

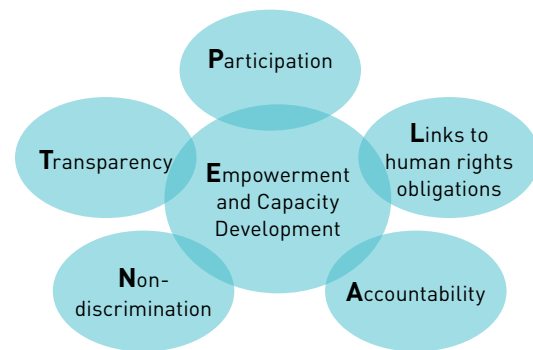
This Technical Note (TN) is part of a series of thematic TNs that aims to support Sida staff and partners to apply the human rights-based approach (HRBA). The TN begins with short introductions to the HRBA and its application in situations of armed conflict. It then introduces International Humanitarian Law (IHL) as a relevant legal framework and briefly explains the classification of armed conflict as it relates to IHL. The TN goes on to highlight the complementarity between International Human Rights Law (IHRL) and IHL. Finally, it provides a short description of protection activities as key in reinforcing people's human rights in times of armed conflict.

ABOUT HRBA AND PLANET

The HRBA builds on the norms and principles outlined in the Universal Declaration of Human Rights, and the subsequent legally binding UN treaties, which forms the basis for all development cooperation. Application of the HRBA contributes to effective development cooperation processes and sustainable development outcomes. It challenges unequal power relations and social exclusion that deny people their human rights and often keep them in poverty and oppression. Sweden is committed to the HRBA through the Swedish Policy for Global Development, the UN common understanding of a HRBA and the EU Consensus on Development agreement including EU guidelines on the promotion of compliance with international humanitarian law (see EU Tool Box on HRBA in the section on Further Reading).

The HRBA places people living in poverty and oppression (rights-holders) at the centre. It is about:

- Empowering rights-holders to enable them to take action to address their situation and to claim their rights individually and collectively.
- Developing capacities and interests of duty-bearers to fulfil their obligations to respect, protect and fulfil human rights.



PLANET is a tool that guides staff on the practical application of the HRBA. It has six elements:

Participation = Do all stakeholders engage actively, in a way which allows rights-holders to contribute meaningfully and influence processes and outcomes?

Links to human rights obligations = How are relevant human rights standards and recommendations from human rights mechanisms identified and used to advance processes, outcomes and objectives?

Accountability = Who are the duty-bearers on various levels, and do they have sufficient capacity and interest to be accountable to rights-holders?

Non-discrimination = Are rights-holders and the root causes of their lack of human rights identified and taken into account, particularly those most subjected to discrimination, marginalisation and vulnerability?

Empowerment and capacity development = How does the intervention contribute to the empowerment of rights-holders to claim their rights, as well as capacity development of duty-bearers to uphold their responsibilities and of other relevant stakeholders to contribute to positive outcomes?

Transparency = What measures are put in place to ensure that all stakeholders are able to access relevant information and knowledge regarding the contribution?

This TN will not provide guidance to all aspects of the PLANET tool as IHL is not a specific thematic area. Rather, IHL is a set of standards and recommendations applicable during situations of state-based armed conflict. Therefore, this TN foremost relates

to Links to human rights and IHL obligations (L). The TN includes some information and references for further reading about Accountability (A) for IHL, since it differs from accountability for IHRL. It also briefly explains aspects of IHRL that are specific to working in contexts of armed conflict. The main purpose of the paper is to provide information that is important to know about when applying HRBA in contexts of conflict. How to apply HRBA as such is not the topic of this TN but can be found in the different TNs about applying HRBA to different thematic areas.

Learn more about HRBA and PLANET at [Human Rights Based Approach – rättighetsperspektiv | Sida](#) and [Thematic method support – human-rights-based-approach \(sida.se\)](#)

HRBA IN SITUATIONS OF ARMED CONFLICT

International law has been continuously developing over most of the last century to help fulfil the principle that all human beings are born free and equal in dignity and rights, are entitled to human rights without discrimination, and should be protected in times of conflict, as in times of peace. International and regional legal instruments have expanded to cover gaps in existing protections that, today, people should be able to avail themselves of protections wherever they find themselves. In situations of armed conflict it is therefore essential to look beyond International Human Rights Law (IHRL) when applying a HRBA.

