

Questions

Frequently Asked

Questions on

International Humanitarian,
Human Rights
and Refugee Law

in the context
of armed conflict



Inter-Agency Standing Committee
Task Force on Humanitarian Action
and Human Rights 2004

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Introduction

This document has been prepared by the IASC Task Force (until 2003, known as the IASC Reference Group) on Humanitarian Action and Human Rights as a complement to *Growing the Sheltering Tree*, a collection of field practices in promoting and protecting rights by humanitarian actors issued by the Task Force in September 2002.

The text seeks to respond to questions commonly asked by humanitarian workers on the legal framework that serves as a basis for assistance and protection activities in situations of armed conflict. It sets out the relevant international instruments and offers examples of their provisions and application by responding to the following questions:

- 1** What is the international legal framework applicable in armed conflicts?
- 2** What are the sources of international law?
- 3** What is “protection”?
- 4** Does international law provide specific protection for women or children?
- 5** What is international humanitarian law?
- 6** What instruments make up international humanitarian law?
- 7** What is the difference between the Geneva Conventions and their Additional Protocols in terms of application?
- 8** What are the basic rules of international humanitarian law?
- 9** What kinds of acts are prohibited in armed conflicts?

- 10 What is international human rights law?
- 11 What is the Universal Declaration of Human Rights?
- 12 What are the major international human rights instruments?
- 13 Is human rights law also applicable in armed conflicts?
- 14 What kinds of human rights are commonly violated in an armed conflict?
- 15 What is international refugee law?
- 16 What are the instruments of international refugee law?
- 17 Who is a "refugee"?
- 18 How is refugee status determined when thousands of civilians are fleeing an armed conflict?
- 19 Are internally displaced persons protected by international law?
- 20 Do non-state actors have obligations under international humanitarian, human rights and refugee law?
- 21 What are the rules on humanitarian assistance in armed conflict?
- 22 What is the protection under international law of humanitarian and other personnel?
- 23 How do the three bodies of law apply in practice?
- 24 How are the three bodies of law implemented?
...nationally? ...internationally? ...regionally?

- 25** What are "war crimes" and "crimes against humanity"?
- 26** How do war crimes and crimes against humanity differ from "genocide"?
- 27** How are individuals held accountable for crimes under international law?

The list of questions above is an attempt to respond to frequently asked questions on the applicable international law; it does not purport to be a comprehensive statement of the law. The Task Force welcomes any suggestion you may have for additional questions that should be included in future updates of this document. For additional information, see the last page in this book.

Frequently Asked Questions

Question 1:

What is the international legal framework applicable in armed conflicts?

The international legal framework applicable in armed conflict is primarily composed of three interrelated and mutually reinforcing sets of rules:

- a International Humanitarian Law;**
- b International Human Rights Law, and;**
- c International Refugee Law.**

While international humanitarian law regulates the protection of persons and the conduct of hostilities in armed conflict, international human rights law imposes standards that governments must abide by in their treatment of persons both in peacetime and war. International refugee law focuses specifically on protecting persons who have fled their country due to persecution or other serious violations of human rights or armed conflict.

Humanitarian Law Persons affected by armed conflict

Human Rights Law All human beings

Refugee Law Refugees

Although the formulation of the respective rules and their applicability might differ, the common objective of these legal regimes is to protect human life, health and dignity. Underlying all three bodies of law is the principle of non-discrimination in the enjoyment of rights, which prohibits states from distinguishing between persons based on grounds such as:

Race,
Colour,
Sex,
Language,
Religion,
Political or Other Opinion,
National or Social Origin,
Property,
Birth or Other Status.

Question **2**:

What are the sources of international law?

Treaties and rules of customary international law are two of the most important sources of international law.

Treaties are the main source of international law. They are written, legally binding instruments, setting out the rights and obligations of two (**bilateral**) or more states (**multilateral**) on a specific issue. Treaties are also commonly designated as: “**conventions**”, “**covenants**” or “**protocols**”.

Examples of multilateral treaties: The UN Charter, the 1949 Geneva Conventions and their 1977 Additional Protocols, the 1966 International Covenants on Civil and Political and on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child, the 1951 Convention Relating to the Status of Refugees.

Customary international law is also an important source of international law. It consists of unwritten rules, created by practice that is adhered to by states out of a sense of legal obligation (*opinio juris*). Customary rules are binding on all states, regardless of whether the state has explicitly consented to be bound by the rule involved or whether the rule may also be found in treaty form.

Examples of customary norms: prohibition of slavery, prohibition of torture, prohibition of genocide, prohibition of indiscriminate attacks against the civilian population, prohibition of “**refoulement**”, etc.

“**Soft**” international law is an important body of non-treaty standards usually adopted within the framework of the United Nations system (declarations, bodies of principles, standard minimum rules, etc.). Although not legally binding, soft law serves to interpret and elaborate treaty provisions and to develop new standards in emerging areas of international law.

Question **3**:

What is "protection"?

