**TOOLKIT
Dynamic
document**

HUMANITARIAN PROTECTION IN ARMED CONFLICT

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Acronyms

AP	Additional Protocol (i.e. one of the three protocols additional to the Geneva Conventions of 1949)
CAC	Convention Against Corruption
CASEVAC	casualty evacuation
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCHN	Centre for Competence on Humanitarian Negotiation
CESCR	UN Committee on Economic, Social and Cultural Rights
CIHL	customary international humanitarian law
CMCoord	civil-military coordination
CRC	Convention on the Rights of the Child
DDR	disarmament, demobilization and reintegration
DIP	Department of International Protection
DPO	Department of Peace Operations
GC	Geneva Convention
GLCD	Global Learning and Development Centre
GPC	Global Protection Cluster
HC	Humanitarian Coordinator
HCT	Humanitarian Country Team
HIV	human immunodeficiency virus
HRDDP	UN Human Rights Due Diligence Policy
HRL	human rights law
HRLU	Human Rights Liaison Unit
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDP	internally displaced person
IED	improvised explosive device
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IHL	international humanitarian law
IRL	international refugee law

ISIS	Islamic State of Iraq and the Levant (Islamic State of Iraq and Syria, Islamic State, Daesh)
LGBTI	lesbian, gay, bisexual, transgender and intersex
LoAC	law of armed conflict
MARA	Monitoring, Analysis, and Reporting Arrangements on Conflict-related Sexual Violence
MEDEVAC	medical evacuation
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali (acronym derived from the French title, Mission Multidimensionnelle Intégrée des Nations Unies pour la Stabilisation au Mali)
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (acronym derived from the French title, Mission de l'Organisation des Nations unies en république démocratique du Congo)
MRM	Monitoring and Reporting Mechanism for Grave Violations against Children in Armed Conflict
MSF	Médecins Sans Frontières
NGO	non-governmental organization
OAU	Organisation of African Unity [1963-1999; became the African Union in 2002]
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
POC	person of concern
POC	protection of civilians *Because the acronym "POC" is used for both "person of concern" and "protection of civilians", the present publication does not use it at all, to avoid confusion.*
POW	prisoner of war
RC	Resident Coordinator
SGBV	sexual and gender-based violence
SOP	standard operating procedure
SRSG	Special Representative of the [UN] Secretary-General
SSG	Strategic Steering Group [Syria]
UDHR	Universal Declaration of Human Rights
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMSIL	United Nations Mission in Sierra Leone
UNICEF	United Nations Children's Fund (acronym derived from the original title: "United Nations International Children's Emergency Fund").
UNMISS	United Nations Mission in South Sudan
UPR	Universal Periodic Review [of the human rights records of the UN member States]

WHO   World Health Organization

Glossary

administrative detention	Non-criminal detention for security reasons, other than during an armed conflict (i.e. in other situations of violence, or in peacetime).
armed element	A person carrying a weapon, irrespective of their legal status, including a civilian carrying a weapon for self-defence or for reasons unrelated to military activities.
civilian	Anyone who is not a member of the armed forces of a party to the conflict.
combatant	In an international armed conflict, a member of the armed forces of a State party to the conflict other than medical and religious personnel.
conflict analysis	The process of understanding the underlying causes and context of a conflict, including its stakeholders and its social, economic and political linkages.
documenting	The collection of information related to alleged violations, for example from interaction with victims or witnesses of such violations. *In the context of IHL and IHRL violations.*
due diligence	The measures required to prevent the UN providing support where there is a real risk of violations of international human rights law, international humanitarian law or refugee law. *Definition from HRDDP. This term will be defined differently in other contexts.*
duty bearer	An entity that has a duty to fulfil certain obligations under international law. These include: • national and international military entities; • organized armed groups (see the definition in 1.6 What is armed conflict?)
fighter	In a non-international armed conflict, a member of the armed forces of a State or of an organized armed group of a party to the conflict.
humanitarian civil-military coordination	Dialogue and interaction between civilian and military actors in humanitarian emergencies.

humanitarian evacuation	A large-scale relocation of civilians who face an immediate threat to life during an armed conflict or other violence, to locations where they can be more effectively protected.
humanitarian worker	A civilian engaged in humanitarian activities, with a clear commitment to humanitarian principles.
international armed conflict	One or more States using armed force against each other. or Foreign occupation. or Fighting against colonial domination or racist regimes.
internment	Deprivation of liberty initiated or ordered by the executive branch – not the judiciary – without criminal charges being brought against the internee.
military personnel	Members of the armed forces of a State.
monitoring	The systematic and regular assessment of alleged violations of IHL and IHRL, including as part of regular protection monitoring activities. *In the context of IHL and IHRL violations.*
non-international armed conflict	A protracted armed confrontation between a State and the forces of one or more armed groups or between armed groups.
non-UN security force	Any of the following: • National military, paramilitary or police force; intelligence service, border control or similar security force. • National civilian, paramilitary or military authority directly responsible for the management, administration or command or control of such a force. • Peacekeeping force of a regional international organization. *Definition from HRDDP. This term will be defined differently in other contexts.*
protected zone	An area aimed at separating civilians from military objectives.

protection	All activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law. *IASC definition. This is the definition used throughout the present document.*
protection	All necessary means, up to and including the use of deadly force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government. *DPO definition. Included here for understanding and comparison – **not** the definition used in the present document.*
protection analysis	Analysis of the risks and needs of affected populations, including persons of concern to UNHCR.
reporting	The transmission of information on an incident (alleged violation), which can include internal reporting (to country office, regional office or Headquarters) or reporting to external entities. *In the context of IHL and IHRL violations.*
support	Includes (but is not limited to) any of the following; • Training, mentoring, advisory services, capacity- and institution-building and other forms of technical cooperation for the purpose of enhancing the operational capabilities of non-United Nations security forces. • Ad hoc or programmatic support to civilian or military authorities directly responsible for the management, administration or command and control of non-United Nations security forces. • Financial support, including payment of salaries, bursaries, allowances and expenses, whatever the source of the funds. *Definition from HRDDP. This term will be defined differently in other contexts.* Importantly for UNHCR, "support" as defined in the HRDDP does not include engagement "to promote compliance with humanitarian, human rights and refugee law or to negotiate humanitarian access and carry out relief operations"

weapon bearer	A person currently or habitually carrying or operating a weapon or weapon system who is a member of any of the following:
	• The armed forces of a State.
	• The police forces of a State that are deployed in an armed conflict, if they are armed.
	• The armed forces of a regional organization.
	• The armed forces of an international coalition of States.
	• Armed forces involved in a UN peace operation.
	• A non-State armed group.
	• A private security company or private military company.

Foreword

Refugees and displaced persons increasingly find themselves caught up in or near armed conflict.

Furthermore, the States and non-State groups fighting today's wars increasingly disregard the basic principles of international humanitarian law, placing millions of civilians in harm's way – sometimes deliberately, as a tactic of war. Contemporary armed conflicts frequently destroy or weaken State authority, leading to failing infrastructure and public services, chronic hardship and poverty, rising levels of crime and the absence of the rule of law. Today's conflicts are largely non-international, involving multiple non-State groups, with varying degrees of ability and willingness to control territory, respect IHL or protect civilians.

To operate more effectively in this environment, we at UNHCR need to enhance our knowledge and use of IHL and develop our skills in such areas as humanitarian negotiations and protection/conflict analyses. We must also be able to organize or take part in humanitarian evacuations, maintain the civilian and humanitarian character of sites hosting displaced populations and operate in so-called "safe zones".

We have to understand the weapon bearers involved in armed conflict – their interests, their motivations, how they operate, how they can help or hinder humanitarian action – and we need to engage with them in a principled yet pragmatic manner. We also need to understand our role in UN prevention activities and how we can work with other UN agencies to protect civilians.

This toolkit addresses those questions, and will enhance UNHCR's protection work in armed conflict. It is intended to support staff on the front line and at Headquarters and offers simple and practical guidance on protection during armed conflict.

Making better use of international humanitarian law in UNHCR protection

1 Making better use of international humanitarian law in UNHCR protection work

Contents

1.1   Why this module?

- International humanitarian law (IHL) is the branch of international law that applies in armed conflict environments. Increasingly, UNHCR personnel are working in such environments.

- IHL:

    o sets the standards for civilian protection and humanitarian assistance;

    o restricts means and methods of warfare;

    o provides protection for humanitarian work – and workers;

What is IHL?
IHL is a set of rules that seek to limit the effects of armed conflict for humanitarian reasons. It protects people who are not (or are no longer) participating in the hostilities and restricts the means and methods of warfare. IHL is also known as the "law of war" or the "law of armed conflict".

    o is a powerful tool for advocacy on behalf of displaced populations;

    o addresses specific protection challenges such as:

    - maintaining the civilian and humanitarian character of IDP and refugee sites;
    - establishing "safe zones" or other protected areas;
    - carrying out humanitarian evacuations during armed conflict.

    o shapes and guides our protection interventions during conflict, alongside international human rights law and international refugee law;

    o helps us deliver all aspects of protection – including assistance, physical protection, and restoring dignity – and is part of our toolkit as a protection agency.

It is therefore more important than ever that you:

• know this branch of the law better;

• refer to it more regularly (and correctly!);

• use it to protect persons of concern;

• understand it when negotiating humanitarian access or otherwise engaging with weapon bearers.

1.2 What will I find in this module?

• A basic introduction to IHL and its main principles.

• An outline of those areas of IHL that are particularly relevant to our work, and of how IHL relates to other branches of law.

• Guidance on using IHL to achieve protection outcomes.

• Examples of how UNHCR is using IHL in the field.

1.3 What's the problem?

1.3.1 Many parties to today's conflicts have a bad attitude towards IHL

• They have an increasing tendency to ignore IHL, deny their responsibilities under IHL or subvert IHL terminology to serve their interests.

• When it suits them, States involved in non-international armed conflicts often claim that IHL does not apply, perhaps referring to "necessary measures in the fight against terrorism"[1] or simply refusing to apply certain rules of IHL.

• Some non-State armed groups have little knowledge of IHL, have no intention of complying with it, or apply it selectively.

1.3.2 Weapon bearers' failure to comply with IHL has dire consequences for civilians

Civilians – including displaced populations – suffer the consequences of systematic breaches of IHL and abuses of human rights in many armed conflicts. Children are disproportionately affected, increasingly suffering the consequences of such IHL violations as attacks on their schools and recruitment into armed groups.

All too often, parties to conflict:

• disregard fundamental notions of IHL, such as the distinction between civilians and combatants;

• intentionally attack civilians, use them as human shields or besiege them and cut them off from assistance and protection – deliberately, as a means of warfare;

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[1] In its resolutions 2462 (2019) and 2482 (2019), the Security Council requested Member States to ensure that counter-terrorism measures comply with their obligations under IHL and take into account their potential effects on humanitarian activities.

- attack civilian objects, such as sites and settlements hosting IDPs or refugees, schools, hospitals and places of worship;
- destroy property, livelihoods, vital infrastructure, hospitals and schools, with devastating, long-term effects.

Those civilians who escape death or injury may well find themselves part of massive displacement.

Conflict and violence are displacing more people than ever before, and violations of IHL and basic human rights are two of the main drivers of conflict, both internally and across international borders.

1.4   What do we need to know, and when do we need to know it?

Any or all of the following branches of law may apply in contexts where UNHCR operates:

International humanitarian law

- Applicable to all parties to the conflict, including armed non-State groups under certain circumstances. Exactly which parts of IHL apply depends on whether the armed conflict is international or non-international. See the table of conflict types and applicable law.

Human rights law

- Also applicable during armed conflicts, but States can derogate from certain rights.
- Only applicable to States that have ratified the relevant treaties.
- Disputed applicability to non-State actors.

International refugee law

- Also applicable during armed conflicts.
- Only applicable to States that have ratified the relevant treaties, apart from the principle of non-refoulement, which is considered customary international law.

Domestic law

- Will vary from one jurisdiction to another.

> **Non-derogable human rights**
>
> Under the **International Covenant on Civil and Political Rights** (ICCPR), States can derogate from (i.e. not honour) some of the rights it sets out "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed". Armed conflict could constitute such an emergency and hence allow a State to derogate from certain rights.
>
> However, some rights are non-derogable, i.e. they always apply, under all circumstances – including during conflict. These include the following:
>
> - Prohibitions on torture and inhuman or degrading treatment/punishment.
> - Prohibitions on genocide, slavery, servitude and racial discrimination.
> - The right to freedom of conscience, thought and religion.

To provide protection, we must understand the interaction between the fields of international law applicable in our specific context.

All these types of law are complementary and often apply concurrently. They share the overall objective of protecting human life and dignity, but they do so under different circumstances and in different ways.

As humanitarian personnel, we must be able to identify the branch(es) of law applicable to each topic of concern to us.

The branches of law relevant to armed conflict

	Applicable during armed conflict?	Applicable to whom?	Main treaties/sources of law
International humanitarian law (IHL)	Yes	Parties to a conflict i.e. States, plus non-State armed groups that meet the criteria of AP II and Common Article 3	• The four Geneva Conventions (GC I–IV) • Protocols I and II additional to the Conventions (AP I and AP II)
International human rights law (IHRL)	Yes (but derogations from certain rights are possible, see textbox)	States (bound by treaties they have ratified and customary law) Applicability to armed non-State actors is disputed	• Universal Declaration Of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • Convention on the Rights of the Child (CRC) etc.
International refugee law (IRL)	Yes	States (bound by treaties they have ratified and customary law)	• 1951 Refugee Convention and its protocol • 1969 OAU Convention

The principles of customary international law (such as non-refoulement and the prohibition of torture) apply to all States at all times, regardless of which instruments they have or have not ratified.

Often, several branches of law apply to a specific question and have to be interpreted together (see the table below for examples).

How the different areas of law complement each other (examples)

	International humanitarian law	International human rights law	International refugee law
Humanitarian access	• GC IV, Art. 59 • AP I, Art. 70 • AP I, Art. 71 • ICC Statute, Art. 8(2) (b) (iii) and (c) (iii) • CIHL Rules 31 and 32	• UDHR, Art. 25 • ICCPR, Art. 11 (The right to an adequate standard of living)	• 1951 Refugee Convention, Articles 20 and 23 (Rationing and public relief)
Family unity	• GC IV, Art. 27 (1) and 82 (3) • AP II, Articles 4(3)(b) and 5(2)(a) • CIHL Rule 105	• CRC, Art. 37 (c) • ICCPR, Art. 23(1) • ICESCR, Art. 10 (1)	• UNHCR Executive Committee Conclusion No. 84 (XLVIII) (soft law)
Deprivation of liberty	• Common Article 3 • GC III (POWs) • GC IV (civilians), in particular Articles 78 and 132-133 • AP I, Art. 75 • AP II, Articles 4, 5 and 6 • CIHL Rules 87, 106 and 108 (POWs), 118-128 (internment)	• UDHR, Articles 3 and 9 • ICCPR, Art. 9 (Deprivation of liberty/ prohibition of arbitrary detention)	• 1951 Refugee Convention, Art. 26 (Freedom of movement)
Non-refoulement	• Common Article 3 • GC IV, Articles 45(4) and 49	• CAT, Art. 3 • ICCPR, Art. 7	• 1951 Refugee Convention, Article 33 (1)

In addition to the three areas of international law shown in the table, domestic law will cover each of the topics listed on the left, but of course will do so differently in each jurisdiction.

1.5 International humanitarian law

1.5.1 What is IHL?

International humanitarian law:

- is the branch of international law that applies in conflict environments;?

- is a set of rules that seeks to limit the effects of armed conflict, for humanitarian reasons;?

- protects people who are not (or are no longer) participating in hostilities and restricts the means and methods of warfare.

IHL is also commonly known (especially in the armed forces) as the "law of war" or the "law of armed conflict" (LoAC).

The main IHL treaties of relevance to UNHCR are as follows:

- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (hereafter Geneva Convention IV or GC IV).

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (hereafter Additional Protocol I or AP I).

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (hereafter Additional Protocol II or AP II).

See the table for a guide as to which instruments cover which topics.

In addition to the treaties explicitly ratified by the nations of the world, there is a significant body of customary international humanitarian law. Those rules are set out and analysed on the ICRC Customary International Humanitarian Law database (hereafter CIHL) which is a useful reference for field workers.

1.5.2 Some IHL provisions of particular relevance to persons of concern

- The prohibition of collective punishment,[2] as it prohibits the imposition of punishment on an entire group of persons (for example a community of IDPs or a specific nationality of refugee) for acts they have not personally committed.

- The prohibition of starvation as a method of warfare,[3] as civilians – including displaced populations – are increasingly subjected to siege warfare.

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[2] *Collective punishments*, ICRC Casebook.
https://casebook.icrc.org/glossary/collective-punishments

[3] Practice Relating to CIHL Rule 53, Starvation as a Method of Warfare.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53

- The [right to know the fate and whereabouts of family members,](#)[4] as refugees and IDPs are often separated from their families during and after flight.

- The [provision of humanitarian assistance](#)[5] to civilians in need ("humanitarian access").

- The principle of non-adverse distinction, as persons of concern to UNHCR are often vulnerable to discrimination during conflict. Customary IHL prohibits distinction based on:

  o race;

  o colour;

  o sex;

  o language;

  o religion or belief;

  o political or other opinion;

  o national or social origin;

  o wealth, birth or other status.

See also the section on [discrimination (or adverse distinction)](#) in the ICRC Casebook.[6]

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[4] CIHL Rule 117, Accounting for Missing Persons.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule117; Pls see also: 'Missing Persons and their families", ICRC- file:///C:/Users/CHALCHOU/Downloads/missing_persons_and_their_families.pdf

[5] *Humanitarian assistance*, ICRC Casebook.
https://casebook.icrc.org/glossary/humanitarian-assistance

[6] *Discrimination (or adverse distinction)*, ICRC Casebook.
https://casebook.icrc.org/glossary/discrimination-or-adverse-distinction

1.5.2.1 Common Article 3

Many of the conflicts in which we operate are non-international in nature, which means that most of the rules in the Geneva Conventions and AP I do not apply. However, all four Geneva Conventions do contain one article that specifically addresses non-international armed conflict – Article 3,[7] which is the same in all four conventions and is referred to as "Common Article 3".

This reads as follows:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> (2) The wounded and sick shall be collected and cared for.
>
> An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
>
> The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

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[7] Geneva Convention I.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/365-570006?OpenDocument

1.5.3 The principles of international humanitarian law

IHL acknowledges that armed conflict will occur but establishes the concept that "even wars have limits".

To a large extent, the limits on how combatants may wage war are set by three principles:

- distinction;
- precaution;
- proportionality.

As a humanitarian worker, you need to be conversant with these principles and use them correctly when advocating for persons of concern, especially when you are dealing with weapon bearers.

Basic principles of IHL – distinction, precaution and proportionality

	Distinction	**Precaution**	**Proportionality**
Definition	• Parties to a conflict must always distinguish between civilians and combatants. • Attacks may only be directed against combatants. • Attacks must not be directed against civilians, civilian objects or persons *hors de combat*.	Parties to a conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.	It is prohibited to launch an attack that 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**.
Sources	• AP I, Articles 48, 51(2) and 52(2) • AP II, Art. 13(2) • CIHL, Rule 1	• AP I, Art. 58(c) • CIHL, Rule 25	• AP I, Articles 51(5)(b) and 57 • CIHL, Rule 14

To take an example of importance to UNHCR´s work:

- a site hosting displaced populations is a civilian object, so IHL prohibits attacks on it (the **principle of distinction**);
- such a site must not be used to host military installations (the **principle of precaution**);
- even if there are fighters/combatants inside such a site, the **principle of proportionality** must be upheld in assessing the legality of a potential attack in terms of IHL (an attack must not take place if the loss of civilian life would be excessive in relation to the direct military advantage).

1.5.4 Why is IHL important to UNHCR's work?

- IHL protects civilians and persons *hors de combat*. Displaced populations are part of the civilian population and are protected as such.

- IHL shapes and guides UNHCR's protection work during conflict, alongside international human rights law and international refugee law. It helps us provide all types of protection – including assistance, physical protection and the restoration of dignity – and is part of the toolkit at our disposal as a protection agency.

- IHL also provides us – as humanitarian workers – with humanitarian access and protection.

> *"International humanitarian law is designed to minimize human suffering in war, including by safeguarding humanitarian activities. So garnering greater respect for IHL is one of the most effective ways to safeguard humanitarian space."*
>
> UN Emergency Relief Coordinator Marc Lowcock

During conflict, IHL is also among the most powerful tools for advocacy on behalf of displaced populations.

As UNHCR personnel, it is therefore important that you:

- know this branch of the law;

- advocate for compliance with it;

- use it to protect persons of concern;

- understand it when negotiating humanitarian access or otherwise engaging with weapon bearers.

1.5.5 How does IHL protect persons of concern to UNHCR?

1.5.5.1 Protection against becoming a refugee or IDP

Preventing displacement

IHL seeks to protect civilians from becoming refugees or IDPs in the first place, by limiting the humanitarian consequences of conflict and thereby the need for flight. As highlighted in a recent ICRC study, *Displacement in times of armed conflict: How international humanitarian law protects in war and why it matters*, many IHL violations directly or indirectly trigger displacement. Civilians may also flee pre-emptively to avoid anticipated violations.

A few key findings from the report:

- There is a correlation between waves of violence and displacement, with displacement being a way for people to avoid actual or predictable danger and to find safety elsewhere.

- Many IHL violations directly or indirectly trigger displacement, including:

  o violations of the principles and rules governing the conduct of hostilities – in particular distinction and precaution;

  o unlawful use of landmines;

  o direct attacks on civilian infrastructure and installations that provide basic services, and the consequent disruption of these services;

  o attacks on medical facilities, personnel and vehicles[8];

  o unlawful denial of access for impartial humanitarian organizations;

  o direct attacks on civilians;

  o murder;

  o hostage-taking;

  o torture;

  o sexual violence;

  etc.

- Civilians have a long memory of IHL violations and are aware of the impact of these violations on others. They may anticipate them happening or happening again and flee pre-emptively.
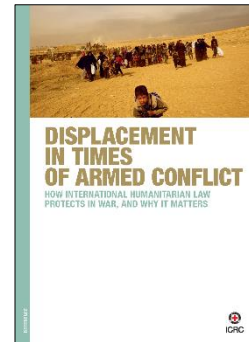
Forced displacement

- CIHL Rule 129[9] states that:

  A. Parties to an **international** armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.

  B. Parties to a **non-international** armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

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[8] See Chapter III- Secretary General Report on Protection of civilians in Armed Conflict-S/2021/423: "Medical care still in peril five years after adoption of resolution 2286 (2016)"

[9] CIHL Rule 129, The Act of Displacement.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129

- In addition to the protection provided by IHL, [Guiding Principle 6 of the OCHA Guiding Principles on Internal Displacement](#)[10] stipulates that:

    1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

    2. The prohibition of arbitrary displacement includes displacement:

        (a) When it is based on policies of apartheid, ethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

        (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

        (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

        (d) In cases of disasters, unless the safety and health of those affected requires their evacuation;

        and

        (e) When it is used as a collective punishment.

    3. Displacement shall last no longer than required by the circumstances.

1.5.5.2 Protection for refugees, IDPs and other persons of concern

Refugees and IDPs are a particularly vulnerable category of war victim, as they have been forced to flee their homes for safety and often find themselves in precarious conditions both during and after flight. Local populations frequently view them with suspicion and parties to conflict often target them for (perceived) affiliation with or support to the enemy.

IHL can protect persons of concern to UNHCR in several ways:

1. As part of the civilian population

IHL protects refugees, IDPs[11] and other persons of concern because they are civilians – so long as they do not take a direct part in hostilities. Even if a refugee or IDP does take direct part in hostilities, they only lose protection against attack under IHL while they are doing so. This is relevant both in international and non-international armed conflict.

2. As refugees

In international armed conflicts, refugees may – under certain circumstances – be considered "protected persons". That status confers on the holder the right, for example, to leave the territory at the beginning of or during a conflict (see [GC IV](#), Articles 35-46).

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[10] OCHA Guiding Principles on Internal Displacement.
http://www.internal-displacement.org/publications/ocha-guiding-principles-on-internal-displacement

[11] The 2009 Kampala Convention on IDPs builds upon the 1998 UN Guiding Principles on Internal Displacement, which restate the principles of international human rights, humanitarian and refugee law applicable to IDPs. The Kampala Convention gives these non-binding principles the force of law in Africa.

A number of other provisions specifically apply to refugees, such as AP 1, Art. 73 (refugees are considered "protected persons" in all circumstances), GC IV, Art. 44 (refugees are not to be treated as "enemy aliens" based on their nationality), etc.

3. As stateless persons

Stateless persons qualify as "protected persons" under GC IV, Art. 4. They are to receive protection "in all circumstances and without any adverse distinction". See also AP I, Art. 73.

1.5.6 IHL and the armed forces

- IHL provides the legal framework for military operations in armed conflicts. Most armed forces include IHL in their training, manuals and instructions, and have advanced knowledge of its application.

