective self-defence, Art. 51 UN Charter;
- The UN Security Council, acting on the basis of the Chapter VII of the Charter, may also decide on the collective use of force as well as on the Chapter VI for a Pacific Settlements of Disputes;
- A further exception to the prohibition of use of force has been recognized within the framework of the right of peoples' self-determination (Resolution 2105-1965).

## Jus In Bello

IHL does not regulate the reason and legality of a conflict. IHL applies and must be respected by States Parties to the Geneva Conventions, armed groups and individuals, whatever the reasons and causes of the armed conflict are, and whether the latter is deemed lawful or not in accordance with the Charter of the United Nations.

IHL is intended to protect war victims and their fundamental rights, no matter to which party they belong. The applicability of IHL is therefore independent from any questions related to jus ad bellum. It continues to be applicable as long as there is a situation of armed conflict.

In situations of armed conflict, members of military units taking part in peace operations must respect IHL when they are actively engaged in armed confrontations against a party to the conflict. When they are not, they are, in principle, considered civilians entitled to protection under IHL. The applicability of IHL to forces conducting operations under UN command and control was reaffirmed in the Bulletin of the UN Secretary-General issued on August 6, 1999.

## Differences between IHL and IHRL

International humanitarian law is the body of law that applies automatically in case of an armed conflict, be it of international or non-international character. Contrary to IHRL, IHL only applies in time of conflict. IHL deals with many issues that are outside the purview of IHRL, such as the conduct of hostilities, combatant and prisoner of war status and the protection of the emblems. Whereas IHL binds all actors to an armed conflict, IHRL is generally considered to lay down rules binding governments only. However, there is a growing body of opinion according to which non-State actors must also be expected to respect human rights norms. Whereas certain Human Right norms can be derogated from, IHL norms cannot.

## Customary Nature of IHL Rules

The Geneva Conventions have achieved universal ratification. This is not the case for their three Additional Protocols.

Customary IHL as a source of law is in practice very important precisely because some of the important IHL treaties are not universally ratified, thus not legally binding on those States not party to them. In particular, Additional Protocols I and II lack ratification by a number of States, some of them important actors in recent or current armed conflicts. Being legally binding obligations on all parties to the conflict by its customary nature, parties to the conflict must respect them, no matter whether they are a party to the concerned IHL treaty or not.

Many provisions of IHL are now accepted as customary law, e.g. the 1907 Hague Conventions, the Geneva Conventions, including common Article 3, and also large parts of both Additional Protocols I and II.

Furthermore, it has to be noted that if an act of war is not expressly prohibited by international agreements or customary law, this does not necessarily mean that it is actually permissible. The so-called Martens Clause that has been included in the Preamble to the Hague Convention IV and

reaffirmed in the 1977 Additional Protocol I, is applicable. It provides that in cases not covered by international agreements, civilians and combatants remain under the protection and authority of the principles on international law derived from established customs, from the principles of humanity and from the dictates of public conscience.

## **IHL and the Role of the ICRC**

The mandate of the International Committee of the Red Cross is derived from the Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross Red Crescent Movement. The ICRC has been entrusted with the role of guardian of international humanitarian law and with specific tasks.

During international armed conflicts, the four Geneva Conventions of 1949 and Additional Protocol I of 1977 lay down the ICRC's right to visit prisoners of war and civilian internees. It further gives the ICRC the right to offer its services to the parties to the conflict with a view to protecting and assisting the victims of the armed conflict, such as bringing relief to wounded, sick or shipwrecked military personnel, restoring contact between family members separated by conflict, aiding civilians and ensuring that those protected by IHL are treated humanely.

During non-international armed conflict, Article 3 common to the four Geneva Conventions also recognizes the right of the ICRC and other impartial humanitarian bodies to offer their services to the conflict parties with a view to engaging in relief activities and visiting people detained in connection with the conflict or to solve other humanitarian problems. This offer of services may not be seen by the concerned State as interference in its internal affairs. The State must examine offer in good faith, is however free to decline it.

ICRC's *right of humanitarian initiative* in other situations of violence is further supplemented by Article 5 of the Red Cross Red Crescent Movement's Statutes. The ICRC can thus propose any humanitarian initiative that comes within its role as specifically neutral and independent institution; the State is however again free to decline it.

## **Respect of IHL and Sanction Mechanisms**

It is primarily the duty of States to respect and ensure respect for IHL. Already during peace time, States must not only implement IHL treaties into their national legislation, but also adopt measures at a national level to effectively implement the law, such as the translation of the instruments of IHL, the dissemination of its main rules among the armed forces and the general population, the marking of protected objects and the appointment of legal advisers within the armed forces. The repression of all violations of IHL through the adoption of criminal legislation punishing war crimes as well as through the prosecution of those persons alleged to have committed such crimes is equally important.

Measures also have to be taken at an international level. States not only have an obligation to respect IHL, but also to ensure its respect. This means that they must not only do everything they can to ensure that the rules in question are respected by its organs and those persons under its control, but they must also take all possible steps to ensure that the rules are respected by all, and in particular by the parties to a conflict. To this end they may, inter alia, undertake diplomatic efforts, publicly denounce violations, restrict trade and cooperate with the United Nations and international and national tribunals.

The United Nations Security Council has established two international tribunals to try certain crimes committed within the territory of the former Yugoslavia and in connection with the events in Rwanda, including violations of international humanitarian law. A permanent International Criminal Court (ICC) competent to try serious violations of international humanitarian law constituting war crimes was set up in 1998 under the Rome Statute (see International Criminal Law). "Mixed" courts such as the Special Court for Sierra Leone have also been established in recent years. Such courts comprise

elements of both international and domestic jurisdiction. These measures constitute a major step forward in efforts to prevent and punish serious violations of international humanitarian law.


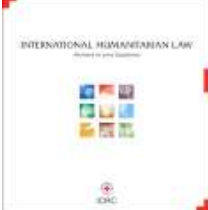




### Hot Issues

- Recognizing when violence can be characterized as armed conflict can be controversial as many States do not want to recognize (for various motives) the existence of an internal armed conflict in their country.
- When provinces are splitting from an existing State and become recognized as emerging States, the issue of which law is applicable can be problematic (e.g. Bosnia as an non-international armed conflict transitioned to Bosnia versus Yugoslavia in an international armed conflict).
- Defining obligations of occupying powers, when the State occupying claims territory of their own, can be problematic. Determining the end of an occupation when a State has “effective control” over a neighbouring territory can also be challenging.
- The applicability of IHL may raise political considerations, i.e. about the formal recognition of a state of emergency or about the existence of armed groups on the national territory.
- The strength of IHL obligations and protections can be seriously challenged if States are able to act with impunity and crimes remain unpunished or there are no international sanctions (see also International Criminal Law).

### Key texts included in Legal Compendium:

- Convention (IV) relative to the Protection of Civilian Persons in Time of War (T - 1949) - together with the three other Geneva Conventions, not included in the Compendium (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (T - 1977)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (T - 1977)
- Rome Statute of the International Criminal Court (T - 1998)
- Secretary-General's Bulletin, Observance by United Nations forces of international humanitarian law (V - 1999)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (T - 2000)
- Customary Rules of International Humanitarian Law (V - 2005)
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (T - 2005)

Online publications:

	<p><b>Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the context of armed conflict, IASC 2004.</b>  <a href="http://www.reliefweb.int/rw/lib.nsf/db900sid/LHON-64UHEC/\$file/OCHA_FAQ_2004.pdf?openelement">http://www.reliefweb.int/rw/lib.nsf/db900sid/LHON-64UHEC/\$file/OCHA_FAQ_2004.pdf?openelement</a></p>
	<p><b>IHL: Answers to your questions (ICRC publication)</b>  <a href="http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0703/\$File/ICRC_002_0703.PDF!Open">http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0703/\$File/ICRC_002_0703.PDF!Open</a></p>
	<p><b>Frits Kalshoven, Liesbeth Zegveld: Constraints on the waging of war: an introduction to international humanitarian law, Geneva, ICRC, 2001, 3rd ed., 223</b>  <a href="http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0793/\$File/ICRC_002_0793.PDF!Open">http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0793/\$File/ICRC_002_0793.PDF!Open</a></p>
	<p><b>International humanitarian law and the challenges of contemporary armed conflicts, ICRC, 2007, 65</b>  <a href="http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/\$File/IHLcontemp_armedconflicts_FINAL_ANG.pdf">http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/\$File/IHLcontemp_armedconflicts_FINAL_ANG.pdf</a>          The purpose of this ICRC Report is to present an overview of some current challenges to international humanitarian law (IHL), to generate reflection and debate on the issues identified and to outline prospective ICRC action in clarifying and developing the law in the times ahead.</p>
	<p><b>How is the term "Armed Conflict" defined in international humanitarian law?, International Committee of the Red Cross (ICRC) Opinion Paper, March 2008</b>  <a href="http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/\$file/Opinion-paper-armed-conflict.pdf">http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/\$file/Opinion-paper-armed-conflict.pdf</a></p>
	<p><b>Cordula Droege, The interplay between international humanitarian law and international human rights law in situations of armed conflict, 2007,</b>  <a href="http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-human-rights-article-011207/\$file/interplay-article-droege.pdf">http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-human-rights-article-011207/\$file/interplay-article-droege.pdf</a></p>

	<b>Violence and the Use of Force, ICRC</b> <a href="http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0943/\$File/ICRC_002_0943.PDF">http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0943/\$File/ICRC_002_0943.PDF</a>
	<b>Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law</b> <a href="http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/direct-participation-report-res/\$File/direct-participation-guidance-2009-icrc.pdf">http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/direct-participation-report-res/\$File/direct-participation-guidance-2009-icrc.pdf</a>
	<b>1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Protocols</b> <a href="http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5LWJP5/\$File/Cultural_Property.pdf">http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5LWJP5/\$File/Cultural_Property.pdf</a>
	<b>Study on Customary International Humanitarian Law: Summary</b> <a href="http://www.icrc.org/web/eng/siteeng0.nsf/html/p0860?opendocument">http://www.icrc.org/web/eng/siteeng0.nsf/html/p0860?opendocument</a>

## Websites:

**International Committee of the Red Cross** <http://www.icrc.org>

The key website on IHL, with a huge amount of documents, including the International Review of the Red Cross

**Relief Web on IHL:**

<http://www.reliefweb.int/rw/lib.nsf/doc207?OpenForm&query=3&cat=International%20Humanitarian%20Law> - good list of resources on IHL

**International Criminal Court:** <http://www.icc-cpi.int>

The website of the International Criminal Court

**ICTY:** <http://www.un.org/icty> - the Website of the International Criminal Tribunal for Ex-Yugoslavia

**ICTR:** <http://www.icttr.org> - the Website of the International Criminal Tribunal for Rwanda

**IHL Research Initiative:** <http://www.ihlresearch.org>

## 5.2 Distinction between Combatants and Non-Combatants

### Why is it important for my work as HC

HCs need to understand core concepts of IHL which afford protection to civilians in conflict and occupied territories, in addition to humanitarian actors. The Security Council and UN have increasingly referred to IHL and advocated for its respect. The last decades have seen an evolution of armed conflicts bringing about an increasing number of non-international armed conflict as well as major and dramatic casualties among the civilian population. There are countless examples of violations of IHL. Still there are important cases where IHL has made a difference protecting civilians and in restricting the use of indiscriminate and unlawful weapons.

### Main elements

#### Fundamental Principle and Basic Rules of the Law on the Conduct of Hostilities

The fundamental principle is that in any armed conflict, the right of the Parties to the conflict to choose methods and means of warfare is not unlimited. Two basic rules supplement this principle. The first prohibits the use of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. The second prohibits methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

#### Protection Against the Effects of Hostilities

The Geneva Conventions do not deal specifically with the general protection of the civilian population against the effects of hostilities. The 1977 Additional Protocol additional to the Geneva Conventions applicable in international armed conflicts has substantially developed the rules aimed at protecting civilians against the effects of hostilities and can by now be considered as having acquired mostly customary character.

#### Combatants

Under IHL, the term “combatant” refers to those persons who are allowed to take a direct part in the hostilities of an international armed conflict. During an armed conflict, only “combatants” are permitted to “take a direct part in hostilities.” This means that they are immune from prosecution for having killed during combat. They are, however, not immune from prosecution for suspected war crimes. Being a combatant also means being a legitimate military target, i.e. that they may be targeted at any time. In case of capture by the adverse party, “combatants” become “prisoners of war” and thus enjoy the protection as provided for by the Third Geneva Convention of 1949.

In international armed conflict, members of the armed forces of a Party to the conflict are combatants. Members of armed groups which participate in hostilities without being entitled to do so are not considered combatants in the above sense and in case of capture do not enjoy the prisoner of war status. There is however no “legal blackhole” with regard to the categories of protected persons in armed conflict. A person is either a combatant or a civilian, and IHL provides for legal protection accordingly without leaving any gaps. If a person involved in hostilities does not qualify for combatant and therefore prisoner of war status, he/she is protected as a civilian (see below the instances when a civilian can exceptionally lose his protection against direct attack).

To limit the risk of misunderstandings, it is recommendable to use the term “combatants” only in situations of international armed conflicts, but not in situation of non-international armed conflict. In

non-international armed conflict, the combatant and thus prisoner of war status does not exist, which means that members of a non-State armed group fighting the armed forces of the State in question may be held criminally responsible for their mere participation in the hostilities.

## **Armed Forces**

The armed forces consist of all organized armed forces, groups and units which:

- Are under a command responsible for the conduct of its subordinates to a party to the conflict;
- Are subject to an internal disciplinary system which enforces compliance with the law of armed conflict; and
- Members distinguish themselves from the civilian population.

Combatants are all members of the armed forces of a party to the conflict except medical and religious personnel that accompany the armed forces. The latter may not take a direct part in hostilities and so long as they do not do so are legally protected from attack.

## **Civilians**

Any person not belonging to the armed forces is considered as a civilian. The civilian population comprises all persons who are civilians. In case of doubt whether a person is a civilian, that person is presumed to be a civilian.

## **Civilians Taking a Direct Part in the Hostilities**

As mentioned above, a person involved in hostilities is not necessarily qualified a "combatant". Nevertheless, in contemporary armed conflicts (both international and non-international), persons may become involved in the hostilities without having a permanent combat function within the structure of one of the parties to the conflict. In such case, the person is a civilian taking a direct part in the hostilities. The consequences of a civilian directly participating in hostilities are important, as he/she loses his/her protection against direct attack for the time and as long as the direct participation in hostilities lasts. As soon as the direct participation has ended, the person therefore recovers his/her full protection as civilian. He/she still remains subject to penal prosecution for the fact of having participated in hostilities without being entitled to do so. Furthermore, upon capture or arrest, civilians who have taken a direct part in the hostilities remain entitled to the fundamental guarantees of humane treatment. The question of which acts amount to direct participation is not defined in treaty law. The ICRC has published in 2009 an interpretive guidance on this question which is available on the ICRC website.