Protection is first and foremost the duty of states. It is because states are sometimes unwilling or unable to comply with their obligations under international law that humanitarian and human rights organizations are needed to provide protection.

There exists no universal definition of "**protection**" For the purposes of this document, the Task Force will rely on a definition that was agreed to by a number of key humanitarian and human rights specialists who took part in an ICRC-sponsored series of workshops on protection between 1996-2000. According to this definition:

"The concept of protection encompasses 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. Human rights and humanitarian organizations must conduct these activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender)".

There is also no uniform answer as to what constitutes a protection activity. A possible response defines a protection activity as any activity which:

"prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects (responsive action); restores people's dignity and ensures adequate living conditions through reparation, restitution and rehabilitation (remedial action); fosters an environment conducive to respect for the rights of individuals in accordance with the relevant bodies of law (environment building)".

Examples of protection activities would be:

Responsive action:

Monitoring, investigation, reporting, evacuation, tracing;

Remedial action:

Family-reunification, resettlement, rehabilitation, promoting transitional justice, including justice for victims;

Environment building:

Promotion of legislative reform, capacity building, training and dissemination.

It must be stressed that the three groups of protection activities are not hierarchical. They are interdependent and will often be carried out simultaneously.

Question 4:

Does international law provide specific protection for women or children?

Women and children enjoy the protection of all the rules of international humanitarian law, IHL human rights law and refugee law. IHL contains a number of rules aimed specifically at protecting women or children in war. International human rights law has specific conventions on the rights of women or children (The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC)). There is also recognition under international refugee soft law of the specific protection needs of displaced women or children (e.g. UNHCR Executive Committee conclusions).

These standards provide, among other things, that women shall be especially protected against threats to their physical safety, rape, sexual exploitation, and discrimination. Standards specific to children include protection from all forms of violence and forcible recruitment. Education is a basic right protected under all three branches law.

Question 5:

What is international humanitarian law?

International humanitarian law is comprised of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. Its principal aims are to protect persons and property that are, or may be, affected by the conflict - e.g. civilians and prisoners of war and civilian objects - and to limit the right of the parties to a conflict to use methods and means of warfare of their choice.

It is primarily the duty of states to respect and ensure respect for international humanitarian law. Other actors also play a role in IHL implementation - in particular the International Committee of the Red Cross (ICRC), which has been mandated by the international community with specific protection and assistance tasks in times of armed conflict. The United Nations and NGOs are also increasingly relying on IHL to better advocate on behalf of civilians affected by armed conflict.

IHL, which is applicable only in times of armed conflict, does not deal with the legality of use of force by states or other actors, but applies whenever an armed conflict breaks out regardless of the underlying reasons. The legality of use of force in international relations is regulated by the UN Charter and by customary international law.

Example

War is raging between Country Y and Country X. Humanitarian agency representatives are travelling across the frontlines to provide aid and protection to the civilian population. The parties to the conflict are prohibited from attacking or deliberately harming civilians, including humanitarian personnel. Attacks must be restricted to military objectives only.

Question 6:

What instruments make up international humanitarian law?

IHL consists of a large number of international treaties that have been developed over the past 150 years, starting with the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The bulk of modern IHL is, however, composed of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977:

- **Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.**
Geneva, 12 August 1949.

- **Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.**
Geneva, 12 August 1949.
- **Convention (III) relative to the Treatment of Prisoners of War.**
Geneva, 12 August 1949.
- **Convention (IV) relative to the Protection of Civilian Persons in Time of War.**
Geneva, 12 August 1949.
- **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.
- **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.

Question 7:

What is the difference between the Geneva Conventions and their Additional Protocols in terms of application?

The main difference is the type of conflict involved. While the four Geneva Conventions and Additional Protocol I apply to international armed conflicts, that is, wars involving two or more states, Article 3 common to all the four Conventions and Protocol II lay down the rules that must be observed by parties to a non-international armed conflict (civil war).

International Armed Conflicts

- The four Geneva Conventions
- Protocol I of 1977 Additional to the Geneva Conventions

Non-international Armed Conflicts

- Article 3 common to the Geneva Conventions
- Protocol II of 1977 Additional to the Geneva Conventions

The Geneva Conventions of 1949

If there is an armed conflict between two or more states, then the Geneva Conventions, which have been ratified by 191 states, are automatically applicable. It is immaterial whether or not a declaration of war has been made or whether the parties to the conflict have recognized that there is a state of war. The only thing required for humanitarian law to become applicable is the fact of an international armed conflict.

Example:

Iran - Iraq;

Ethiopia - Eritrea;

USA and other coalition states - Afghanistan.

Additional Protocol I of 1977

This protocol, which applies in international armed conflicts, further expands the categories of protected persons and contains rules on the conduct of hostilities (e.g. prohibition of indiscriminate attacks against civilians and civilian objects, principle of proportionality, etc.) The Protocol also expands the definition of international armed conflict to include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of self-determination. Protocol I has been ratified by 161 states.