- Some armed groups have also unilaterally declared their commitment to abide by certain parts of IHL. For example, 17 armed groups have signed Action Plans with the UN to end recruitment of child soldiers. The most recent Action Plan has been signed in Myanmar in November 2020. In addition, many such groups have signed a "Deed of Commitment" through Geneva Call, including 54 deeds signed as of December 2020 for the adherence to a total ban on anti-personnel mines and for cooperation in Mine Action, 28 on the protection of children from the effects of armed conflict, the last one being in 2020 and 25 on the prohibition of sexual violence in armed conflict and towards the elimination of gender discrimination.. Geneva Call started also to work on the protection of health care in armed conflict in 2018. To date, two Armed Non-State Actors have signed the Deed of Commitment for the protection of health care in armed conflict and have taken measures to implement them. 14 ANSAs have signed unilateral declarations during the Covid-19 pandemic. (See *Armed non-State Actors and Displacement in Armed Conflicts* and Geneva Call 2020 Annual Report).

- Military personnel will often accept arguments based on IHL more readily than those based on human rights law – a branch of law that not all military forces are familiar with or consider themselves bound by.

You must therefore be able to use IHL in conversations and negotiations with weapon bearers. This includes, at a minimum, an understanding of terms such as "military objective" and "military necessity", together with the principles of distinction, precaution and proportionality, and an ability to cite the correct legal obligations applicable to the question in hand.

1.6 What is armed conflict?

As a humanitarian worker in the field, you need to know whether the situation in which you are operating constitutes:

- an international armed conflict;
- a non-international armed conflict;
- some other situation of violence.

This is not just of interest to lawyers! The classification of a situation will determine what rules apply in that specific context and therefore inform our operational response on the ground.

It also has a huge effect on the legal protection available to persons of concern, and the tools that you can use for advocacy.

Classification of a conflict

The classification of a conflict is essential, as it determines which part of IHL – if any – applies to your situation and what protection is available to persons of concern.

Conflict classification can be a complex exercise and needs to be factually assessed on a case-by-case basis. As a field worker, you will not be required to do this yourself, but you may wish to consult the ICRC in-country, or with your HQ, if you are uncertain about what law applies in your situation.

The ICRC's classification of a conflict is not always public. If you seek their advice in-country, make sure to also ask whether this information can be shared with others (and if not, keep it confidential!).

See the following resources:

- **How is the Term "Armed Conflict" Defined in International Humanitarian Law?**
- **Internationalized internal armed conflict**

Conflict types and applicable law

Situation	Definition	IHL
International armed conflict	• One or more **States** using **armed force** against each other (Art. 2 common to the Geneva Conventions). • **Foreign occupation**. • Fighting against **colonial domination** or **racist regimes**. There is no requirement of intensity, declaration of war or acknowledgement of a state of war by the parties involved.	**IHL applies**. Main sources: • The four Geneva Conventions (GC I–IV) • Additional Protocols I & 2 (AP I and AP II) • Customary law
Non-international armed conflict	A protracted armed confrontation: • between a **State** and the forces of one or more **armed groups** or • between **armed groups**. The confrontation needs to have a **minimum level of intensity**, and the armed group(s) a **minimum degree of organization**.	**IHL applies**. Main sources: • Article 3 common to the four Geneva Conventions • Additional Protocol II (AP II) • Customary law
Other violence	Other forms of large-scale violence, such as civil unrest, riots, gang violence, crime and acts of terrorism. These do not qualify as "armed conflicts" as they do not meet the minimum level of intensity and organization required (See AP II, Art. 2).	**IHL does not apply**.

1.6.1 Non-international armed conflicts

Article 3 common to the Geneva Conventions refers to "armed conflict not of an international character". This has been interpreted in jurisprudence, including that of the International Criminal Tribunal for the Former Yugoslavia which, in the Tadić case found that:

> "an armed conflict exists whenever there is a **resort to armed force between States** or **protracted armed violence between governmental authorities and organized armed groups or between such groups within a State**."

A slightly higher threshold applies for the applicability of Additional Protocol II:

> " […] all armed conflicts which are not covered by Article 1 […] between its armed forces and **dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.**

1.6.2 Internationalized conflicts

Many of today's conflicts are what is often described as "internationalized", and in 2018 such conflicts accounted for the majority of conflict-related deaths.

This is not a third category of armed conflict. These are non-international armed conflicts with an international dimension. This dimension normally entails one or more States or organizations intervening in the conflict, either:

- **in support of** the State party to the conflict;

or

- in support of an armed group **against** the State party.

The latter scenario can lead to the conflict becoming an international armed conflict (a conflict between States).

Note that different types of armed conflict can exist within the same geographical area at the same time, and that different parts of IHL therefore apply between the parties.

1.7 How can we better integrate IHL into protection work?

This section looks at five specific protection tools and explains how integrating IHL into these tools can enhance protection for displaced populations.

1.7.1 Conflict analysis

Conflict analysis is the process of understanding the following aspects of a conflict:

- Root causes.
- Triggers.
- Dynamics.
- Trends.
- Stakeholders.
- Operational environment.

The Secretary-General's emphasis on conflict prevention stresses the need for deeper conflict analyses and for wider

> **Protection-related activities during armed conflict to which IHL is especially relevant**
>
> - Activities covered in this module:
>   - o Compiling or understanding conflict analyses.
>   - o Drawing up protection strategies.
>   - o Conducting humanitarian negotiations.
>   - o Engaging with weapon bearers.
>   - o Undertaking advocacy for the rights and wellbeing of displaced populations.
> - Activities covered elsewhere in the Toolkit:
>   - o Raising awareness.
>   - o **Maintaining the civilian and humanitarian character of IDP and refugee sites**.
>   - o Conducting specific protection activities during armed conflicts, such as **humanitarian evacuations**.

sharing of such analyses within the UN system. Humanitarian organizations will increasingly be involved in drafting and sharing conflict analyses. Because UNHCR works in close contact with displaced and local communities, we often have accurate and timely information on the latest developments, and this can form a valuable part of a conflict analysis.

A conflict analysis will always include mapping stakeholders and their relationships, together with actors' positions, interests, needs, sources of power, etc. Stakeholder mapping may include people, groups and entities that affect or are affected by the conflict, positively or negatively, directly or indirectly.

> **Conducting conflict analyses**
>
> The **United Nations Conflict Analysis Practice Note** explains how to conduct a conflict analysis, and includes links to further resources on the subject.

This analysis should then feed into the operational planning of UNHCR and our partners, especially preparedness and contingency planning for humanitarian emergencies. Finally, continuous conflict analysis is vital in the management and direction of an emergency operation as it evolves.

IHL can also help us classify the parties to an armed conflict, especially a non-international armed conflict. Categorizing non-State armed groups according to [AP II, Art. 1](), para. 1, can help us understand the legal obligations of a group and the power it exercises, especially in view of the requirement in that article that the armed group must control territory.

> ### When does a non-State armed group acquire rights and duties under AP II?
>
> 1. This Protocol [...] shall apply to all armed conflicts which are not covered by Article 1 of [...] Protocol I and which take place in the territory of a High Contracting Party between its armed forces and **dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol**.
>
> 2. **This Protocol shall not apply to situations of internal disturbances and tensions**, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.
>
> *AP II, Art. 1*

This type of information will help us decide how to engage with different groups and how to prioritize our protection activities in areas under their control.

It is important to remember that even if a non-State armed group does not meet the criteria set out in AP II, it is still bound by [Article 3 common to the Geneva Conventions](). Common Article 3 states that such groups are always obliged to treat civilians humanely.

While there is room for endless debate as to what constitutes "humane treatment", common Article 3 contains the following prohibitions, which are especially relevant to armed groups:

- Murder.
- Mutilation.
- Cruel treatment.
- Torture.
- Hostage-taking.
- Summary execution.

During discussions with armed groups, it is important for UNHCR personnel to be aware of these prohibitions, and the fact that they apply during non-international armed conflict – not just during an international armed conflict.

Classifying a conflict according to IHL can also help us understand the position of the government involved in the conflict, and help us communicate and advocate in a way that speaks to the State's interest and position.

For example:

- Has the ICRC – as custodian of IHL – classified the situation as an armed conflict and if so, as which type?

- Does the government recognize the existence of an armed conflict on their territory?

- Does the government accept the applicability of IHL and hence accord a certain status to a non-State armed group? If not, what is the potential rationale for the government's position?

- If the government refuses to apply IHL, are there valid reasons for their refusal? Could it be that the situation is an "other situation of violence" rather than a non-international armed conflict? If so, that would affect the areas of law that apply.

1.7.2 Protection strategies

To set up an effective protection strategy, we must ask:

- Who needs protection?

- What do they need protection from?

- How do protection risks and responses vary according to <u>age, gender and other factors</u>?

To answer these questions, we must understand the rights of the people affected, including the rights accorded by IHL, and regularly assess respect for those rights. We must also understand how age, gender and factors such as ethnicity, religion or disability may affect protection risks. For instance, young men and boys are often at high risk of forced recruitment, summary execution and detention during armed conflict. As today's conflicts are often fought along ethnic or religious lines, minority groups may well require particular attention. Moreover, older people and those with disabilities are often unable to flee the fighting and are hence at particular risk of being abandoned or exploited during conflict. We need to engage with the different segments of affected populations and consult them on all decisions and actions that have a direct impact on their well-being.

When we are working in an armed conflict, IHL should inform our protection strategies. We must consider both the direct consequences of the armed conflict for affected persons, such as the risk of military attack and recruitment, and the indirect consequences, such as a lack of basic infrastructure and services.

1.7.3 Negotiating access to displaced populations

We can only help people if we can get to them.

In an armed conflict, humanitarian negotiation plays a crucial role in gaining or improving access and creating the conditions for effective protection.

IHL specifies the obligations of parties to a conflict regarding humanitarian access, and includes specific rules on the requirements for humanitarian assistance.[12]

In most cases, we will not be able to rely exclusively on IHL when negotiating access. But it is important that we know what IHL says about humanitarian access and that we attempt to use IHL when appropriate.

> **Why do we need access to people of concern?**
>
> 1. To provide assistance.
>
> 2. To carry out protection work.
>
> Do not neglect the second factor; access for assistance provision is not enough. You also need access that will allow you to find out from people of concern what they need and to reduce the risks they face.

> **What are humanitarian negotiations?**
>
> Humanitarian negotiations are interactions with parties to a conflict – and others – aimed at:
>
> * establishing the presence of humanitarian agencies in a conflict environment;
> * ensuring their continued access to vulnerable groups;
> * facilitating assistance and protection work.
>
> For UNHCR, the aim of conducting humanitarian negotiations is to better protect and assist displaced populations.
>
> UNHCR has entered into a strategic partnership with the **Centre for Competence on Humanitarian Negotiation** (CCHN) to enhance the capacity of our staff and partners to negotiate on the front line.

Referring to the obligation of warring parties to grant access to people in need can sometimes be helpful, depending on who we are dealing with. Military personnel, for instance, may be more open to arguments beginning with "Under the Law of Armed Conflict …", especially if such provisions have been incorporated into their military law, manuals or standard operating procedures ("SOPs"), and we can refer to these.

Humanitarian or moral arguments, or arguments based on other areas of law, may be less effective, depending on who you are speaking to.

IHL also helps determine whether the reasons that parties may give for denying or limiting access are valid. Experience shows that discussions about consent, in particular the question

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[12] CIHL Rule 55, Access for Humanitarian Relief to Civilians in Need.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter17_rule55

of whether the withholding of consent is arbitrary, are highly political as well as operational. Meaningful access negotiations are rarely possible without knowing how IHL treats the question of consent, what limitations are admissible, and which legal interpretations could be valid.

1.7.4 Engaging with weapon bearers

IHL provides the legal framework for military operations in armed conflicts. Weapon bearers often refer to IHL as the law of armed conflict (LoAC), and speaking the same language is essential if there is to be any serious dialogue or engagement.

Operational examples

While UNHCR does engage directly with weapon bearers to gain access and achieve protection outcomes, field practice shows that we can use a multitude of channels to influence them.

North-western Syria

We worked with local and national NGOs to establish dialogue with the civilian wings of non-State armed actors.

Afghanistan

Community liaisons served as contact points for armed groups.

Access working groups

Access Working Groups are inter-agency fora that systematically collect information about access (where it is granted and where it is not, and for what reasons), monitors trends and raises concerns with the UN country team and/or government authorities.

Access Working Groups have had positive effects in several field operations, including Sudan (Darfur) and Burundi.

Syria

- The Access Working Group concluded a protocol for engagement with parties to the conflict on humanitarian assistance, which reiterated humanitarian principles and gave examples of what the humanitarian community would and would not do in relation to parties to the conflict.
- Some 20 armed groups signed a related declaration of commitment on compliance with IHL and humanitarian assistance, outlining their commitment to complying with the basic principles of IHL and to facilitating humanitarian assistance in accordance with IHL.

Other options

Partners such as the ICRC and Geneva Call may also be useful entry points to weapon bearers to does not have direct access, especially armed non-State actors.

Whether they call it IHL, LoAC or the law of war, most armed forces include it in their training, military manuals and operational instructions, and have advanced knowledge of its application.

Some armed non-State groups are also interested in complying with IHL, perhaps for reasons of legitimacy or to obtain support from the civilian population, and quite a few have also unilaterally declared their commitment to abide by certain parts of IHL. For example, to date, 17 non-State armed groups have signed Action Plans with the UN to end recruitment of child soldiers. In addition, many such groups have signed a "Deed of Commitment" through Geneva Call, pledging to respect and be held accountable for specific provisions of IHL, including 54 deeds signed on anti-personnel landmines, 28 on children and 25 on sexual violence and gender discrimination.

Bear in mind that the soldier you are talking to may have done several "LoAC" courses and may know far more about IHL than you do. You will destroy your credibility if you claim that "the Geneva Convention says X" without checking your facts first. They may well ask "Which of the *four* Geneva Convention*s* do you mean?" before informing you that none of the Conventions says any such thing.

UNHCR staff also need to be ready to provide training and technical advice to military personnel, often in conjunction with the ICRC.

> **Operational example**
>
> **Syria**
>
> The protection cluster in Syria developed and disseminated standard operating procedures on security screening. These SOPs recommended respect for basic IHL and protection principles – including freedom of movement – in the treatment of civilians displaced from ISIS-held areas.

For more guidance on engaging with weapon bearers for protection outcomes, see 4.5 How might I engage with weapon bearers?

1.7.5 Advocacy

Humanitarian advocacy aims to promote change that will bring policy, practice or law into compliance with international standards. Advocacy on IHL seeks to change the behaviour of parties to the conflict and increase their compliance with IHL. Used in combination with other protection activities, humanitarian advocacy can help transform the underlying systems and structures that affect civilians in need of protection.

> **What is civil-military coordination?**
>
> Civil-military coordination is the dialogue and interaction between civilian and military actors in humanitarian emergencies that is necessary to:
>
> - protect and promote humanitarian principles;
> - avoid competition;
> - minimize inconsistency;
> - pursue common goals when appropriate.

We can use IHL in various ways as part of a broader protection advocacy strategy:

- To remind parties to the conflict of their legal obligations towards displaced populations.

- To try to change their behaviour on the ground, increasing their compliance with IHL.

- To respond to IHL violations and advocate for measures to address them, possibly via UN human rights treaty bodies or by means of judicial interventions through the State's justice system.

- To inform displaced populations of their rights and give them a voice.

- To encourage outside parties (such as other States, regional organizations or the political arm of the UN) to exert pressure on the parties to the conflict.

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What is advocacy?

- Advocacy is a process aimed at influencing legislation, policies, systems and practices.

- Advocacy has always been an essential element of our work in the field.

- The UNHCR mandate calls on us to "intercede on behalf of" persons of concern, and empowers the organization to use its considerable knowledge, experience, networks and credibility to influence State authorities towards transforming "policies and services that affect displaced and stateless people on a national, regional and global level."

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1.7.5.1 Forms of advocacy

Advocacy can take different forms, including:

- quiet diplomacy via bilateral discussion with parties to conflict (directly or through trusted interlocutors);

- advice to the Humanitarian Coordinator/Humanitarian Country Team from UNHCR (as protection cluster lead agency) regarding the IHL principles they need to promote or violations that need to be addressed;

- public messages.

The choice will depend on the opportunities available and the strategy adopted. Making the correct choice requires you to carefully analyse the stakeholders, their attitudes and their reactions. You need to be able to move along a spectrum that goes from quiet diplomacy to open denunciation.

Syria and the Central African Republic

- The Protection Cluster has issued and/or supported the development of guidance on IHL-related issues, such as security screening that affects displaced populations, weapons searches, and the civilian character of IDP and refugee sites.

Syria

- The Protection Cluster developed and updated an advocacy plan for the Humanitarian Coordinator, covering such themes as:
  - o protection of civilians and civilian objects;
  - o evacuation of civilians and protection of populations on the move;
  - o children associated with armed groups.

Iraq

UNHCR regularly submitted "Critical Protection Issues Notes" to meetings of the Humanitarian Country Team, to ensure that protection was kept on the agenda and discussed at senior management level.

Nigeria

UNHCR set up a protection monitoring project for areas of displacement and return, in cooperation with national partners. In Borno State, 48 protection monitors were deployed in areas affected by the conflict. They trained 23 community-based protection action groups to identify, mitigate and report on/respond to protection risks and concerns. The data from the monitoring is used for advocacy purposes, partly through regular Protection Monitoring Thematic Reports.

West and Central Africa Region

Project 21 is a regional interagency Protection monitoring tool developed in 2020 to harmonize data collection and analysis between Protection/humanitarian actors in WCA region. Under the co-facilitation of UNHCR and the Danish Refugee Council (DRC), Project 21 supports cross-border and interagency coordination through joint data collection, joint analysis, advocacy and coordinated programming. It also has the objective to inform the programming of Governments and development actors.

- Familiarize yourself with basic IHL terminology and principles, in particular the principles of distinction, precaution and proportionality.

- Find out what areas of IHL apply in your context (depending on whether the conflict is international or non-international) and what the basic IHL-based rules are for the protection of displaced populations.

- Read the ICRC booklet **International Humanitarian Law: Answers to your questions**.

- Take the ICRC's online course **Introduction to International Humanitarian Law**.

- Ask the UNHCR Department of International Protection (DIP) and Global Learning and Development Centre (GLDC) about more advanced courses.

- Refer to the relevant sources under "Further references and guidance" below.

1.8   Further references and guidance

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UNHCR Toolkit: Protection in armed conflict

Protection of civilians: The role of UNHCR

2 Protection of civilians: The role of UNHCR

Contents

2.1 Why this module?

- UNHCR's work in and close to armed conflicts can often involve protecting civilians and dealing with a UN presence that has a protection of civilians mandate.

- You therefore need to understand what "protection of civilians" entails in the wider UN context, and the differences between this concept and "protection" in UNHCR's work for displaced populations.

- A clearer understanding of the protection of civilians concept will give you an overview of the broader UN system operating in and close to armed conflicts, and how to best use the richness of this system for protection outcomes, while at the same time being aware of the potential risks and challenges such an approach entails.

2.2 What will I find in this module?

- The different definitions of "protection".

- A framework for the protection of civilians within UN peace operations.

- How UNHCR can work with other agencies to protect civilians.

- A checklist for UNHCR protection activities.

2.3 The "protection of civilians" concept

2.3.1 History

Protection of civilians is central to the UN's work on international peace and security. The concept derives from IHL and was developed in the 1990s as a reaction to increasing civilian casualties in modern armed conflicts and in the context of strengthening responses to internal displacement.

Over the last 20 years, the Security Council has increasingly addressed such protection issues as:

- humanitarian access;
- the protection of refugees and IDPs;
- the humanitarian and civilian character of camps and settlements for refugees and IDPs;
- the protection of children during armed conflict;
- protection against sexual violence in conflict;
- most recently, the protection of health personnel and facilities during armed conflict.

"hardly a day goes by where we are not presented with evidence of the intimidation, brutalization, torture and killing of helpless civilians in situations of armed conflict. Whether it is mutilations in Sierra Leone, genocide in Rwanda, ethnic cleansing in the Balkans or disappearances in Latin America, the parties to conflicts have acted with deliberate indifference to [international humanitarian and human rights] conventions. Rebel factions, opposition fighters and Government forces continue to target innocent civilians with alarming frequency".

Kofi Annan, in his first Protection of Civilians report as UN Secretary-General, September 1999

In October 1999, for the first time, the Security Council authorized a peacekeeping force to use force to protect civilians under imminent threat of physical violence in accordance with Chapter VII of the UN Charter (a "protection of civilians mandate").[13] By 2009, such activities were "given priority in decisions about the use of available capacity and resources",[14] and the vast majority of today's peace operations have a protection of civilians mandate.

In addition to authorizing the use of force to protect civilians, the Security Council has used sanctions, fact finding commissions, commissions of inquiry, and international justice mechanisms.

2.3.2 Terminology

The term "protection" has different meanings for political, military, humanitarian, human rights and development actors. This has led to confusion in the field as to what peacekeeping activities constitute "protection" and how these activities relate to other forms of "protection" work by, for example, humanitarians.

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[13] *UN Security Council Resolution 1270 (1999)*, UN Doc. S/RES/1270, para. 14. The UN mission in Sierra Leone (UNAMSIL) was provided with a mandate that authorized it to take "the necessary action [...] to afford protection to civilians under imminent threat of physical violence".
https://undocs.org/S/RES/1270(1999)

[14] *UN Security Council Resolution 1894 (2009)*, Protection of civilians in armed conflict. UN Doc. S/RES/1894, para 19.
https://undocs.org/S/RES/1894(2009)

UNHCR and other humanitarian agencies apply the IASC definition of "protection", which encompasses "all activities aimed at obtaining full respect for the rights of the individual in accordance with IHL, international human rights law, and international refugee law".

Contrasting definitions of "protection"

Inter-Agency Standing Committee (IASC)	UN Department of Peace Operations (DPO)
All activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.	All necessary means, **up to and including the use of deadly force**, aimed at preventing or responding to threats of physical violence against civilians, within capabilities and areas of operations, and without prejudice to the responsibility of the host government.

The DPO concept of "protection" differs from the humanitarian definition because it also comprises a political element and explicitly includes the use of force, which may call into question the neutrality of the operation. By contrast, humanitarian protection is strictly bound by the humanitarian principles of impartiality, neutrality and operational independence, which mean that the use of force, in any form, is always excluded.

While there is no commonly accepted definition of the protection of civilians, a holistic view entails that this includes the act of protecting from violence those who are not directly participating in hostilities, and minimizing harm to them. Who is considered a civilian during an armed conflict is determined by IHL.

The specificities of "humanitarian protection"

On the one hand …	On the other hand …
Protection work by UNHCR and other humanitarian agencies can overlap with the roles and actions of other UN agencies.	Humanitarian protection has very distinct features and is strictly guided by humanitarian principles.
A UN peacekeeping force may provide physical security to civilians, including displaced populations.	The use of force would be incompatible with the role and mandate of UNHCR and other humanitarian agencies.
During armed conflicts, human rights actors will often focus on monitoring, investigation, reporting (including civilian casualty tracking) and analysis, which informs the UN's wider efforts to prevent and respond to violations, including advocacy and engagement with parties to the conflict.	Humanitarian agencies will often avoid going public about IHL or human rights violations, to maintain access to affected populations.

When you work with other agencies, you will need to be aware of their mandate and that of the UNHCR. You will also need to ensure that cooperation respects humanitarian principles. See also 4.7 How engagement with weapon bearers can support protection work.

2.3.3 Current UN-wide priorities

In 2017, the UN Secretary-General put forward his vision for the protection of civilians, in which he stressed that a unified effort throughout the UN system was needed to prevent crises and protect civilians in armed conflict.

The third priority – "Prevent forced displacement and pursue durable solutions for refugees and IDPs" – is of particular importance to UNHCR's work, and includes considering:

> **Protection of civilians – the three priorities in the SG's 2017 report**
>
> 1. Enhance respect for international law and promote good practices by parties to conflicts.
> 2. Protect humanitarian and medical staff and facilities, and prioritize the protection of civilians in UN peace operations.
> 3. Prevent forced displacement and pursue durable solutions for refugees and IDPs.
>
> **Report of the Secretary General on the protection of civilians in armed conflict, 2017**

- protection risks in refugee and IDP operations;
- the civilian and humanitarian character of camps and settlements;
- forced returns;
- protracted internal displacement.

In his 2019 and 2020 Reports on protection of civilians in armed conflict, the Secretary-General reiterated the importance of the abovementioned priorities and emphasised that addressing forced displacement demanded greater coherence between humanitarian and development actors with more focus on durable solutions.

2.4 Protection of civilians within UN peace operations

The framework for UN peace operations is laid down in the DPO Policy *The protection of Civilians in United Nations Peacekeeping*. That policy establishes a three-tier model to describe the protection of civilians.

Operational concept for the protection of civilians

Tier I Protection through dialogue and engagement	Tier II Provision of physical protection	Tier III Establishment of a protective environment
• Dialogue with parties to the conflict • Mediation between parties to the conflict • Requesting governments to intervene to protect civilians • Public information and reporting on protection of civilians	• Military and/or police activities involving the showing or use of force to prevent, deter, pre-empt and respond to situations in which civilians are under threat of physical violence	• Support for the political process (including in transition periods) • Disarmament, demobilization and reintegration • Promotion and strengthening of the rule of law • Fighting impunity and strengthening accountability • Support for security sector reform • Management and disposal of arms and ammunition stockpiles • Support for the participation of women in peacebuilding and the inclusion of women in decision-making processes in post-conflict governance structures • Helping to create conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and IDPs

Tier III is deliberately designed to be broad, and orientated towards long-term peacebuilding and development. It encompasses many different activities, which are often closely related to UNHCR's work, such as:

- helping to establish security conditions that will facilitate the delivery of humanitarian assistance;

- support for the participation of women in conflict prevention, conflict resolution and peacebuilding;

- helping to create conditions conducive to voluntary, safe, dignified and sustainable return.