## **Protection of Civilian Persons and Property**

The prohibition of direct attacks on civilians and civilian property includes all acts of violence. Attacks or threats of violence intended to terrorize the civilian population are also prohibited. The prohibition includes indiscriminate attacks as well as disproportionate attacks, i.e. those which cause incidental civilian losses and damage excessive in relation to the concrete and direct military advantage anticipated.

The precautions in attack require that in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. Precautions against the effects of attacks require the parties to the conflict to take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

The presence or movements of the civilian population or individual civilians must not be used to try to shield military objectives from attack or to shield, favour or impede military operations.

### Hot Issues

- The direct targeting of the civilian population amounts to a grave breach under IHL and must be prosecuted.
- The use by a party to the conflict of prohibited weapons may politically be extremely sensitive as it might be part of a political strategy and/or military tactic.
- Furthermore bringing objective evidence of such breaches may be difficult especially when war is raging.

### More information on the topic

See references under 5.1 above.

## 5.3 Protection of Persons and Objects Under IHL

### Why is it important for my work as HC

IHL provides for the specific protection of certain categories of persons and objects in case of armed conflict and is the basis for the humanitarian action notably of the ICRC and possibly of other humanitarian organizations for the benefit of the victims of conflicts. HCs need to be able to rely on treaty-based obligations to advocate for humanitarian access and assistance. They also need to understand the customary nature that underpins these laws, which will allow them to call for the respect of protected persons in situations of armed conflicts as well as respect of fundamental guarantees.

### Main elements

#### General Protection

IHL provides for a general protection of all persons affected by the armed conflict. In principle, IHL therefore concerns all those persons who in times of armed conflict find themselves in the power of the adverse party to the conflict.

Nevertheless, some persons are considered specifically "protected persons" to which a particular humanitarian protection applies under IHL. These include the wounded, the sick, the shipwrecked, prisoners of war and other persons deprived of their freedom in relation to conflict, civilians and other persons not or no longer taking part in the fighting, in particular vulnerable categories like children, women or elder persons, medical and religious personnel, the staff of relief operations or the staff of civil defence organizations.

In the event of armed conflict, there are also protected objects. These include all civilian objects, cultural property as well as medical units and transports.

## **Protection of the Medical Mission**

Hospitals, medical personnel, units, transports and material enjoy a special protected status under IHL. Medical personnel, units and transports may not be attacked. They only use their protection if they commit, or are used to commit, outside their humanitarian function, acts harmful to the enemy. Examples of such acts that are considered harmful to the enemy include the use of a hospital or an ambulance as a transport or store for weapons, or as a shield for able-bodied military forces. Medical personnel on the other hand do not lose their protection if they carry a small arm for the purposes of self-defence. Attacks against medical facilities or personnel, whether civilian or military, are prohibited and may constitute war crimes.

## **Aid**

In order to ensure protection from the effects of war, the Fourth Convention guarantees notably the free passage of all consignments of medicine and medical equipment. It also permits the free passage of foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and women in labour. The Protocol I considerably extends the scope for undertaking relief operations. It provides that when the civilian population of a territory under the control of a Party to the conflict, other than an occupied territory, is not adequately provided for, relief actions of a humanitarian and impartial character must be undertaken, subject to the agreement of the Parties concerned in such relief action. These may consist of foodstuffs, medicines, clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population.

The personnel taking part in relief actions must be respected and protected.

## **Protection of Children**

Children must be the object of special respect and must be protected against any form of indecent assault. They must receive the care and aid they require, whether because of their age or for any other reason. All practicable measures must be taken to prevent children from being recruited into the armed forces of a party to the conflict and/or being used in the hostilities.

## **Protection of Women**

Women shall be the object of special respect and must be protected against any form of indecent assault. Pregnant women and mothers of dependent infants, who are arrested for reasons related to the armed conflict, shall have their cases considered in absolute priority and in the event of a death penalty being pronounced, it shall not be carried out.

## **Additional Guarantees**

IHL provides also for the reunification of dispersed families and family news, as well as the protection of journalists.

## **Fundamental Guarantees**

Persons who are in the power of a Party to the conflict shall be treated humanely in all circumstances and shall benefit from the fundamental guarantees without any discrimination based on any pretext whatsoever. Among the fundamental guarantees, it is specified that the person, the honour, the convictions and religious practices of all such persons must be respected.

The following acts in particular are prohibited under any pretext whatever, whether committed by civil or military agents:

- Violence to the life, health and physical or mental well-being of persons, particularly murder; torture of all kinds, whether physical or mental; corporal punishment, and mutilation;
- Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- The taking of hostages;
- Collective punishments;
- Threats to commit any of the foregoing acts.

Finally, the respect of essential judicial guarantees also form part of the fundamental guarantees accorded to all persons affected by an armed conflict.

## Situation of Occupation

Aside from the general rules of protection of all persons affected by an armed conflict, IHL provides in the Fourth Geneva Convention for specific provisions for protection of the civilian population living in a situation of occupation. IHL provides for specific clauses regarding issues such as:

- **Food:** the Occupying Power has the duty of ensuring the food and medical supplies of the population.
- **Hygiene and public health** must be ensured and maintained by the Occupying Power with the cooperation of national and local authorities.
- **Relief:** the Occupying Power must permit necessary relief operations to aid the population and facilitate them by all means at its disposal, particularly by authorizing the charitable work of the Protecting Power, of a neutral State, of the ICRC or any other impartial humanitarian organization.

## Hot Issues

- Advocating for the inferred right to humanitarian assistance and eventually the right of access may encounter resistance of certain States. The issue may be highly politicised.
- In the case of occupation, IHL calls for important obligations for the Occupying Power. Many States may not wish to be seen as an occupying power, not to abide by the rules set in the Fourth Geneva Conventions.
- When a dispute over a territory arises and a State moves their own citizens in to a territory, they may dispute occupation, while others characterize the action as a de facto annexation.

## More information on the topic

See references under 5.1 above.

## 5.4 Displacement in Armed Conflict

### Why is it important for my work as HC

HCs need to understand the protection enjoyed by civilians under IHL, limitations on forces displacing populations, and additional obligations of Occupying Powers. It is important to note that forced displacement, in extremis, can rise to the level of an international crime (see International Criminal Law).

### Main elements

Under IHL, the displacement of civilians should not occur in the first place, and if it does, their protection must be ensured. IHL expressly prohibits any party to an armed conflict from compelling civilians to leave their places of residence for reasons related to the conflict, or deport or forcibly transfer the civilian population of an occupied territory. Exceptionally, temporary evacuations may be carried out if the security of the civilians or imperative military reasons so demand.

In addition to this express prohibition, the rules of IHL intended to spare civilians from hostilities and their effects also play an important role in preventing displacement, as it is often violations of these rules that cause civilians to flee their homes.

While they are displaced, IDPs are entitled to the same protection from the effects of hostilities and the same relief as the rest of the civilian population. Moreover, all possible measures must be taken in order to ensure that the civilians concerned benefit from satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

Return is only expressly addressed by IHL in the context of forced displacement. In such cases, displaced persons must be allowed back to their homes as soon as reasons for displacement have ceased.

Occupying powers are specifically prohibited from implementing deportations. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. The only exception is military necessity and the security of the civilians involved, which must be balanced with protection of these groups. Should such displacements occur, populations should be returned as soon as possible to their homes when the crisis ceases. All possible measures should be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, safety and nutrition.

Primary responsibility for protecting IDPs lies unequivocally with the State or other authorities in control of the territory where the IDPs find themselves. The return of those displaced very often presents a formidable challenge to the authorities and resident communities.

### Hot Issues

- Limited access by humanitarian organizations to those requiring assistance – often the result of deliberate obstruction by parties to a conflict – seriously hampers the implementation of the law and of aid work in general (see also Access below).
- These problems are related, for instance when the population is being displaced or forcibly relocated as part of a military strategy aimed at weakening the support base of the “enemy”. Where humanitarian workers provide assistance to the civilian victims of such strategies, they may in turn be perceived as promoting the goals of one of the parties, and as a result be specifically targeted by the other.

## 6. Refugee Law

### Why is it important for my work as HC

HCs need to understand the key aspects that underpin identification, protection and assistance for refugees, and the particular role of the United Nations High Commissioner for Refugees (UNHCR). The distinction and interface with other people of concern, in particular IDPs, is important.

### Main elements

Armed conflict is commonly associated with violence and persecution which prompt people to flee their country of origin and seek asylum in other countries. Outside the context of conflict, people may also have to flee their country to avoid individual persecution. Refugee Law establishes specific entitlements to international protection, with corresponding obligations on the part of receiving States, for persons who cannot avail themselves of the protection of their country of origin (or their country of habitual residence for persons who do not have a nationality).

Millions of people worldwide become refugees as a consequence of the indiscriminate general effects of armed conflict, and/or because they have been persecuted on grounds of race, religion, nationality, political opinions or their social characteristics.

## 6.1 The International Legal Refugee Protection Framework

### The 1951 Convention Relating to the Status of Refugees

International refugee law, and more generally the international refugee protection system, provides for a specific regime of human rights protection for a specific category of persons: those who can no longer rely on their country of nationality or habitual residence for respect, protection and fulfilment of their human rights and fundamental freedoms. International refugee law is thus squarely embedded within the human rights paradigm. Article 14 of the Universal Declaration of Human Rights (UDHR) provides for the right to seek and enjoy asylum from persecution. This right is implicit in the very existence of the 1951 Convention Relating to the Status of Refugees; the primary international refugee law instrument.

The Refugee Convention defines the term “refugee” and sets minimum standards for the treatment of persons who are found to qualify for refugee status. The 1967 Protocol supplements the 1951 Refugee Convention.

Together, the Refugee Convention and Protocol cover three main subjects:

- The definition of refugee, along with terms for cessation of, and exclusion from, refugee status;
- The legal status of refugees in the country of asylum, their rights and obligations, including the right to be protected against forcible return, or *refoulement*, to a territory where their lives or freedom would be threatened;
- States’ obligations, including cooperating with the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions and facilitating its duty of supervising the application of the Convention.

## Definition of Refugee

The 1951 Refugee Convention defines a **refugee** as someone who has fled his/her country of nationality or habitual residence due to a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or political opinion and who, for such reasons, is unable or unwilling to return to his/her country.

In the context of Africa and Latin America, the definition of refugees has been broadened, in order to include all persons who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order, are compelled to leave in order to seek refuge outside the country of origin or nationality. As a consequence, these definitions of refugees are much broader than the definition enshrined in the 1951 Convention. In June 2001, the African-Asia Legal Consultative Organization adopted the revised 1966 Bangkok Principles on the Status and Treatment of Refugees, which also provide for an extended refugee definition.

State parties may decide to adopt a broader definition of refugees, for instance by granting asylum to persons who wouldn't be entitled to get refugee status under the 1951 Convention. However, a State party may not legally restrict the definition of refugees by adopting a narrower one than in the 1951 Convention.

Generally, States undertake refugee status determination. However, when States are not party to the 1951 Convention or where no functioning national asylum procedure is in place to decide on applications for refugee status, UNHCR may undertake such determination under its mandate.

## Non-refoulement

The principle of *non-refoulement* is the cornerstone of refugee law. Article 33 (1) of the 1951 Convention relating to the Status of Refugees reads, "No Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

The principle of *non-refoulement* is not unique to Refugee Law and can be found in various other instruments of international law, for example, the Fourth Geneva Convention of 1949 (Art. 45, para. 4), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), the International Covenant on Civil and Political Rights (Article 7), the Declaration on the Protection of All Persons from Enforced Disappearance (Article 8), and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 5).

In addition, it is included in a number of regional human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the American Convention on Human Rights (Article 22), the OAU Refugee Convention (Article II), and the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World (Article 2).

The prohibition against *refoulement* is considered part of customary international law. This means that even States not party to the Refugee Convention must respect the principle of *non-refoulement*. In some circumstances, persons facing possible *refoulement* who cannot rely on refugee protection may have recourse to relevant human rights mechanisms, such as the Committee against Torture (monitoring States parties' application of the Convention against Torture).

## Cessation Clauses

A person is no longer a refugee entitled to international protection when he or she has regained national protection, either as a national of their country of origin or by acquiring a new nationality, or because the circumstances in their country of origin, which were the reason he or she was granted refugee status, have ceased to exist such that international protection is no longer required.

## Durable Solutions

The United Nations High Commissioner for Refugees (UNHCR), in cooperation with States, facilitates the implementation of durable solutions for refugees in accordance with three options: voluntary repatriation to the country of origin, local integration in the country of asylum, resettlement in a third country. Such measures must be undertaken voluntarily, based on free and informed decisions by individual refugees vis-à-vis the available options.

## 6.2 Other Terms

An **asylum seeker** is someone who has made a claim that he or she is a refugee, and is waiting for that claim to be examined by competent authorities or UNHCR. The term contains no presumption as to whether the person is actually a refugee or not - it simply describes the fact that someone has lodged the claim. Some asylum seekers will be recognized as refugees and others will not.

The term **“migrant”** is not defined, but is generally understood to include people who move to a foreign country for non-touristic reasons (economic, educational or social). 'Migrants' are different from refugees, or other people seeking international protection who are protected by a specific legal regime. Due to entry restrictions, refugees are increasingly forced to use irregular modes of travel, alongside migrants (mixed migration movements). Such irregular mixed movements often expose migrants and refugees to dangerous travel, human trafficking, abuses by smugglers and other forms of exploitation.

**Internally displaced persons** (IDPs) are the persons who have been forced to move from their home but have not crossed an international border. (see International Displaced Persons and International Law).

A **stateless person** is someone who is not considered as a national by any State (de jure stateless); or someone who formally possesses a nationality but where it is ineffective, for example they are denied the right to return to their country (de facto stateless). While stateless persons – just like all persons subject to a State's jurisdiction - should enjoy almost all human rights (except, for example, voting rights which usually are reserved for nationals), possession of nationality is often essential for full participation in society and may be, in practice, a prerequisite for the enjoyment of the full range of human rights. As a result, stateless people are often unable to obtain identity documents; they may be detained for reasons related to their statelessness; and they are often denied access to education and health services or blocked from obtaining employment. Unlike the other groups outlined here, they may have never moved away from the place where they were born.

The 1954 Convention relating to the Status of Stateless Persons provides a legal framework for the protection of stateless persons. The 1961 Convention on the Reduction of Statelessness provides for safeguards to prevent and resolve cases of statelessness. Some stateless people are also refugees and are thus protected under international refugee law. UNHCR has a mandate to prevent and reduce statelessness and protect stateless persons and has stepped-up its activities in recent years, frequently taking an operational role when national capacity is lacking. Statelessness can be prevented through adequate constitutional or legislative revision.

## 6.3 UNHCR

In the aftermath of World War II, the United Nations General Assembly created the Office of the United Nations High Commissioner for Refugees to lead and coordinate international action to safeguard the rights and well-being of refugees. UNHCR's Statute serves as its constitution through which the UN General Assembly sets forth the High Commissioner's functions and responsibilities, including a definition of persons on whose behalf the High Commissioner can act, and calls on States to cooperate with UNHCR in this regard. UNHCR's mandate has been expanded in various UN General Assembly resolutions.