Widespread IHL violations occur during conflicts. They include the deliberate attacks on civilians or civilian facilities, such as schools and hospitals; conflict related sexual violence; unlawful recruitment and use of children in hostilities; the indiscriminate use of explosive weapons; forced displacements of civilians; looting; and attacks on humanitarian workers, etc. Most of today's armed conflicts involve Armed Non-State Actors (ANSAs) either fighting government forces or other ANSAs. As a result, it is key to understand what legal obligations these groups have under IHL.

States – duty-bearers – are required to take action to ensure respect for and application of both bodies of law. However, in contexts of armed conflict it is not uncommon that states impose limitations to human rights in the name of 'national security'. In the face of such moves, it is important to uphold the well-established norm that "the protection offered by human rights conventions does not cease in case of armed

conflict". In addition, it is of relevance to understand states' obligations under IHL as well as the complementarity between IHRL and IHL in times of conflict.

INTERNATIONAL HUMANITARIAN LAW OR "THE LAWS OF WAR"

IHL is applicable only in armed conflict as opposed to IHRL.² IHL is binding to states and also imposes duties on ANSAs, thereby governing relations between parties to the conflict.³

IHL is a compromise between the two underlying principles of humanity and of military necessity. These two principles shape all its rules. Broadly speaking, IHL consists of two parts that draw their names from the cities where they were initially codified:

1. HAGUE LAW: regulating how hostilities are conducted thus regulating the means and methods of warfare; and
2. GENEVA LAW: ensuring the protection of non-combatants and those who no longer take part in hostilities, including the wounded and sick.

The following elements of Hague Law are key in contexts of armed conflict and may be useful when exploring the links to IHRL and IHL obligations (the L of the PLANET tool): and entry points for holding duty-bearers accountable (A) to rights-holders:

- *Principle of distinction* between civilians and combatants and between civilian objects and military objects forbids the targeting of civilians and civilian infrastructure and the use of indiscriminate weapons.
- *Principle of proportionality* requires that the effects of the means and methods of warfare used must not cause harm to civilians disproportionate to the military advantage sought.
- *Principle of military necessity* dictates that the only legitimate military purpose is to weaken the military capacity of other parties to the conflict.

1 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, I.C.J. Reports 2004, para. 106. <https://www.icj-cij.org/en/case/131>

2 It is important to remember that IHL is only applicable in situations of non-international armed conflict and international armed conflict that satisfy organization requirements and reach certain level of intensity and duration. Riots, isolated acts of violence, protests, and single acts of terrorism do not constitute an armed conflict under IHL. See ICRC (2012), [Internal conflicts or other situations of violence – what is the difference for victims?](#), December 10.

3 International Humanitarian Law applies to all the signatory States of the Geneva Conventions of 1949 and their Additional Protocols of 1977 but it also binds non-state actors: private citizens, armed groups, national liberation movements, and international organizations. See ICRC (2012), [Internal conflicts or other situations of violence – what is the difference for victims?](#), December 10.

These principles, and associated concepts, such as the *prohibition of superfluous injury and unnecessary suffering*, have been critical in banning weapons or challenging the use of weapons that are indiscriminate or cruel. This has a long history, from the prohibition of exploding bullets in 1868 to the Anti-personnel Landmines Convention more than a hundred years later. However, the ongoing need for action on this subject is evidenced by the fact that, despite the outlawing of chemical and biological weapons following the First World War, the use of such weapons in places like Syria⁴ is very much a live issue today.

Geneva Law consists of the 1949 Geneva Conventions and their 1977 Additional Protocols and include protections related to wounded and sick in the armed forces on land (GC I) and at sea (GC II), to prisoners of war (GC III), and to civilians (GC IV). They regulate international armed conflict, situations of occupation, and non-international armed conflict (GC common Article 3 and Additional Protocol II).⁵ See links under Further Reading to read the actual documents. Common Article 1 of the Geneva Conventions also establishes responsibilities on the part of Third States⁶ for enforcing compliance with IHL, and this can be an important avenue for accountability. Third States thus have an obligation to take measures to ensure respect for IHL and to not knowingly aid or assist another state in the commission of an IHL violation. This may invoke either state responsibility or individual criminal responsibility.