2.5 Working together to protect civilians

Protecting civilians during armed conflicts requires UN agencies and other actors to work together.
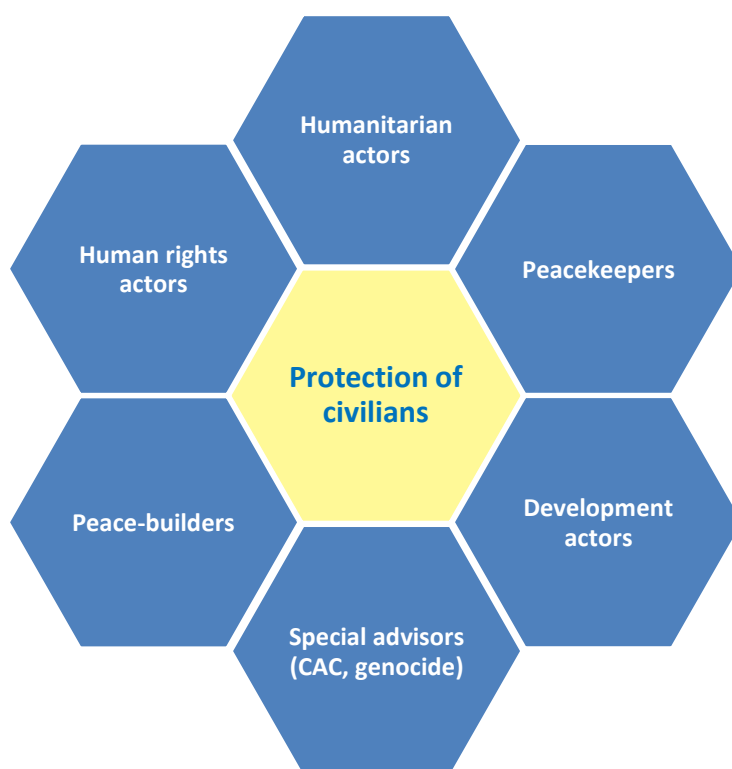
The UN's approach to the protection of civilians draws on the abilities of various UN and other agencies, with distinct yet complementary mandates, expertise and approaches to protection.

The Secretary-General's vision of a "peace continuum", where the protection of civilians is a priority throughout the process,[15] includes linking humanitarian activities with prevention and peacebuilding.

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[15] *Protection of civilians in armed conflict. Report of the Secretary-General,* 10 May 2017, UN Doc. S/2017/414, para 76.
http://undocs.org/S/2017/414

- UN agencies are included in coordination mechanisms related to peacekeeping and humanitarian response, ensuring that peacekeeping, human rights and humanitarian perspectives are all taken on board.

- Different UN agencies provide input to mission-wide Protection of Civilians Strategies and Humanitarian Country Teams' Protection Strategies.

- Through the Protection Clusters, UNHCR collects data and provides protection analyses that inform both humanitarian and wider UN action.

- Peacekeeping, human rights and humanitarian actors conduct joint missions, e.g. when setting up a new peace operation.

- Jointly developed country-specific civil-military guidelines facilitate principled dialogue and engagement between humanitarians and weapon bearers.

- Human rights agencies refer victims to humanitarian partners for assistance and services, while humanitarians provide human rights agencies with analytical information about trends and developments, which they gather by monitoring and engaging with affected communities.

2.6 Examples of UNHCR's contribution to the protection of civilians

2.6.1 Monitoring and early warning (including data collection and analysis)

- By engaging with displaced and other crisis-affected populations, UNHCR and other humanitarian organizations can often fulfil an early warning function, as we may well be the first to detect critical developments that will require a broader political response, i.e. a response that goes beyond the scope of humanitarian action.

- By carrying out protection monitoring, data collection and analyses in and close to armed conflicts, humanitarian organizations can inform inter-agency decision making and mobilize the wider UN system with data and analysis on protection risks, rights violations and forced displacement. See also 8 Monitoring, documenting and reporting on violations.

- Such data collection and analysis can foster accountability; inform engagement with national authorities and other parties to the conflict; optimize the overall UN approach; and feed into human rights reporting, such as:

  o   the work of the Human Rights Council;

  o   the Secretary-General's country-specific and thematic reports.

Yemen and Afghanistan

Civilian casualty tracking systems have been set up to analyse trends and inform advocacy. In Yemen, the UN used casualty figures in public advocacy and these are believed to have contributed to lifting the siege of the port of Hodeidah, while in Afghanistan, such systems led to a decrease in civilian casualties from pro-government airstrikes.

Iraq

During the conflict in Mosul, UNHCR and NGO partners documented protection concerns raised by populations on the move, including the disappearance of men and boys as young as 9, which were channelled to the CMCoord for discussion with coalition forces and pro-government militias.

Syria

The Humanitarian Military Coordination Cell was used to channel protection concerns from the Syria Protection Sector to the Coalition Forces.

2.6.2 Guiding the provision of physical protection

UN peacekeeping personnel in uniform may be able to provide armed protection against physical violence, through the threat or use of force. The extent to which they can provide such protection will depend on their mandate and operational capacity.

Decisions on where and when to provide armed protection should be informed by protection analysis from human rights and humanitarian actors, often through the Protection Clusters.

2.6.3 Capacity building

- Various UN entities train military, defence and security forces, which in turn contributes to the protection of civilians.

Democratic Republic of the Congo

The Protection Cluster briefs the UN peacekeeping mission on any new trends observed through their work with the IDP community (using a protection risk matrix) and the Joint Protection Teams identify communities that "must-should-could" be protected. Based on this information, the local commander can then step up the peacekeeping presence in areas of high risk.

Central African Republic

The Protection Cluster developed a "hot-spot matrix", which mapped out areas according to the level of violence against civilians (reported incidents). The matrix was then used to advocate with the UN forces for additional military and police patrols in high-risk areas. This led to enhanced patrols and enhanced the communities' subjective sense of security (measured through surveys). It also resulted in the UN forces establishing a temporary field presence in an area not previously covered.

- Human rights and protection personnel within UN peace operations train military, government and civil society personnel, to enhance prevention and accountability regarding the protection of civilians.

- UNHCR, in particular, provides advice and support on incorporating international law into national law and policies, and runs training on international human rights law, refugee law and, to some extent, IHL.

> **Operational example**
>
> **Nigeria**
>
> UNHCR and the Protection Sector have conducted a series of training sessions for the armed forces on the protection of civilians in areas formerly under the control of Boku Haram, in cooperation with the National Human Rights Commission

As multiple agencies engage in capacity building, it is important that they cooperate and coordinate to ensure consistent messaging.

2.6.4 Supporting community-based conflict resolution and protection strategies

Essential protection tasks for UNHCR and other humanitarian agencies include:

- working with displaced communities and other affected populations;

- understanding the dynamics and structures within the community;

- building on the capacities and strengths of community members to find solutions.

UN actors, including UN peace operations, human rights, humanitarian and development actors, can contribute to peaceful coexistence by:

- strengthening social cohesion;

- reducing communal tensions;

- fostering dialogue between communities.

This can include support for community-based:

- conflict resolution mechanisms;

- mediation mechanisms;

- self-protection strategies;

- coping mechanisms.

> **Operational examples**
>
> **South Sudan**
>
> The Protection Cluster developed localized protection of civilians strategies to support self-protection measures by communities in the event of military attacks.
>
> **Ukraine and Yemen**
>
> UNHCR has set up **community centres**. During conflict and violence, they can provide a safe space for communities to gather, access services, and participate in social, cultural and vocational activities, which in turn can contribute to protecting children and youth from risks such as forced recruitment and sexual and gender-based violence. Such centres can also facilitate social cohesion/peaceful coexistence with host communities.

2.6.5 Creating a protective environment through the rule of law

A protective environment is both one of the aims of humanitarian protection and one of its prerequisites.

Promoting the rule of law helps to create a protective environment. This involves various UN agencies and complements such activities as conflict prevention, conflict resolution and peacebuilding.

Activities under this heading include:

Operational example

Ukraine

The Protection Cluster provided IDPs and other conflict-affected people with a free legal aid directory, listing more than 140 organizations that provided legal aid and explaining how to contact them. This helped link affected people to the rule-of-law efforts of other organizations.

- disarmament, demobilization and reintegration (DDR) or related programmes;

- security and rule-of-law sector reforms;

- capacity building on law and policymaking, including the development of legislation;

- advocacy for ratification of treaties, and adoption and implementation of national law and policy.

All these efforts strengthen the national judicial system and complement the efforts of other UN organizations regarding the rule of law. Furthermore, such activities can form part of the peace continuum, as they may well have preventive and peacebuilding effects.

UNHCR supports governments' efforts to develop and implement laws and policies on displacement, advocates for the ratification of treaties, and supports legal aid and judicial interventions for persons of concern..

2.6.6 Enabling freedom of movement

UNHCR advocates for freedom of movement for displaced and conflict-affected civilian populations, in particular so that they can:

- seek safety away from hostilities;

- obtain asylum;

- maintain family unity;

access basic services and assistance.

Freedom of movement is not absolute (see ICCPR Article 12(1) and Principle 14 of the Guiding Principles on Internal Displacement), and derogations are possible in times of armed conflict, for example if they are required for national security or public order. UNHCR and other humanitarian actors must advocate for such derogations to be necessary, proportionate and based on law.

Over time, the nature of restrictions of movement may change. Under certain circumstances, such measures may also amount to deprivation of liberty.

We need to be aware of the different legal regimes that apply in such circumstances, and adapt our operational response and advocacy towards duty bearers accordingly.

On occasion, achieving freedom of movement may require measures of last resort such as humanitarian evacuations (see 6 Humanitarian evacuations). Normally, no single organization has the capacity and access to organize a humanitarian evacuation on its own. While humanitarian agencies such as UNHCR may have the necessary contacts with affected communities to determine whether a humanitarian evacuation is required, a multi-agency response will be needed to actually carry out an evacuation, with strong commitment from various actors.

2.6.7 Maintaining the civilian character of IDP/refugee camps and settlements

The principle of the civilian and humanitarian character of camps and settlements hosting refugees and internally displaced persons is founded in the UN Charter, international refugee law, human rights law, and IHL, and has been reiterated by the UN Security Council and General Assembly. It forms part of the protection of civilians, and poses a major protection challenge in conflict settings.

For further information on this topic, see 5 The civilian and humanitarian character of sites and settlements.

Get informed

- Read about how IHL protects civilians during armed conflict in *How Does Law Protect in War?* Vol. I, Chapter 8, "**The Protection of Civilians**".

- Follow the links on that page to any IHL instruments or entries in the **Customary International Humanitarian Law database** that could be relevant to your work.

- Refer to the relevant sources under "Further references and guidance" below.

2.7 Checklist: Key actions for UNHCR operations

Action	Practical examples
Work with the Humanitarian Country Team and UN peace operations to support and advise on the protection of displaced populations.	• Develop a protection matrix that will help peacekeepers in prioritizing areas of risk. • Produce advocacy notes for the HCT, highlighting protection risks in the country. • Work with the HCT and the UN peace operation to develop a Protection of Civilians Strategy.
Conduct regular protection monitoring of conflict-affected populations, and identify and document protection risks and rights violations.	• Monitor prisons and other places where civilians are held. • Monitor borders. • Carry out community-based protection work in urban areas, and in sites and settlements hosting displaced populations.
Help IDP and conflict-affected communities to protect themselves.	• Set up early warning systems. • Support community initiatives such as community policing and mobile courts.
Encourage State and non-State weapon bearers to fulfil their obligations under IHRL and IHL.	• Organize training and capacity-building activities. • Engage in protection dialogue with non-State armed groups, where possible. • Collaborate with the ICRC and other agencies on key messages, when appropriate.
Maintain the civilian and humanitarian character of sites and settlements, and seek to minimize risks if weapon bearers are already present.	• Advocate for adequate security measures in all areas hosting displaced populations (whether urban or camps/settlements). • Advocate for the identification and separation of fighters/combatants, disarmament and weapons searches by the host State, and, if relevant, UN police or UN military personnel. • Implement the recommendations contained in 5.5 How can we maintain the civilian and humanitarian character of sites?.

2.8 Further references and guidance

1. Sources of international law

a) Protection of civilians in general

- *CIHL Rule 1, The Principle of Distinction between Civilians and Combatants.*
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1.

- *CIHL Rule 5, Definition of Civilians.*
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5.

- *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949, especially Articles 13-26.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, especially Art. 4, which states that "All persons who do not take a direct part or who have ceased to take part in hostilities, […] shall in all circumstances be treated humanely" and sets out a list of "fundamental guarantees", effectively prohibiting such acts as murder, rape and pillage.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument,

- The links above are for the ICRC's article-by-article database. The four Geneva Conventions and their Additional Protocols are also available for download in PDF format and for purchase in print form:

  o *The Geneva Conventions of 12 August 1949*, ICRC, Geneva, May 2016.
    https://shop.icrc.org/les-conventions-de-geneve-du-12-aout-1949.html

  o *The Protocols Additional to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, November 2017.
    https://shop.icrc.org/les-protocoles-additionnels-aux-conventions-de-geneve-du-12-aout-1949.html

b) Protection of women

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Art. 76.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=5FB5CC7AD1C3AAF7C12563CD0051E08C.

c) Protection of children

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2. Other references

- *Aide Mémoire. For the consideration of issues pertaining to the protection of civilians in armed conflict,* OCHA (ed.), 2014. http://www.unocha.org/sites/unocha/files/Aide%20Memoire%202016%20II_0.pdf.

- *Building a culture of protection: 20 years of Security Council Engagement on the Protection of Civilians*, OCHA. https://www.unocha.org/sites/unocha/files/Building%20a%20culture%20of%20protection.pdf.

- "*Community Self-protection*", Aditi Gorur/Nils Carstensen, in Protection of Civilians, Haidi Willmot/Ralph Mamiya/Scott Sheeran/Marc Weller (eds.), Oxford, 2016, pp. 428-438.

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  - o Online version: https://casebook.icrc.org/.
  - o PDF files of print version: https://www.icrc.org/en/document/how-does-law-protect-war-0. (Links are at bottom of page)

- *Inter-Agency Standing Committee Policy on Protection in Humanitarian Action*, 2016. http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/IASC%20Guidance%20and%20Tools/iasc-policy-on-protection-in-humanitarian-action.pdf.

- *Protection of civilians in armed conflict. Report of the Secretary-General,* 8 September 1999, UN Doc. S/1999/957. https://undocs.org/S/1999/957.

- *Protection of civilians in armed conflict. Report of the Secretary-General,* 10 May 2017, UN Doc. S/2017/414.
  http://undocs.org/S/2017/414.

- *Protection of civilians in armed conflict. Report of the Secretary-General,* 14 May 2018, UN Doc. S/2018/462.
  http://undocs.org/S/2018/462.

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  https://undocs.org/S/RES/1894(2009).

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  http://undocs.org/S/PRST/2015/23.

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  http://www.globalprotectioncluster.org/wp-content/uploads/DPO-Policy-on-The-Protection-of-Civilians-in-United-Nations-Peacekeeping.pdf

- The protection of civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices, Haidi Willmot/Scott Sheeran, *International Review of the Red Cross*, No. 95, 2013, pp. 517-538.
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People at heightened risk during conflict

3 People at heightened risk during conflict

Contents

3.1   Why this module?

- People with specific age, gender and other characteristics may be exposed to heightened risk during armed conflict. UNHCR needs to take these heightened risks into consideration in order to offer effective protection to *all* persons of its concern.

- UNHCR applies an age, gender and diversity approach to all aspects of its work, including during conflict. In concrete terms, this means understanding and analysing the ways in which conflict affects different persons of concern in different ways, depending on their sex, gender, age and other factors, in order to provide an effective humanitarian response.

- Updated and timely conflict and protection analysis must inform UNHCR's protection strategies and action in conflict settings.

3.2   What will I find in this module?

- An overview of people with specific age, gender and other characteristics who may be at heightened risk during armed conflict.

- Guidance on how to assess such risks based on conflict and protection analysis.

3.3   Terminology

conflict analysis

The process of understanding the underlying causes and context of a conflict, including its stakeholders and its social, economic and political linkages. It provides an evidence base for strategic and targeted responses, and reduces the likelihood that violent conflict will emerge or re-emerge.

protection analysis

Analysis of the risks and needs of affected populations, including persons of concern to UNHCR.

3.4 The effect of armed conflict displaced and other civilians

In situations of armed conflict, UNHCR's work begins with addressing threats that pose the greatest risk to civilians. Civilians – including displaced populations – suffer the most from the consequences of armed conflict, including systematic breaches of IHL and abuses of human rights.

All too often, parties to conflict:

- disregard the distinction between civilians and combatants;

- intentionally attack civilians, including displaced populations, use them as human shields or besiege them;

- attack civilian objects, including sites and settlements hosting IDPs or refugees;

- destroy property, livelihoods and the vital infrastructure, hospitals and schools on which civilians rely.

> **ICRC study on displacement in armed conflict**
>
> In 2018, the ICRC conducted a study to understand what impact IHL has on displacement (***Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters***).
>
> The study found that violence or the threat of violence were the most important considerations for civilians when deciding whether to flee. Many IHL violations trigger displacement, directly or indirectly. Such violations include direct attacks on civilians, civilian infrastructure and installations, plus torture, hostage-taking and sexual violence.
>
> It also found that civilians have a long memory of IHL violations, and may choose to flee pre-emptively if they anticipate violations happening again.

Those civilians who escape death or injury may well find themselves part of massive displacement.

Conflict and violence are displacing more people than ever before, and violations of IHL and human rights are two of the main causes of displacement, both internally and across international borders.

> *"As an operational agency present in and around conflict zones throughout the world, we see – on a daily basis – the devastating impact that war and the current conduct of hostilities is having on civilian populations."*
>
> Grainne O'Hara, Director of the Division of International Protection, UNHCR, July 2019

3.5 Conflict and protection analysis

Conflict and protection analyses help us to assess the risks facing persons of concern during conflict, and to formulate our protection strategies and activities accordingly. We must keep these analyses up to date and ensure that they are available in good time.

While protection analysis is part of UNHCR's regular work, you may not be as familiar with the concept of conflict analysis.

Conflict analysis is the process of understanding the following elements of a conflict:

- root causes;
- triggers;
- dynamics;
- trends;
- stakeholders.

Conflict analysis and protection analysis

Conflict analysis includes:

- Understanding the conflict in its historical and contemporary context.
- Knowing the communities and leaders involved and their political and economic environment.
- Identifying the main parties to the conflict, the major factions within each party and any third parties.
- Understanding each party's major interests – their motivation in terms of needs, fears, concerns and aspirations.

Protection analysis involves identifying the main protection risks and needs of the displaced population.

Those needs include having action taken in response to violations of their rights and having their basic assistance needs met.

A solid conflict analysis forms the basis of a solid protection analysis.

The _United Nations Conflict Analysis Practice Note_ explains how to conduct a conflict analysis, and includes links to further resources on the subject.

3.6 Persons of concern at heightened risk during conflict

UNHCR applies an age, gender, and diversity approach to all aspects of its work. This requires us to understand and analyse the exposure to protection risks that women, men, girls and boys of concern face during armed conflict, and how such exposure to risks could affect them.

The IASC has also recognized the need to incorporate a diversity analysis into all aspects of our work, including in a cluster response, as it is essential to understand and address the different protection risks within a community.

While the risks that people face will differ from conflict to conflict, people with certain characteristics regularly face specific risks that you should be aware of. See below for examples.

Within one single conflict situation, different people may face very different protection risks. For example, the following situations may all arise simultaneously:

- A non-State armed group attacks civilians of an opposing ethnic or religious group, motivated by a political agenda, historical grievance or revenge;

- people of the same ethnicities or religious as the armed group are forcibly recruited into it and simultaneously face reprisals from State forces if they are perceived to support it;

- women of both ethnicities and religions face a heightened risk of sexual violence;

- both sides target civil society activists, journalists and human rights defenders.

Furthermore, risks are not static, and may change during the course of the conflict.

3.6.1 Children and youth

Armed conflict has a disproportionate effect on children:

- Children are among those who suffer the most from IHL violations – such as indiscriminate attacks – as they are less able to escape.

- They are among the first victims of mines and unexploded remnants of war, attracted by the colourful appearance of explosives or forced to go to school or to play in hazardous areas.

- Children are at the highest risk of dying from starvation and disease. They become undernourished faster than adults. As the WHO points out in its Q&A on malnutrition and emergencies, undernourished children catch infections more easily, and have a harder time recovering because their immune systems are impaired.

- Children are particularly affected by attacks on hospitals, water and electricity, as these are essential to their survival.

Operational examples

Yemen

- Conflict has closed some 2,000 schools.

- By early 2019, 43% of school-aged children did not attend school.

- Through the United Nations Country Task Force on Monitoring and Reporting (CTFMR) 149 deaths of children because of landmines were verified. 579 children were maimed

- A 2019 Study carried out in Abyan and Zinjibar found upwards of 33% of IDP children has a mental or physical disability.

Nigeria

- In 2018, armed non-State actors recruited and used a total of 1,947 children, and 48 were used in suicide attacks.

South Sudan

- Armed non-State actors have continuously recruited children in South Sudan. Some 19,000 child soldiers are taking part in the conflict.

- Armed forces and groups often recruit children and young people – both boys and girls – as fighters or to perform support activities. This exposes them to abuse, separates them from their families and has serious long-term consequences. Even after reintegrating into civilian life, former child combatants may suffer trauma and stigma for the rest of their lives.

- Children may be deprived of their liberty in connection with conflict, sometimes because of (perceived or real) association with armed groups or because their parents or guardians have been detained. Children who are born in detention suffer from precarious conditions, may be deprived of birth certificates, and are often unable to obtain education or meet other basic needs.

- Their schools are attacked or taken over for military purposes, preventing them from continuing their education and thereby compromising their future – and efforts to stabilize their country.

3.6.2 Women and girls

Sexual violence as a weapon of war

In certain armed conflicts, sexual violence is systematically used as a tactic of war, and women and girls remain the most affected.

Survivors often refrain from reporting attacks because they fear reprisals and the stigma attached to sexual violence, leaving them without access to basic services. Conflicts often result in an increase in HIV infections, mostly in women and girls.

Other types of gender-based violence

Other types of and gender-based violence [16] (GBV) become more frequent during conflict, owing to the breakdown of community and social structures and the absence of the rule of law.

For instance, girls may be at higher risk of child and early marriage during conflict, as their parents seek protection or resources.

Girls in conflict zones are likely to stop going to school. In some conflicts (such as Afghanistan, Mali and Pakistan) attacks on schools specifically target girls, for ideological reasons. The case of Pakistani schoolgirl Malala Yousafzai is perhaps the best-known example of this problem.

Disruption of economic activity

Armed conflict often deprives women of their economic activities, or limits their freedom of movement. Fear of rape, harassment and assault, together with the presence of mines, may prevent them from leaving their homes or camps.

3.6.3 Men and boys

Men are usually seen as "fighters", but they are also victims of war. In many of today's conflicts they are at heightened risk.

Risks include the following:

- Armed groups recruit men and boys more frequently than women and girls – often by force or threat of force – putting them on the front line. Because of their perceived role as fighters, they are also subjected to frequent security screenings, deprivation of liberty, violence or retaliation based on perceived or real association with parties to the conflict.

Operational examples

South Sudan

Over 1,500 cases of SGBV were reported to UNHCR and partner agencies in 2018. These cases involved physical, emotional, psychological and sexual violence inflicted on women, men and children. Crimes of this nature are always under-reported, so we may safely assume that the actual incidence of SGBV in South Sudan is much higher.

In December 2020, South Sudan's government, in partnership with UN agencies, set up a special court to handle gender-based violence (GBV) cases.

Mali

More than half of all girls aged between 20 and 24 have married before the age of 18 in recent years, partially as a consequence of conflict.

Operational examples

Sri Lanka

More than a fifth of Tamil men detained in the conflict reported being sexually abused.

Bosnia

During the Bosnian war in the 1990s, almost 5,000 men held in detention camps outside Sarajevo were raped.

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[16] See UNHCR 2020 Policy on the Prevention of, Risk Mitigation and Response to GBV, https://www.unhcr.org/5fa018914.pdf

- Sexual violence against men and boys, although rarely acknowledged or reported, is prevalent during conflict, including as a weapon of war and in detention settings. According to the All Survivors Project, sexual violence against males has occurred in at least 22 countries in conflict over the last 50 years.

Where social norms marginalize or stigmatize same-sex relations, the wider community may interpret sexualized attacks against men as an indication of sexual orientation or gender identity, putting survivors at additional risk of homophobic attacks.

Survivors are reluctant to speak. Consequently, sexual violence against men and boys remains under-reported, or reported as torture or ill-treatment.

3.6.4 Older people

During conflict, older people may encounter particular protection risks.

- As they tend to be less mobile, they may be unable to escape or avoid attacks, meaning they are more likely to be killed or injured by hostilities. This can also lead to abandonment by family members, or separation from them, and to social exclusion and isolation.