UNHCR promotes the basic human rights of refugees and that they will not be returned involuntarily to the country where they face persecution. UNHCR promotes international refugee agreements, helps States establish asylum structures and acts as an international watchdog over refugee issues.

"Persons of concern to UNHCR" are all persons for whom UNHCR has recognized protection and assistance responsibilities. They include: a) Refugees b) Asylum-seekers c) Returnees (i.e., former refugees) d) Stateless persons and persons at risk of becoming stateless e) Internally displaced persons (particularly in situations of conflict, generalized violence and human rights violations).

UNHCR's authority to act on their behalf is based on its Statute, UN General Assembly resolutions, and the above-mentioned conventions. The IASC guidance on the Humanitarian Reform also provides a basis for UNHCR's enhanced responsibilities vis-à-vis IDPs.

### Hot Issues

- Policies of border closure to deliberately inhibit asylum-seekers when conflict breaks out in neighbouring countries.
- Neighbouring States denying asylum on the grounds that humanitarian agencies are providing assistance to IDPs in the country of origin of asylum seekers.
- Pressure on host communities when large numbers of refugees are present for long periods without being locally integrated.
- Inadequate burden-sharing by States.
- New patterns of international migration, including those related to climate change.

## Key texts included in Legal Compendium:

Convention relating to the Status of Refugees (T - 1951)

Protocol relating to the Status of Refugees (T - 1967)

Convention Governing the Specific Aspects of Refugee Problems in Africa (T - 1969)


Cartagena Declaration on Refugees (V - 1984)

Convention relating to the Status of Stateless Persons (T-1954)

Convention on the Reduction of Statelessness (T-1961)

## More information on the topic

### Online publications:

	<p><b>An Introduction to International Protection, Protecting persons of concern to UNHCR, UNHCR, 2005</b> <a href="http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&amp;id=3ae6bd5a0">http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&amp;id=3ae6bd5a0</a> - this guide helps self-study of international protection</p>
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### Websites:

#### **Protecting Refugees: A Field Guide for NGOs**

<http://www.icva.ch/files/protectionfieldguide.pdf>

A practice-oriented manual for NGOs

#### **United Nations High Commissioner for Refugees**

<http://www.unhcr.org/cgi-bin/texis/vtx/home>

The key website on refugees; see in particular RefWorld, the reference centre maintained by the UNHCR

#### **“International Thesaurus of Refugee Terminology”**

<http://refugeethesaurus.org/hms/home.php?publiclogin=1>

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

#### **On Statelessness**

<http://www.unhcr.org/statelessness>

#### **Handbook for the Protection of Women and Girls, UNHCR, 2008.**

<http://www.unhcr.org/47cfa9fe2.html>

**Forced Migration Online**

<http://www.forcedmigration.org/>

Comprehensive web site that provides access to a diverse range of relevant information resources on forced migration: digital library, archives of specialized journals, web links database, organisation contact database, photos. Managed by Oxford's Refugee Study Centre.

**Forced Migration Review**

<http://www.fmreview.org/welcome.htm>

Practice-oriented forum for debate on issues facing refugees and internally displaced people. Produced by Oxford Refugee Studies Centre together with Norwegian Refugee Council.

**University of Michigan Law School**

<http://www.refugeecaselaw.org/>

Allows searching on case law related to refugees.

**Forced Migration Current Awareness Blog**

<http://fm-cab.blogspot.com/>

**Refugee Studies Centre article collection**

[http://www.reliefweb.int/library/RSC\\_Oxford/index.htm](http://www.reliefweb.int/library/RSC_Oxford/index.htm)

A collection of articles on refugee protection produced by the Oxford Refugee Studies Centre

**Human Rights Watch on Refugees**

[http://hrw.org/doc/?t=refugees&document\\_limit=0,2](http://hrw.org/doc/?t=refugees&document_limit=0,2)

**Refugees International**

<http://www.refugeesinternational.org/content/issue/>

**ReliefWeb on Refugees**

<http://www.reliefweb.int/rw/lib.nsf/doc207?OpenForm&query=3&cat=Refugees>

**Basic facts on refugees and the UNHCR**

<http://www.unhcr.org/basics/BASICS/4034b6a34.pdf>

**UNHCR Handbook on Emergencies**

<http://www.unhcr.org/publ/PUBL/3bb2fa26b.pdf>

**International Journal of Refugee Law**

<http://ijrl.oxfordjournals.org/>

## 7. Internally Displaced Persons and International Law

### Why is it important for my work as HC

All countries where there are HCs designated currently have large populations of IDPs as a consequence of armed conflict, natural disasters or other reasons. IDPs are part of a broader civilian population that may also have protection and assistance needs. Displacement, however, causes specific vulnerabilities and exposes people to higher risks of abuse, exploitation and discrimination. Key concepts of international law which have relevance to IDPs are reflected in the Guiding Principles on Internal Displacement. They are important references for HCs advocating for the protection of displaced populations.

### Main elements

IDPs are people forced to flee or to leave their homes to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters. But, unlike refugees, they remain within their country's borders.

By the end of 2008, 26 million people remained displaced by conflict and 36 millions more are estimated to have been displaced by disasters.<sup>5</sup> Providing protection and assistance to them and ending their displacement, and their suffering, are key goals of national and international actors alike. Securing durable solutions for these people is also fundamental to ensuring long-term recovery and stability in post-emergency countries – whether in conflict or natural disaster contexts.

Governments have the primary responsibility to provide assistance and protection to IDPs and to establish conditions for durable solutions. However, ensuring IDPs receive adequate protection and are able to make an informed and voluntary choice of the most suitable solution for their own situation is a challenge that all IDP-hosting countries face.

The international community complements and, if necessary, substitutes the governments response. As no single agency is responsible for protection and assistance of IDPs, many national and international non-governmental organizations respond to the needs of IDPs. The “cluster approach”, adopted in 2005, seeks to improve the coordination and the effectiveness of the humanitarian response and, by doing so, to better meet the needs of IDPs. UNHCR has assumed a leadership role in the protection of IDPs from conflict situations and more recently have noted their intention to assume a lead in natural disasters with the agreement of national authorities, where their capacity permits, and in agreement with UNICEF and OHCHR. The HC has the overall responsibility for the coordination of the humanitarian actors and the appropriateness of the humanitarian response.

The HC plays an important role to both assist the State to fulfil its obligations to protect IDPs, while at the same time strengthening coordination of humanitarian actors. Response can be enhanced by the HC through broad participation by all stakeholders (civil society, national human rights institutions, IDPs, etc).

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<sup>5</sup> Figures on internal displacement as a result of conflict see **IDMC** [http://www.internal-displacement.org/idmc/website/resources.nsf/\(httpPublications\)/0605361027488A28C12575A90042305B?OpenDocument](http://www.internal-displacement.org/idmc/website/resources.nsf/(httpPublications)/0605361027488A28C12575A90042305B?OpenDocument)

Figures on natural disaster induced displacement, see **OCHA/IDMC Study** [http://www.internal-displacement.org/idmc/website/resources.nsf/\(httpPublications\)/451D224B41C04246C12576390031FF63?OpenDocument](http://www.internal-displacement.org/idmc/website/resources.nsf/(httpPublications)/451D224B41C04246C12576390031FF63?OpenDocument)

## **The Guiding Principles on Internal Displacement**

Unlike the case of refugees, there is no international treaty which applies specifically to IDPs. Recognizing this gap, the Guiding Principles on Internal Displacement (GPs) were developed and presented to the UN Commission on Human Rights in 1998. The GPs identify and elaborate upon specific rights of IDPs as they are inherent in, and can be derived from, existing international human rights law and international humanitarian law.

### **Soft-law Instrument**

The GPs are not legally binding. However, they reflect and are consistent with international human rights law and international humanitarian law which are binding on states (and in the latter case, on non-State actors). The GPs have become widely accepted at international, regional and national levels. Heads of State and of Governments unanimously recognized them as 'an important international framework for the protection of IDPs' in the World Summit 2005 (A/RES/60/1), a recognition subsequently echoed by the General Assembly and the Human Rights Council.

The Organization of American States and the Committee of Ministers of the Council of Europe called for their implementation at national level. An increasing number of States have incorporated them into national legal and policy frameworks.

Humanitarian Coordinators should promote the incorporation of the GP into national legislation as well as policies, strategies and action plans. The HC can draw on domestic or regional legislation to advocate for appropriate treatment of and protection for IDPs and reinforce respect for their rights. The HC should advocate to all parties to respect IHL, HR and the Guiding Principles.

### **Scope of the GPs**

The GPs are applicable for all situations of internal displacement and address all phases of displacement: prevention (protection from displacement), protection during displacement, and protection in the post-displacement phase (return, settlement elsewhere in the country or local integration).

IDPs remain citizens of the country and as such enjoy the same human rights as all other citizens within their own country. These rights may be articulated in the domestic constitution and legislation as well as international human rights instruments and customary law. In situations of armed conflict, moreover, they enjoy the same rights as other civilians to the various protections provided by international humanitarian law.

### **IDPs Rights under the GPs**

Arbitrary displacement is prohibited according to the GPs. Once persons have been displaced, they retain the whole range of economic, social, cultural, civil and political rights, including the right to life and physical integrity and dignity, the right to liberty and security of person, freedom of movement and the right to choose one's residence, the right to respect of family life and unity, the right to an adequate standard of living, including shelter and housing, food and drinking water, clothes and medical services and sanitation, the right to education, political rights such as the right to participate in public affairs and the right to participate in economic activities. IDPs must not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

Competent authorities have the duty to provide protection and assistance to IDPs and to assist them to achieve a durable solution through voluntary, dignified and safe return, settlement elsewhere in the country or local integration, including help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation.

The Inter-Agency Standing Committee (IASC) has adopted a framework on durable solutions for internally displaced persons in 2009, which sets out the process and conditions for achieving durable solutions.

## **IDPs and Human Rights Treaties**

At the sub-regional level the International Conference of the Great Lakes Region has transformed the GPs into a binding instrument in the Pact on Security, Stability and Development in the Great Lakes Region and its Protocol on the Protection and Assistance to IDPs.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala Convention, was adopted in October 2009. It is the only binding regional agreement on IDPs and builds upon the GPs.

The Convention brings together existing international legal norms and existing legislation of the African Union, including the Constitutive Act of the African Union, and the African Charter on Human and Peoples' Rights, to provide a comprehensive legal framework that addresses the specificities of internal displacement in Africa. The Convention represents the acknowledgement of AU member states that internal displacement has a major impact on the continent, both in relation to its impact on the individual – the specific vulnerabilities that it creates, and the impact on the State – recognising that it is a source of instability that may undermine long-term peace, stability and development.

Although not expressly referred to, IDPs are protected by universal and regional human rights instruments, i.e.:

- The African Charter on Human and People's Rights sets out general human rights principles applicable to all individuals, including IDPs.
- The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 recognizes general human rights, many of which have particular relevance for IDPs (e.g. right to property). IDPs have brought cases of alleged violations of the Convention to the European Court of Human Rights.
- The American Convention on Human Rights 1969 sets out general human rights obligations.

## **The Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons**

The Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons (RSG) plays an important role in promoting respect for the rights of IDPs. The RSG is mandated by the Human Rights Council to engage in advocacy in favour of the protection and respect of human rights of IDPs, to continue and enhance the dialogue with States and other actors concerning the rights of IDPs, to strengthen the international response to internal displacement, and to mainstream the human rights of IDPs throughout the UN system. In his country-specific engagements, the RSG closely engages with the HC in order to jointly analyse the displacement situation in a country and to coordinate advocacy activities with the government.



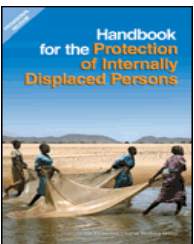


## Hot Issues



- The lack of a specific legal treaty covering IDPs requires greater work highlighting the rights of IDPs and the obligations of States. The GPs are the normative framework for the protection of IDPs and the key advocacy tool vis à vis governments. The rights of IDPs can also be confused when humanitarian action is occurring in proximity with refugees who are protected by a specific legal instrument(s) (see Refugees).
- The phase immediately following displacement is when IDPs are particularly vulnerable and when there is a prevalence of sexual violence, increased risks of separation of families and the appearance of numerous cases of separated/non-accompanied children with specific risks facing children under such circumstances. It is also often the time when structures and means to monitor and report are the weakest.
- There is a risk that displacement may be used as a method of warfare. A population may be forcibly displaced as part of a military strategy aimed at weakening the support base of the “enemy”. Where humanitarian actors provide assistance to the civilians affected by such strategies, they may be perceived as promoting the goals of one of the parties to conflict and, thus, affect perceptions of their neutrality and impartiality.
- Engagement with governments to promote the protection of IDPs and to find durable solutions for them, which comply with international standards can be challenging. Protracted displacement can lead to severely increased vulnerabilities amongst IDPs, and create a major burden on local and national authorities, which in turn, may undermine efforts aimed at national peace and stability in a country.
- Cooperation with multiple organisations and coping with the increased global attention among NGOs and other humanitarian organisations to consider protection of IDPs may constitute a real challenge for HCs.
- Cooperation between humanitarian and development actors in the early recovery phase, which is essential for successful return or another type of durable solution is very challenging.

## Key texts included in Legal Compendium:

- Guiding Principles on Internal Displacement (V - 1998)
- Protocol on the Protection and Assistance to Internally Displaced Persons (T - 2006)
- Kampala Convention (T – 2009)

**Online publications:**

	<p><b>The Guiding Principles on Internal Displacement</b>  <a href="http://www.brookings.edu/projects/idp/gp_page.aspx">http://www.brookings.edu/projects/idp/gp_page.aspx</a></p>
	<p><b>Guiding Principles on Internal Displacement – Annotations by Walter Kälin</b> revised edition Studies in Transnational Legal Policy, N° 38 published by The American Society of International Law and the Brookings Institution – University of Bern Project on Internal Displacement, 2008  <a href="http://www.brookings.edu/reports/2008/spring_guiding_principles.aspx">http://www.brookings.edu/reports/2008/spring_guiding_principles.aspx</a></p>
	<p><b>The IDP Protection Handbook</b>  <a href="http://www.humanitarianreform.org/Default.aspx?tabid=294">http://www.humanitarianreform.org/Default.aspx?tabid=294</a></p>
	<p><b>Protecting Internally Displaced Persons: A Manual for Law and Policymakers</b>          The Brookings-Bern Project on Internal Displacement, 2008.  <a href="http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx">http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx</a></p>
	<p><b>When Displacement Ends - A Framework for Durable Solutions</b>          The Brookings-Bern Project on Internal Displacement &amp; Georgetown University's Institute for the Study of International Migration, 2007.  <a href="http://www.brookings.edu/reports/2007/09displacementends.aspx">http://www.brookings.edu/reports/2007/09displacementends.aspx</a></p>

	<p><b>Addressing Internal Displacement: A Framework for National Responsibility.</b>  The Brookings-Bern Project on Internal Displacement, 2005.  <a href="http://www.brookings.edu/projects/idp/20050401_nrframework.aspx">http://www.brookings.edu/projects/idp/20050401_nrframework.aspx</a></p>
	<p><b>Reference Guide: Normative Developments on the coordination of humanitarian assistance in the General Assembly, the Economic and Social Council, and the Security Council since the adoption of General Assembly resolution 46/182, OCHA 2009</b>  <a href="http://ochaonline.un.org/humanitarianresolutions">http://ochaonline.un.org/humanitarianresolutions</a>  This guide provides a compilation of relevant General Assembly, Economic and Social Council and Security Council language on the issue of internal displacement and is a useful tool for HC interaction with concerned governments and other relevant parties on this issue.</p>

## Websites:

### Office of the Representative of the UN Secretary-General on the Human Rights of IDPs

<http://www2.ohchr.org/english/issues/idp/standards.htm>

### Office for the Coordination of Humanitarian Affairs

<http://ochaonline.un.org/News/InFocus/InternallyDisplacedPeopleIDPs/tabid/5132/language/en-US/Default.aspx>

### UNHCR on IDPs

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=idps>

Access through RefWorld to UNHCR resources on IDPs.