IHL regulates behaviour in conflict (*jus in bello*) and is not concerned with the legal justification for engaging in armed conflict (*jus ad bellum*). This means that an armed conflict whose lawfulness is contested is nonetheless still regulated by IHL. Moreover, violations of the rules by one party to a conflict does not justify violations by another.

Geneva Call – engaging ANSAs on IHL

Sida’s partner Geneva Call works in situations of armed conflict or armed violence where there are one or more armed ANSAs fighting government armed forces or ANSAs, whose practices may have a direct negative impact on the protection of civilians.

ANSAs cannot become parties to international treaties and may therefore not feel bound to respect IHL. Sometimes they are simply not aware of their obligations under IHL. The objective of this humanitarian engagement is to encourage ANSAs to adapt their policies and practices to bring them into line with IHL, to ultimately better protect civilians from the negative effects of armed conflict. Geneva Call focuses on a number of different thematic areas, e.g. child protection, gender and displacement, and uses a wide range of targeted awareness-raising and training tools in its engagement with ANSAs and communities.

Geneva Calls has also developed Deeds of Commitment that can be signed by ANSAs. In 2021, 110 Deeds of Commitment had been signed by 75 ANSAs in over 15 countries since 2002. See [Geneva Call](#), May 25, 2021.

Geneva Call receives core support under the global Strategy for Sustainable Peace

IHL also establishes an obligation for parties to the conflict to permit the provision of assistance by neutral and impartial actors. This is the basis upon which humanitarian organisations, including the United Nations, Red Cross and Red Crescent Movement, and Non-Governmental Organisations (NGOs) negotiate access to provide assistance with both states and ANSAs. Despite this obligation and the reinforcement of the principle by UN General Assembly and Security Council resolutions, the negotiation of access to affected populations by humanitarian actors remains challenging. The ICRC is the mandated ‘guardian’ of IHL, but others have responsibilities for ensuring respect for its provisions.

Body of Law	International Human Rights Law	International Humanitarian Law
Applies	At all times	Only in situations of armed conflict
Binds	States	States and ANSAs
Governs	Relations between states and individuals	Relations between parties to the conflict
Mandated actor	Office of the UN High Commissioner for Human Rights (OHCHR) UNICEF (children)	ICRC

⁴ ‘West: Syria must answer 20 questions on its chemical weapons’ <https://apnews.com/article/business-middle-east-russia-france-syria-e88ff67968e4ac1462a6cba84a500d1>

⁵ For further details on the legal distinctions between non-international and international armed conflict, see Ricardo Garcia Vilanova/CRC, (2017), [When does IHL apply?](#), August 13.

⁶ Responsibility of Third States in Enforcing International Humanitarian Law <https://www.nrc.no/globalassets/pdf/legal-opinions/eo-common-article-1-ihl---boutruche---sassoli---8-nov-2016.pdf>

Raising awareness of IHL among parties to conflicts, other duty-bearers as well as within the international community, advancing the implementation of IHL in armed conflicts, and addressing IHL violations is critical in situations of armed conflicts. Many international and local organisations play a vital role in engaging local authorities and other actors, including ANSAs, on the rights of the affected population and their own obligations, to stop violations of IHL and demand accountability (A).

CLASSIFICATION OF ARMED CONFLICT IN RELATION TO IHL

The majority of contexts that Sida is active and supports development and humanitarian efforts in are affected by conflict, violence and/or fragility. Generally speaking, there are a variety of definitions of armed and violent conflict available. Many of these are relevant to Sida's work generally and to peace-building specifically. However, as mentioned above, IHL only applies during times of 'armed conflict' according to definitions used in IHL.⁷

IHL classifies armed conflicts as either International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC). The proper categorisation of an armed conflict is necessary to determine which set of rules apply to the conflict⁸ and has significant implications as for example humanitarian access and assistance is more detailed for IACs. This poses a challenge as the majority of contemporary conflicts are NIACs. The simple distinction between the two categories can also become difficult as in practice conflicts are more complex, for example by neighbouring states involving themselves directly or through proxies in NIACs.