- They find it more difficult to adapt to a new environment.

- The conflict may affect their pensions or community support, leaving them unable to cover their basic needs.

- They have trouble accessing or paying for health care and assistive devices (such as walking frames).

- Many older people are left to care for others during conflict, including children, other older people or people with disabilities.

The problems that older persons face also affect members of their households. For example, older people who cannot reach water points themselves may send children to collect drinking water for them, exposing them to risk.

Operational examples

Syria

A 2019 survey of older persons in north-east Syria revealed the following:

- 90% of older people depended on family or friends for their basic needs and 85% had to borrow money to survive.

- 50% were living with a disability, and many of them had difficulties reaching aid distribution points and health services without support.

- 60% faced physical barriers to obtaining enough food.

- Water sources were too far away for almost 25%

Ukraine

A 2018 survey of older persons living within 5 km of the contact line in Ukraine revealed that:

- 96% were experiencing conflict-related mental health problems;

- 97% had at least one chronic disease;

- 53% needed assistive devices, including walking frames, canes and toilet chairs.

With numerous older women living alone and many experiencing violence and abuse, older women were in particular need of protection and assistance.

Surveys conducted in Syria and Ukraine highlight some of the problems that older people encounter during conflict.

3.6.5 People with disabilities

The effect of conflict on people with disabilities can be particularly severe.

For example:

- It is more difficult for people with reduced mobility to escape from dangerous situations, such as attacks. Even if warnings are given before an attack, they may not be able to escape, and may be left behind.

- Conflict destroys the infrastructure they need, or otherwise renders it difficult for them to access such services as health, education, reintegration, rehabilitation and psychosocial support.

> **Operational examples**
>
> **Mali**
>
> Many people with disabilities have been left behind when their families were fleeing attacks.
>
> **South Sudan**
>
> People with disabilities have been shot, hacked to death or burned alive in their houses.

- People with disabilities may find it harder to live independent lives than others, during both conflict and flight, leaving them at higher risk of abuse, exploitation and SGBV.

- They may face discrimination, stigma and marginalization because of their disability.

- Humanitarian assistance may fail to properly serve people with disabilities, owing to:

  o a lack of knowledge and preparation on the part of those providing the assistance;

  o physical constraints that make it difficult or impossible for them to access delivery points.

> **Security Council Resolution 2475 (2019)**
>
> On 20 June 2019, the UN Security Council adopted its first-ever **resolution** on persons with disabilities in conflict, an issue that has long been overlooked by States and organizations alike.
>
> The resolution calls upon States and parties to conflict to protect people with disabilities and to ensure they have access to justice, equal access to basic services – including education, health care, transportation and ICT systems – and humanitarian assistance.
>
> It also encouraged their participation and representation in humanitarian action, conflict prevention and resolution, reconciliation, reconstruction and peacebuilding.

3.6.6 Minorities

Most of today's armed conflicts have underlying ethnic or religious motivations. Minority groups, whether or not they are taking part in the conflict, therefore tend to be the most affected.

Ethnic or religious groups suffer targeted and intentional attacks by States and non-State actors alike, such as;

- mass killings and massacres;
- torture;
- sexual violence;
- forcible transfer or displacement;
- forced labour (including in concentration camps);
- starvation and sieges.

Some of these acts may amount to genocide or ethnic cleansing.

Operational example

Syria

The **UN Commission of Inquiry** concluded that ISIS had committed genocide, crimes against humanity and war crimes against the Yazidi minority group. ISIS had sought to erase the Yazidis, including through killings, sexual slavery, enslavement, torture, inhuman and degrading treatment and forcible transfer.

Genocide and ethnic cleansing

Genocide is defined as:

"any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. Killing members of the group;
b. Causing serious bodily or mental harm to members of the group;
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. Imposing measures intended to prevent births within the group;
e. Forcibly transferring children of the group to another group."

(**Article II of the Convention on the Prevention and Punishment of the Crime of Genocide**).

To constitute genocide, there must be a proven intent to physically destroy a national, ethnical, racial or religious group. The victims are deliberately targeted because of their real or perceived membership of a group, and this group is the target of destruction (not its members as individuals).

Ethnic cleansing, however, does not have an agreed definition under international law. In common use, it refers to a purposeful policy to remove by force the civilian population of an ethnic/religious group from certain geographic areas.

3.6.7 LGBTIQ+ people[17]

Lesbian, gay, bisexual, transgender and intersex and queer (LGBTIQ+) people face severe protection risks during conflict and displacement, such as:

- sexual and gender-based violence[18], including in detention;
- lack of police protection;
- exclusion from basic services;
- arbitrary detention;
- social and familial ostracism and exclusion.

During conflict, the rule of law breaks down and State protection and community structures weaken, leaving LGBTIQ+ people with limited protection from violence and abuse.

In addition, in many States, authorities are complicit in abuses against LGBTIQ+ persons. Consensual same-sex sexual acts are criminal offences in 70 States, and six of these impose the death penalty for such acts.

Often, displaced LGBTIQ+ people end up in a situation similar to that from which they fled – if not worse.

As a humanitarian worker, you need to be aware that many LGBTIQ+ people attempt to hide their sexual orientation or gender identities in an effort to avoid abuse, making it difficult to identify them or provide humanitarian services tailored to their needs.

Moreover, lesbian, gay, bisexual, transgender and intersex and queer persons have specific needs and face distinct risks. Our interventions should consider the intersection of sexual orientation and/or gender identity with other distinguishing characteristics (including age and disability) that could affect a person's situation.

To identify LGBTIQ+ people and respond properly to their needs, we must create safe spaces, safe procedures and inclusive services.

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[17] See UNHCR Need to Know Guidance 2, Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement, 2011, available from www.refworld.org/pdfid/4e6073972.pdf.

3.6.8 Medical personnel

"It is when fighting breaks out that health-care services are most needed, but it is also then that they are most vulnerable to attack" (ICRC Health Care in Danger).

- The WHO reported hundreds of attacks on medical staff and facilities in 2018. Attacks on medical staff harm not only in-bound patients but all who need medical treatment.

- Health personnel are often put under pressure to treat only their own side, or at least to prioritize patients from their side.

- They also risk death, injury, kidnapping, harassment, threats, intimidation, robbery and arrest, simply for performing their medical duties.

Operational examples

According to Insecurity Insight's data recorded in 22 countries affected by armed conflict, 182 health-care workers were killed in 2020 (compared with 160 in 18 States in 2019 and 137 in 17 States in 2018), with the highest numbers in Burkina Faso, the Democratic Republic of the Congo, Somalia and the Syrian Arab Republic. Eighty-six health-care workers were kidnapped and 165 injured.

Afghanistan

In 2015, an airstrike destroyed the MSF trauma hospital in Kunduz, killing 42 people.

Yemen

Airstrikes have destroyed more than 70 health facilities since March 2015.

Global initiatives on health care in conflict

In response to attacks on health care, the International Red Cross and Red Crescent Movement launched the **Health Care in Danger** initiative to address violence against patients, health workers, facilities and vehicles, and ensure safe access to and delivery of health care in armed conflict and other emergencies. WHO is leading a similar **Health Care Initiative**.

3.6.9 Social leaders, journalists and human rights defenders

Attacks on social leaders and human rights defenders – and their families – occur frequently during conflict, often as a way of deterring them from carrying out their work.

Their work may confront perpetrators of violence, exposing them to increasing risk of threats and attacks.

Reporting the horrors of war is dangerous work. Journalists are on the front line and exposed to the direct effects of war. In addition, parties to conflicts attack journalists deliberately or subject them to arbitrary detention.

3.7 Further references and guidance

1. Sources of international law

a) Protection of civilians in general

- CIHL Rule 1, The Principle of Distinction between Civilians and Combatants.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1.

- CIHL Rule 5, Definition of Civilians.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5.

- *Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949*, especially Arts 13-26.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument.

- *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=1507EE9200C58C5EC12563F6005FB3E5&action=openDocument.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 8 June 1977.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, especially Art. 4, which states that "All persons who do not take a direct part or who have ceased to take part in hostilities, […] shall in all circumstances be treated humanely" and sets out a list of "fundamental guarantees", effectively prohibiting such acts as murder, rape and pillage.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument

The links above are for the ICRC's article-by-article database. The four Geneva Conventions and their Additional Protocols are also available for download in PDF format and for purchase in print form:

- o *The Geneva Conventions of 12 August 1949*, ICRC, Geneva, May 2016.
  https://shop.icrc.org/les-conventions-de-geneve-du-12-aout-1949.html

- o *The Protocols Additional to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, November 2017.
  https://shop.icrc.org/les-protocoles-additionnels-aux-conventions-de-geneve-du-12-aout-1949.html

b) Protection of women

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Art. 76. https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=5FB5CC7AD1C3AAF7C12563CD0051E08C.

c) Protection of children

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Art. 77 https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750099?OpenDocument.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Art. 78 https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AF6D036649078A20C12563CD0051E0C4.

2. Other references

- *UNHCR Policy on the Prevention of, Risk Mitigation, and Response to Gender-based Violence - UNHCR/HCP/2020/01,* https://www.unhcr.org/5fa018914.pdf

- *90% of older people in north-east Syria depend on the help of others*, HelpAge International, 29 July 2019. https://www.helpage.org/newsroom/latest-news/90-of-older-people-in-northeast-syria-depend-on-the-help-of-others-/.

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- *Children and armed conflict. Report of the Secretary-General*, United Nations, UN Doc. A/73/907–S/2019/509, 20 June 2019. https://childrenandarmedconflict.un.org/document/2018-secretary-general-annual-report-on-children-and-armed-conflict/.

- *Disability and armed conflict*, Alice Priddy, April 2019. https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2014-interactif.pdf.

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- Health Care in Danger, ICRC. http://healthcareindanger.org/the-issue/.

- *Independent International Commission of Inquiry on the Syrian Arab Republic*. https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx.

- *Inter-Agency Standing Committee Policy on Protection in Humanitarian Action*, 2016. https://interagencystandingcommittee.org/protection-priority-global-protection-cluster/documents/iasc-policy-protection-humanitarian-action.

- *Legal protection of children in armed conflict*, ICRC, 28 February 2003.. https://www.icrc.org/en/document/legal-protection-children-armed-conflict-factsheet.

- *Missing millions: How older people with disabilities are excluded from humanitarian response*, HelpAge. https://www.helpage.org/newsroom/latest-news/millions-of-older-people-with-disabilities-risk-being-excluded-from-humanitarian-assistance-new-helpage-report-reveals/.

- *Q&A on malnutrition and emergencies*, WHO. https://www.who.int/features/qa/malnutrition-emergencies/en/.

- *Rapid needs assessment of older people: north-east Syria*, Help Age. https://www.helpage.org/newsroom/latest-news/90-of-older-people-in-northeast-syria-depend-on-the-help-of-others-/.

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- *"They came to destroy"*: ISIS Crimes Against the Yazidis, UN Human Rights Council, 16 June 2016. https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=20113&LangID=E.

- *UNHCR Policy on Age, Gender and Diversity*, UNHCR, 8 March 2018. https://www.refworld.org/docid/5bb628ea4.html.

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Engaging with weapon bearers to achieve protection outcomes

4 Engaging with weapon bearers to achieve protection outcomes

Contents

4.1   Why this module?

- When you are deployed to a conflict zone, you may have to decide how and whether to talk to armed forces and other weapon bearers, such as UN missions, armed non-State groups etc.

- Discussing such topics as camp management and IDP/refugee movements (including returns and relocations) with weapon bearers is an indispensable part of protecting displaced populations.

- Weapon bearers can help ensure the civilian and humanitarian character of sites and settlements hosting displaced populations.

- Weapon bearers can provide physical security for individuals and groups at risk, but this is not without its potential drawbacks, which you need to keep in mind.

- Weapon bearers may help affected populations or provide convoys for humanitarian personnel, which could lead to humanitarian organizations being perceived as linked with them.

4.2   What will I find in this module?

- Terminology used when talking about weapon bearers.

- Basic concepts of civil-military coordination.

- Why it is necessary to engage with weapon bearers.

- How to engage with weapon bearers.

- How to minimize the risks inherent in engaging with weapon bearers.

The module covers only **humanitarian** engagement with weapon bearers, during an **armed conflict**, which is intended to have a **protection outcome for displaced populations**. See below for a definition of "protection outcome".

4.3   Basic terminology and actors

humanitarian worker

A civilian engaged in humanitarian activities, with a clear commitment to humanitarian principles. This commitment is usually set out in their legal mandates, mission statements or statutes.

Under IHL, humanitarian workers enjoy the some protection as any other civilian[19] plus additional protection based on their humanitarian role.[20]

In addition, UN personnel (including UNHCR personnel) are protected by the Convention on the safety of United Nations and associated personnel if they are "present in an official capacity in the area where a United Nations operation is being conducted." Article 7 of the Convention stipulates that "United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate." At the time of writing, 94 States are parties to this Convention.[21]

military personnel

Members of the armed forces of a State. Even when they deliver aid or help civilians, military personnel do not become humanitarian workers and do not acquire civilian status under IHL.

weapon bearer

A person currently or habitually carrying or operating a weapon or weapon system who is a member of any of the following:

- The armed forces of a State.
- The police forces of a State that are deployed in an armed conflict, if they are armed.
- The armed forces of a regional organization.
- The armed forces of an international coalition of States.
- Armed forces involved in a UN peace operation.
- A non-State armed group.
- A private security company or private military company.

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[19] CIHL Rule 5, "Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians".
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule5

[20] CIHL Rule 31, "Humanitarian relief personnel must be respected and protected".
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule31

[21] For an up-to-date list of parties to the Convention, see *Convention on the Safety of United Nations and Associated Personnel*, UN Treaty Collection.
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-8&chapter=18&lang=en

The type of civil-military coordination required in a context depends largely on the types of military entity involved.

duty bearer

An entity that has a duty to fulfil certain obligations under international law.

These include:

- national and international military entities;
- organized armed groups (see the definition in 1.6 What is armed conflict?)

humanitarian civil-military coordination

The essential dialogue and interaction between civilian and military actors in humanitarian emergencies.

Such engagement is necessary to:

- protect and promote humanitarian principles;
- avoid competition;
- minimize inconsistency;
- pursue common goals when appropriate.

UNHCR (in its capacity of GPC Cluster Lead), and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) both work with weapon bearers, but their roles are different.

The roles of UNHCR and OCHA regarding weapon bearers

UNHCR	OCHA
Liaises with weapon bearers relevant to its activities and mandate, for example: • to ensure access for assistance and protection purposes; • to advocate for and promote protection outcomes (see examples below); • to generate support for specific protection activities.	Constitutes the focal point for civil-military coordination within the UN system. This includes: • supporting UN agencies (including UNHCR and cluster lead agencies), plus NGOs and NGO consortia, in liaising with weapon bearers; • finding a common and coherent approach to engagement with weapon bearers through the Humanitarian Country Teams.[22]

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[22] On the definition of UN civil-military coordination (UN-CMCoord) see also *UN-CMCoord Field Handbook (v1.0)*. UN OCHA (ed.), p. 7.
https://reliefweb.int/sites/reliefweb.int/files/resources/CMCoord%20Field%20Handbook%201.0.pdf

The specific platform for engagement with weapon bearers will depend on the operational context.

It is important for UN agencies to be consistent in the messages they deliver, and for engagement with weapon bearers to be guided by the humanitarian principles of humanity, neutrality, impartiality and operational independence.

A **protection outcome** is a reduction in the risk facing an affected person or population. We can therefore say that a response or activity "has a protection outcome" if it reduces such risks.

We consider a risk to have been reduced when:

* threats to people, and their vulnerability, have been minimized

or

* their capacity has been increased.

For instance:

* Parties to a conflict agree to stop recruiting child soldiers.
* Government authorities support the voluntary movement of affected people, by ensuring that they have full access to information that enables them to take free and informed decisions.
* Government authorities ensure the civilian and humanitarian character of sites and settlements, by identifying combatants/fighters and separating them from the displaced population, reducing the presence of arms and weapons in such sites and re-establishing the rule of law.
* Parties to a conflict know the exact locations of IDP and refugee sites and settlements, and treat them as civilian objects, i.e. not as targets of military attacks.
* Parties to a conflict allow the civilian population freedom of movement. This includes allowing them to seek safety away from fighting and violence and that in turn includes allowing them to cross international borders.

4.4   Why do we need to engage with weapon bearers to achieve protection outcomes?

During armed conflicts, humanitarians engage with duty bearers with the aim of achieving **protection outcomes** (see definitions of "duty bearer" and "protection outcome", plus examples of the latter, in 4.3 Basic terminology and actors)**.**

By engaging with weapon bearers, we may be able to:

* limit the effects of the conflict on the civilian population;
* promote the rights of all individuals.

To achieve those objectives, we promote compliance with:

- international humanitarian law;
- international human rights law;
- international refugee law;
- other legal obligations that apply in the context, including domestic law.

Engagement with weapon bearers can also improve the conditions under which we operate.

For example:

- They might have information on the conflict that is indispensable for security management (access, movements, etc.), or information on unmet humanitarian needs in places to which we do not have access.
- Obtaining access is often crucial in a conflict and the denial or restriction of access is a constant problem. Dialogue with weapon bearers can facilitate access.
- Under certain exceptional circumstances, humanitarians may require military support for technical, logistical or security reasons (but see below regarding the limits to this).

4.5   How might I engage with weapon bearers?

Engagement with weapon bearers can include:

- information sharing;

- advocacy;

- training;

- awareness-raising;

- measures to reduce the impact of hostilities on civilians.

Engagement can range from cooperation to simple coexistence.

Cooperation may be possible where there is good mutual understanding between the civilian agencies and weapon bearers and when the security situation is reasonable. The poorer the mutual understanding and the more difficult the security situation, the more the relationship between UNHCR and weapon bearers is likely to be one of coexistence.

The graphic below (based on one published by OCHA) illustrates this spectrum.

Co-existence   **Coordination** **Cooperation**

Engagement focuses on minimizing competition and de-conflicting

Engagement focuses on improving the effectiveness and efficiency of the combined effort
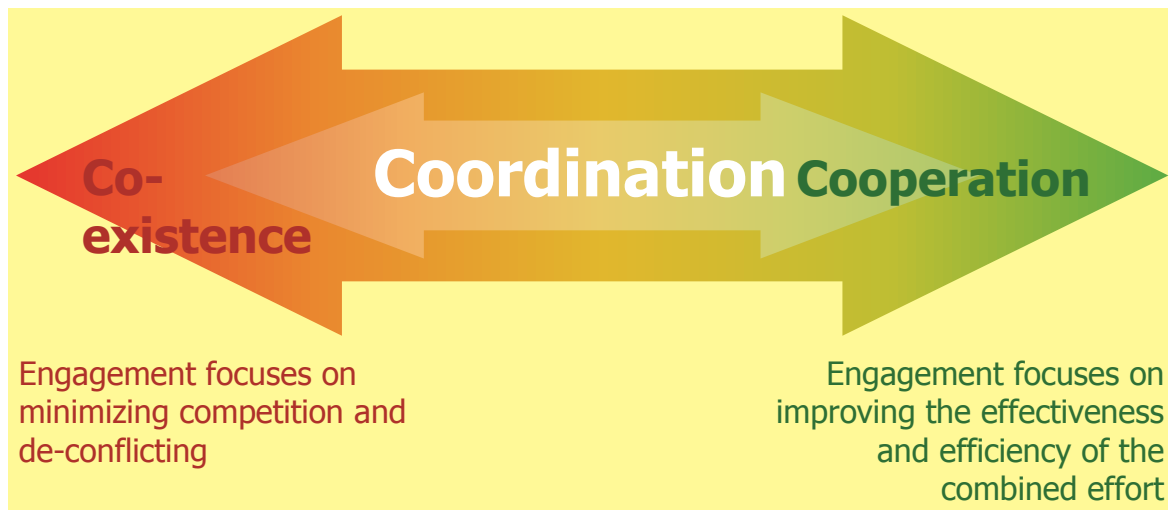
Nigeria

The armed forces are the main governmental counterpart for the humanitarian response to the displacement caused by Boko Haram. The security situation requires a military presence in schools and hospitals, and during the delivery of aid. UNHCR and the Protection Sector have therefore engaged extensively and directly with the Nigerian armed forces on issues related to displaced populations and their protection under IHL and human rights law. Our engagement has included training the armed forces for their operations in areas previously under Boko Haram control.

Close coordination with the National Human Rights Commission and the presence of human rights advisors in military units has also contributed to information sharing and dialogue between the Protection Sector and the armed forces.

Syria

A Humanitarian Military Coordination Cell managed information sharing with/requests for assistance to Coalition forces. It also acts as a channel through which the Syria Protection Sector can raise protection concerns with Coalition forces.

Afghanistan

A working group was established, consisting of the Protection Cluster, UN CMCoord and human rights actors.

Central African Republic

The Protection Cluster set up a Protection Working Group, chaired with the UN mission and attended by protection and military actors, plus the UN police.

Democratic Republic of the Congo

Coordination mechanisms included Protection of Civilians meetings and the Senior Management Group on Protection, where the Protection Cluster is the lead agency.

Philippines

The relationship built up with the armed forces during typhoon Haiyan contributed to a robust response to the conflict in Mindanao.

4.6 Points to bear in mind when engaging with weapon bearers

You will inevitably encounter weapon bearers in an armed conflict or other high-risk environment. They will be sharing an operational environment with you, but you and they have very different mandates and missions. Sometimes, they will be the perpetrators of abuse against the civilian population.

In most contexts, interaction is necessary and can significantly improve protection outcomes, but it also involves the risk of blurring the distinction between civilians and weapon bearers. If that occurs, humanitarian assistance may no longer be seen as principled – and in particular

neutral – which could have serious implications for the humanitarian operation, and ultimately for the protection of displaced populations.

Engagement with non-State armed groups poses particular challenges due to the variety of groups. They often have fragmented command and control structures, unclear or mixed motives and shifting alliances and interests. The position of the host State towards such groups may further complicate engagement, as may national counter-terrorism legislation[23], donor requirements or counter-terrorist listings.

To navigate these complexities, a solid protection and conflict analysis is needed, and humanitarians must be able to communicate their mandate and role clearly, to everyone. They must always adhere to the humanitarian principles of humanity, neutrality, impartiality and independence.

4.6.1 Humanitarian principles[24]

Humanity	Neutrality	Impartiality	Independence
Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.	Humanitarians must not take sides in hostilities or engage in political, racial, religious or ideological controversies.	Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinion.	Humanitarian action must be independent of the political, economic, military or other objectives of any actor regarding areas where humanitarian action is being implemented.

To create an environment in which we can do our job, we must maintain a clear distinction between the role and function of humanitarians and the role and function of weapon bearers.

It is crucial for us as humanitarians to remain neutral and to maintain our independence with regard to political and military objectives.

Being perceived as distinct from weapon bearers and their objectives might require a certain degree of physical distance in some contexts.

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[23] National legislation in several countries – recently in Chad and Switzerland – has excluded impartial humanitarian activities from the application of counter-terrorism measures under criminal law.

[24] See *OCHA On Message: Humanitarian Principles*, https://www.unocha.org/sites/dms/Documents/OOM_HumPrinciple_English.pdf

4.6.2 Balancing the risks and benefits

The challenge is to maximize the positive effects of engagement while minimizing any potential negative effects.

The right balance will depend on the context and we should be guided by solid conflict analyses.

We must ask ourselves:

- Will being associated with weapon bearers affect the humanitarian operating space and have detrimental effects on humanitarian operations?

- If so, what can we do to mitigate such effects?

- What could be the possible entry points for engaging with weapon bearers (directly, or indirectly through trusted intermediaries)?

Furthermore, engagement with weapon bearers must not jeopardize local networks, or the

When engaging with weapon bearers
- Do not create risks for civilians.
- Do not undermine the ability of humanitarian workers to operate impartially and independently and to be perceived as doing so.
- Never share information that provides a tactical advantage to any party engaged in hostilities – this would be contrary to the principle of neutrality.

- Think carefully about how to engage. Options include:
  o as UNHCR;
  o through OCHA or other parts of the UN system;
  o via local communities;
  o through other organizations that have direct access, such as the ICRC or Geneva Call.

trust that humanitarians have built up with displaced communities and others. A community-based approach is the best way for you to assess how communities perceive weapon bearers and to ensure regular dialogue with them to correct any misperception about your role or engagement with weapon bearers.

4.7 How engagement with weapon bearers can support protection work

In this section, we shall just consider four examples:

- Conflict and protection analysis
- Humanitarian access
- Deconfliction arrangements
- Promoting behavioural change ("humanization of conflict")

4.7.1 Conflict and protection analysis

Conflict and protection analyses are essential for humanitarian action.

Dialogue with weapon bearers can be helpful when you are carrying out such analyses. They will be conducting their own analysis of the conflict and will therefore have information on:

- the parties to the conflict (changes in alliances, etc.);

- military activities;

- population movements;

- the impact of the conflict on infrastructure (such as roads, water and electricity);

- the presence of mines and unexploded ordnance;

- humanitarian needs that may be partially or completely unknown to humanitarians.

Conflict analysis and protection analysis

Conflict analysis includes:

- Understanding the conflict in its historical and contemporary context.

- Knowing the communities and leaders involved and their political and economic environment.