### The Brookings-Bern Project on Internal Displacement

<http://www.brookings.edu/projects/idp.aspx>

### Internal Displacement Monitoring Centre (IDMC), Norwegian Refugee Council

<http://www.internal-displacement.org/>

### Forced Migration Online

<http://www.forcedmigration.org/>

### Global Protection Cluster WG

[www.humanitarianreform.org/protection](http://www.humanitarianreform.org/protection)

## 8. Disaster Affected Populations and International Law

### Why is it important for my work as HC

Natural disasters, the consequences of events triggered by natural hazards that overwhelm local response capacity and seriously affect the social and economic development of a region, are traditionally seen as situations creating challenges and problems mainly of a humanitarian nature. Less attention has been devoted to human rights protection which also needs to be provided in this particular context. HCs are therefore required to ensure that during their actions in relation to natural disasters they continue to frame their actions and advocacy around the human rights framework.

Protecting human rights or adopting human rights-based approach may not be seen as a priority when compared from the primary objective of saving-lives. Still, when human rights considerations are not addressed during the initial stages of a humanitarian response, there is a great risk that violations will occur not only during the emergency phase, but will continue afterwards.

### Main elements

People do not lose their human rights as a result of a natural disaster or their displacement. All persons affected by natural disasters, including those who are displaced, are entitled to the protection of all relevant human rights guarantees. Human rights are the legal underpinning of humanitarian work in the context of natural disasters. A rights-based approach to emergency relief helps to ensure that the principle of non-discrimination is applied in all phases of the disaster response.

In order to provide guidance on how to protect the rights of individuals affected by natural disasters, the Inter-Agency Standing Committee (IASC) adopted **Operational Guidelines on Human Rights and Natural Disasters**. They are intended to ensure that disaster relief and reconstruction efforts are conducted within a framework that protects and furthers human rights.

### The Operational Guidelines

For operational reasons, the Operational Guidelines divide human rights into four groups, namely:

- a) rights related to physical security and integrity (e.g. protection of the right to life and the right to be free of assault, rape, arbitrary detention, kidnapping, and threats to these rights);
- b) rights related to basic necessities of life (e.g. the rights to food, drinking water, shelter, adequate clothing, adequate health services, and sanitation);
- c) rights related to other economic, social and cultural protection needs (e.g. the rights to be provided with or have access to education, to receive restitution or compensation for lost property, and to work); and
- d) rights related to other civil and political protection needs (e.g. the rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination).



The Operational Guidelines suggest that the first two groups of rights may be the most relevant during the emergency, life-saving phase. Thus in the initial disaster response, it is usually more important to ensure adequate access to water than to provide replacement identity cards to those displaced. However, the guidelines insist that only the full respect of all four groups of rights can ensure adequate protection of the human rights of those affected by natural disasters, including of those who are displaced.

## Hot Issues

- States may be unwilling to indicate their ability to protect the rights and needs of affected populations. The right of access remains contested (see Access).
- In situations of natural disasters human rights violations may not be intended or planned. Yet there are major protection concerns as a result of systemic failure, negligence, oversight or indifference.
- Pre-existing patterns of discrimination and other human rights problems are exacerbated in situations of natural disasters. Governments might be reluctant to discuss human rights in these contexts.

## More information on the topic

### Online publications:

	<p><b>Manual on International Law and Standards Applicable in Natural Disaster Situations, International Development Law Organisation, 2008</b></p> <p><a href="http://www.idlo.int">http://www.idlo.int</a></p>
	<p><b>Human Rights and Natural Disasters, Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster, Brookings-Bern Project on Internal Displacement.</b></p> <p><a href="http://www.brookings.edu/projects/idp/2006_naturaldisasters.aspx">http://www.brookings.edu/projects/idp/2006_naturaldisasters.aspx</a></p>

## 9. International Criminal Law (ICL)

### 9.1 International Crimes

#### Why is it important for my work as HC

There are a range of crimes specifically related to areas directly covered by HCs in their coordination role. These include protected persons, affected populations, humanitarian property and programs. Monitoring and reporting may be a critical concern in coordinating the UN's response to violations.

#### Main elements

#### Typology of International Crimes

Four categories of international crimes are mentioned in the Rome Statute of the International Criminal Court (ICC): war crimes, crimes against humanity, genocide and aggression. For the time being, the latter is not yet defined for the purposes of the ICC. The elaboration of a definition is ongoing, and so far there is no consensus amongst States on the definition of that crime. The definitions of the three other crimes, however, are included in the Rome Statute.

The definitions adopted by the Statute are also based on several legal texts, including the Statute of the International Military Tribunal established in Nuremberg after the Second World War, the Geneva Conventions and their Additional Protocols, and the Statutes and case law of the International Criminal Tribunals for the former Yugoslavia and Rwanda. The legislation and case law of various countries can also help to analyze whether some acts constitute an international crime.

In addition, it should be underlined that facts constituting international crimes are very likely to also constitute violations of the national legislation of any country.

#### War Crimes

War crimes are acts prohibited in either international or internal armed conflict for which a person may be held individually criminally responsible. The term includes both "grave breaches" of the Geneva Conventions of 1949 and of Protocol I of 1977 and other serious violations of the laws and customs of war, committed in either international or non-international armed conflict.

Under the ICC Statute, war crimes in internal armed conflict include:

- Murder, mutilation, cruel treatment and torture;
- Taking of hostages;
- Denial of fair trial rights;
- Intentionally directing attacks against the civilian population or against individual civilians not taking a direct part in the hostilities;
- Pillaging a town or place;
- Committing rape and other acts of sexual violence; and
- Ordering the displacement of the civilian population unless their security or imperative military reasons so demand, etc.

## Crimes against Humanity

Crimes against humanity are prohibited acts committed in a widespread or systematic manner against a civilian population either in war or in peacetime. While one and the same factual situation will often give rise to both war crimes and crimes against humanity, the major difference is the widespread or systematic nature of crimes against humanity of which the individual act (e.g. torture) must be a part.

Under the ICC Statute, crimes against humanity include:

- Murder;
- Extermination;
- Enslavement;
- Deportation;
- Torture;
- Enforced disappearances; and
- Rape and other forms of sexual violence.

## Genocide

Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- 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; and
- Forcibly transferring children of the group to another group.

This convention bans acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. It declares genocide a crime under international law whether committed during war or peacetime, and binds all signatories of the convention to take measures to prevent and punish any acts of genocide committed within their jurisdiction. It declares genocide itself, conspiracy or incitement to commit genocide, attempts to commit or complicity in the commission of genocide all to be illegal. Individuals are to be held responsible for these acts whether they were acting in their official capacities or as private individuals.

The same factual situation giving rise to accusations of war crimes and crimes against humanity may also give rise to a claim that genocide has been perpetrated; the main difference is that acts constituting genocide are those committed with a specific intent to destroy members of a particular group. Such intent is usually hard to prove, which is why genocide charges are usually harder to bring than charges for other crimes under international law.

## Sexual and Gender-Based Violence in the ICC Statute

Incidents of sexual and other forms of gender-based violence (SGBV) are increasingly reported in humanitarian crisis and the subject is receiving increased attention by the international community. Sexual violence violates human rights standards enshrined in international and regional law including ICCPR, CEDAW, and the Convention on the rights of the Child (when the violence is committed against someone under the age of eighteen).

The Rome Statute remains a significant landmark in the development of international law's response to sexual and gender-based violence. By codifying a range of emerging customary norms it has strengthened human rights, particularly for women and children.

The ICC includes the following war crimes both in international and non-international armed conflict: **“Rape, sexual slavery, enforced prostitution, forced pregnancy...enforced sterilization, or any other form of sexual violence also constituting”** either a grave breach or a violation of Common Article 3 of the Geneva Conventions.

These crimes may, in some cases, constitute an element of genocide. Rape and other forms of sexual violence are also recognized as crimes in the statutes of the ICTR and ICTY as well as the Special Court for Sierra Leone and the Cambodia Tribunal.

**“Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”**. The crime is defined as the same as a war crime, with the addition that “the conduct was committed as part of a widespread or systematic attack directed against a civilian population” whether committed during war or peace.

Gender is also relevant in two further crimes against humanity, if committed as part of a widespread or systematic attack directed against a civilian population:

- **Persecution**, where gender is one of the grounds upon which the identified group or collectivity is selected; and
- **Enslavement**, which is defined as the exercise of power attaching the right of ownership over a person, including in the course of trafficking persons, in particular women and children.

### **Specific Crimes related to Humanitarian Operations**

All the crimes listed in the Rome Statute of the ICC have some relevance to HCs and the populations of their concern. However, there are a number of crimes which have direct reference to their work. In addition to sexual and gender-based crimes listed above, these specifically include:

- The Crimes Against Humanity of **deportation or forcible transfer of population**, which is defined as “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”;
- The War Crimes of **unlawful deportation or transfer or unlawful confinement**, defined as “transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”; and
- **Other serious violations of the laws and customs applicable in international armed conflict, including:**
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

- (v) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (vi) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (vii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (viii) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions; and
- (ix) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

- **Other serious violations of the laws and customs applicable in armed conflicts not of an international character, including:**

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Conscripting or enlisting children under the age of fifteen years into armed forces or groups, or using them to participate actively in hostilities; and
- (vi) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

## Hot Issues

- Although clear definitions of international crimes exist, determining whether particular acts constitute such crimes is not always easy.
- The definition of aggression is not yet agreed between States, because of political differences of views amongst States on what is an aggression (formerly called “crime against peace”).

**Websites:**

**Trial (Track Impunity Always)** <http://www.trial-ch.org/en/home.html> - a very comprehensive site on international criminal law

**Crimes of War Project:** <http://www.crimesofwar.org/> - see their book on “what the public should know” about war crimes

**The American Society of International Law Guide to Electronic Resources for International Law** <http://www.asil.org/resource/home.htm> - a good list of resources on international criminal law.

## 9.2 Role of National and International Courts

### Why is it important for my work as HC

Understanding the mechanisms for prosecuting suspects of international crimes and the relationship between national courts, UN staff (and humanitarian staff in general) and the office of the prosecutor is important for the role of HC. As the most senior UN humanitarian official, HCs must be aware of the interface with the ICC prosecutors’ office and possible challenges to humanitarian action.

### Main elements

Holding individuals accountable for crimes under international law is primarily the duty of States. States are obliged under international law to take legislative and other measures that would enable them to domestically bring to justice persons suspected of crimes under international law. This includes the right to exercise universal jurisdiction over genocide, war crimes, crimes against humanity, torture and enforced disappearances - meaning that a State can prosecute and try the perpetrator of these acts even if he or she is not a national and the crime was not committed in its territory.

In addition to the national implementation mechanisms, the primary aim of which is to ensure State compliance with international law obligations, there are also international judicial mechanisms for holding individuals accountable for violations that constitute crimes under international law when States are unable or unwilling to do so.

In 1993 and 1994, the UN Security Council established ad hoc international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). The tribunals are authorized to prosecute and try persons suspected of having committed crimes under international law in the conflicts that had taken place in those two conflicts. All States are obliged to cooperate with the Tribunals in the performance of their mandate, including by arresting and surrendering suspects who might be found in their territory. Other State-based criminal tribunals have also been established in Sierra Leone and in Cambodia.

## The International Criminal Court (ICC)

Based on the need for a permanent judicial mechanism, in 1998 States established, through the Rome Statute, the world's first permanent International Criminal Court (ICC). The ICC has jurisdiction only over individuals suspected of having committed genocide, war crimes and crimes against humanity (as well as aggression, once a definition of that crime has been agreed to). The Court became operational in 2003, after the election of its judges and prosecutor. The ICC can investigate cases upon the referral of a situation by the UN Security Council, by referral of a State party or by the Prosecutor, but it is complementary to national judicial systems.

This means that the Court is able to exercise jurisdiction only when a domestic criminal justice system is unable or unwilling to do so. So far, the ICC started to act on four situations: Central African Republic, Democratic Republic of Congo, Uganda and Sudan (Darfur). The Darfur case was referred to the ICC by the Security Council.

The Negotiated Relationship Agreement between the ICC and the UN established their institutional relationship and cooperation arrangements for judicial assistance, including provisions for information disclosure and confidentiality.

### Hot Issues

- Exercise of ICC jurisdiction in contexts where the authority of the court is not acknowledged, or where States do not recognize the authority of the Security Council to recommend prosecution by the ICC, is controversial.
- Perceived support for or involvement of humanitarian personnel in the investigations, arrests or prosecutions may be viewed by affected States as improper interference in their domestic affairs and, therefore, has implications for the perceived neutrality and the acceptance of humanitarian action.
- Controversy continues regarding a perceived trade-off between establishing conditions for peace and the pursuit of justice for crimes committed in the context of armed conflict whereby those participating in conflict will not be willing to negotiate for peace as long as they believe they may be prosecuted for crimes.

### More information on the topic

See references above 9.1.

### Websites:

**Negotiated Relationship between the International Criminal Court and the United Nations, entry into force on 4 October 2004.**

[http://www.iccnw.org/documents/ICC-ASP-3-Res1\\_English.pdf](http://www.iccnw.org/documents/ICC-ASP-3-Res1_English.pdf)

## 10. Protection

### 10.1 Protection in Practice

#### Why is it important for my work as HC

Protection underlies all aspects of humanitarian action. HCs need to understand key legal instruments and principles which underpin concepts of protection and their critical role in ensuring coordinated responses, advocacy and negotiation to protect affected populations.

#### Main elements

##### Demystifying Protection: What is it?

Humanitarian actors are mobilized to protect life and health and to ensure respect for the human being. As such, humanitarian work extends beyond simply providing material needs of food, water, and shelter and includes a consideration of safety, security, dignity, and integrity of the people we assist.

Protection aims to ensure the full and equal respect for the rights of all individuals affected by crisis. The IASC defines protection as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of relevant bodies of law (human rights law, international humanitarian law and refugee law).

Human rights and humanitarian actors shall conduct these activities impartially and not on the basis of race, national, or ethnic origin, language or gender.”