It may also be challenging to identify when a situation of violence amounts to armed conflict. Qualification of a situation as one of armed conflict is also often contested by states and this is not left exclusively to the parties to the conflict, but is a complex, highly politicised process. The overlapping and complementary rules, norms and standards of IHRL and IHL help ensure that protection continues even when parties do not acknowledge the existence of an armed conflict. If you are interested to know if the context you

are working with classifies as an armed conflict in relation to IHL, the International Committee of the Red Cross (ICRC) provides useful information⁹.

COMPLEMENTARITY BETWEEN IHL AND IHRL

Both IHL and IHRL aim to protect the life, health and dignity of human beings. As mentioned above, states are required to take action to ensure respect for and application of both bodies of law. Derogation from human rights is limited, and some rights are non-derogable. This means that they cannot be suspended even in a state of emergency, which a government can declare in case of an armed conflict within its territory. These include the right to life; the prohibition of torture and inhuman punishment or treatment; the outlawing of slavery or servitude; principles of legality and non-retroactivity of the law; and the right to freedom of thought; conscience and religion. Importantly, states are duty-bearers and always have an obligation to:

- *respect* human rights by refraining from acts that would violate them;
- *protect* people's rights from being violated by others (for example, prevent corporations from violating the rights of people on their territory);
- *fulfil* human rights by taking proactive measures to ensure the enjoyment of human rights.

There are no provisions under IHL that allow states to waive its application; IHL must be respected in all circumstances. Geneva Law establishes a number of essential protections for affected populations which, while not human rights per se, are very similar in terms of their impact. There is thus considerable overlap between IHL protections and non-derogable rights under IHRL. When both legal frameworks apply to the same situation, the *lex specialis* principle dictates that the more specific rules govern over the more general (*lex generalis*)¹⁰.

The complementarity between these bodies of law ensures that people – rights-holders under IHRL – in situations of occupation or living in territory controlled by ANSAs are protected from discrimination and abuse and from being deprived of essential goods such as food, water and medical care, and are ensured their dignity, family rights, and freedom of conscience, thought and religion.

⁷ Peacebuilders often use wider definitions and other subcategories of armed conflict than the specific terms and usages found in IHL.

⁸ Rules that apply for an IAC are found mainly in the four Geneva Conventions and Additional Protocol I and those for a NIAC are found mainly in Article Three common to the four Geneva Conventions and Additional Protocol II. Situations of occupation are regulated by IHL, namely the Fourth Geneva Convention and Additional Protocol I.

⁹ [ICRC guidance on the Qualification of Armed Conflict](#).

¹⁰ For more information, see ICRC How Does Law Protect in War?: Lex Specialis, <https://casebook.icrc.org/glossary/lex-specialis>

Through the Rome Statute in 2002 the International Criminal Court (ICC) and the ICC Trust Fund for Victims (ICC TFV) were established. ICC investigates and, where warranted, tries individuals charged with the gravest crimes of concern: genocide, war crimes, crimes against humanity and the crime of aggression. ICC contributes to end impunity, and through international criminal justice ICC aims to hold those responsible accountable for their crimes and to help prevent these crimes from happening again. ICC complements national judiciaries.

Although not described further in this TN, International Refugee Law (IRL) protects and assists people who have crossed an international frontier. It is complementary to IHRL, and if the refugees are in an area of armed conflict, it also complements IHL. Please see the Further Reading section below. See also the TN on HRBA and Migration [Human Rights Based Approach and Migration \(sida.se\)](https://www.sida.se)

PROTECTION IN HUMANITARIAN ACTION AND DEVELOPMENT COOPERATION

Protection activities are important in reinforcing people's human rights in times of crisis including when caused by armed conflict. Protection is defined by the Interagency Standing Committee (IASC) as "... all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. International Human Rights Law (IHRL), International Humanitarian Law and International Refugee law (IRL)".

All humanitarian actors have a responsibility for protection, and some have a particular mandate, either under international law, like ICRC (IHL) and UNHCR (refugees), or through the humanitarian system, like UNICEF (children), IOM (Internally Displaced Persons and migrants), and UNFPA (gender-based violence). The IASC has outlined its commitment to the centrality of protection in conflict or disaster¹¹, and the Global Protection Cluster has developed guidance about what this looks like in practice.^{12,13}



Illustration by Diakonia International Humanitarian Law Centre.