- Identifying the main parties to the conflict, the major factions within each party and any third parties.

- Understanding each party's major interests – their motivation in terms of needs, fears, concerns and aspirations.

Protection analysis involves identifying the main protection risks and needs of the displaced population.

Those needs include having action taken in response to violations of their rights and having their basic assistance needs met.

A solid conflict analysis forms the basis of a solid protection analysis.

In many operational situations, engaging in dialogue and sharing information with weapon bearers can therefore enhance a humanitarian organization's conflict and protection analyses.

However, such dialogue and information sharing must take account of the considerations and concerns mentioned above. In particular, any security information provided to weapon bearers must not give them a tactical advantage or undermine networks built up with communities and affected populations.

It is also important to avoid mis-communication when sharing information with weapon bearers:

- Their reasons for collecting, analysing, and sharing information will differ from those of a humanitarian organization, as may the way in which they carry out these tasks.

- Their hierarchy will specify what information can be shared and by whom (e.g. only personnel of a certain rank), so refusal or reluctance on the part of weapon bearers to give us information does not necessarily imply mistrust.

- Weapon bearers have their own language. This is particularly true of the armed forces, as becomes apparent when reading military reports and other documents. We must therefore become acquainted with international humanitarian law and with the language and jargon used in our context before embarking on information sharing and dialogue.

- Be aware of your own jargon. Concepts such as "protection" (beyond physical protection), "durable solutions", and a "rights-based approach" may not mean much to non-humanitarians. Avoid acronyms where possible.

Operational example

Iraq

- The United Nations set up a Military Coordination Unit before the 2016 operation in Mosul, which:
  - o coordinated and liaised with Iraqi and international armed forces;
  - o carried out approximately 250 field missions in support of the Humanitarian Country Team, engaging with field commanders and other military personnel on the ground;
  - o mapped the actors involved, listing military actors by type and allegiance, together with their command structures and key contacts;
  - o identified the loyalties, behaviour, rules of engagement and capabilities of the military actors.

- The conflict involved a plethora of military actors and a wide range of pro-government militias, and the work of the unit made it possible to draw up a protection analysis based on a solid conflict analysis, and to prioritize protection issues.

4.7.2 Humanitarian access

Challenges that humanitarians may face when trying to access people in need include:

- conducting negotiations to secure and sustain access (for both assistance and protection);
- ensuring the security of humanitarian personnel and aid;
- ensuring the safety of people in need (including during returns, relocations and evacuations);
- working with or alongside military forces.

These challenges are closely interrelated.

We can envisage two scenarios regarding access for humanitarian action.

Scenario 1: Humanitarians engage with weapon bearers to obtain their support and ensure access

When we are attempting to obtain or improve access, our interaction with weapon bearers may range from mere information sharing to using direct contacts established by them. In all cases, the degree of cooperation must be in accordance with humanitarian principles.
See 4.6.1 Humanitarian principles.

Scenario 2: Weapon bearers provide security so humanitarian agencies can reach people in need

The Inter-Agency Standing Committee (IASC) has issued clear guidance on when humanitarian actors can and should use military escorts. Using armed forces to provide security in order to gain access is a measure of last resort, to be used only if **both** of the following conditions are met:

- there is no other way of gaining access while ensuring the safety of humanitarian personnel;

and

- the humanitarian needs are critical.

You must have explored all other options before using a military escort.

Operational examples

Nigeria

The Nigeria Protection Cluster accepted military escorts so humanitarian personnel could visit the affected population in areas retaken by the Nigerian Army from Boko Haram and in the north-east of Nigeria, where the security situation was such that humanitarian work was only possible with the army present.

Central African Republic, Somalia and Democratic Republic of the Congo

Military escorts have been used in these countries.

Burundi

The UN has set up a working group on humanitarian access, which collects information about incidents where access is denied and shares this with the authorities to reach a solution.

The dilemma

Reasons for using the armed forces	Reasons for not using the armed forces
• Military forces can offer security by providing armed escorts, guarding compounds and assets or providing area security. • Engagement and coordination between humanitarian and military actors are often essential in order for us to obtain access and do our job – especially in high-risk environments.	• If we associate ourselves with military forces, we may undermine the neutrality, independence and impartiality of our organization – or appear to do so, which may have the same effect. • Whether we use armed forces to provide security, or merely coordinate with them, it will be difficult to avoid the perception that we are compromising humanitarian principles.

Resolving the dilemma:
Identify/mitigate the consequences of working with weapon bearers

• **Find out** how people in need, and their communities, view the various weapon bearers operating in the area. This will give you an idea as to how they will perceive your working with or alongside them.

• **Limit** your association with weapon bearers in scope and time:

  o Work with them only on matters where they add value.

  o Work with them only for as long as necessary.

  o Keep your infrastructure, vehicles, etc. away from theirs.

• **Retain** control over humanitarian activities at all times.

• **Ask** weapon bearers to cooperate in maintaining a strict distinction between military and humanitarian roles and actions.

• **Adapt** your cooperation to the context: the civilian population may consider your working with or alongside weapon bearers more acceptable in some parts of a conflict situation than others. For instance, it may be more acceptable in an area prone to criminal activity.

Compare

The additional humanitarian impact you can achieve by working with or alongside weapon bearers	The impact you can achieve without them

4.7.3 Deconfliction arrangements

Deconfliction is the exchange of information and planning advisories between humanitarians and weapon bearers to:

- prevent or resolve conflicts between their two sets of objectives;
- remove obstacles to humanitarian action;
- avoid potential hazards for humanitarian personnel.

Concrete deconfliction measures may include:

- military pauses;
- ceasefires[25] or temporary cessations of hostilities;
- safe corridors for aid delivery.

UNHCR may need to inform international, regional or national forces of the exact locations of informal sites or settlements hosting displaced populations, as these are civilian objects and should therefore be protected against direct attack.

> **Operational example**
>
> **Somalia**
>
> Deconfliction arrangements were put in place between humanitarian agencies and the African Union Mission in Somalia. These were facilitated by OCHA, which ensured regular information sharing on humanitarian activities.

Humanitarians may also wish to inform weapon bearers of any:

- humanitarian convoys;
- relocations;
- returns;
- transport/delivery of humanitarian assistance.

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[25] In its resolution 2565 (2021), the Security Council called for a global ceasefire that generated widespread support. A total of 180 Member States and one non-member observer State endorsed the call, as did more than 20 armed groups and other entities and more than 800 civil society organizations.

4.7.4 Promoting behavioural change ("humanization of conflict")

<div class="operational-examples">

Operational examples

Syria

- UNICEF successfully advocated with Kurdish entities against the recruitment of children under 18, building on a commitment signed with Geneva Call.

- The Protection Sector advocated with the Kurdish entities, both directly and through the International Coalition to Counter ISIS, to implement standard operating procedures for the security screening of civilians fleeing hostilities.

Afghanistan

- Casualty tracking and regular public "Protection of Civilians" reports produced by the United Nations Assistance Mission in Afghanistan (UNAMA) garnered media attention (both locally and in troop-contributing countries) and influenced the behaviour of pro-government forces (international and national) regarding the use of airstrikes in populated areas, and the use of explosive and indirect weapons. This led to a significant reduction in civilian casualties.

- Similar engagement with anti-government elements led to a reduction in IED incidents.

</div>

Many of the weapon bearers with whom we engage are in fact the sources of risk for civilians, or of violations against them.

UNHCR and other humanitarians therefore need to promote compliance with IHL by parties to the conflict, so as to reduce the effect of hostilities on civilians and contribute to protection outcomes.

This is particularly important where attacks are taking place on camps and sites hosting refugees and displaced persons, and during urban conflict and violence, where the use of explosive weapons of war, anti-personnel mines and IEDs in populated areas, together with the presence of explosive remnants of war, can have a devastating effect on civilians, even after the conflict is over. Recent examples include Eastern Ghouta in Syria and Mosul in Iraq.

We can engage directly with parties to the conflict, including armed non-State groups, or indirectly, by using the influence of others with whom they have regular contact or who support them.

Engagement must be based on solid data and analysis – in particular on civilian casualty figures, or mortality and morbidity rates – and how these factors relate to the military tactics and weapons employed.

4.8 Points to keep in mind when engaging with a UN peacekeeping force

UN peacekeeping missions have both a political and a military mandate, so certain actors in the country may not see some of their positions or activities as neutral.

In many armed conflicts, UN peacekeeping missions and humanitarian organizations are equally concerned with protecting civilians, and undertake activities that complement each other (see 2.4 Protection of civilians within UN peace operations).

While we have different approaches, roles and mandates, coordination on protection is essential, to ensure:

- timely two-way information exchange;
- early warning;
- conflict analysis;
- prioritization of protection issues.

When engaging with a UN peace operation, you need to become familiar with its mandate, mission, operational constraints and capacity. Each UN peace operation has its own structure, and you need to know the structure in your context, so you can identify the most suitable entry point. This may be the Human Rights or Rule of Law components, or it may be a Protection of Civilians Officer.

The peacekeeping mission and humanitarians must brief each other regularly on their respective protection strategies (i.e. the HCT's Protection Strategy and the UN mission's Protection of Civilians Strategy), and must seek consistency and complementarity through these strategies.

Operational examples

Democratic Republic of the Congo

UNHCR interacts with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) at national and provincial level (with MONUSCO heads of office). Engagement includes human rights briefings, the issue of armed escorts (when needed) and information sharing and analysis. Useful protection mechanisms include regular Protection of Civilians meetings and the Senior Management Group on Protection, where the Protection Cluster is the lead agency. Joint Protection Teams assessed communities that "must-should-could" be protected, as MONUSCO could not respond to all needs.

Central African Republic

The Protection Cluster established a Protection Working Group, chaired with the UN mission and attended by protection and military actors, plus the UN police. This enabled the Protection Cluster to discuss topics with the UN mission that included the presence of armed elements in IDP sites.

South Sudan

The Protection Cluster works closely with the United Nations Mission in South Sudan (UNMISS) on localized protection of civilians strategies, using hot-spot matrixes to advocate for additional patrols and prioritization of high-risk areas for UNMISS activities.

Mali

UNHCR and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) are running joint quick impact projects to support affected communities.

4.9 Engaging with non-State armed groups

Dialogue with non-State armed groups poses particular challenges owing to the variety of such groups. They often have fragmented command and control structures, unclear or mixed motives, and shifting alliances and interests.

While some non-State armed groups operate as *de facto* authorities and are willing to offer protection to civilians, provide humanitarian assistance and cooperate with humanitarians, others will have limited capacity and interest regarding humanitarian issues. A solid conflict analysis is essential for any engagement with non-State groups

Understanding their structure is a first step in identifying potential sources of influence over their behaviour. The more decentralized the armed group, the more the sources of influence are external to the group. While communities *can* have a positive influence over non-State groups, they can also incite violence and violations.

> **Operational examples**
>
> UNHCR is, for example, liaising directly with:
>
> - the Kurdish authorities in Northern Syria;
>
> - the Polisario Front in Western Sahara;
>
> - the "Donetsk People's Republic" and "Luhansk People's Republic" in Ukraine.
>
> In other areas, such as north-western Syria and Afghanistan, we engage with non-State actors via national or local NGOs and community leaders.

The position of the host State, especially vis-à-vis groups perceived as challenging its sovereignty, may further complicate such engagement, as may national counter-terrorism legislation, donor requirements and the various listing and sanctions regimes. Advocate for humanitarian exceptions wherever possible.

If we engage directly with non-State actors, we must be able to clearly communicate our humanitarian mandate and protection work to everyone, and adhere to the humanitarian principles of humanity, neutrality, impartiality and operational independence at all times. While we would normally only initiate a discussion on protection issues after building a relationship of trust, over a certain period of time, it is advisable to introduce ourselves as protection actors from the beginning, to avoid any misunderstandings.

As highlighted in a recent ICRC study, *The Roots of Restraint in War,* an exclusive focus on the law is not as effective in influencing behaviour as a combination of the law and the values underpinning it. Linking the law to local norms and values gives it greater traction. The role of law is vital in setting standards, but encouraging individuals to internalize the values it represents through socialization is a more durable way of promoting restraint.

In situations where we do not engage directly, we can seek the support of the UN Country Team, States or other actors with influence. The ICRC, for example, has identified some 561 armed groups in the world today, of which they currently engage with 412 (72%). UNHCR can therefore raise protection issues bilaterally with the ICRC, so as to inform their confidential dialogue with such groups.

- Read **2 Protection of civilians: The role of UNHCR** to update yourself on:

  o protection terminology;

  o the roles and mandates of different bodies engaged in protection;

  o the complementarity between them.

- Study the UN guidance on civil-military coordination, in particular **OCHA on Message: Civil-Military Coordination** (see below).

4.10 Further references and guidance

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UNHCR Toolkit: Protection in armed conflict

The civilian and humanitarian character of sites and settlements

5 The civilian and humanitarian character of sites and settlements

Contents

5.1 Why this module?

Preserving the civilian and humanitarian character of sites and settlements is an essential part of protecting civilians who are fleeing armed conflict. Violations of this principle endanger the protection a site can give.

You therefore need to understand what the civilian and humanitarian character of sites and settlements entails and how you can contribute to maintaining that status.

5.2 What will I find in this module?

Operational guidance on maintaining the civilian and humanitarian character of sites and settlements (referred to in this module as "sites") in situations of armed conflict.

5.3 Terminology

administrative detention

Non-criminal detention for security reasons, other than during an armed conflict (i.e. in other situations of violence, or in peacetime).

armed element

A person carrying a weapon, irrespective of their legal status, including a civilian carrying a weapon for self-defence or for reasons unrelated to military activities.

civilian

Anyone who is not a member of the armed forces of a party to the conflict.

combatant

In an international armed conflict, a member of the armed forces of a State party to the conflict other than medical and religious personnel.

fighter

In a non-international armed conflict, a member of the armed forces of a State or of an organized armed group of a party to the conflict.

internment

Deprivation of liberty initiated or ordered by the executive branch – not the judiciary – without criminal charges being brought against the internee.

5.4 The principles governing the civilian and humanitarian character of sites

5.4.1 What do we mean by the "civilian and humanitarian character" of sites?

5.4.1.1 Civilian character

Sites shelter displaced populations and facilitate their access to humanitarian assistance. They are therefore "civilian objects" under IHL.[26] That means they are entitled to protection against attack, unless and for such time as they become military objectives.[27]

Even when sites are used for military purposes in a manner that would turn them (or parts of them) into military objectives, parties to the conflict must respect all rules related to the conduct of hostilities, including the principles of distinction, proportionality, and precaution.[28]

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[26] See: AP I, Art. 52.
https://ihl-databases.icrc.org/ihl/WebART/470-750067

CIHL Rules 7-10.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule7

[27] IHL defines civilian objects as "all objects that are not military objectives".
See CIHL Rule 9, Definition of Civilian Objects, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9.

[28] On the principle of distinction, see:

AP I, Arts 48 (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C) and 52 (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4)

CIHL Rules 1 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1) and 7 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule7).

On the principle of proportionality, see:

AP I, Art. 51 (5b).
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563CD0051DC9E

CIHL Rule 14, Proportionality in Attack.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14

On the principle of precaution, see:

The mere presence of combatants or fighters within a site does not in and of itself make it a military objective.

In relation to sites, parties to a conflict must:

- avoid or minimize:
  - o civilian deaths;
  - o civilian injuries:
  - o damage to sites;
  - o damage to civilian objects located within the sites;[29]
- protect sites in the areas under their effective control and the civilian population of those sites against attack, in particular by not locating military objectives in or near them.[30]

These obligations are not only relevant to States. Non-State organized armed groups that are party to an armed conflict are bound by IHL and must respect sites and refrain from launching direct attacks against civilians and civilian objects[31]. Furthermore, if armed groups control the territory where a site is located, they also have a certain responsibility for ensuring the safety and well-being of the population within this territory.[32]

GC IV, Art. 18(5).
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=59AB4DAFFBF70295C12563CD0051BB01

AP I, Art. 57.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=50FB5579FB098FAAC12563CD0051DD7C

AP I, Art. 58.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C995BF5C5BCFB0E2C12563CD0051DDB2

CIHL Rules 15-24.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

[29] AP I, Art. 57.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=50FB5579FB098FAAC12563CD0051DD7C

CIHL Rules 15-21 (principle of precaution when launching an attack)
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

[30] AP I, Art. 58.
https://ihl-databases.icrc.org/ihl/WebART/470-750074?OpenDocument

CIHL Rule 22, Principle of Precautions against the Effects of Attacks.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule22

CIHL Rule 23, Location of Military Objectives outside Densely Populated Areas.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule23.

[31] See CIHL Rule 7, The Principle of Distinction between Civilian Objects and Military Objectives.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule7

[32] CIHL Rule 22, Principle of Precautions against the Effects of Attacks.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule22

When managing sites and maintaining their civilian character, it is essential to distinguish:

- combatants and fighters from civilians;
- civilians who are participating directly in hostilities from those who are not.[33]

The importance of these distinctions lies in the fact that it is permissible to attack combatants, fighters and civilians who are participating directly in hostilities, and such attacks are a threat to sites and their inhabitants.

Fighters/combatants should therefore be prohibited from entering, residing in, transiting through or visiting sites, even for short periods of time.[34]

5.4.1.2 Humanitarian character

Preventing combatants or fighters from entering a site is essential for maintaining the **civilian** character of sites, but it may not be enough to preserve its **humanitarian** character and protect the people living there.

We must therefore identify other categories of person who could pose a risk to the humanitarian character of a site.

These include:

- Civilians who sporadically take a direct part in hostilities while being accommodated in sites. While we must consider the risk these people pose and take appropriate countermeasures, we must bear in mind that they are civilians and not combatants/fighters.
- Civilians who support a party to the conflict and carry out such activities as recruitment and training related to armed forces or groups. This kind of activity is incompatible with the humanitarian character of a site (and with the institution of asylum under international refugee law).
- Civilians who take a direct part in hostilities, or recruit and train for military purposes. They can be denied access to sites and/or be referred to local law enforcement authorities if they pose a threat to the population.

At the same time, we must identify the protection risks to a person who is refused entry or expelled from a site, which include the following:

- the opposing party could see them as a combatant or fighter and hence as a legitimate target;
- they may still need to be protected from refoulement in accordance with international law, and therefore require specific attention.

CIHL Rule 23, Location of Military Objectives outside Densely Populated Areas.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule23

[33] See the *ICRC interpretive guidance on the notion of direct participation in hostilities*.
https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities

[34] See the *UNHCR Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, Chapter 5.6.
https://www.refworld.org/docid/452b9bca2.html.

5.4.2 Dilemmas

Problem	Possible solution	Possible drawbacks to this solution
Civilians in a site are recruiting and training personnel in support of an armed group involved in the conflict or promoting the group's propaganda.	Prevent propaganda, recruitment and training in the site by not allowing individuals who carry out such activities to enter the camp, or by referring them to local law enforcement.	• People denied access to the site may be harmed or even killed. • Identifying people involved in recruitment and training can be difficult on a large site that is hosting a large number of people.
Members of State armed forces or non-State armed groups are carrying weapons within a site, jeopardizing its civilian status.	Refuse to allow such groups to carry weapons on site.	• The absence of weapons is no guarantee that everyone who constitutes a threat to civilians has been identified and separated out. • It may be difficult, impossible or entail too much risk to disarm and demilitarize a site completely if its civilian and humanitarian character has already been compromised, e.g. if a party to the conflict controls it. • Armed security may be required for the site. If this is the case, it may be appropriate to request that they be located outside the site. Police presence is preferable to armed forces, in particular during an armed conflict. Weapons depositories can be a measure of last resort.
Civilians are carrying weapons in the site.	Ban the carrying of weapons by civilians in the site.	Civilians may be carrying weapons for their own defence. If people will be at higher risk if disarmed, not disarming until conditions improve may be the only safe option.

Problem	Possible solution	Possible drawbacks to this solution
Prolonged security screening and security measures at a site potentially amount to arbitrary deprivation of liberty.	Withdraw or suspend humanitarian activities within the site.	• Site residents are deprived of our protection and other services. • There is no "protection by presence", which may lead to further abuse and risks to the population.
	Continue humanitarian activities within the site.	• Providing material assistance may help to prolong the screening process or deprivation of liberty unnecessarily. • Our presence may be interpreted as an indication that conditions are acceptable, or we may be seen as condoning conditions that are not acceptable.
Humanitarian assistance is being diverted to support a party to the conflict.	Withdraw or suspend humanitarian assistance, to persuade those responsible to preserve the civilian character of the site.	Civilians in the site may be forced to adopt harmful coping strategies in order to survive, such as joining an armed group.

5.5 How can we maintain the civilian and humanitarian character of sites?

5.5.1 UNHCR's approach

We must ensure that sites protect people fleeing armed conflict.

This means:

- ensuring physical safety, by keeping combatants and fighters out of such sites;

- preventing civilians in sites from participating directly in hostilities;

- drawing up protocols regarding the management of high-risk situations, such as the presence of weapons or armed civilians inside the site;

- preventing civilians who contribute to the general war effort from intermingling with the population of a site when their activities undermine protection;

- restricting any armed security personnel to agreed locations, such as gates, and not allowing them to enter the camp;

- assessing the protection risks for individuals who are not admitted to a site and for those who are separated, expelled or detained.

We must therefore consider all areas of international law, and we must analyse:

- the threats that have triggered displacement;
- the protection risks faced by people living in a site, including risks linked to the presence of fighters/combatants;
- the protection risks faced by people not admitted to sites or expelled from them.

5.5.2 Measures

UNHCR advocates for measures to maintain the civilian and humanitarian character of sites and of asylum, such as:

Effective security in hosting areas

- Locate sites in safe areas, at a reasonable distance from the front line, borders and other areas of insecurity.
- Take appropriate and effective security measures at all hosting areas (be they camps, urban areas or other locations), so as to:
    - prevent infiltration of fighters/combatants and weapons;
    - reduce the risk of recruitment;
    - ensure the maintenance of law and order.

Weapons searches and disarmament

Safely remove, collect, document, control and dispose of the following, at borders and in sites hosting displaced populations:

- weapons of any kind;
- ammunition;
- explosives.

Screening

Screen out fighters/combatants from among displaced populations by way of agreed, transparent and fair criteria, so as to separate them, in a timely manner, from civilians in need of protection.

Separation

Physically separate fighters/combatants from displaced civilians through measures of control, as authorized by and in accordance with national law. In certain circumstances, deprivation of liberty may be required.

DDR

Carry out disarmament, demobilization and reintegration (DDR), to reintegrate combatants/fighters into civilian life after removing their weapons.

5.5.2.1 Screening

It is States that bear the primary responsibility for protecting and assisting people within their jurisdiction. That includes ensuring that sites in their territory remain secure, and that their civilian and humanitarian character is maintained.

Problems encountered in connection with screening include:

- poor treatment and material conditions during screening, such as:
  - o men performing physical checks on women;
  - o confiscation of personal effects, including money and mobile phones;
  - o making people with specific needs wait as long as everyone else, despite their needs;
  - o screening children without observing the safeguards necessary regarding those associated with armed groups.
- restrictions on freedom of movement during lengthy screening processes, which can amount to arbitrary deprivation of liberty;
- family separation;
- persons going missing after screening;
- forced return or refoulement.

These problems may become acute if IDPs/refugees:

- are being stigmatized;
- are perceived to have a particular political opinion;
- are perceived to be complicit with a party to the conflict.

The role of humanitarian agencies during screening

During screening, our role as humanitarians is to advocate for the State to identify fighters/combatants and separate them from the general population, while applying the standards laid down in IHL, IHRL and IRL.

This could include monitoring screening operations, to ensure that the authorities strike the right balance between security and humanitarian considerations, in particular when dealing with large movements. However, we can only do this if the party conducting screening allows us to – in many cases they will not.

Furthermore, a humanitarian presence at screening may appear to legitimize the screening or the way it is being done, which could be undesirable. In many cases, the ICRC would be better placed to take on this role, in light of its mandate.

We can also offer advice regarding standard operational procedures to adopt during screening.

To do so, we must understand the threats and the protection needs that a situation may create.

Factors to consider include:

- the safety of people in the site;
- the risks someone may face if they are not admitted, or are separated, deprived of liberty or expelled;

- how the displaced community and the host community see threats to their safety and well-being in and near the site.

Specialized agencies can provide support or technical advice on specific aspects of the screening, such as the identification of children associated with armed forces or armed groups and the establishment of screening procedures and criteria. A comprehensive protection response with regard to screening will involve both advocacy and direct action.

Screening-related topics on which we should advocate

1. Regarding all categories of person

- Clearly inform the population subjected to screening about the process.

- Conduct screening at clearly identified locations that are not exposed to hostilities (e.g. away from the front line).

- Release individuals as soon as screening is completed.

- Cover basic needs during screening – especially water, hygiene and food.

- Maintain procedural safeguards, such as non-refoulement.

- Fast-track individuals with specific needs, particularly people in need of medical care.

- Ensure medical care is available throughout the process.

- Refrain from confiscating personal documentation if at all possible and, if documents are confiscated as a last resort, take all necessary measures to keep them safe.

Operational examples

CAR

The Protection Working Group facilitated discussion between the Protection Cluster and the UN mission on the presence of armed elements in the IDP sites and how to best address this.