This definition, adopted in the late 1990s, shifts humanitarian assistance from simply providing for basic needs to the recognition that affected populations have a legal claim to their protection. It also requires humanitarians to view affected States, groups and individuals not as recipients of assistance but as active participants and actors in their own rehabilitation.

##### Why is it Important?

The incorporation of safety, security, dignity and integrity concerns into humanitarian action is driven by convictions that 1) human dignity and integrity are inherent to all human beings by reason of law; 2) protection-blind humanitarian action can put affected individuals and groups at greater risk; and 3) it ensures greater and longer lasting humanitarian results.

##### When does it Matter?

Increased risks to safety, security, dignity and integrity of individuals and groups particularly arise in five different emergency scenarios: armed conflict, post-conflict, rapid and slow-onset of natural disasters, and protracted social conflict. In these settings, rights are violated and existing protective supports, at every level of the community and society, erode and societal inequalities increase. To cope with these increased risks, individuals and groups may be forced to engage in equally perilous and exploitative coping or survival strategies. Humanitarian assistance that is blind to the increased risks that may accompany aid can also make matters worse. Hence, increased security and safety concerns result from the emergency itself; from the strategies individuals and groups may be forced to adopt (e.g prostitution, child labour, human trafficking, displacement); and from humanitarian assistance when it is not properly planned and delivered.

Protection concerns include: denial of access and exclusion to humanitarian assistance, to water, to food, to shelter and to economic opportunities and education; arbitrary killings and disappearances; sexual based violence and rape; forced evictions and displacement; torture and mutilations; separation of families; forced conscription of children into armed conflict; and forced prostitution and labour.

While safety and security concerns increase for all affected groups during emergency scenarios, the following may be at greater risk: extremely poor people; women (pregnant women, mothers, single mothers, widows, and in some cultures unmarried adult women and teenage girls); young men; children (new born to 18); refugees; internally displaced persons; stateless persons; national minorities; indigenous peoples; migrant workers; disabled persons; older persons (especially when they have lost care-givers); HIV positive persons and AIDS victims.

## Who is Responsible?

While people are always key actors in their own protection, international law dictates that protection is first and foremost the duty of the State. When States are unable or unwilling to assume this responsibility, however, humanitarian organizations have a vital role to play.

“Mandated agencies,” charged with specific protection responsibilities, are the International Committee of the Red Cross (ICRC) working on behalf of civilians in times of conflict; the United Nations High Commissioner for Refugees (UNHCR) aiding refugees and internally displaced persons; the United Nation’s Children’s Fund (UNICEF) supporting children; and the United Nation’s Office of the High Commissioner for Human Rights (OHCHR) integrating human rights across the United Nations. They also undertake monitoring and reporting at the field level, and provide technical assistance.

“Non-mandated actors,” other UN and non-governmental organizations with general humanitarian response mandates, also play an active role in supporting protection, developing and implementing both specialized protection and UN support expertise.

Ensuring that humanitarian actors do not overstep their role is important and humanitarian efforts need to be framed around the following modes of action: **substitution**, which means engaging in direct provision of services only when the State is incapable or unwilling to assume its responsibilities, and should only take place for limited and specific periods of time; **capacity building**, which means working to support and strengthen existing institutional and community structures to help accountable parties assume their responsibilities; **persuasion**, which means working with the accountable parties to convince them to assume their responsibilities; **mobilization**, which means sharing information in a discreet way with selected people, bodies or States that have the capacity to influence the authorities to satisfy their obligations, and **denunciation**, which means engaging in public disclosure to advocate for responsible parties to assume their role.

## Protection Actions

In general terms, protection actions are divided into two groups: 1) “stand-alone or specialist” activities that have protection as their primary or sole objective; and 2) “mainstreamed or integrated” activities that incorporate protection principles into sectoral programming.

In general terms, protection activities are pragmatic and programmatic actions that expand the focus from immediate needs to the inclusion of questions of safety and security in humanitarian action. These include responsive actions, which seek to prevent or halt a specific pattern of abuse or alleviate its immediate effects, i.e. immediate care such as health and nutrition; remedial actions, which take place after abuse and aims to restore a person’s dignity and ensure adequate living condition through reparations, restitution and rehabilitation, i.e. education, access to livelihoods, and psychosocial care; and environment building actions which aim to foster an environment conducive to respecting the

rights of individuals, i.e. legislative reform and social sector strengthening. These actions are interdependent and in most cases are carried out simultaneously.

## **Key Protection Principles**

Four key principles have specific application when integrating protection into sectoral programming. These are participation, non-discrimination, capacity building and do no harm.

### **Participation**

Humanitarian action is about working directly with affected States, institutions, groups and individuals to identify existing structures, frameworks, positive coping mechanisms, feeds, threats and gaps, and about jointly developing responses using all existing capacities to overcome the problems. This can only be to the extent possible and desirable given that States and state-actors are often at the root of protection problems. Affected States, institutions, individuals and groups should not only be informed but incorporated into decision making processes. Meaningful participation is an important means of fostering an independent capacity and supporting the dignity of those at risk.

### **Non Discrimination**

Humanitarian assistance is given on the basis of need alone, regardless of nationality, ethnic origin, religion, class, political opinion, age, gender or on any other ground. A holistic needs analysis should therefore accompany any action to ensure non-discrimination in favor or against any one special group. It is also the collective responsibility of all actors engaged in humanitarian assistance work to ensure that no one group is overlooked. When urgent needs exceed capacity, triage prioritization must be non-discriminatory and must balance resources with existing needs.

### **Capacity Building**

States are the primary responsible actors for ensuring the protection of populations and individuals in their territory. As such, any activity that humanitarians engage in from substitution to denunciation has to have the intent of building capacity of the responsible actors and its parts to assume the responsibility awarded to them by law.

### **Do No Harm**

Actions, as well as inaction, can have unintended negative consequences. Therefore, humanitarian actors need to ensure that the manner in which their assistance is administered and delivered does not increase a group's or person's safety and security risks. Humanitarian actors need to be keenly aware that power struggles may arise over humanitarian resources both within the affected population and with neighboring groups. Before taking any action, humanitarian actors must anticipate the consequences and assess potential risk factors and take measures to eliminate or mitigate such risks.

## The Egg Model

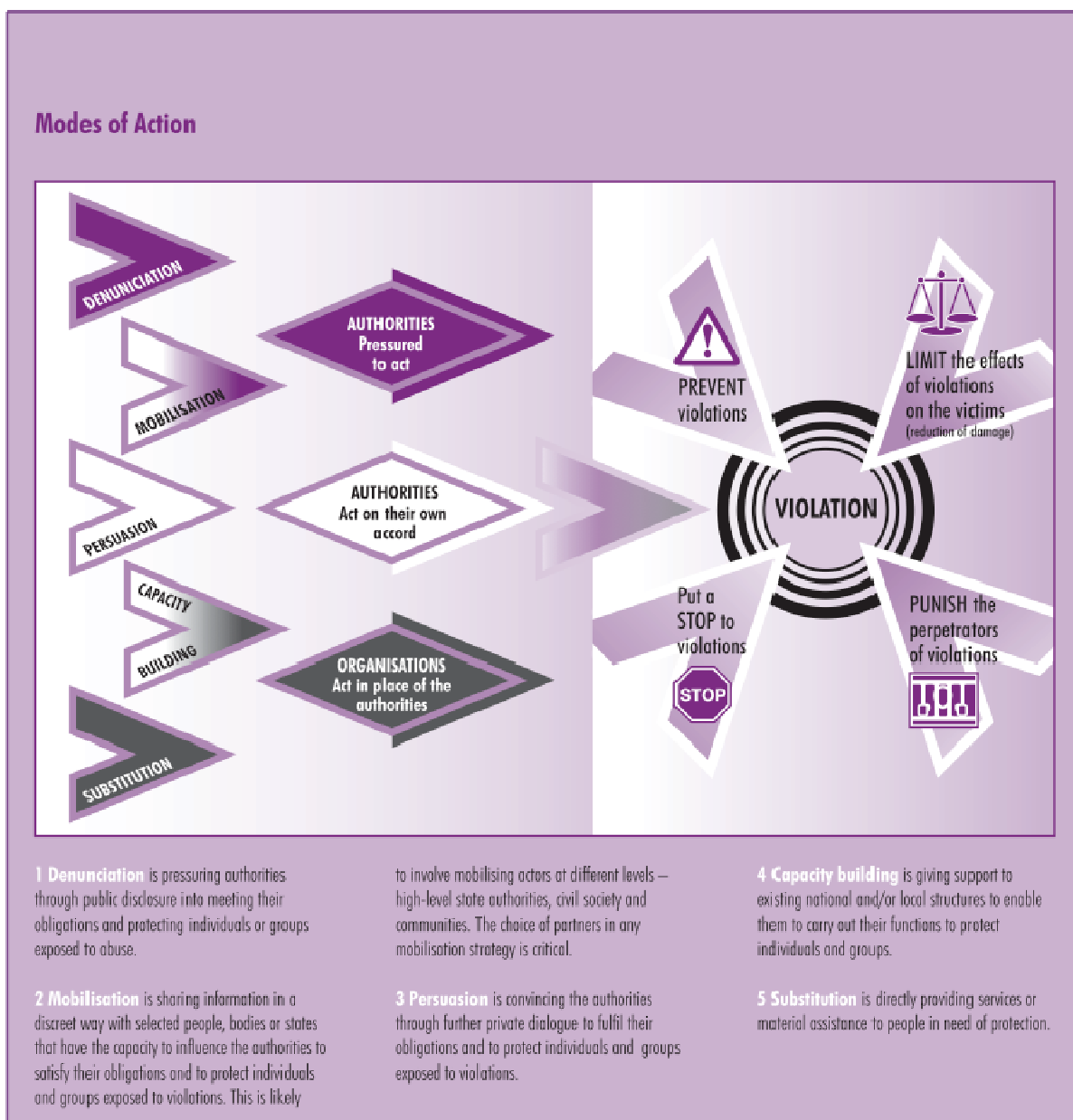
This model illustrates three types of action and objectives to enhance protection in practice: responsive action, remedial action and environment-building.

See the diagram below:



How relevant actions to enhance protection are undertaken is also important. While protection is often assumed to involve confrontation with the responsible authorities, in fact, there are numerous modes of action which may - and must - be employed, based on analysis and strategic choices about effectiveness in different situations. Different actors may also have preferred modes of action. A variety of modes of action by different actors may ultimately result in the most effective and strategic combination of interventions.

See diagram below:



## The Protection Cluster

Established in 2005 as part of the humanitarian reform process, the global **Protection Cluster Working Group** (PCWG) is the main forum at the global level for the overall coordination of protection activities in humanitarian action. The PCWG includes UN human rights, humanitarian and development agencies as well as non-governmental and other international organizations active in protection. The PCWG is chaired by UNHCR, which is the lead agency for protection at the global level. Under the Protection Cluster, five Areas of Responsibility have been identified, each of which is led by a focal point agency with specific expertise in the area. These are:

- Rule of Law and Justice (Focal points UNDP/OHCHR);
- Child Protection (UNICEF);
- Gender-based Violence (UNFPA/UNICEF);
- Mine Action (UNMAS);
- Housing, Land and Property (UNHABITAT).

In light of the complex nature of Protection, focal point agencies have committed to acting as provider of last resort for their area of responsibility.

The role of the PCWG is to lead standard and policy setting relating to protection; support the development of strengthened protection capacity; provide operational advice and support when requested by protection working groups at the country level; and ensure that protection is mainstreamed and integrated in other clusters and sectors.

**At the country level**, the Humanitarian Country Team, under the leadership of the Humanitarian Coordinator or the Resident Coordinator and in consultation with relevant partners, decides what coordination structures are put in place at the country level, including whether the cluster approach is adopted in order to strengthen the collaborative response. The role and responsibilities of protection working groups differ depending on the context, the nature and type of protection risks and gaps, as well as the needs and capacities of the protection actors on the ground.

Activities undertaken by the Cluster should include:

- Carrying out joint needs assessments and analysis;
- Agreeing on common priority areas for action;
- Developing joint protection strategies and plans of action;
- Mapping operational capacity;
- Agreeing on geographic areas of responsibility when appropriate;
- Identifying gaps;
- Mobilizing resources;
- Raising awareness of the human rights situation and protection concerns and undertaking joint advocating with relevant stakeholders, such as parties to a conflict, State authorities, UN bodies, and donors; and
- Measuring the protection impact and evaluating the protection response.

Protection working groups should be led by agencies or organizations that have knowledge, expertise and experience of protection and protection coordination. In countries where the cluster approach is applied, the lead agency for protection at the country level takes responsibility, acts as a “first point of call” and “provider of last resort” and is accountable to the HC, for ensuring effective coordination of the protection response.


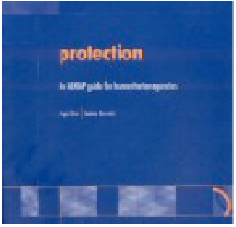
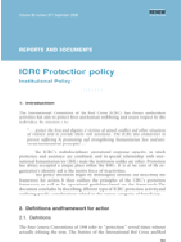
The Protection Cluster should also decide the extent to which the various focal points for particular protection areas, such as child protection or gender-based violence that have been established at the global level, should be replicated at the field level.

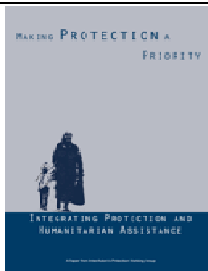

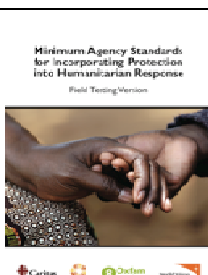
## Hot Issues




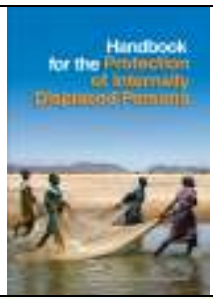


- Some areas of confusion, differences in approach, and even disagreement about protection in practice, remain between humanitarian actors and traditional human rights agencies. This is exacerbated by a lack of common or standard analytical frameworks and tools to support efforts to identify risks and possible solutions to address the threats that people face and their vulnerabilities in conflict and disaster situations.
- The work of human rights organisations and humanitarian actors can be contested. While many acknowledge the fundamental underpinning of human rights provides for humanitarian action, some humanitarian workers feel that the roles of humanitarian agencies and human rights organisations have come to duplicate or overlap with one another. The challenge for the Protection Cluster Coordinator and of the HC is to ensure that all protection actors can operate to the maximum of their ability in a complementary fashion.