Protection activities during armed conflict aim at obtaining full respect for the human rights of the individual in accordance with IHRL and IHL and are a key part of humanitarian assistance and are also relevant in development cooperation, within the thematic area of peaceful and inclusive societies as well as in other thematic areas. Actions to ensure protection may include:

- Engaging state and non-state actors, including ANSA:s, to fulfil human rights and respect the protection of people affected by armed conflict;
- Ensuring the participation of affected people and the transparency and accountability of all actors – including organisations providing neutral, impartial assistance – through effective community-based feedback and complaints mechanisms;
- Supporting actors that provide protection and monitor violations to address impunity for violations and increase accountability, as well as the coordination of humanitarian protection and assistance.

Activities in support of protection are also found in long-term development cooperation, especially in relation to peacebuilding. At Sida, the thematic area of Peaceful and Inclusive Societies includes protection of Children Affected by Armed Conflict as well as the Women Peace and Security agenda which includes protection aspects (among other things). Furthermore

11 IASC Commitment to the Centrality of Protection https://interagency-standingcommittee.org/system/files/2020-11/IASC_Policy_on_Protection_in_Humanitarian_Action%2C_2016.pdf

12 Guidance on Centrality of Protection <https://www.globalprotectioncluster.org/tools-and-guidance/protection-cluster-coordination-toolbox/communication-package-on-protection/the-centrality-of-protection-what-it-means-in-practice/>

13 Please see the Sida document IHL and Protection in Humanitarian Situations under the Further Reading section for more information.

Diakonia – Using IHL to increase the protection of civilians in armed conflict of

The Diakonia International Humanitarian Law Centre was established in 2017 to promote respect for the laws of war and to increase the protection of people in conflict zones. The global Center builds on the success of Diakonia's IHL Resource Center (IHLRC) in Jerusalem, which was founded in 2004.

Through research, legal analysis, capacity building, and advocacy, the Centre raises awareness and knowledge about IHL in order to increase accountability, address a culture of impunity and improve the respect for and adherence to IHL. Diakonia works with humanitarian organisations, governments and state armed forces, armed groups, civil society, and other actors in promotion of IHL.

Sida has supported this work from the start.

the thematic area of peaceful and inclusive societies includes work to reduce violence, curb the proliferation of Small Arms and Light Weapons and reduce the threats from mines. All of which are relevant to protection.

In addition to direct assistance, neutral and impartial development and humanitarian actors play an important role in reinforcing the protective environment by engaging with parties to the conflict, advocating for the safety and protection of the affected population, call for accountability for violations of IHL and sometimes simply by being present. Protective presence can in some contexts contribute to the decrease of manifestations of violence and deter attacks on civilians. Protective presence raises international awareness of what happens on the ground in an armed conflict and is an opportunity to advocate for the duty-bearers to cease violence and for the international community to ensure compliance with IHL. It contributes to the monitoring and documentation of violations of IHRL and IHL, which is key in order to address prevailing impunity and lack of accountability.

FURTHER READING

The EU Tool Box on the Human Rights Based Approach (see Annex 3 for principles in relation to conflict contexts), [swd-2021-human-right-based-approach_en.pdf \(europa.eu\)](https://www.europa.europa.eu/press-communications/infobox/infobox_12112021_en.pdf)

1949 Geneva Conventions, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

The Additional Protocols to the Geneva Conventions, <https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm>

ICRC role on ensuring respect for IHL, <https://blogs.icrc.org/ilot/2017/08/14/what-is-the-icrc-s-role-in-developing-and-ensuring-respect-for-ihl/>

Protection for Children recruited by Armed Forces, <https://www.unicef.org/protection/children-recruited-by-armed-forces>

1951 Refugee Convention and 1967 Additional Protocol <https://www.unhcr.org/uk/1951-refugee-convention.html>

For more information on protection mainstreaming, visit the Global Protection Cluster, <https://www.globalprotectioncluster.org/themes/protection-mainstreaming/>

Sida document: IHL and Protection in Humanitarian Situations – Humanitarian Operational Guidance [Humanitarian Operational Guidance – IHL and Protection.pdf \(sida.se\)](https://www.sida.se/~/media/Sida/2021/04/Humanitarian-Operational-Guidance-IHL-and-Protection.pdf)

Diakonia (2021): Easy Guide to International Humanitarian Law, [Easy-Guide-to-IHL.pdf \(triggerfish.cloud\)](https://www.triggerfish.cloud/easy-guide-to-ihl.pdf)