Ethiopia and South Sudan

UNHCR worked with national authorities to develop standard operating procedures for the screening of combatants/fighters during registration of asylum seekers and refugees.

Iraq

The Protection Cluster advised the armed forces on adding safeguards to screening procedures.

South Sudan

The police checked the luggage of relocating refugees before convoys depart for refugee camps.

Syria

The Syria Protection Cluster proposed SOPs on security screening procedures at IDP sites to Kurdish entities in north-east Syria, both directly and via Coalition Forces.

Sudan

In 2020 UNHCR developed a roadmap on the civilian character of asylum and camps and is advocating for its implementation.

- Refrain from confiscating personal property if at all possible and, if personal property is confiscated for security reasons, ensure that confiscation is temporary and documented, with people receiving written records of the item confiscated and the procedure for its return.

- Inform family members of the whereabouts of anyone arrested or detained as a consequence of screening, and allow them to maintain contact with their families.

2. Additionally, for women and girls

- Provide separate screening facilities.

- Use female personnel for searches.

- Give particular consideration to women who are pregnant, breast-feeding and/or accompanied by babies and young children.

3. Additionally, for children

- In principle, avoid screening children under 15.

- Give priority to identifying children who are or have been associated with armed forces or armed groups.

- Strike the right balance between:

  o enabling such children to benefit from programmes to address their needs and help them rejoin their families;

  and

  o avoiding stigmatization.

- Promptly identify:

  o unaccompanied and separated children;

  o children with immediate medical needs or disabilities;

  o child heads of household;

  o children who may have been associated with armed groups.

- Avoid any action or procedure that may separate children from families or caregivers.

- Immediately identify, register and document children to facilitate future tracking, in cooperation with protection specialists.

- Immediately refer children without care arrangements to authorities and humanitarian agencies.

- Accommodate unaccompanied or separated children in separate, child-friendly facilities; girls and boys should have separate accommodation.

- Do not allow unaccompanied or separated children to leave the screening site until their relationship with the person accompanying them has been verified by local authorities, in cooperation with protection specialists.

- If children up to 18 are temporarily segregated from families/caregivers during security screening, separate them from adult detainees/internees.

Direct action we can take regarding screening, independently or with partners

- Visit sites and maintain a presence close to them, to monitor protection risks and to gather evidence for dialogue with the authorities (see, however, the concerns about prolonging or condoning screening mentioned above).

- Register people with specific protection risks, such as disengaged combatants/fighters and people of recruitment age.

- Document missing persons, including those reported as having been arrested, to prevent disappearances and re-establish family links (this is generally done by the ICRC, or in conjunction with them).

- Monitor children who are or have been associated with armed forces or armed groups (this is generally done with UNICEF or with other specialized agencies or task forces on children associated with armed groups).

- Monitor screening procedures, but only if the authorities give full and transparent access and there is a means whereby humanitarian agencies (such as UNHCR or the ICRC) can pass on concerns to them.

5.5.2.2 Separation

People who pose a serious threat – either because they continue to engage in hostilities or because their activities pose other protection risks – should be separated from the rest of the population as early as possible.

Why is separation necessary?

Separation preserves humanitarian space, the humanitarian character of assistance and the security of humanitarian personnel working in sites.

What forms can separation take?

Separation can include:

- expulsion from a site;

- transfer to another place;

- reporting to the authorities;

- deprivation of liberty (in exceptional circumstances).

Precautions regarding separation

Failure to find appropriate responses for separated individuals may result in them hiding among the civilian population in sites, thereby compromising the civilian and/or humanitarian character of those sites.

To reduce the risk of this happening, the authorities responsible should take the following precautions:

- Separation measures should not only achieve the aims set out above, but should also ensure that separated individuals are protected from security and other threats, and will enjoy due process if arrested/detained.

- Expulsion or transfer to another authority must be in strict compliance with international law, including the principle of non-refoulement.

- Separation measures should help lower the level of violence, by giving former combatants/fighters opportunities for rehabilitation and reintegration into civilian life, and by creating mechanisms for social cohesion and dialogue.

We must therefore assess the possible ways of dealing with those who are separated and advise the authorities and others on how best to implement separation in a specific situation.

5.5.2.3 Deprivation of liberty

In exceptional circumstances, individuals who are separated may be detained for the purposes of criminal proceedings or interned/administratively detained for imperative reasons of security. Any deprivation of liberty must be carried out in accordance with international and domestic laws and standards.

Deprivation of liberty may cause one or more of the following problems:

- there may be no legal grounds or procedures for deprivation of liberty;
- conditions of detention and treatment may be inadequate;
- there may be failures to observe the principle of non-refoulement;
- those detained may be unable to access humanitarian services;
- detaining authorities may fail to provide such basic safeguards as:
  - protection against torture or degrading treatment;
  - protection against summary execution;
  - the right of detainees to maintain contact with the outside world and the right of their families to be informed of their whereabouts.

When any of the above-mentioned situations arise, organizations with a specific mandate to visit persons deprived of liberty – such as the ICRC – may consider the following:

- Asking the authorities to:
  - grant them access to places of detention and to people deprived of liberty, so they can register detainees and monitor conditions and treatment;
  - prevent abuses;
  - adopt and comply with procedural safeguards and judicial guarantees.
- Providing material assistance (basic hygiene items, blankets, clothing, water and sanitation, etc.) to help the detaining authorities ensure adequate conditions of detention.
- Advocating for the specific protection and assistance needs of women and children, such as:
  - preservation of family unity;
  - family visits;
  - psycho-social assistance;
  - medical care.

5.5.2.4 Disarmament, demobilization and reintegration and other programmes

To find effective ways of handling combatants/fighters, it is important for humanitarians to:

- identify and advocate for disarmament, demobilization and reintegration programmes that are suitable for the context;

- see how such programmes could help maintain the civilian and humanitarian character of sites by ensuring solutions for separated fighters and combatants.

What is disarmament, demobilization and reintegration?

Disarmament, demobilization and reintegration (DDR) is a voluntary process, based on a political agreement, which consists of reintegrating combatants/fighters into civilian life after removing their weapons. It opens up such opportunities as education, vocational training, income-generating activities and psycho-social support to combatants/fighters who wish to disengage and to return to civilian life.

DDR is separate from screening, separation, weapons searches and other measures to maintain the civilian and humanitarian character of sites.

What are the potential benefits of DDR?

DDR programmes can:

- enhance the protection of civilians and the civilian and humanitarian character of sites;
- provide longer-term solutions for combatants and fighters.

The objectives of DDR are to:

- deal with separated combatants/fighters;
- reduce violence;
- increase stability.

Pre-conditions for the success of a DDR programme:

- A peace agreement that has the buy-in of the parties.
- A minimum level of security.

Alternatives to DDR

Where the pre-conditions for a successful DDR programme are absent, alternative programmes can be considered, such as those run by DPO and partners in the Central African Republic, the Democratic Republic of the Congo, Haiti and Mali.

Community violence reduction programmes

- Flexible, community-based programmes containing elements of reconciliation, dialogue, prevention and conflict resolution/peace-building.
- Aimed at reintegrating former combatants/fighters into society with the involvement of the community.
- May focus on areas particularly prone to violence, engaging with youth-at-risk and community members, and working with reliable partners.

Such programmes have increased social cohesion by promoting a stronger, more stable community and thereby contributing to an overall decrease in violence.

Pre-DDR programmes.

This type of programme was designed in the Central African Republic for fighters who did not fulfil the eligibility criteria for participation in a DDR programme (i.e., they had not formally disarmed, they had only stored their weapons temporarily) and could benefit from vocational training and income-generating programmes.

5.5.2.5 The role and limitations of UNHCR and other humanitarian actors

All of the above measures fall squarely under the responsibility of the host State or, in some circumstances, international or regional forces.

Humanitarian actors do not have the mandate, expertise or capacity to take on the security functions of the State. Our role is therefore to advocate for such measures when needed, and to monitor their implementation.

We can also support the State by providing technical or legal advice, or facilitate support from other States, the UN or development agencies (such as DPO, the United Nations Development Programme or the World Bank).

We should also:

- support community-based protection approaches, such as community policing and alert systems;
- engage the community in dialogue, to understand their perspectives and coping mechanisms (which may, for example, include joining an armed group in order to obtain an income);
- ensure confidential channels for reporting incidents or concerns related to the presence of fighters/combatants, plus other protection issues.

Other possible channels/entry points for dialogue include:
- the ICRC;
- Geneva Call;
- UN special rapporteurs;
- UN peace operations and political missions;
- donors;
- regional bodies;
- religious leaders;
- faith groups.

5.6 Responding to the presence of combatants/fighters and armed elements

5.6.1 Possible scenarios

- Combatants/fighters are present in the site to:
    - plan or launch military operations;
    - use civilians as human shields;

- o use it as a "rest & recuperation" centre while visiting family members;
- o hide from law enforcement agencies or enemy forces;
- o recruit and train civilians for military purposes:
- Government armed forces entrusted with managing a site or ensuring its security compromise the civilian character of a site by virtue of their armed presence in and around it.
- The presence of other persons carrying weapons (armed elements) generates protection risks, whether or not such weapons are intended for military use (civilians can for example carry weapons for self-defence or for other reasons unrelated to military activities).

Such scenarios may seriously undermine the protection and security of sites and their civilian populations.

5.6.2 Possible consequences of the presence of combatants/fighters at a site

- Attacks on the site.
- Harassment.
- Forced recruitment and child recruitment.
- Sexual and gender-based violence.
- A perception on the part of government authorities or other party controlling the area where the site is located that its entire population is complicit with the enemy, leading them to push for closure of the site.

5.6.3 Possible risk-mitigating measures that UNHCR can undertake in conjunction with others

- Prevent and mitigate risk by taking the following measures:
  - o locate (or re-locate) the site away from military installations and border areas;

Operational example
South Sudan Police posts were set up at the boundaries of camps, and armed elements deposited their weapons at one of these posts before entering. This measure has helped to maintain the civilian character of the camps.

  - o ensure that physical protection in and around sites is provided by entities not involved in the conflict or, if this is not possible, locate personnel responsible for physical protection on the outskirts of the site;
  - o identify people at risk of recruitment (both voluntary and forced) and inform them of the implications of recruitment for their civilian status – and their refugee status if applicable;
  - o ensure the protection of children (which includes protecting them against recruitment);
  - o step up security measures, such as community policing or police posts, with the active involvement of camp managers;

- o establish standard operating procedures for managing incidents in relation to specific threats, including the presence of combatants/fighters or armed elements.

- Pursue community-based protection approaches:

  - o engage a site's civilian and host populations in a dialogue to understand their perspectives, perceptions, concerns and coping mechanisms – which may include joining an armed group in order to survive or obtain an income;

  - o where possible, encourage these populations to advocate and negotiate directly with combatants/fighters or armed elements for their own protection.

- Raise people's awareness of their rights and basic protection principles.

- Create ways for people to report problems related to the presence of combatants/fighters or armed elements in the camp and other protection issues (e.g. through camp managers).

- Organize activities that will strengthen people's resilience by reducing their exposure to threats and the need to resort to harmful coping mechanisms.

- Engage in dialogue with State bodies, organized armed groups, individuals or groups engaged in criminal activities, etc., to make best use of different entry points and centres of power and decision-making.

Possible approaches include:

- bilateral and confidential dialogue;

- public advocacy;

- capacity-building;

- training.

These approaches can be mutually reinforcing. For instance, engaging the authorities on such technical issues as developing standard operating procedures can build trust and can open channels of communication.

Possible channels/entry points include:

- the ICRC;

- Geneva Call;

- special rapporteurs;

- donors;

- regional bodies;

- religious leaders;

- faith groups.

5.7 Further references and guidance

1. Sources of international law

- CIHL Rules 1, 7-10 and 14-24.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

- *Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949*, Art. 18(5).
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=59AB4DAFFBF70295C12563CD0051BB01.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 8 June 1977, Arts 48 to 57.
  https://ihl-databases.icrc.org/ihl/INTRO/470

2. Other references

- *Aide Memoire – Operational Guidance on Maintaining the Civilian and Humanitarian Character of Sites and Settlements*, UNHCR/ICRC, July 2018.
  https://www.refworld.org/docid/5b55c6fe4.html.

- *Global Consultations on International Protection/Third Track: The Civilian Character of Asylum: Separating Armed Elements from Refugees*, UNHCR, 2001.
  https://www.refworld.org/topic,50ffbce4120,50ffbce4126,3bfa82d65,0,,LEGALPOLICY,.html.

- *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, UNHCR, December 2018.
  https://www.refworld.org/docid/452b9bca2.html

- *ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities*, ICRC, 2009.
  https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities.

- *Operational Protection in Camps and Settlements. A Reference Guide of Good Practices in the Protection of Refugees and Other Persons of Concern*, UNHCR, 2006.
  https://www.refworld.org/docid/44b381994.html.

- *The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the "Ladder of Options"*, UNHCR, 2000.
  https://www.unhcr.org/excom/standcom/3ae68d18c/security-civilian-humanitarian-character-refugee-camps-settlements-operationalizing.html.

UNHCR Toolkit: Protection in armed conflict

Humanitarian evacuations

6 Humanitarian evacuations

Contents

6.1   Why this module?

Humanitarian evacuations need to be part of our toolkit in any armed conflict or other situation of violence because:

- displaced people and other civilians often suffer severe restrictions on their freedom of movement;

- when people at extreme risk are stranded in hard to reach areas, enclaves and besieged areas, we may be unable to meet their most basic and urgent needs safely, or at all;

- people may remain stranded in such situations for prolonged periods of time. Even if they are physically safe, they will suffer psychologically from the ever-present threat that surrounds them.

However, humanitarian evacuation is not without its dangers and drawbacks:

- Humanitarian evacuations can expose people to new security and protection risks.

- Humanitarian evacuations can be manipulated for political or military ends.

- If poorly organized and implemented, humanitarian evacuations can create new protection risks and can even get people killed.

- A humanitarian evacuation is a temporary measure, and does not constitute a permanent solution.

Humanitarian evacuations are therefore a measure of last resort, to be deployed when other options for providing life-saving assistance and protection have failed or are unattainable.

The purpose of this module is to support you if you have to decide whether to instigate or participate in a humanitarian evacuation and, if so, how to go about it.

6.2   What will I find in this module?

We shall start with the decision-making process, before moving on to a detailed checklist of things to do and factors to consider when planning and executing a humanitarian evacuation.

Other publications set out the theoretical and legal background to humanitarian evacuations. It is essential that you read up on the rationale and the legal considerations underpinning humanitarian evacuations long before you are confronted with the possibility of becoming involved in one yourself.

This module only covers **in-country humanitarian** evacuations in an **armed conflict** or other situation of **violence**, where individuals or groups face an **immediate threat to life**; it does not address the specific issues raised by cross-border evacuations or evacuations in response to disaster.

6.3 Terminology

humanitarian evacuation

A large-scale relocation of civilians who face an immediate threat to life during an armed conflict or other violence, to locations where they can be more effectively protected.

6.4 Humanitarian evacuation in practice

This module provides a series of evacuation planning tools:

- An overview of the phases and the major steps within each.

- A detailed checklist.

- A risk analysis tool to help you compare and prioritize multiple situations where humanitarian evacuations are a possibility.

The four phases of a humanitarian evacuation

- Decide
- Prepare
- Implement
- Monitor and evaluate

- A fictitious example of a causal tree, to help you map out the causes and drivers of a situation at the second step of Phase 1, giving you a better sense of the appropriate responses.

Scale-of-risk matrix, for use when mapping populations and areas at risk

		Impact or severity of an event				
		Negligible	Minor	Moderate	Severe	Critical
Likelihood that an event will happen	Very likely/ imminent	Low	Medium	High	Very high	Unacceptable
	Likely	Low	Medium	High	High	Very high
	Moderately likely	Very low	Low	Medium	High	High
	Unlikely	Very low	Low	Low	Medium	Medium
	Very unlikely	Very low	Very low	Very low	Low	Low

Causal tree (example) for use when determining the causes of a possible need to evacuate

Problem	**Lives of persons of concern threatened**
Cause Level 1	**Attacks by militia** **Starvation – town under siege**
Cause Level 2	**President accuses persons of concern of inciting violence** **Militia has not been paid** **Army suspects town of supporting insurgents**
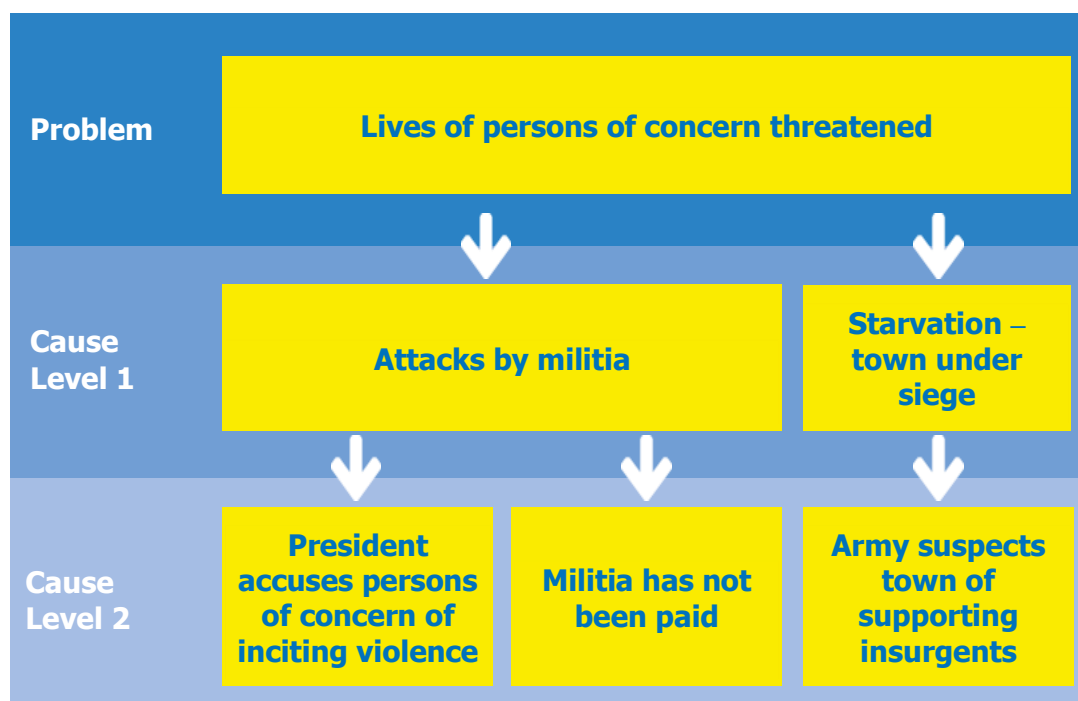
6.5 Checklist for planning and implementing humanitarian evacuations

This checklist is largely based on UNHCR's accumulated experience of humanitarian evacuations in such conflicts such as those in the former Yugoslavia, the Central African Republic and Syria, as well as other guidance.

6.5.1 Decide whether to carry out a humanitarian evacuation

6.5.1.1 Assess and analyse the options

- Identify and map areas where there is an immediate threat to life, and the people under threat, indicating the scale of the risk. See the scale-of-risk matrix above.

- Map the causes and drivers of protection risks to populations facing unacceptable risk of loss of life. Produce a causal tree inspired by that shown above.

- Be aware that requests for evacuations may come from the community itself, or from parties to conflict. These are quite different scenarios for the humanitarian community to respond to.

- Before deciding to launch an evacuation, consider deploying other diplomatic responses to the causes and drivers, such as:
  - mediation;
  - mobilizing embassies;
  - increasing the provision of humanitarian supplies;
  - interposing international military forces.

- Engage directly with the populations in question to understand their:
  - protection needs;
  - community-based protection mechanisms and capacity;
  - perceptions of threats and risks;
  - intentions and options for their security and safety.

- Where the factors above suggest that humanitarian evacuation is necessary, verify that the population of concern:
  - actually wishes to evacuate;
  - understands what an evacuation will entail.

- Establish criteria for relocation areas, in consultation with the affected population.

- Map and assess the availability of safe and secure in-country relocation areas. Cross-border evacuations are outside the scope of this module.

6.5.1.2 Consult and seek support

- Advise and seek the support of:
  - the Humanitarian Country Team;
  - the leadership of the Resident/Humanitarian Coordinator and/or Special Representative to the Secretary General (where applicable);

  to prepare for a humanitarian evacuation; this includes establishing criteria and minimum standards for engagement.
- Obtain global support from UNHCR headquarters for the decision to evacuate.

6.5.2 Prepare for the evacuation

6.5.2.1 Select a safe and secure relocation area

- Reach agreement on a relocation area with the population concerned, and with the authorities and local communities at the destination.
- Where feasible, facilitate "go and see" visits by members of the population concerned to the relocation area.
- Ensure that the relocation area meets basic criteria for protection and assistance or self-reliance, including:
  - safe distances from areas of conflict;
  - access to social services;
  - basic infrastructure;
    - food;
    - water;
    - shelter;
    - medical care;
    - etc.
  - livelihood options;
  - reduced risk of conflict (with host communities, with local authorities or among the population concerned once relocated).
- Negotiate with authorities to ensure:
  - provision of security for the area;
  - national protection mechanisms;
  - humanitarian access;
  - freedom to move to other areas;
  - inclusion of the area in national development plans.
- Where possible, sites should reflect the intended destinations of the people concerned and the current location of immediate family members and members of the community who may have already fled and reached safety.

6.5.2.2 Engage with communities

- Identify protection risks – from inside the population concerned as well as from outside – by means of sustained contact, including:

  o focus group discussions;

  o individual protection interviews;

  o feedback mechanisms.

- Keep re-verifying that the proposed movement would be voluntary. Means of achieving this include interviews with individual members of the population, especially with persons with specific needs, minorities, etc. If only part of a community agrees to a humanitarian evacuation, there is a risk that the remaining community will be further exposed to danger, something that must be factored into the analysis.

- Explain:

  o the reasons for the evacuation;

  o the timeframe for the movement(s);

  o the risks associated with going and with staying;

  o conditions during the movement;

  o conditions at the destination;

  o services available at the destination;

  o rights and precautions in relation to return and future reconciliation (e.g. people need to travel with documentation related to property rights, identity documents, etc.)

- Engage and communicate with future host communities as far as possible, informing them about:

  o the place(s) of origin of the population concerned;

  o the reasons for their movements;

  o guarantees regarding the humanitarian and civilian character of the movements;

  o the overarching intentions for reconciliation and return.

6.5.2.3 Profile the population concerned and assess their needs

- Obtain basic information and assess needs, in as confidential a space and manner as possible, on the individuals and groups requiring humanitarian evacuation, including:

  o the number of persons requiring assistance, broken down by:

    - gender;
    - age;
    - ethnicity;
    - religious affiliation;
    - civil status;

  o whether individuals are accompanied by, or have been separated from, immediate family members;

  o place(s) of origin;

- o the reasons why the people concerned have become displaced;

- o how long the people concerned have been displaced for;

- o the physical condition of persons requiring assistance and whether urgent humanitarian and/or health assistance is required;

- o whether persons requiring assistance are traveling with personal effects or livestock;

- o an initial indication (by means of pre-screening) of the possible presence of fighters/combatants among the civilian population.

- If necessary, plan for the engagement of the State or UN mission to ensure the civilian character of the population.

6.5.2.4 Map requirements for the evacuation

- Drawing on the above-mentioned needs assessment, map the requirements for an evacuation, including:

  - o the human resources;

  - o the material needs;

  - o the capacities and comparative advantages of partners in the various sectors/clusters;

  - o agencies capable of providing assistance at the proposed destination:
    - short-term (transitional);
    - long-term (infrastructure).

6.5.2.5 Agree on modalities and standards

- Consult all parties who will be involved in the evacuation and agree on the timing and modalities.

- Draw up standard operating procedures.

- If the UN Designated Official for security decides that armed escorts are necessary, agree on who will facilitate the civil-military dialogue and interaction on behalf of the Humanitarian Country Team (normally OCHA as the UN focal point for UN CMCoord) and ensure that the rules of engagement applicable to those providing security are understood.

- Review and update the minimum standards for engagement in humanitarian evacuations.

- Ensure that those negotiating with parties to the conflict on such issues as safe passage for convoys obtain undertakings to comply with these minimum standards and that the parties have understood their practical implications. In a situation where armed non-State actors or pro-government militias are involved in hostilities, make sure that all groups will allow safe passage, and be aware of possible fragmentation of such groups and/or weaknesses in their command structures.

6.5.2.6 Draw up a plan of action

- Seek agreement on the following points from all involved in the evacuation, including the populations concerned and the parties to the conflict where necessary:

  - o The time and method of the movements.

  - o Action to be taken in response to incidents and problems that could arise before, during and after the evacuation.

- o Measures to preserve the civilian character of the movements (e.g. concerned communities must travel without weapons and there must be no fighters/combatants amongst them).

- o Measures to safeguard the health and safety of individuals (e.g. for health reasons, populations concerned may not be able to travel with livestock).

- o Services to be provided during the journey, including:
  - food;
  - water;
  - shelter;
  - disposal of human waste;
  - special provisions for persons with specific needs.

- Means of communication and information-sharing prior to departure and during travel.

- Building on the above-mentioned agreements, develop a division of labour and a plan of action that maximizes each organization's capacity and comparative advantage.

- Use the plan of action to mobilize resources from donor countries where necessary.