## More information on the topic

### On-line publications:

	<p><b>Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action, Inter-Agency Standing Committee (IASC), 2002</b></p> <p><a href="http://www.icva.ch/gstree.pdf">http://www.icva.ch/gstree.pdf</a></p> <p>This book is one of the key documents on advocacy and protection. It aims to identify and share practices of people working in zones of conflict or under oppressive regimes to prevent or mitigate abuses, in order to promote their adaptation by others.</p>
	<p><b>Protection: An ALNAP Guide for Humanitarian Agencies, Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), 2006</b></p> <p><a href="http://www.alnap.org/publications/protection/alnap_protection_guide.pdf">http://www.alnap.org/publications/protection/alnap_protection_guide.pdf</a></p> <p>This guide gives essential advice and insights to humanitarian practitioners who are involved in providing safety and protecting vulnerable people in war and disaster. It provides a framework for responsibility and action which helps clarify conceptual issues and helps humanitarian field workers position themselves vis-à-vis other actors who have overlapping mandates.</p> <p>A practical schema is also presented which gives practical advice on how to think through the various elements of protection focused in each step of the project cycle. The guide also outlines key principles of best practice for protection-focused humanitarian work.</p>
	<p><b>ICRC Protection Policy, 2008</b></p> <p><a href="http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p751/\$File/irrc-871-ICRC-protection-policy.pdf">http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p751/\$File/irrc-871-ICRC-protection-policy.pdf</a></p> <p>Adopted in 2008, this policy outlines the different approaches between the ICRC and other organizations on the issue of protection.</p>

	<p><b>Making Protection a priority: Integrating Protection and Humanitarian Assistance, Interaction, 2004</b>  <a href="http://www.interaction.org/files.cgi/2835_Protection_priority.pdf">http://www.interaction.org/files.cgi/2835_Protection_priority.pdf</a>  Presenting the concept of protection as a collective responsibility while recognizing the mandates of the ICRC and UNHCR, this paper highlights ways for agencies to bring their diverse mandates, areas of geographic coverage, sources of influence and tools, to bear on protection issues and contribute to more comprehensive protection.</p>
	<p><b>Protection Manual for Human Rights Defenders, Peace Brigades International (PBI), 2005</b>  <a href="http://reliefweb.int/rw/lib.nsf/db900sid/OCHA-6TJKLN/\$file/PBI-Dec2005.pdf?openelement">http://reliefweb.int/rw/lib.nsf/db900sid/OCHA-6TJKLN/\$file/PBI-Dec2005.pdf?openelement</a>  The purpose of this manual is to provide human rights defenders with additional knowledge and some tools that may be useful for improving their understanding of security and protection. The link established with security is an interesting aspect of this book.</p>
	<p><b>Protection in Practice: Field-Level Strategies for Protecting Civilians from Deliberate Harm, ODI, 1999</b>  <a href="http://reliefweb.int/rw/lib.nsf/db900sid/LGEL-5EXB8V/\$file/odi-protection-jul99.pdf?openelement">http://reliefweb.int/rw/lib.nsf/db900sid/LGEL-5EXB8V/\$file/odi-protection-jul99.pdf?openelement</a>  Although dated from 1999, this document still includes some interesting aspects of protection, as its aim is to be as practical as possible.</p>
	<p><b>Captier, Christian, "What Does Humanitarian Protection Really Mean?" Humanitarian Exchange, 2003.</b>  <a href="http://www.odihpn.org/report.asp?ID=2511">http://www.odihpn.org/report.asp?ID=2511</a>  This article examines the challenges that the concept of protection poses to humanitarian agencies, especially through the limits of humanitarian protection. The author distinguishes between protection and humanitarian protection arguing that humanitarian organizations have the responsibility to compel others to protect, rather than provide protection themselves.</p>
	<p><b>Minimum Agency Standards for Incorporating Protection into Humanitarian Response, 2008 (Field testing version), Caritas, CARE, Oxfam and World Vision</b>  <a href="http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_humanitarian-and-emergencies/Minimum%20Agency%20Standards%20for%20Incorporating%20Protection%20into%20Humanitarian%20Response%20July%202008.pdf">http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_humanitarian-and-emergencies/Minimum%20Agency%20Standards%20for%20Incorporating%20Protection%20into%20Humanitarian%20Response%20July%202008.pdf</a>  This publication, still a Field Testing Version, aims at defining standards for incorporating protection into humanitarian response.</p>

	<p>Professional standards for protection work carried out by humanitarian and human rights actors in armed conflict and other situations of violence, ICRC  <a href="http://www.ikrk.org/Web/Eng/siteeng0.nsf/htmlall/p0999/\$File/ICRC_002_0999.PDF">http://www.ikrk.org/Web/Eng/siteeng0.nsf/htmlall/p0999/\$File/ICRC_002_0999.PDF</a></p>
	<p>S/PRST/2009/1, Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians, 14 January 2009.  <a href="http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Aide%20Memoire-2009.pdf">http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Aide%20Memoire-2009.pdf</a></p>
	<p>Liam Mahony, Protective Presence, Field strategies for protecting civilians, Centre for Humanitarian Dialogue, 2006  <a href="http://www.hdcentre.org/files/Proactive%20Presence.pdf">http://www.hdcentre.org/files/Proactive Presence.pdf</a></p>
	<p>Handbook for the Protection of Internally Displaced Persons  <a href="http://www.unhcr.org/479498992.html">http://www.unhcr.org/479498992.html</a></p>
	<p>Framework for Durable Solutions for Refugees and Persons of Concern  <a href="http://www.unhcr.org/3f1408764.pdf">http://www.unhcr.org/3f1408764.pdf</a></p>
	<p>Protecting Internally Displaced Persons: A Manual for Law and Policy Makers  <a href="http://www.brookings.edu/~media/Files/rc/papers/2008/1016_internal_displacement/10_internal_displacement_manual.pdf">http://www.brookings.edu/~media/Files/rc/papers/2008/1016 internal displacement/10 internal displacement manual.pdf</a></p>

	<b>Framework for National Responsibility</b> <a href="http://www.brookings.edu/fp/projects/idp/20050401_nrframework.pdf">http://www.brookings.edu/fp/projects/idp/20050401_nrframework.pdf</a>
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## Websites:

**ReliefWeb** <http://www.reliefweb.int/rw/lib.nsf/doc207?OpenForm&query=3&cat=Protection>

An extensive list of resources, covering not only protection in general, but also protection of specific groups (children, IDPs...).

**Global Protection Cluster Working Group**

<http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=79>

**ICVA.** <http://www.icva.ch/doc00000941.html>

This contains a list of resources on protection, however most are accessible to ICVA members only.

**ProCap Online** <http://ocha.unog.ch/ProCapOnline/>

Aims to facilitate the process of seconding of standby partner personnel to protection-mandated UN agencies while these agencies increase their operational capacity through normal staffing and recruitment processes. It also functions as a means for the ProCap Support Unit to gather and convey information amounting to an overview of the strategic and operational protection capacity of the UN system.

## 10.2 Security Council and Protection

### Why is it important for my work as HC

Beginning in 1999, the Security Council has become increasingly concerned with issues relating to the protection of civilians in armed conflict. It has passed five thematic resolutions on the issue, in addition to resolutions addressing the situation of children affected by armed conflict and women, peace and security. These same issues are also addressed to varying degrees in the Council's country-specific resolutions.

The HC needs to have a thorough understanding of the key resolutions which have a bearing on the responsibilities of parties to conflict, as well as United Nations actors, including peacekeeping missions and country teams. It is also important to be aware of the different Security Council mechanisms that exist in relation to protection.

### Main elements

#### Protection of Civilians in Armed Conflict

The protection of civilians has come to occupy a prominent place on the Security Council's agenda. It holds biannual open debates on the issue at which it is briefed by the Emergency Relief Coordinator on issues and contexts of particular concern that exist at that time. It also receives regular reports from

the Secretary-General which include concrete proposal and recommendations for improving the protection of civilians in situations of armed conflict.

The Security Council has adopted five thematic resolutions on the protection of civilians including Resolutions 1265 (1999), 1296 (2000), 1674 (2006) and 1738 (2006) and 1894 (2009) which address such issues as compliance by parties to conflict with international humanitarian law and human rights law and accountability for violations thereof; humanitarian access; and, importantly, the role of peacekeeping missions in the protection of civilians. the actions of parties to conflict.

Indeed, the inclusion of protection activities in the mandates of peacekeeping missions, beginning with the United Nations mission in Sierra Leone in 1999, is among the most significant of the Council's actions to enhance protection where it matter most, on the ground. The protection roles assigned to these missions include ensuring physical protection, particularly for those under imminent threat of physical danger; assisting in the creation of conditions conducive to the voluntary, safe and dignified return of refugees and internally displaced persons; ensuring the protection of humanitarian personnel and facilitating the provision of assistance; child protection; and addressing sexual violence.

To assist it in its consideration of protection issues, the Council requested the development of an Aide-Memoire on the protection of civilians which identifies key protection concerns in contemporary conflicts and, based on past practice, actions the Council could take to respond thereto.

The Council has also established an Expert Group on the Protection of Civilians. The Expert Group, currently chaired by the United Kingdom, provides an important forum for the Office for the Coordination of Humanitarian Affairs (OCHA) to informally brief the Council on behalf of the humanitarian community, with a view to ensuring that protection concerns are identified and addressed in the Council's resolutions and actions on specific situations.

## **UNSC Resolution 1325 on Women, Peace and Security**

The unanimous adoption of **United Nations Security Council Resolution 1325** on 31 October 2000 was a watershed in the evolution of international women's rights and peace and security issues. It was the first formal and legal document from the United Nations Security Council that requires parties to a conflict to respect women's rights and to support their participation in peace negotiations and in post-conflict reconstruction.

UNSC Resolution 1325 was the first Security Council Resolution specifically addressing the disproportionate and unique impact of war on women, and women's special under-valued and under-utilized contributions to conflict resolution and sustainable peace. It urges women's equal and full participation as active agents in peace and security. Among other recommendations to UN and national entities, the Resolution calls for the:

- Prosecution of people for crimes against women (often such crimes are committed with impunity);
- Extra protection of girls and women in war zones as they are more often deliberately targeted;
- Appointment of more women for peacekeeping operations and training humanitarian and peacekeeping personnel on protection rights and needs of women; and
- Involving more women in negotiations, peace talks and post-war reconstruction planning.

Resident/Humanitarian Coordinators are encouraged to:

- Establish a gender theme group among the UN entities that comprise the country team. Further, the Resident/Humanitarian Coordinator can enhance the effectiveness of the gender theme groups by increasing the level of seniority of members, establishing a clear mandate for the group, developing links to other theme groups and providing adequate resources; and
- Encourage the host country to protect and promote women's increased active participation in conflict prevention, post-conflict reconstruction and peace-building, so as to allow for sustainable development.

## UNSC Resolutions on Conflict-Related Sexual Violence

On 19 June 2008, the UN Security Council unanimously adopted Resolution 1820 on Women, Peace and Security which stresses the need to eliminate all forms of violence against civilians, particularly women and girls, during and in the wake of armed conflict. In many parts of the world, rape is used as a tactic of war to systematically humiliate, dominate and instil fear in members of a community or ethnic group. Key provisions of the resolution recognize a direct relationship between the widespread and/or systematic use of sexual violence as an instrument of conflict and the maintenance of international peace and security; commit the Security Council to considering appropriate steps to end such atrocities and to punish their perpetrators; and request a report from the Secretary General on situations in which sexual violence is being widely or systematically employed against civilians and on strategies for ending the practice.

The Resolution commits the Security Council to consider appropriate steps to end such atrocities and to punish their perpetrators and, perhaps most importantly, to commit States in which sexual violence is being widely or systematically employed against civilians to report in June each year to the Security Council.

Key elements of the Resolution include the following:

- Specific training of troops on the categorical prohibition of sexual violence;
- Development of mechanisms for protecting women and girls in and around UN-managed camps;
- A welcome for the coordination efforts of UN Action Against Sexual Violence in Conflict;
- Scope for addressing root causes of sexual violence including “debunking myths that fuel sexual violence”; and
- Calls on peacemaking efforts, and UN-appointed mediation teams in particular, to address sexual violence in conflict-resolution processes.

On 30 September 2009, the UN Security Council unanimously adopted Resolution 1888 (SCR 1888) that aims to further strengthen the efforts of the international community to combat sexual violence in armed conflict. The resolution, co-sponsored by more than 60 UN Member States, calls on the UN Secretary-General to appoint a Special Representative to intensify efforts to end sexual violence against women and children in conflict situations and who should engage on a high level with military and civilian leaders.

SCR 1889 focuses on women’s participation and urges Member States, UN bodies, donors and civil society to ensure that women’s protection and empowerment is taken into account during post-conflict needs assessment and planning, and factored into subsequent funding and programming.

The resolution also calls on all those involved in the planning for disarmament, demobilization and integration programs, in particular, to take into account the needs of women and girls associated with armed groups, as well as the needs of their children. Through the text, the Council also requests the Secretary-General to submit a report within 12 months focused on women in post-conflict situations, and to ensure cooperation between the Special Representative of the Secretary-General on Children and Armed Conflict and the Special Representative on sexual violence in armed conflict, whose appointment had been requested by SCR 1888.

## Children and Armed Conflict – the Monitoring and Reporting Mechanisms (MRM) for Grave Violations against Children’s Rights

### Background

The Security Council has determined that the issue of children and armed conflict is a concern for international peace and security and, as a result, it is the thematic issue with which the Council is more engaged than any other matter. Since 1999, the Council adopted six resolutions pertaining to children and armed conflict. In 2005, in an unprecedented decision, the Security Council established, through Resolution 1612 a framework for enhancing the protection of children affected by armed conflict by mandating the UN system to establish a Monitoring and Reporting Mechanism (MRM).

The key objectives of the MRM are to:

- a) Monitor grave violations against children in armed conflict;
- b) Report these to the Security Council Working Group on children and armed conflict established under the Resolution; and
- c) Respond to the grave violations against children.

The MRM provides a concrete framework to reduce the occurrence of grave violations against children leading to the prevention of further grave violations; ensuring appropriate response such as a political, advocacy and programmatic response. The framework also emphasizes the accountability of perpetrators, both government and non-State armed groups, through regular scrutiny at the highest levels.



There are six grave violations being monitored, reported and responded to:

- Killing or maiming of children;
- Recruiting or using children by armed forces or armed groups;
- Attacks against schools or hospitals;
- Rape and other grave sexual violence against children;
- Abduction of children; and
- Denial of humanitarian access for children.

The MRM was originally established in seven countries in 2006 following the adoption of Security Council Resolution 1612 in 2005. In 2009, fourteen countries were covered by part of this mechanism. New countries can be covered by this mechanism if it is determined that an armed group or force within that country has recruited or used children and that party is reported in the Secretary-General's annual report on Children and Armed Conflict, which includes an Annex that lists parties to conflict who recruit or use children. In MRM terminology – the party becomes 'listed' in the Secretary-General's report.

### The Role of the RC/HC in Implementing MRM

The framework for monitoring and reporting grave violations against children's rights, as established under Security Council Resolution 1612 (2005), presents a framework for developing evidence-based approaches to advocacy and programming on behalf of conflict-affected children. The monitoring and

reporting mechanism (MRM) offers an opportunity for a new platform for engagement with parties to conflict – both government and non-State entities – for the sake of children. A RC/HC needs to be aware of how the mechanism works and the sensitivities around it since the grave violations being monitored within this framework also constitute international crimes.

In general, due to his/her mandate to coordinate protection and humanitarian actors in the country, the RC/HC plays a key leadership role in driving the agenda for children and armed conflict. With regard to the MRM, the RC/HC has several responsibilities to fulfil:

- RC/HC often serves as the task force chair, or co-chair (see below for further details on the various scenarios in this regard);
- RC/HC is ultimately responsible for ensuring that the information from the established mechanism in country is UN verified, accurate and objective. The mechanism is to be developed in cooperation with the government, yet the collection and verification of data that informs the process must remain of high integrity and needs to be collected on all sides of the conflict in to ensure objectivity;
- RC/HC takes the lead in advocacy and engagement with the government around the MRM in order to ensure follow-up and response and, in support of the UNICEF Representative, may also negotiate with non-State actors around grave violations; and
- RC/HC is responsible for follow-up on the Security Council Working Group conclusions, in support of the UNICEF Representative and peace-keeping missions, and recommendations in the Secretary-General's country-specific annual report, as well as recommendations from visits of the Special Representative of the Secretary-General, etc.

### **10.3 Specific United Nations Measures relating to Sexual Exploitation and Sexual Abuse**

Following concerns over cases of sexual exploitation and abuse committed by United Nations staff in a number of contexts, important steps were taken by the Secretary-General to prevent and respond to such acts, including the promulgation of a Secretary-General's Bulletin on this issue.

#### **Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse**

"Sexual exploitation" is defined as any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

Responding to allegations of sexual exploitation and abuse by UN humanitarian personnel and peacekeepers, in 2003 the UN Secretary-General issued a bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13). It contains definitions of such acts, classifies them as serious misconduct for all UN staff, including UN agencies, and stresses that these rules should be incorporated into contracts with entities and individuals working in cooperative arrangements with the UN.

In May 2005, the Council held its first ever open briefing on this matter and received information from H.R.H. Prince Zeid Ra'ad Zeid Al Hussein and the Under Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno. It issued a presidential statement in which it condemned, in the

strongest terms, all acts of sexual abuse and exploitation committed by peacekeepers and stressed the need to ensure proper investigation and accountability.

Resident and Humanitarian Coordinators and Representatives of the Secretary-General are in the best positions to ensure that the bulletin is implemented coherently at the field level. According to the RC Generic Job Description, the RC is responsible for ensuring the establishment and functioning of an in-country network on protection from sexual exploitation and abuse to implement the Secretary-General's Bulletin. The Job Description also asserts that it is the RC's role to ensure that the network is supporting the development and implementation of a country-level action plan to address sexual exploitation and abuse. This action plan should include the establishment of mechanisms to assist victims of sexual exploitation and abuse, in order to implement UN General Assembly 62/214. While the RC can seek UN Country Team endorsement of the plan and monitoring of its implementation, the HC can seek endorsement by the Humanitarian Country Team as well as encourage active participation in these Networks by the humanitarian community and integration of PSEA activities in the work of the clusters.

### **Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN Personnel**





While the Secretary-General's Bulletin on Sexual Exploitation and Abuse applies primarily to UN agencies, some eighty NGOs, UN agencies and other international organizations have also committed themselves to address the issue by signing onto the Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN Personnel. The Statement of Commitment identifies a number of measures that signatories are to take. It also recalls the Inter-Agency Standing Committee's Six Core Principles Relating to Sexual Exploitation and Abuse, which classify these acts by humanitarian workers as gross misconduct and grounds for dismissal and requires humanitarian workers to report incidents.

#### **Hot Issues**

- The HC needs to take utmost care not to ensure that beneficiaries/affected populations are not put at risk by reporting.
- The HC needs to take utmost care not to put staff in danger because of the monitoring and reporting on Security Council Resolutions on Women, Peace and Security and MRMs.
- Managing information related to grave violations of rights is a complex undertaking, and the data that becomes available is extremely useful for evidence-based advocacy, but normally highly contested by the parties to the conflict.
- The question of dealing with non-State actors is also complex in many situations as governments do not like to lend legitimacy to such groups. However, the point needs to be made that the UN engages with such groups for humanitarian purposes only, and such engagement does not lend itself to any type of recognition.
- Security issues are also a major concern in relation to the Security Council resolutions mentioned above as staff will engage in this monitoring exercise and armed groups and forces start to understand that this information ends up in public reports, which at the end of the day will make the commanders of such groups accountable.
- Security Council resolutions are complex instruments for addressing accountability. It is sensitive for governments to be listed in the Secretary-General's global annual report, and there is normally a great deal of discussion around this at the time of listing, or when the country annual report is developed.

## More information on the topic

### On-line publications:

	<p><b>IASC Gender Handbook</b>  <a href="http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/IASC%20Gender%20Handbook%20Final.pdf">http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/IASC%20Gender%20Handbook%20Final.pdf</a></p>
	<p><b>Reporting and Interpreting Data on Sexual Violence from Conflict-Affected Countries: Dos and Don'ts (UN Action note)</b>  <a href="http://www.stoprapenow.org/pdf/UN%20ACTION_Dos%20and%20Don'ts.pdf">http://www.stoprapenow.org/pdf/UN%20ACTION_Dos%20and%20Don'ts.pdf</a></p>
	<p><b>IASC Guidelines for Gender-based Violence Interventions in Humanitarian Settings</b>  <a href="http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/tfgender_GBVGuidelines2005.pdf">http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/tfgender_GBVGuidelines2005.pdf</a></p>
	<p><b>Guidelines on the MRM forthcoming.</b>          2009 Report of the Secretary-General on Children and Armed Conflict, A/63/785-S/2009/158, 26 March 2009.  <a href="http://www.un.org/children/conflict/english/reports.html">http://www.un.org/children/conflict/english/reports.html</a></p>

### Key websites:

#### UN Action against Sexual Violence in Conflict

<http://www.stoprapenow.org/>

#### IASC Sub-Working Group on Gender and Humanitarian Action

[http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-tf\\_gender-default&mainbodyid=&publish=](http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-tf_gender-default&mainbodyid=&publish=)

#### Inter-agency Working Group on Reproductive Health in Crises (IAWG)

<http://www.iawg.net/>

#### WHO, Women's health

<http://www.who.int/hac/techguidance/pht/womenshealth/en/index.html>

Links to key documents and websites.

#### Reproductive Health Response in Conflict (RHRC) Consortium

<http://www.rhrc.org/>

#### Sexual Violence Research Initiative

<http://www.svri.org/>

**The Reproductive Health Access, Information and Services in Emergencies (RAISE) Initiative**  
<http://www.raiseinitiative.org/home/>

**Key resources on women peace and security and on the MRM, including the UNSC resolutions**  
<http://www.womenwarpeace.org/>

**Sexual violence data reporting - UN Action dos and don'ts**  
[http://www.stoprapenow.org/pdf/UN%20ACTION\\_Dos%20and%20Don'ts.pdf](http://www.stoprapenow.org/pdf/UN%20ACTION_Dos%20and%20Don'ts.pdf)

## 10.4 The Responsibility to Protect

### Why is it important for my work as HC

**Responsibility to Protect (R2P)** is a recently developed concept in international relations regarding a State's responsibilities towards its population, as well as the international community's responsibility should a State fail or refuse to uphold its basic duties. The concept of the responsibility to protect is contained in paragraphs 138 and 139 of the Outcome Document of the 2005 World Summit. A critical understanding R2P can inform HC's understanding of how States choose to respond to genocide, war crimes, ethnic cleansing and crimes against humanity as well as how States continue to develop international norms and consider options for reinforcing responsibilities to protect people from these crimes.

### Main elements

The Outcome Document of the World Summit, outlines the following regarding R2P:

*138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means... The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*

*139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity... We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.*

The UN Secretary-General has appointed a Special Advisor on R2P who is working to further develop and operationalize the R2P concept and to elaborate its implications for the UN. The Special Advisor prepared a Secretary-General's report on R2P which was submitted to the General Assembly in January 2009.

The report emphasizes that R2P should be understood within the context of paragraphs 138 and 139 of the Outcome Document. It thus refers to “three pillars”: (a) the principal responsibility of States to protect their populations from the listed crimes and violations; (b) the role of the international community to support and assist States in meeting this responsibility; and (c) the role of Member States to respond in a timely and decisive manner, in accordance with the Charter, to help protect populations from the listed crimes and violations but in a manner which is not limited to the use of force.

The report also emphasizes that R2P is focused solely on the four crimes and violations listed in the Outcome Document and does not extend to other calamities such as climate change, HIV and AIDS, and natural disasters. It also stresses that R2P does not alter, but rather reinforces, the legal obligation of Member States to refrain from the use of force except in conformity with the Charter.

The General Assembly discussed the Secretary-General’s report in July 2009. The tone and substance of the debate indicated a clear consensus within the membership on the obligation to halt mass atrocities. The issues on which Member States expressed concern included selectivity and the use of double standards in the implementation of the norm; the use of force and unilateral intervention; the restraint on the use of veto by the P5 in R2P situations; and respective roles of the General Assembly and the Security Council in implementing R2P.

In September 2009, the General Assembly adopted by consensus resolution 63/308 on R2P, in which it took note of the report of the Secretary-General and of the timely and productive debate and decided to continue its consideration of R2P.

### Hot Issues

- No international agreement exists on the criteria for external military intervention to put an end to genocide, war crimes, ethnic cleansing and crimes against humanity. It is argued that external intervention even in such cases may be at odds with the concept of sovereignty.
- Focus of attention has been on intervention and less on State responsibility in countries where crimes may be committed.
- Detractors of the R2P concept argue that by justifying external breaches of State sovereignty, R2P encourages foreign aggression by stronger nations.
- Confusion exists on the parameters of R2P, e.g. when the crime of genocide is contested or when access for disaster affected communities is denied.

### More information on the topic

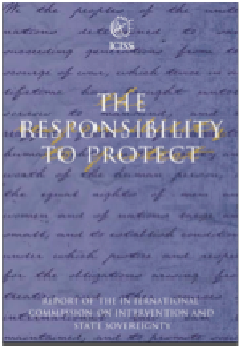
#### Key websites:

**Responsibility to Protect.** [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org)

**A/63/677, General Assembly Resolution**, 12 January 2009, Implementing the responsibility to protect, Report of the Secretary-General.

<http://www.ipacademy.org/asset/file/419/SGRtoPEng.pdf>

## On-line publications:

	<p><b>The Responsibility to Protect, International Commission on Intervention and State Sovereignty (ICISS), Dec 2001.</b> <a href="http://www.iciss.ca/pdf/Commission-Report.pdf">http://www.iciss.ca/pdf/Commission-Report.pdf</a></p> <p>This report examines the so-called right of humanitarian intervention, i.e. the question of when, if ever, it is appropriate for States to take coercive, and in particular military, action, against another State for the purpose of protecting people at risk in that other State.</p>
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## 11. Humanitarian Access and International Law

### Why is it important for my work as HC

Access is a fundamental pre-requisite to effective humanitarian operations. It concerns both access by humanitarian actors to populations affected by crisis as well as the affected population's access to humanitarian assistance and services. Access, however, is rarely guaranteed. A conscious effort must be made to establish and maintain access. In addition, in many humanitarian crises, the erosion of access needs to be addressed in order to increase the effectiveness of humanitarian aid.

A critical understanding of access and barriers and constraints to access is crucial for HCs to undertake negotiation and access to enhance protection and enable humanitarian action.

### Main elements

#### 11.1 Humanitarian Access

Access is an issue of over-arching humanitarian concern which requires effective coordination at strategic and operational levels. GA Resolution 46/182 sought to strengthen the coordination of humanitarian assistance in the UN system and established the mandate of the Emergency Relief Coordinator (ERC). The role of the ERC's in relation to access is outlined generally in the resolution in terms of the overall effective coordination of humanitarian relief efforts, and specifically and explicitly to actively facilitate access by operational organizations to provide emergency assistance.

In addition, in 2007, the ERC committed to: (i) establishing more systematic monitoring and reporting on access and to report instances of grave concern to the Security Council, and (ii) prioritising efforts to increase access on the ground.

#### Types of Constraints on Access

In practice, access is rarely guaranteed and commonly requires concerted strategies to achieve and sustain. In this regard, it should be noted that there are several different types of constraints on access. Not all are a consequence of deliberate obstruction and are not necessarily violations of international humanitarian law.

Constraints on access may include, for example:

- Formal and ad hoc bureaucratic impediments on the entry of personnel and goods into the country of operations as well as on the movement of personnel and goods on the ground once in-country;
- Ongoing intense hostilities, skirmishes and military operations;
- Attacks on humanitarian personnel, facilities and assets, both motivated by politics or economics, and as perpetrated by parties to conflict as well as armed criminal actors;
- Diversion of aid away from beneficiaries by various actors; and
- Difficult climate, terrain and lack of infrastructure.

Multiple types of constraints are often simultaneously present in a single context. Constraints will typically fluctuate over time and will likely affect different sectors of humanitarian activity in different ways.

As such, there are no blanket remedies to enhance access. Each constraint requires tailored responses, in terms of both operations and policy, in accordance with the particular dynamics and patterns manifested in practice. Understanding constraints on access, their trends over time, their humanitarian consequences and their implications for operations, and the factors driving constraints, is thus essential to identifying means of addressing them. This means our analysis and efforts to find means to address constraints must be built on increasingly systematic and rigorous access monitoring.

The combination of multiple and complex types of constraints on access across several situations also underscore the importance of coordinated strategies and efforts to enhance access.

While a humanitarian agency may need to develop its own operational strategy in accordance with its particular operational requirements for the safe and timely provision of humanitarian aid, no single agency can develop and implement comprehensive solutions itself. The strategic options we develop and implement, our conduct as humanitarian actors, and the substance of our negotiations with parties to the conflict and other actors, concern all humanitarian actors and have implications for the affected population as a whole.

Coordination of access negotiation undertaken by humanitarian actors with the parties to conflict will increasingly need to feature prominently in our strategies. This includes efforts to establish acceptance for humanitarian action and negotiate appropriate context-specific modalities for the implementation of humanitarian activities which are consistent with humanitarian principles.

In addition, given that crises evolve over time, access negotiation is rarely a one-off activity. Ongoing liaison with all relevant parties is an essential underpinning of successful access negotiation. Most importantly, consistent adherence to humanitarian principles underpins effective humanitarian operations. They provide the basis for establishing acceptance for humanitarian activities to be conducted, while minimising interference in this regard and, therefore, serve to help achieve and sustain access.

Strategies to address access constraints must draw upon various capacities within the humanitarian community. For example, robust civil-military coordination capability may be essential to help arrange and implement humanitarian corridors or de-conflicting arrangements during hostilities, whereby communication channels with parties to conflict are used to coordinate the time and locations of relief activities to help ensure that military operations do not interfere with the delivery of humanitarian assistance. Skills to develop and implement media strategies may also be important to disseminate information and increase public awareness on humanitarian principles and humanitarian activities in a given context.

## Human Rights Law and Humanitarian Assistance

A rights-based approach to humanitarian action seeks to bring about the fulfillment of human rights and protection from threats which interfere with their fulfillment, including harm and deprivation resulting from armed conflict or disaster. This can be achieved, in part, through ensuring access to assistance, by directly providing humanitarian assistance and conducting other humanitarian activities to protect human life when the affected State is unable or unwilling to do so.