6.5.2.7 Promote the right to return

People evacuated during a conflict have a right to return to their places of origin and residence at the end of the conflict or when conditions in the area of origin permit.

- Through engagement with the population concerned, generate understanding of the short-term nature of humanitarian evacuations and the need for longer-term solutions.

- Raise awareness of rights, particularly the right of return.

- Ensure that individuals and groups to be evacuated bring all personal documentation, such as:
  - o passports;
  - o rental contracts;
  - o property deeds;
  - o medical documentation;
  - o prescriptions;
  - o school records;
  - o any other critical information.

- Step up advocacy in the areas where humanitarian evacuations are planned and implemented to ensure that the population concerned, and their surrounding communities, are aware of the right of return and of efforts being made to foster reconciliation and peaceful coexistence to enable return.

6.5.2.8 Train and prepare staff

- Arrange training, dialogue and information sharing for all organizations and those of their staff who will be involved in the evacuation.

- Humanitarian evacuations require a multi-functional team, with expertise in several areas, including:
  - security;
  - logistics;
  - driving;
  - medical (first aid);
  - protection (e.g. child protection and sexual and gender-based violence).

6.5.2.9 Pre-position humanitarian relief for the evacuation

- Pre-position the supplies and the corresponding human resources that were identified as necessary during the planning phase. The supplies that need to be pre-positioned include:
  - Civilian vehicles (distinguishable from military transport) that are suitably supplied and equipped to move people with special needs and people with serious injuries or medical conditions. The types and numbers of civilian vehicles, and the number of people to be evacuated, will limit the quantity of baggage that each individual can take.
  - Basic relief items (including food, water and non-food items).
  - Medical supplies and medical personnel.
  - Toilets or other facilities for disposing of human waste.
  - Shelter along the evacuation route where necessary and at the point of arrival.
- Make appropriate provision for:
  - people with disabilities;
  - elderly people;
  - pregnant women;
  - children.

  Looking after groups such as the above may involve providing additional resources and expertise in such areas as child protection and sexual/gender-based violence, including dedicated staff.

- Depending on the size of the population concerned, the number of people with specific needs, the distances to be travelled and conditions in the relocation area, it may also be necessary to consider:
  - carrying out the evacuation in several phases;
  - dividing the population into groups and having them leave at different times;
  - breaking the evacuation down into steps.

6.5.3 Draw up contingency plans for dealing with incidents during the evacuation

Agree in advance how all involved in the evacuation will react to incidents that can arise during the actual evacuation, such as:

- individuals within the community interfering with the evacuation or propagating misleading information;

- all or part of the convoy being stopped or re-routed;
- individuals being detained by a party to the conflict;
- the convoy coming under attack;
- documents being confiscated.

6.5.4 Monitor the situation following the evacuation

- Monitor the relocation area with regard to:
  - protection issues;
  - access to services and rights, including freedom of movement.

6.5.5 Evaluate the evacuation operation

- Conduct a participatory assessment with relocated individuals and communities as soon as possible.
- Conduct a post-evacuation "lessons learned" exercise.

6.6 Minimum standards

The following minimum standards are derived in large part from international humanitarian law, and are pre-requisites for UNHCR participation in a humanitarian evacuation.

They are applicable both armed conflict and other situations of violence and any departure from them must be justified by a clear and sound rationale.

Minimum standards for humanitarian evacuations

	Requirement
1.	Civilians shall be protected against attack and shall be granted safe passage during an evacuation.[35]
2.	Civilians and any other person who has been detained or is *hors de combat* shall be treated humanely and in accordance with international law, regardless of whether they are included in a humanitarian evacuation.[36]
3.	The parties to the conflict shall allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.[37]
4.	Certain international humanitarian agencies, such as the ICRC, shall have access to any persons detained before, during, and after the humanitarian evacuation, to register them and monitor their treatment.[38]
5.	Civilians shall not be arbitrarily deprived of objects indispensable to their survival, nor shall their access to relief supplies be impeded.[39]
6.	The sick and wounded shall be cared for.[40]
7.	Children shall be afforded special protection.[41]
8.	Humanitarian organizations shall be able to undertake all measures to safeguard family unity, including the tracing of family members.[42]
9.	The safety and protection of humanitarian and medical personnel and of humanitarian convoys shall be respected before, during and after humanitarian evacuations.[43]

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[35] Article 3 common to the Geneva Conventions.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66

CIHL Rule 6, Civilians' Loss of Protection from Attack.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule6

36 Article 3 common to the Geneva Conventions.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C125 63CD00519E66

CIHL Rule 87, Humane Treatment.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule87

37 Article 3 common to the Geneva Conventions.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C125 63CD00519E66

CIHL Rule 55, Access for Humanitarian Relief to Civilians in Need.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55

38 CIHL Rule 123, Recording and Notification of Personal Details of Persons Deprived of their Liberty.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule123

39 CIHL Rule 53, Starvation as a Method of Warfare.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53.

UN Committee on Economic, Social and Cultural Rights (CESCR) Gen Comment 15, The Right to Water.
https://www.refworld.org/pdfid/4538838d11.pdf

Universal Declaration on Human Rights, Article 25.
https://www.un.org/en/universal-declaration-human-rights/

International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11.
https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

Convention on the Rights of the Child, Articles 24(2), 27.
https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

Arab Charter on Human Rights, 16 March 2008, Article 13.
https://www.humanrights.ch/en/standards/other-regions-instruments/arab-charter-on-human-rights/

40 Article 3 common to the Geneva Conventions.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C125 63CD00519E66.

CIHL Rule 110, Treatment and Care of the Wounded, Sick and Shipwrecked.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule110

41 AP I, Art. 77.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9A083D5A023FBFB0C125 63CD0051C015

AP II, Art. 4.
https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C125 63CD0051E783

42 CIHL Rule 105, Respect for Family Life.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule105

Universal Declaration on Human Rights, Article 16(3).
https://www.un.org/en/universal-declaration-human-rights/

International Covenant on Civil and Political Rights.
https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

6.7 Operational and protection considerations

6.7.1 Evacuation as a life-saving measure

Humanitarian evacuations are a **life-saving measure for individuals and groups facing an immediate threat**, where one or more of the following conditions apply:

- other protection measures are impracticable:
- other protection measures have not had the desired impact;
- armed or security forces are absent;
- armed or security forces are unable to guarantee a sustained presence;
- armed or security forces are unable to ensure physical protection through their presence.

6.7.2 Planning for the possibility of a humanitarian evacuation

- Conditions can deteriorate rapidly in an armed conflict or other situation of violence, and we must be capable of responding rapidly.
- We must therefore make it clear to our partners and the humanitarian leadership that humanitarian evacuations may have to take place at some point.
- Any protection strategy for a community at risk must include the possibility of a humanitarian evacuation.

6.7.3 Risk assessment

Before becoming involved in a humanitarian evacuation, we must carry out a risk assessment that includes:

- the risks to the population concerned – of evacuating them and of not doing so;
- the impact on UNHCR's ability to provide protection and assistance of our being associated with any evacuation.

6.7.4 Preserving the civilian character of a humanitarian evacuation

The appropriate authorities must conduct basic screening, to ensure that persons being evacuated are unarmed and that no weapons, arms or ammunition are boarded on the civilian vehicles used for the evacuation. There should be no fighters/combatants amongst the people being evacuated.

Humanitarian evacuations may require additional security arrangements, such as armed escorts.

Arab Charter on Human Rights, Article 38.
https://www.humanrights.ch/en/standards/other-regions-instruments/arab-charter-on-human-rights/

[43] CIHL Rules 25, 28, 29 and 54-56.
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

In deciding how and whether to use armed escorts, you should:

- explore all alternatives (including the mandates of peace operations);

- perform a thorough security and risk assessment;

- consider the *IASC Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys*

- consult the *Human Rights Due Diligence Policy* on UN support to non-United-Nations security forces.

6.7.5 Preserving family unity

- Children and parents should not be separated against their will or best interest. This may mean moving entire families in the same vehicles or convoys.

- If separation of convoys becomes necessary, children and minors must remain with their parents or guardians.

- Prepare for the eventuality of parents and children becoming separated during a humanitarian evacuation. This may include registering/documenting family members prior to the evacuation and ensuring tracing and verification capabilities ready to be deployed in the event of separation.

6.7.6 Mobilizing support if evacuation is blocked

If a humanitarian evacuation is needed as a life-saving measure of last resort, but is being blocked for political or other reasons, humanitarian organizations need to reach a consensus on how to proceed while respecting humanitarian principles. Advocacy using legal frameworks, reminding States and non-State entities of their obligations, will be required to obtain the support needed for an evacuation.

6.8 Further references and guidance

1. Sources of international law

- *Arab Charter on Human Rights*, 16 March 2008, Articles 13 and 38.
  https://www.humanrights.ch/en/standards/other-regions-instruments/arab-charter-on-human-rights/

- Article 3 common to the Geneva Conventions.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/365-570006?OpenDocument

- CIHL Rules 6, 25, 28, 29, 53–56, 87, 105, 110 and 123.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

- *Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949*, Articles 4, 44 and 70.
  https://ihl-databases.icrc.org/ihl/INTRO/380

> **Get informed**
>
> Read the internal note **Humanitarian Evacuations in Violence and Armed Conflict** (on which this module is based) for further background on humanitarian evacuations.

- *Convention on the Rights of the Child (CRC)*, 2 September 1990, Articles 24(2) and 27.
  https://www.ohchr.org/en/professionalinterest/pages/crc.aspx.

- *International Covenant on Civil and Political Rights (ICCPR)*, 23 March 1976.
  https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,
  3 January 1976, Article 11.
  https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 8 June 1977, Articles 4, 73 and 77.
  https://ihl-databases.icrc.org/ihl/INTRO/470

- *Universal Declaration Of Human Rights (UDHR)*, 10 December 1948.
  https://www.un.org/en/universal-declaration-human-rights/

2. Other references

- *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, UNHCR, December 2018.
  https://www.refworld.org/docid/452b9bca2.

- *Handbook for the Protection of Internally Displaced Persons*, Global Protection Cluster, June 2010, Part V.12 on Humanitarian Evacuations.
  http://www.unhcr.org/4c2355229.html.

- *Humanitarian Evacuations in Violence and Armed Conflict*, UNHCR.
  https://www.refworld.org/pdfid/57fe09284.pdf.

- *Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys*, IASC, 27 February 2013.
  http://www.refworld.org/pdfid/523189ab4.pdf

- *UN Human Rights Due Diligence Policy on Support for Non-United Nations Security Forces (HRDDP)*, UN Secretary-General, 5 March 2013, A/67/775-S/2013/110.
  https://www.refworld.org/docid/537dd44a4.html.

UNHCR Toolkit: Protection in armed conflict

Human rights due diligence

7 Human rights due diligence

Contents

7.1   Why this module?

- UNHCR often works with non-UN security actors to promote the protection of persons of concern.

  For example, we may ask the local or national police to help enhance the security of a refugee or IDP site, and provide the police with material support to do so. Or we may conduct capacity building activities with border officials to ensure that they follow asylum- and protection-friendly reception procedures.

- Any support to non-UN security actors needs to comply with the *UN Human Rights Due Diligence Policy* (HRDDP), to ensure that such support is consistent with the UN's purposes and principles.

- UNHCR personnel need to be aware of this Policy and know how it applies to UNHCR activities in conflict settings.

7.2   What will I find in this module?

An overview of the HRDDP and its applicability to UNHCR operations.

This module does **not** cover support to UN security forces, such as UN peace operations or UN missions.

7.3   Terminology

These definitions are those set out in the HRDDP. The same terms will be defined differently in other contexts.

due diligence

The measures required to prevent the UN providing support where there is a real risk of violations of international human rights law, international humanitarian law or refugee law.

non-UN security force

Any of the following:

- National military, paramilitary or police force; intelligence service, border control or similar security force.

- National civilian, paramilitary or military authority directly responsible for the management, administration or command or control of such a force.

- Peacekeeping force of a regional international organization.

support

Includes (but is not limited to) any of the following;

- Training, mentoring, advisory services, capacity- and institution-building and other forms of technical cooperation for the purpose of enhancing the operational capabilities of non-United Nations security forces.

- Ad hoc or programmatic support to civilian or military authorities directly responsible for the management, administration or command and control of non-United Nations security forces.

- Financial support, including payment of salaries, bursaries, allowances and expenses, whatever the source of the funds.

Importantly for UNHCR, "support" as defined in the Policy does not include engagement "to promote compliance with humanitarian, human rights and refugee law or to negotiate humanitarian access and carry out relief operations". See below for examples of support in the context of UNHCR operations.

7.4 How is human rights due diligence relevant to UNHCR's work?

UNHCR operations regularly interact with non-UN security forces during conflict. Supporting such forces can be necessary to ensure effective protection, particularly if the State does not have adequate resources.

In the past, providing such support has led to positive protection outcomes, such as:

- enhanced physical security of sites, camps and other areas hosting displaced populations;

- prevention of forced or child recruitment by non-State actors or organized gangs;

- separation of fighters/combatants from displaced populations at entry/border points;

- enhanced conditions of detention for displaced populations.

Examples of common UNHCR activities that would fall within the scope of the HRDDP include:

- payment of salaries or incentives, or making other transfers of funds to government officials (armed forces, police, border, prison and security officials);

- purchasing or providing equipment, furniture, vehicles or fuel (for example to enhance security measures or public services in areas hosting displaced populations);

- building or improving infrastructure (such as a police post at the entrance of a refugee camp, or additional facilities in a detention centre).

However, the HRDDP would **not** normally apply to:

- training and sensitization activities to promote awareness of and compliance with international humanitarian law, international human rights law and refugee law;
- capacity support directly related to promoting compliance with international humanitarian law, international human rights law, and refugee law;
- legal and technical assistance on standard-setting (such as advice/reviews regarding national legislation, codes or policies related to international refugee and human rights law);
- humanitarian negotiations, mediation, advocacy or diplomacy (including access negotiations) for the purposes of advancing UNHCR's mandate or on a "good offices" basis;
- medical evacuation (MEDEVAC) or casualty evacuation (CASEVAC).

Importantly, the HRDDP should not be so interpreted as to limit UNHCR's advocacy work with security forces aimed at promoting the protection of its persons of concern. The HRDDP does not prevent us from engaging in advocacy with any entity, even one that has been guilty of grave violations.

The HRDDP does apply to indirect support to national or regional security forces through a UNHCR implementing partner (under a Project Partnership Agreement).

7.5   What does this mean for me?

The Due Diligence Policy requires you to familiarize yourself with it and to assess its relevance to your operation.

If UNHCR or its implementation partners are supporting or considering supporting non-UN security forces, you must:

- decide whether there is a real risk of the (intended) recipient committing grave violations of international humanitarian, human rights or refugee law;
- provide support only when such a risk does not exist or has been mitigated;
- establish procedures for monitoring the conduct of recipients;
- report allegations of grave violations to national authorities with a view to stopping the violations, if they are committed during the period of support;
- should that be ineffectual, consider suspending or withdrawing support.

It is good practice to reference the HRDDP in relevant project agreements with government authorities and implementing partners.

While UNHCR conducts its own risk assessments and communicates directly with national authorities on the HRDDP, you should coordinate such efforts with, and communicate them to, the UN Country Team, to promote consistency across the UN.

The most senior UN official in the country (SRSG/RC/HC) has a specific role, which includes:

- communicating the HRDDP to State authorities;

- initiating and coordinating UN Country Team efforts; this includes conducting a common general and preliminary risk assessment covering all national security forces;

- supporting UN entities in the intervention phase; this includes taking a leading role in communicating with the authorities.

7.6   Further references and guidance

- *Guidance Note on Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces*, United Nations, 2015. https://undg.org/document/human-rights-due-diligence-policy-on-un-support-to-non-united-nations-security-forces/.

- *UN Human Rights Due Diligence Policy on Support for Non-United Nations Security Forces (HRDDP)*, UN Secretary-General, 5 March 2013, A/67/775-S/2013/110. https://www.refworld.org/docid/537dd44a4.html.

Monitoring, documenting and reporting on violations

8 Monitoring, documenting and reporting on violations

Contents

8.1 Why this module?

- UNHCR is part of the wider UN system working for the promotion of human rights and international peace and security. Monitoring, documenting, reporting and referring violations of IHL, IHRL and IRL is part of this, and is intrinsically linked to our mandate as a protection agency, but needs to be adapted to the operational circumstances.

- As a UN agency, UNHCR has a responsibility to monitor, document and report serious violations against women, girls and boys during armed conflict through MARA and MRM.

- UNHCR can also use its engagement with human rights mechanisms (UPR, human rights treaty bodies etc.) to highlight violations against persons of concern.

- During and after armed conflict, UNHCR may also be asked to cooperate with various UN mechanisms and/or international or national courts and tribunals. In such cases, and in light of the sensitive nature of such work, field offices should seek further guidance from Headquarters.

8.2 What will I find in this module?

- Guiding principles related to UNHCR´s role in monitoring, documenting and reporting violations.

- An overview of the most commonly used mechanisms for reporting and monitoring in the UN.

8.3 Terminology

documenting

The collection of information related to alleged violations, for example from interaction with victims or witnesses of such violations.

monitoring

The systematic and regular assessment of alleged violations of IHL and IHRL, including as part of regular protection monitoring activities.

reporting

The transmission of information on an incident (alleged violation), which can include internal reporting (to country office, regional office or Headquarters) or reporting to external entities.

8.4   UNHCR's role in monitoring, documenting and reporting violations

UNHCR is part of the wider UN system working for the promotion of human rights and international peace and security. Monitoring, documenting and reporting on violations of IHL and IHRL contribute to these objectives, and are intrinsically linked to our mandate as a protection agency. On international refugee law, UNHCR also has supervisory responsibilities as set out in Article 35 of the 1951 Refugee Convention.

Moreover, documenting and reporting on violations can:

- raise awareness of violations that cause forced displacement, and support advocacy and dialogue with parties to the conflict;

- help combat impunity for such violations;

- result in support and capacity building for national institutions;

- inform programmatic responses by UNHCR or other actors;

Monitoring and reporting violations committed during ongoing hostilities can, however, have very serious consequences for UNHCR's ability to maintain operations on the ground, our access to affected populations, and the security of personnel, partners, and persons of concern.

We must take these operational considerations into account when UNHCR becomes aware of violations, either in the country where they are occurring or in neighbouring countries where UNHCR is assisting refugees who are fleeing such violations. UNHCR offices must exercise utmost caution when deciding whether and how to monitor, document and report violations.

It is also important to note that monitoring and reporting violations is not an end in itself, but should prompt appropriate advocacy and/or programmatic responses to prevent and/or respond to the violations.

Moreover, we should not collect information from survivors of sexual violence or torture unless there are services in place (although trends may still be gathered), to avoid subjecting people to the additional trauma of re-living their experiences without receiving support.

Finally, any reporting from UNHCR must also take into account the following documents (available to UNHCR personnel only):

- UNHCR's Policy on the Protection of Personal Data (UNHCR/HCP/2015/6);

- UNHCR's Information Classification, Handling and Disclosure Policy (IOM/FOM 076/2010).

8.5 An overview of selected UN reporting and monitoring mechanisms

8.5.1 Reporting on grave violations against children and sexual violence in conflict (MARA and MRM)

The UN Security Council has established two specific monitoring and reporting mechanisms for violations during conflict:

- The [Monitoring and Reporting Mechanism for grave violations against children in armed conflict](#) (MRM), which provides for the systematic gathering of accurate, timely, objective and reliable information on grave violations committed against children.

- The [Monitoring, Analysis, and Reporting Arrangements on conflict-related sexual violence](#) (MARA), which aims to prevent and address conflict-related sexual violence, improve assistance to survivors and support the establishment of field-driven systems for reporting.

As a UN agency, UNHCR has a responsibility to support the implementation of MRM and MARA. This is also linked to UNHCR's protection mandate and the need to ensure adequate response services for survivors of violence.

In situations where MRM and MARA are implemented, UNHCR should:

- participate in the MRM Country Task Force and country coordination bodies;

- collect and verify information for MRM and MARA in line with its mandate, guided by the principles of the child's best interests, informed consent and confidentiality.

Information collected should inform UNHCR and inter-agency prevention and response advocacy and programming.

Where it is ethical and safe to do so, we should collect information on violations against persons of concern both within the country in conflict and in countries of asylum to which refugees from these conflict areas have fled. For the South Sudan situation, for example, UNHCR collects information not only within the country, but also from South Sudanese refugees arriving in Uganda, Ethiopia and the DRC.

Both mechanisms operate in cooperation with the Special Representative of the Secretary-General on Children and Armed Conflict (SRSG-CAAC), the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC), and other UN entities.

8.5.2 Seeking immediate interventions from UN human rights bodies on behalf of persons of concern

Human rights instruments establish a variety of supervisory mechanisms, including individual complaint procedures, which UNHCR can use on behalf of persons of concern to seek States' compliance with their human rights obligations, e.g. to prevent *refoulement*.

UNHCR can act on behalf of an individual (or group of) person(s) of concern, to seek immediate interventions to prevent irreparable harm. Such immediate interventions can include interim measures of protection or urgent appeals issued by UN human rights bodies pursuant to their individual complaint procedures.

Each of these procedures has its own requirements, advantages and limitations. A UNHCR operation wishing to submit a complaint on behalf of an individual or group (or to advise individuals or groups on how to submit a complaint) should carefully review the various procedures available and decide which would be the most appropriate in the specific case.

After identifying the most appropriate mechanism(s) and reviewing the necessary requirements, UNHCR operations can submit a complaint directly to the chosen body or bodies, or advise individuals or groups on submitting a complaint.

UNHCR operations should inform the Human Rights Liaison Unit (HRLU) if UNHCR submits any complaints on behalf of individuals or groups, so that the HRLU can assist with the follow up.

8.5.3 Reporting to the UN Human Rights Council and treaty bodies

International human rights frameworks complement and strengthen the protection of persons under UNHCR's mandate, and continue to apply in situations of armed conflict (subject to certain derogations).

UNHCR's engagement with the UN human rights system and mechanisms therefore presents one avenue by which UNHCR can act as "a strong, principled and persuasive advocate for the rights and needs" of persons of concern, in line with our Strategic Directions 2017-2021. Such engagement has resulted in changes in national legislation, policies and practices, and enhanced respect for the fundamental rights of persons of concern.

The UN human rights treaties and instruments establish a variety of supervisory mechanisms that promote accountability and implementation.

These include, for example:

- the Universal Periodic Review (UPR) and Special Procedures of the UN Human Rights Council;

- the UN human rights treaty bodies (committees of elected independent experts), of which the tools include periodic reports, individual communications, country visits and enquiries, such as the Committee on the Rights of the Child.

UNHCR can leverage the mandates of these mechanisms at Headquarters, in Regional Offices and in Field Operations.

At field level, UNHCR mainly provides input to country-specific reports submitted to the UPR and treaty bodies, through information shared with Special Rapporteurs and through the use of individual complaint procedures. HRLU in Headquarters can support UNHCR offices on such engagement.

8.5.4 Requests from national, international and UN entities

During or after an armed conflict, a UNHCR office in the field may be asked to cooperate with various institutions and mechanisms promoting accountability, such as:

- international and hybrid criminal tribunals;

- national courts;

- fact-finding missions;

- commissions of enquiry.

You must be aware of the different mandates and roles of the various UN entities.

Any cooperation must:

- be consistent with our mandate;

- be consistent with the humanitarian principles;

- respect our duties towards persons of concern (including confidentiality/data protection);

- take account of any potential implications for the security of personnel, operations and persons of concern.

Furthermore:

- the first contact between a commission/mission and UNHCR should be with Headquarters;

- the parameters for cooperation need to be set out in an Exchange of Letters.

If these procedural requirements are met, UNHCR personnel can consult the general guidance (available to UNHCR personnel only), which sets out parameters for:

- information sharing;

- access to refugees and asylum-seekers;

- interviews with UNHCR personnel;

- counselling of persons of concern;

- logistical and operational support.

Given the complexity of the legal issues to which requests for cooperation give rise and the additional work that they may generate, UNHCR personnel should refer any requests from the following to Headquarters for consideration and guidance:

- an international criminal tribunal;

- the ICC;

- a national court.

South Sudan and CAR

UNHCR participated in the development of a MARA addendum to the existing information-sharing protocol, which allowed for the systematized and regular sharing of aggregate trends on conflict-related sexual violence in these countries.

Myanmar

A country-wide protection-incident-monitoring format was introduced in all UNHCR field offices, covering all six grave violations defined under the MRM.