There is no multilateral human rights treaty expressly setting out a right to assistance or a right of access. However, humanitarian assistance may be necessary to give effect to the fundamental rights to life, food, clothing and shelter. As such, humanitarian assistance, and access to affected populations, should be seen as a tool in support of the fulfillment of rights.

It should be noted that the Code of Conduct of the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief expresses such a right as a matter of principle and organisational commitment in stating that “the right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries”. Those members of the Red Cross Movement and NGOs that are signatories to this Code of Conduct may, thus, tend to refer to a “right to humanitarian assistance.”

## International Humanitarian Law and Humanitarian Assistance

In situations of international and non-international armed conflict, international humanitarian law applies. Under international humanitarian law, parties to conflict must protect and meet the basic needs of persons within their effective control. If they are unable or unwilling to do so, humanitarian actors have an important subsidiary role to play, and parties to conflict are obliged to allow and facilitate relief actions for this purpose. The Geneva Conventions recognize certain obligations on States parties to allow victims of armed conflicts to receive supplies indispensable to their survival. These obligations were further developed with the adoption of the Additional Protocols in 1977.

In an international armed conflict, the obligation to provide assistance includes in particular:

- The free passage for consignments of certain objects necessary to the survival of the civilian population; and
- The duty of the Occupying Power to ensure essential supplies to the population of territories it occupies. If its own supplies are inadequate, the Occupying Power must agree to relief provided by outside sources.

Additional Protocol I strengthens the body of rules adopted in 1949. For instance, a State at war must accept impartial humanitarian relief schemes carried out without adverse distinction of the population on its own territory, subject to the agreement of the parties concerned. If those conditions are met, however, it would be wrong to refuse such relief schemes, which may not be regarded as either interference in the armed conflict or as hostile acts.

In a non-international armed conflict, Additional Protocol II specifies, among other things, that if the civilian population is suffering excessive deprivation owing to a lack of supplies essential to its survival, relief actions which are of an exclusively humanitarian and impartial nature and conducted without any adverse distinction must be allowed and facilitated subject to the right of control of the warring parties (these include government, dissident forces and other armed groups). It is now generally recognized that the State must authorize purely humanitarian relief operations of this nature if it is not in a position to assist the affected population itself.

Legal obligations related to humanitarian access under international humanitarian law differ according to the situation in which the relief operation has to be carried out. In occupied territories, there is a clear and unconditional obligation for the Occupying Power to ensure adequate supplies to the population under its control or to allow and facilitate relief actions, if the whole or part of the

population is inadequately supplied. In territories other than occupied territories, relief operations, though mandatory when the population is not provided with adequate supplies, remain subject to the consent of the Parties concerned. In non-international armed conflict, such operations also remain subject to the consent and right of control of "the State concerned".


## Hot Issues

- Multifaceted UN operations may blur the distinction between political goals and humanitarian operations, as well as that between political or military actors and humanitarian organizations.
- Humanitarian actors face hard choices and trade-offs between adopting measures which enable them to reach affected populations in the short term versus the implications those measures may have for their acceptance and access in the long term.
- Approaches to the security management of humanitarian operations can have significant implications for access. A choice to use armed escorts can limit access to only those where those providing armed escort are themselves able to operate. In addition, such measures can negatively affect perceptions of neutrality and, therefore, security if those providing armed escort are themselves a target for attack by opposing forces.
- Decreasing field presence in response to a perceived increase in security threats means that personnel may be absent precisely when and where ongoing liaison or intensified negotiation on the ground is most needed to maintain access.

## More information on the topic

**OCHA Access Monitoring and Reporting Framework** (in development). Ensuring systematic monitoring and reporting on humanitarian access in situations of armed conflict through the use of a standardized framework.

## On-line publications:

	<p><b>Humanitarian Negotiations with Armed Groups, OCHA, 2006</b> <a href="http://ochaonline.un.org/humanitariannegotiations/index.htm">http://ochaonline.un.org/humanitariannegotiations/index.htm</a></p>
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## 11.2 International Disaster Response Laws, Rules and Principles (IDRL)

### Why is it important for my work as HC

HCs play a critical role in the aftermath of major disasters in promoting international responses that are quick, effective and well-coordinated. Regulatory hurdles and barriers are common complaints in international disaster operations, reducing humanitarian access and rendering aid slower, more expensive and less effective. At the same time, the multiplicity of responders has sometimes led to poor quality and chaotic efforts causing more harm than good. As a result, understanding national regulatory frameworks for international disaster relief is of prime importance. The IFRC have been active in tracking national systems that make up International Disaster Response Laws, Rules and Principles to assist development of improved national regulations prior to crises occurring.

### Main elements

#### What are the Key Issues?

When international assistance is required to respond to a major disaster, legal provisions and regulations can become barriers to a prompt and adequate response. At the same time, the lack of appropriate regulation can result in poor quality and coordination from some international providers.

Some of the most frequent problems faced during international relief operations are:

#### Unnecessary red tape

- Restrictions and delays in customs clearance for relief goods and equipment;
- Imposition of duties, tolls and other taxes on relief items and activities;
- Difficulties and delays in obtaining and renewing necessary visas and permits for humanitarian personnel;
- Problems obtaining legal recognition of foreign professional qualifications for specialized personnel (particularly medical staff); and
- Difficulties in legal registration for foreign humanitarian organizations, leading to restrictions in opening bank accounts and hiring local staff.

#### Poor quality and coordination from some international providers

- Importation of unnecessary or inappropriate relief items;
- Failure to coordinate with domestic authorities and other relief providers;
- Use of inadequately trained personnel;
- Failure to consult with beneficiaries;
- Culturally unacceptable behaviour; and
- Proselytizing.

#### Sources of IDRL

There is no single international instrument relating to international assistance. IDRL is contained in a wide array of international and national regulations regarding customs, transport, diplomatic privileges and immunities, telecommunications, civil and military cooperation agreements, health law, environmental treaties, international weapon control and even space law, among others.

Among the most significant international instruments and guidelines regarding relief assistance are the **Kyoto Convention** on the Simplification and Harmonization of Customs Procedures as amended in 1999 and the **Istanbul Convention** on Temporary Admission of 1990, both of which include annexes specifically focused on reducing barriers to customs clearance of relief consignments and waiving

associated duties and charges. However, like a number of other treaties in this area, they have relatively few parties.

Several treaties in the area of transport law also have individual provisions designed to ease the entry of disaster relief items and personnel. These include the **Convention on Facilitation of International Maritime Traffic** of 1965 and Annex 9 to the **Convention on International Civil Aviation** of 1944.

One of the best-known global instruments on disaster response relates to telecommunications law. The **Tampere Convention** on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 calls on State parties to reduce regulatory barriers to the use of telecommunications resources. Importantly, this convention applies not only to States but also to other entities providing relief, including humanitarian organizations.

Several instruments focusing on donors are also important for disaster relief. These include the **Food Aid Convention** as amended in 1999, which sets out not only minimal donation commitments but also progressive quality standards for food assistance, and the non-binding Principles and Practice of Good Humanitarian Donorship of 2003, which emphasize the responsibility of donors to provide their funding in ways supportive of equitable and appropriate relief.

In 2005, the **International Health Regulations** were revised and greatly expanded, providing strong systems for the international exchange of information pertinent to prevention and response to the spread of diseases. The World Health Organization (WHO) has also been key in developing guidelines in other pertinent areas related to health law, including with regard to drug donations and the use of field hospitals.

Moreover, guarantees for the security of humanitarian personnel were extended to some disaster relief personnel by the 2005 Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

Probably the most important and most comprehensive global instruments in this area are **non-binding resolutions**, declarations, codes and guidelines. A number of UN documents fall in this category, particularly UN General Assembly Resolutions 46/182 of 1991, 57/150 of 2002 on international urban search and rescue, and the **Hyogo Framework of Action** of 2005. The International Conference of the Red Cross and Red Crescent has also adopted a number of important instruments, including the Measures to Expedite International Relief of 1977 (which were also endorsed by the UN Economic and Social Council and General Assembly). The most widely used voluntary codes and guidelines in the field are the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organizations of 1994 and the Sphere Humanitarian Charter and Minimum Standards in Disaster Relief as revised in 2004.

## The Guidelines

In November 2007, the State parties to the Geneva Conventions and Red Cross and Red Crescent actors unanimously adopted the **Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance** (known as the “IDRL Guidelines”) at the 30th International Conference of the Red Cross and Red Crescent. The Guidelines were also welcomed by the IASC WG earlier in 2007 and by three resolutions of the UN General Assembly (UNGA Res. Nos. 63/139, 63/141, and 63/137) in 2008.

The IDRL Guidelines are a set of recommendations to governments on how to prepare their disaster laws and plans for the common regulatory problems in international disaster relief operations. They are based on and summarize the provisions of existing international legal and policy documents (such as those described above).

The Guidelines recognize that it is first and foremost the responsibility of the government of the affected State to address the humanitarian needs caused by a disaster within its borders and, therefore, international disaster assistance should be designed and implemented so as to be complementary to the efforts of these domestic actors, rather than displace them.

The Guidelines advise governments as to the minimal quality standards they should insist upon in humanitarian assistance as well as the kinds of legal facilities aid providers need to do their work effectively. The Guidelines also encourage States to reduce legal barriers to disaster relief originating within or passing through their territories to another country affected by a disaster, in order to avoid delays.

For both transit and affected States, the Guidelines call for:

- Expedited visa processing and customs clearance for relief personnel, goods and equipment;
- Facilitation of relief transport;
- Exemptions from taxes, duties and fees on relief activities; and
- Simplified means for humanitarian organizations to acquire temporary domestic legal personality in order to operate legally in the country.

The Guidelines insist that international assistance providers be held responsible for abiding by certain minimum humanitarian standards in their disaster assistance. Granting of legal facilities to these organizations should be conditioned to their commitment to, and ongoing compliance with, these minimal standards.

While primarily designed as a preparedness tool for legal reforms before disasters strike, the Guidelines can also be used as an advocacy document, as an expression of international consensus on how to deal with the most common regulatory issues.

### Hot Issues

- The primary role of domestic authorities and legal sovereignty of the State may be at odds with speedy international humanitarian access. Access by relief actors often remains contested as does the concept of right of access.
- Completely unregulated and unfettered access by international actors has often been found to be counterproductive. On the other hand, too much regulation can clearly have severe ramifications on affected communities.

### More information on the topic

#### Websites:

IDRL Programme, [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

## On-line publications:

	<p><b>Law and legal issues in international disaster response: a desk study, IFRC 2007.</b> <a href="http://www.ifrc.org/Docs/pubs/idrl/desk-study/113600-idrl-deskstudy-en.pdf">http://www.ifrc.org/Docs/pubs/idrl/desk-study/113600-idrl-deskstudy-en.pdf</a>  <a href="http://www.ifrc.org/what/disasters/idrl/research/publications.asp">http://www.ifrc.org/what/disasters/idrl/research/publications.asp</a></p> <p>This desk study compiles the insights gained by the International Federation's IDRL programme through its legal research, case studies, consultations and a global survey on existing regulatory frameworks and remaining problem areas</p>
	<p><b>Introduction to the guidelines on the domestic facilitation and regulation of international disaster relief and initial recovery assistance</b> <a href="http://www.ifrc.org/what/disasters/idrl/resources/guidelines.asp">http://www.ifrc.org/what/disasters/idrl/resources/guidelines.asp</a></p> <p>On 30 November 2007, the 30th International Conference of the Red Cross and Red Crescent unanimously adopted the "IDRL Guidelines." This introduction provides information on their origins and presents their text and the text of the adopting resolution</p>

## 11.3 Customs Model Agreement

### Why is it important for my work as HC

When customs facilitation measures are not addressed prior to an emergency, there is a great risk that essential basic relief items are stuck at the border for administrative and bureaucratic issues. The application of simplified customs procedures allows speeding up the delivery of international humanitarian assistance.

HCs will have a major role to play in addressing this topic with the government as a preparedness measure.

### Main elements

#### What are the Key Issues?

A study conducted by the Office for the Coordination of Humanitarian Affairs (OCHA) showed that four international instruments - one recommendation (CCC Recommendation (1970) concerning relief consignments) and three conventions (Revised Kyoto Convention, A.T.A. Convention, and Istanbul Convention) elaborated by the World Customs Organization (WCO), contained recommended facilitation measures to simplify and streamline Customs clearance of humanitarian consignments. If fully applied, these measures would contribute considerably to the prompt delivery of humanitarian assistance.

However, an international convention is legally binding only if a government formally accepts it. The study showed that a limited number of countries had acceded to the conventions and/or annexes relating

to the delivery of humanitarian assistance, and that even fewer countries had translated these recommendations into provisions of their national legislation.

OCHA and the WCO developed a customs model agreement between the United Nations and a State/government concerning measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies (Model Customs Facilitation Agreement). It includes recommended facilitation measures to simplify customs clearance of humanitarian consignments. If fully applied, these measures would contribute considerably to the prompt delivery of humanitarian assistance.

If specific legislation to facilitate customs clearance of emergency relief items lacks, a Customs Agreement between the UN (i.e. the most senior UN authority in-country) and the government can be negotiated in advance of an emergency. Once signed, the agreement covers all UN-led humanitarian emergency assistance operations and is to be automatically applied by all national Customs offices at border-crossing points.

## The Agreement

Following the recommendations of the Workshop on Emergency Stockpiles, the First Meeting of the Standing Coordinating Group of the Military and Civil Defence Assets (MCDA) Project, and a number of other meetings and consultations with interested national and international organizations, OCHA initiated the development of a Model Agreement between the United Nations and a State/government concerning measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies (Model Customs Facilitation Agreement).

The recommended measures are to be applied to the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies. These measures are included in the Model Customs Facilitation Agreement.

The Model Customs Facilitation Agreement is intended to serve as a basis for the development of practical working tools on a bilateral, UN-particular country level.

## Hot Issues

- The annex I to the customs agreement requires a certification by the UN RC/HC that the (non-UN) shipper is a bona fide participant in the relief operation. This kind of certification is a necessary measure of control and guarantee for the respective government and the UN as a whole against abuse of customs facilities by private relief agencies.

## More information on the topic

### Websites:

#### **Office for Coordination of Humanitarian Affairs, Logistics Support Unit**

Page on customs facilitation measures

<http://ochaonline.un.org/lisu>

#### **World Customs Organization – Revised Kyoto Convention**

[http://www.wcoomd.org/home\\_wco\\_topics\\_pfoverviewboxes\\_tools\\_and\\_instruments\\_pfrevisedkyotocnv.htm](http://www.wcoomd.org/home_wco_topics_pfoverviewboxes_tools_and_instruments_pfrevisedkyotocnv.htm)

#### **IFRC – IDRL Program**

<http://www.ifrc.org/what/disasters/idrl/>

**Inter-Agency Standing Committee**  
**Humanitarian Coordination Group**  
**January 2010**