Mali/Spain/Morocco

In 2019, the Committee on the Rights of the Child found that the rights of an unaccompanied Malian refugee boy deported from Spain to Morocco had been breached on several points.
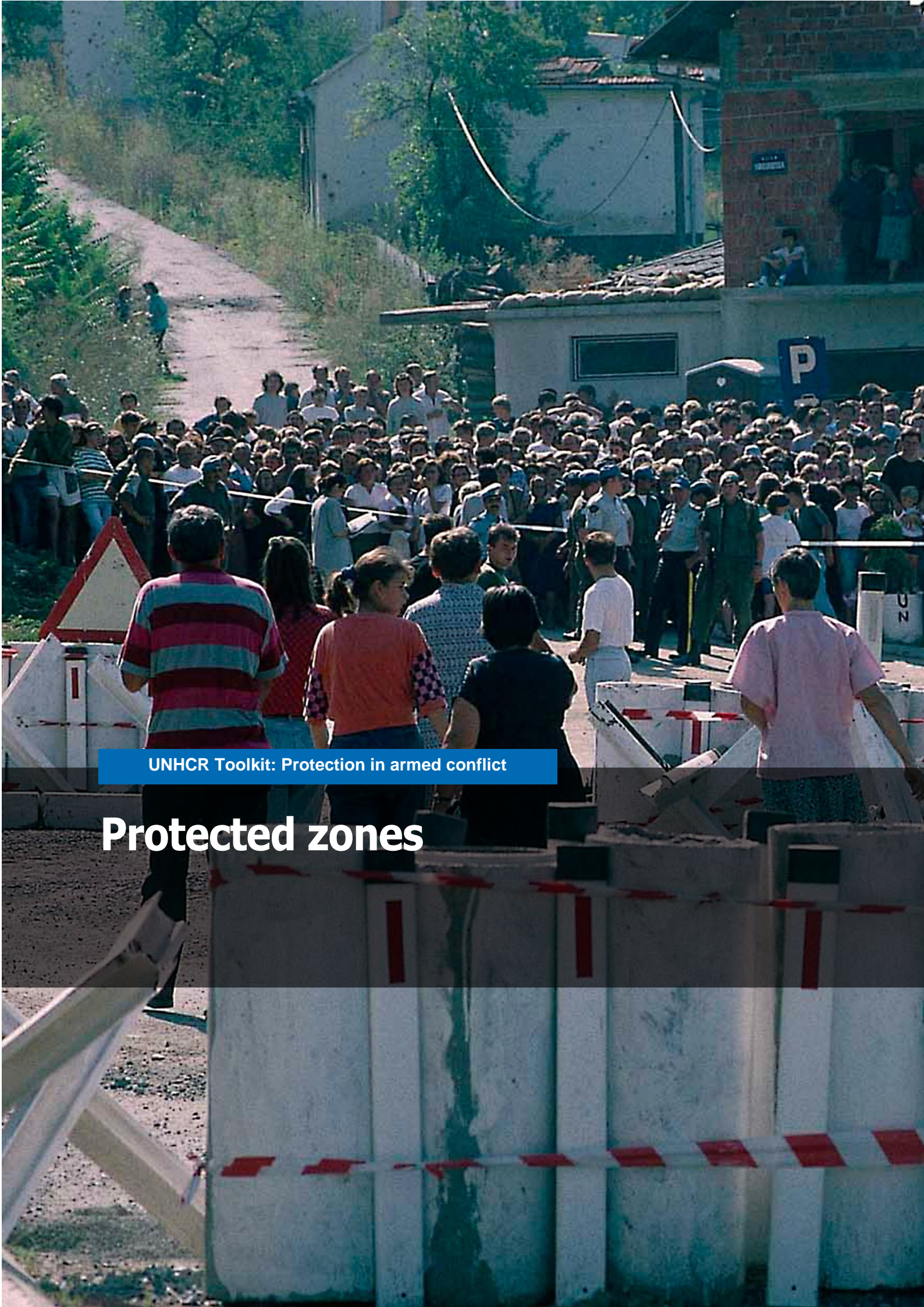
8.6   Further references and guidance

1.   Sources of international law

- CIHL Rules 139-143, Compliance with IHL.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

- CIHL Rules 156-161, War Crimes.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

- *Convention and Protocol relating to the Status of Refugees*, 1951 (Convention) and 1967 (Protocol).
  https://www.unhcr.org/1951-refugee-convention.html.

- *Rome Statute of the International Criminal Court (ICC Statute)*, 17 July 1998, Article 8.
  https://legal.un.org/icc/statute/99_corr/cstatute.htm.

2.   Other references

- FAQ and online submission to the Special Procedures.
  https://spsubmission.ohchr.org/.

- *General guidance on engaging with United Nations Human Rights Complaints Procedures*, UNHCR. (For UNHCR personnel only).
  https://intranet.unhcr.org/content/dam/unhcr/intranet/protection-operations/human-rights/documents/english/Individual_Complaints_General_Guidance.pdf.

- *General guidance on UNHCR cooperation with United Nations-mandated commissions of inquiry and fact-finding missions*, UNHCR. (For UNHCR personnel only).
  https://intranet.unhcr.org/content/dam/unhcr/intranet/protection-operations/protection-policy-and-legal-advice/documents/english/protection-and-national-security-section/Commissions_of_Inquiry_General_Guidance.PDF.

- *Human Rights Engagement: Using the UN human rights mechanisms for protection and advocacy, UNHCR*. (For UNHCR personnel only). https://intranet.unhcr.org/content/dam/unhcr/intranet/protection-operations/human-rights/documents/english/Advocacy%20using%20the%20UN%20human%20rights%20mechanisms.pdf.

- Individual Complaint Procedures under UN Human Rights Treaties. https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf.

- MARA online resources. http://www.endvawnow.org/en/articles/1526-monitoring-analysis-and-reporting-arrangements-on-conflict-related-sexual-violence.html.

- MRM online resources. http://www.mrmtools.org/mrm/index.html.

- OHCHR overview of human rights mechanisms. https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

- *Relations with International Criminal Tribunals,* UNHCR, IOM 48/2002-FOM 44/2002. (For UNHCR personnel only). http://swigea56.hcrnet.ch/refworld/docid/3d6e43ea4.html.

- *UNHCR's Engagement in the Implementation of the Protection Mechanisms Established by Security Council Resolutions 1612 and 1960 (MRM and MARA)*. https://www.refworld.org/pdfid/5a6edf734.pdf.

- *UNHCR's Information Classification, Handling and Disclosure Policy*, IOM/FOM 076/2010. (For UNHCR personnel only). https://intranet.unhcr.org/en/policy-guidance/iomfoms/iom-076-fom-076-2010.html.

- *UNHCR's Policy on the Protection of Personal Data,* UNHCR/HCP, 2015. https://www.refworld.org/docid/55643c1d4.html.

- *UNHCR's Strategic Directions 2017–2021*, UNHCR, 16 January 2017. https://www.unhcr.org/5894558d4.pdf.

Protected zones

9 Protected zones

Contents

9.1   Why this module?

- IHL gives belligerents the possibility of setting up various types of protected zone during a conflict. Within these zones, civilians and/or certain other categories of person, including people of concern to us, are safe from the effects of the conflict – as long as all sides obey the rules. While warring parties create such zones all too rarely, we need to know how they work and what conditions apply to them, so that we can help ensure that such zones offer maximum protection.

- Various types of "safe area" have emerged in recent years that differ from the above IHL-based protected zones. Even when such zones are based on a UN Security Council Resolution, they have been attacked and have facilitated abuses and violations of IHL, with serious consequences for displaced populations.

- So-called "safe areas" are sometimes used to restrict people in need of international protection from seeking asylum and to contain displaced persons within limited and dangerous areas inside their country of origin.

- When working in armed conflicts, you therefore need to be aware of the applicable legal framework and the potential protection risks associated with both protected zones under IHL and other "safe areas". You should advocate for solutions that minimize the risks to freedom of movement and the right to seek asylum.

9.2   What will I find in this module?

- The key concepts related to zones created during a conflict that are described as "protected" or "safe".

- The differences between "protected zones" as defined in IHL and other "safe areas" not covered by IHL, and the protection considerations to keep in mind when such areas are established.

9.3 Key concepts

When talking about protected places, we must distinguish between zones and localities established under IHL, and those areas that have no legal basis under IHL. Safe zones or safe areas established by a UN Security Council resolution under Chapter VII of the UN Charter fall between these two categories of zone; they have no basis in IHL, but they do have a legal status, as they are established under the UN Charter.

Categories of zone and area, and their legal status

Name	Status
• Hospital zone • Hospital locality • Safety zone • Safety locality • Neutralized zone • Demilitarized zone	• Legal terms, defined in IHL. • Designating an area as one of these zones imposes legal obligations on parties to a conflict.
• Safe zone • Safe area • Safe haven	• Not legal terms under IHL. • Designating an area as a safe zone/area/haven imposes **no** legal obligations on parties to a conflict **unless** it has been established by a UN Security Council resolution under Chapter VII of the UN Charter.

The existence of protected zones as specified under IHL, or of any other "safe zone", does not relieve weapon bearers of their obligation to respect and protect all those whom IHL defines as protected persons, at all times and in all places – inside or outside such zones.

Protected persons include the entire civilian population, sick and wounded fighters and a number of other groups.[44]

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[44] "Protected persons" in *How does law protect in war?*, ICRC.
https://casebook.icrc.org/glossary/protected-persons

9.4 Protected zones defined in international humanitarian law

9.4.1 Terminology and rationale

9.4.1.1 Types of protected zone defined in IHL

IHL provides for the creation of special zones to protect civilians from the effects of armed conflict. The essence of such zones is that they constitute geographical locations that remain free from hostilities and other military activities, and where humanitarian needs can be met, including safe shelter, medical treatment and food.

Examples of protected zones defined in IHL:

- Hospital zones.

- Neutralized zones.

- Demilitarized zones.

9.4.1.2 Characteristics common to all protected zones defined in IHL

- They can be established only with the explicit consent of all parties to the conflict, and this consent usually requires a written agreement between the parties.

What is a protected zone?
• A protected zone is an area aimed at separating civilians from military objectives.
• Its purpose is to protect civilians from the effects of hostilities by assuring enemy forces that no military objectives exist within a defined area where civilians are concentrated.
• If the enemy respects IHL, civilians in the protected zone run no risk of being harmed by the hostilities.
(Adapted from *How Does Law Protect in War?* Part I, p. 29, Marco Sassoli, Antoine Bouvier and Anne Quintin)

- They must be demilitarized, and therefore strictly civilian in character.

9.4.1.3 Factors that differentiate protected zones as defined by IHL

- The **category** of protected person who may use them (sick and wounded combatants, all civilians, certain categories of civilian, etc.).

- Their **location** (in, close to or remote from the combat zone).

Protected zones, as defined by international humanitarian law[45]

	Hospital zones and localities	Hospital and safety zones and localities	Neutralized zones	Non-defended localities	Demilitarized zones	"Neutralized zones"
Armed conflict	International	International	International	International	International	Non-international
Legal basis	GC I, Art. 23 and Annex 1	GC IV, Art. 14 and Annex 1	GC IV, Art. 15	AP I, Art. 59	AP I, Art. 60	Art. 3 common to the Geneva Conventions
Categories of person who may be present in this zone	Sick, wounded and related personnel	Specific categories of civilian: • Wounded • Sick • Aged • Children under 15 • Pregnant women • Mothers of children under 7	• All civilians not taking part in hostilities • Sick and wounded combatants	Civilians	Civilians	Civilians
How created	Written agreement between parties or Unilateral declaration, with recognition by other party	Written agreement between parties or Unilateral declaration, with recognition by other party	Written agreement between parties	Notification to opposing party or Ad hoc agreement if not all conditions satisfied	Express agreement	Agreement between parties Practice of ICRC
Location	Distant from combat zone	Distant from combat zone	In combat zone	In or near combat zone.		By analogy with the principles of GC IV, Art. 15
Time-frame	Unlimited	Unlimited	Limited (as agreed by the parties)	Unlimited	Unlimited	By analogy with the principles of GC IV, Art. 15
Rules				Open to occupation	No military personnel, equipment or operations	

				No military personnel, equipment or operations		
Markings	Red cross or red crescent emblem	Oblique red bands on white ground	To be agreed upon by the parties	To be agreed upon by the parties	To be agreed upon by the parties	Red cross emblem (if under the authority of the ICRC)

9.4.1.4 Other types of protected zone

1. Humanitarian corridors

While not explicitly mentioned in IHL, a humanitarian corridor is a type of demilitarized zone intended to allow the safe transit of humanitarian aid. [46]

The main differences between a humanitarian corridor and a demilitarized zone in the traditional sense are that a humanitarian corridor is of short duration and that it covers a limited area.

2. Open relief centres

These are temporary places that displaced persons on the move can freely enter or leave and in which they can obtain essential relief assistance in a relatively safe environment.

Open relief centres were established during the non-international armed conflict in Sri Lanka between 1990 and 1993. The parties to the conflict respected these centres and maintained their civilian character. UNHCR was party to the agreement governing them.

Open relief centres come close to the neutralized zones defined in IHL.

9.4.1.5 Objectives of protected zones covered by IHL

The common objective of these various zones is to enhance the protection of civilians by providing shelter from the dangers arising out of armed conflict or by placing certain areas beyond the reach of hostilities. Civilians, wounded fighters and civilian objects are protected under IHL wherever they are, but an agreement by all parties that clearly makes certain places "out of bounds" can enhance the protection of protected persons and objects.

9.4.1.6 Why must protected zones covered by IHL be demilitarized?

- Protected zones are protected by IHL because they are demilitarized.

- Because they contain no military threats or objectives, and because they can exist only if the parties recognize them through agreement, such zones can reinforce the protection that IHL already affords to civilians and other persons who are not taking part in hostilities.

- If these pre-conditions are not met, the zone created does not enjoy the status of a protected zone under IHL. Nonetheless, any civilians and sick or wounded combatants inside it would still enjoy the protection to which they are always entitled under IHL.

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[46] For examples of practice regarding humanitarian corridors, see CIHL, Practice relating to Rule 55. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter17_rule55.

9.4.2 Examples

Although it has been possible to create protected zones under IHL since 1949, this has rarely happened. The ICRC has recorded those cases in which protected zones were created; its mandated role under the Geneva Conventions includes helping to establish and run such zones under IHL.

Protected zones of the types provided for in the Geneva Conventions, 1949–2016[47]

Date	Place	Type of protected zone
1971	Dhaka, Bangladesh	Neutralized zone
1974	Nicosia, Cyprus	Neutralized zone
1975	Saigon, Viet Nam	Neutralized zone
1979	Managua, Nicaragua	Neutralized zone
1980	N'Djamena, Chad	Neutralized zone
1982	Port Stanley, Falkland Islands (Malvinas)	Neutralized zone
1983	Tripoli, Lebanon	Neutralized zone
1990	Jaffna, Sri Lanka	Neutralized zone
1991	Dubrovnik, Croatia	Hospital zone
1991	Osijek, Croatia	Hospital zone
1994	Chiapas, Mexico	Neutralized zone

9.5 Zones not defined in IHL

In the post-Cold War era, a new type of internationally sanctioned zone emerged, known variously as a "safe zone", "safe area" or "safe haven". The first instance of such zones was the "safe havens" established in northern Iraq to protect the Kurdish population. These were established after the UN Security Council passed Resolution 688 (1991). Subsequently, the UN Security Council imposed "safe areas" in Bosnia-Herzegovina (1993), as did the French-led Operation Turquoise in Rwanda (1994). More recently, in May 2017, Russia, Turkey, and Iran signed a joint agreement regarding the creation of four "de-escalation" zones within Syria.

These new types of zone differ significantly from the protected zones defined in IHL:

- They do not require the consent of the parties to the conflict.

- They are not required to have an exclusively civilian character.

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[47] Source: *Commentary on the First Geneva Convention*, Art. 23, ICRC (ed.), Cambridge 2016, p. 674. https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=064AD4047D38D443C1257F7A0054F2E2. The country names shown are those used today and in some cases differ from the names used at the time.

9.5.1 What arguments are put forward for the establishment of safe zones?

Safe zones are often proposed in conflicts where:

- there is a high degree of disregard for IHL, with considerable humanitarian impact;
- a political solution is still far off.

They are often regarded as a measure of last resort to protect civilians.

9.5.2 Who is likely to propose a safe zone?

- **Third governments** unwilling to intervene in the conflict but under pressure from public opinion and media in their countries to "do something". They may depict safe zones as a non-military, non-political means of limiting the theatre of war and protecting civilians from hostilities.
- **Neighbouring governments.** If large numbers of refugees are arriving in their countries, they may look for "alternative options" in the refugees' country of origin. This was, for example, said to be the motive behind UN Security Council Resolution 688 (1991), following which safe havens were established in northern Iraq, and the Turkish government's call for safe zones in northern Syria.

9.5.3 What are the main dilemmas related to safe zones?

a) A safe zone requires agreement or a credible military deterrent

The vast majority of the so-called "safe" zones have been anything but. The most dramatic example was the fall of Srebrenica in 1995. The report of the UN Secretary-General on that incident perfectly illustrates the main dilemmas:

> "Protected zones and safe areas can have a role in protecting civilians in armed conflict, but it is clear that either they must be demilitarized and established by the agreement of the belligerents, as in the case of the "protected zones" and "safe havens" recognized by international humanitarian law, or they must be truly safe areas fully defended by a credible military deterrent. The two concepts are absolutely distinct and must not be confused. […]
>
> The safe areas were established by the Security Council without the consent of the parties and without the provision of any credible military deterrent. They were neither protected areas nor safe havens in the sense of international humanitarian law, nor safe areas in any militarily meaningful sense."[48]

b) Safe zones may lead to extension or escalation of the conflict

If a safe zone is enforced through military presence, the military or security forces present would probably become a (new) party to the armed conflict and thus make the safe zone a legitimate target under IHL. Furthermore, armed actors could try to establish a base inside the

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[48] *Report of the Secretary-General pursuant to General Assembly resolution 53/35, The fall of Srebrenica.* UN Doc. A/54/549, 1999, para. 499 (p. 107).
http://undocs.org/en/A/54/549.

zone, using it to launch or plan attacks on parties outside. In both instances, the civilian character of the zone would be undermined, and the zone would risk becoming a target for attack.

c) *Some civilians will be outside the safe zone*

Logistics and cost will limit the area that a zone can cover. Some civilians will inevitably find themselves outside the scope of the protection the zone could have offered them, and may be unable to reach it.

Safe zones may increase attacks on unprotected civilians outside such zones.

9.6   Protection risks to consider

Before supporting the creation of a so-called "safe zone", or operating within it, humanitarians must undertake a thorough analysis of the new or increased protection risks the zone may pose to affected populations. Even when a protected zone is created under the auspices of IHL, some of these risks may exist.

The dilemma	
If a "safe" zone is undefended or insufficiently defended	**If a "safe" zone is defended by military means**
It may become a deadly trap, putting people at severe risk.	It may attract attacks or lead to an escalation of hostilities

A non-exhaustive list of potential risks includes the following:

- Unless all parties to the conflict agree on the safe zone, it may become a target for military attacks, putting civilians and humanitarian workers at severe risk.

- Parties to a conflict may use the creation of a safe zone to pursue their own political and military objectives, especially when no agreement is reached, and parties do not wish to reach one.

- It is difficult to establish clear structures or mechanisms to guarantee the safety of civilians in a safe zone, especially if no agreement between the parties is in place and/or the conflict involves a multitude of non-State armed groups and proxies.

- Experience in conflicts such as Bosnia-Herzegovina, Sri Lanka and Syria shows that safe zones do not prevent armed actors from committing serious violations of IHL and human rights, and may even facilitate the commission of such violations.

- The measures necessary to enforce a safe zone may compromise its civilian character.

- If a safe zone is not demilitarized it may attract attacks, banditry or crime.

- If a safe zone is not demilitarized, fighters/combatants may withdraw into it and hide, before taking up arms again. This would endanger the civilian character of the zone. It may also increase the risk of recruitment and forced recruitment of displaced persons, and the diversion of humanitarian aid.

- Enforcing a safe zone can create an illusion of security among civilians, which may prompt them to take greater risks.

- Declaring a zone "safe" may be understood to mean that other areas of the country are "unsafe" in the sense that, outside the designated safe zones, it is permissible to conduct attacks without restriction. Creating such an assumption could undermine the fundamental rule of IHL that all civilians are to be respected and protected under all circumstances.

- Safe zones increase the risk of border closures and restrictions on the freedom of movement of civilians.

- Safe zones can be used to keep people in their countries of origin, reject them at the border and deny them access to asylum.

9.7 Considerations for UNHCR engagement with safe zones

If the decision to create a safe zone or protected area is taken, UNHCR should attempt to minimize the protection risks for displaced populations, both those who are inside and those who are outside the zone.

Among other measures, we should advocate for the following:

- The right to seek and enjoy asylum is not compromised.

- Borders remain open, to ensure that people in need of international protection are not confined to potentially dangerous areas inside their country of origin.

- The principle of *non-refoulement* is respected. Refugees must not be forced to return, or coerced into doing so, and internally displaced persons must not be obliged to return to their places of origin.

- No restrictions are imposed on the freedom of movement of people fleeing violence.

- People living in a safe zone have full access to basic services, and to humanitarian assistance when needed. On the other hand, moving to a safe zone should not be a precondition for accessing basic services or humanitarian assistance.

- All parties to the conflict give the necessary assurances for the safety of the affected populations and of humanitarian personnel, and UNHCR is given full access – including guarantees for the security of its staff – to undertake protection and assistance work.

- There is close coordination with other humanitarian actors, and joint monitoring and assessment are undertaken.

Lastly, UNHCR must formulate clear messages on the role, mandate and limitations of humanitarian action, if any, inside such areas. Humanitarian action is no substitute for a political process in providing safety and achieving solutions, nor can it guarantee protection against violations of IHL.

> **Get informed**
>
> - Read the legal background to IHL-based protected zones in How Does Law Protect in War?, Vol. I, Chapter 13, "Zones created to protect war victims against the effects of hostilities".
>
> - Follow the links on the page above to any IHL instruments or entries in the Customary International Humanitarian Law database that could be relevant to your work.
>
> - Find out about protected zones or safe areas in the country where you are working and what the legal basis is for them. What is working well in those zones? What problems arise, and how could they be addressed?
>
> - Refer to the relevant sources under "Further references and guidance" below.

9.8 Further references and guidance

1. Sources of international law

- CIHL Rule 35, Hospital and Safety Zones and Neutralized Zones.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35.

- CIHL Rule 36, Demilitarized Zones.
  https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule36.

- *Commentary on the First Geneva Convention,* ICRC, 2016, Art. 23.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=064AD4047D38D443C1257F7A0054F2E2.

- *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949*, especially Art. 23 on hospital zones.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=4825657B0C7E6BF0C12563CD002D6B0B&action=openDocument.

- *Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949*, especially Art. 14 on hospital zones and Art. 15 on neutralized zones.
  https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument.

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Annexe 2 – Overview of key IHL provisions relevant to UNHCR's work

In reading the table below, bear in mind that the following IHL instruments apply only during an **international** armed conflict:

- GC IV – with the exception of Art. 3, which stipulates that in case of a non-international armed conflict, "persons taking no active part in the hostilities […] shall in all circumstances be treated humanely" and prohibits a number of acts against them.

- AP I – with the exception of Art. 1(2), which states that "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

AP II, on the other hand, applies exclusively to **non-international** armed conflicts.

Topic	IHL instrument	Article, etc.	Content	Link	Comments
Assistance	AP II	Art. 18(2)	"If the civilian population is suffering undue hardship […] relief actions […] shall be undertaken […]"	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C97EBA985969303BC12563CD0051E90B	
Civilian, definition	AP I	Art. 50	Civilians are all those who are not combatants	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E1F8F99C4C3F8FE4C12563CD0051DC8A	AP I, Art. 50 refers to GC III Art. 4A and AP I, Art. 43, which list those persons who are not civilians.
Civilian, definition	CIHL	Rule 5	"Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians."	https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule5	
Civilians, forced movement	AP II	Art. 17	Prohibition of forced movement	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D1E091435298F4C2C12563CD0051E8F5	
Civilians, protection	AP I	Art. 51	Stipulates that civilians shall be protected against dangers from military operations and shall not be attacked. Prohibits (and defines) indiscriminate attacks, reprisals and the use of civilians as human shields.	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563CD0051DC9E	

Topic	IHL instrument	Article, etc.	Content	Link	Comments
Civilians, protection	AP II	Art. 13	Stipulates that civilians shall be protected against dangers from military operations and shall not be attacked. Also prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population".	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A366465E238B1934C12563CD0051E8A0	
Humanitarian personnel	AP I	Art. 71	Establishes the right of "relief personnel" and "relief actions" to exist and stipulates that they must be "respected and protected". Requires parties to assist relief personnel and to restrict their activities or movements only in case of "imperative military necessity".	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B67EDFC718BF74E3C12563CD0051DFC4	
Humanitarian personnel, protection	CIHL	Rule 31	"Humanitarian relief personnel must be respected and protected."	https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule	
Protected person, definition	GC IV	Art. 4	"Persons protected by the Convention are those who […] find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=78EB50EAD6EE7AA1C12563CD0051B9D4	
Protected person, humane treatment	GC IV	Art. 27	"Protected persons […] shall at all times be humanely treated"	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FFCB180D4E99CB26C12563CD0051BBD9	

Topic	IHL instrument	Article, etc.	Content	Link	Comments
Refugees, protected person status	AP I	Art. 73	Stipulates that refugees are "protected persons" within the meaning of GC IV, Parts I and III.	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=319C8D02127ADAD2C12563CD0051E004	
Women, special protection	GC IV	Art. 27	"Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."	https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FFCB180D4E99CB26C12563CD0051BBD9	

Abbreviations used in the overview of IHL provisions

Abbreviation	Meaning	Comments
GC	Geneva Convention	
AP	Additional Protocol	Officially "Protocol … Additional to the Geneva Conventions of 12 August 1949"
CIHL	ICRC Customary International Humanitarian Law Database	