Example:

NATO - the Federal Republic of Yugoslavia

(in addition to the Geneva Conventions, Protocol I was applicable to 15 out of 19 NATO members).

Article 3 common to the Geneva Conventions

This article, which is found in all four Geneva Conventions, is said to constitute a "mini-Convention" in itself. It lays down the rules that must be respected by all parties to an international armed conflict, as well as all parties to an internal armed conflict, whether the warring parties are government forces fighting with insurgents or rebel groups fighting among themselves.

It provides that persons taking no active part in the fighting, or no longer taking part in the fighting, must in all circumstances be treated humanely and without discrimination.

It specifically prohibits the following acts against such persons: 1) violence to life and person, in particular murder, mutilation, cruel treatment and torture, 2) the taking of hostages, 3) outrages upon personal dignity, in particular humiliating and degrading treatment, and 4) the passing of sentences and the carrying out of executions without a judgement pronounced by a regularly constituted court providing all judicial guarantees.

Example:

Taliban - Northern Alliance; Sri Lanka.

Additional Protocol II of 1977

This Protocol elaborates the provisions of article 3 common to the Geneva Conventions and thus also applies to internal armed conflicts. However, it requires that the internal armed conflict be one in which dissident armed forces or other organized armed groups, under responsible command and exercising control over a part of a country's territory and government forces are fighting against each other within the border of a state. The Protocol has been ratified by 156 states.

Example:

The Russian Federation (Chechnya), Sierra Leone.

Question 8:

What are the basic rules of international humanitarian law?

They may be summed up as follows:

The lives, physical and moral integrity of persons not taking, or no longer taking an active part in hostilities must be respected. They must in all circumstances be protected and treated humanely without discrimination.

It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.

The wounded and sick must be collected and cared for by the party holding them. Protection also covers medical personnel,

establishments, transports and equipment. The Red Cross or Red Crescent emblems must also be respected.

The lives, dignity, personal rights and convictions of captured combatants and civilians under the authority of an adverse party must be respected. They must be protected against all acts of violence and reprisals.

Everyone has the right to benefit from fundamental judicial guarantees. No one shall be responsible for an act he or she has not committed. No one shall be subjected to torture, corporal punishment or cruel and degrading treatment.

The parties to a conflict do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such, nor civilian persons shall be the object of attack. Attacks shall be directed solely at military objectives.

Question 9:

What kind of acts are prohibited in armed conflicts?

International humanitarian law aims to limit the effects of violence on civilians by regulating the way in which the parties to an armed conflict conduct military operations. IHL thus prohibits making the civilian population or individual civilians the object of attack, starvation of civilians as a method of warfare or the launching of an indiscriminate attack affecting the civilian population or civilian objects. Apart from rules on the conduct of hostilities, IHL also seeks to protect civilians who find themselves in enemy hands during armed conflict. It specifically prohibits murder, torture, mutilation, rape, corporal punishment, collective punishments, the taking of hostages or the denial of fair trial rights to civilians subject to criminal process. All of the acts listed above, and many others, are considered war crimes.

Question **10**:

What is international human rights law?

Human rights are founded on respect for the dignity and worth of each person. International human rights law is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. Human rights law therefore places an obligation on states to act in a particular way and prohibits states from engaging in specific activities. An important function of human rights law is to enable individuals and groups to take positive action to redress violations against their internationally recognized rights.

Human rights treaties have been developed both internationally, usually under the auspices of the United Nations, or regionally (Organization of American States (OAS), Organization of African Unity (OAU, now the African Union), and the Council of Europe). There is also a vast body of international human rights soft law.

Question **11**:

What is the Universal Declaration of Human Rights?

It is the first human rights instrument developed by the United Nations, adopted in 1948 by the UN General Assembly. Most of its provisions today constitute customary international law.

The Universal Declaration consists of a Preamble and 30 articles, setting out the main civil, cultural, economic, political and social rights to which all persons are entitled, without discrimination of any kind. The rights protected include the right to life, liberty and security of person, freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to a fair trial, the right to seek and enjoy asylum, the right to an adequate standard of living, to education, to work, etc.

Question **12**:

What are the major international human rights instruments?

The 1948 Universal Declaration of Human Rights is a non-treaty text that has over time been complemented by a series of legally binding international treaties. Among them are:

- **The Convention on the Elimination of All Forms of Racial Discrimination of 1965**
- **The International Covenant on Civil and Political Rights of 1966**
- **The International Covenant on Economic, Social and Cultural Rights of 1966**
- **The Convention on the Elimination of All Forms of Discrimination against Women of 1979**
- **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984**
- **The Convention on the Rights of the Child of 1989**
- **The Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families of 1990**

Question **13**:

Is human rights law also applicable in armed conflicts?

International human rights law is valid in all circumstances and at all times, including situations of armed conflict. However, in emergency situations, states parties to certain international treaties may exceptionally derogate (temporarily suspend their obligations) from certain civil and political rights under strictly defined circumstances. There are nevertheless certain rights that can never be suspended - not even in war.

The International Covenant on Civil and Political Rights provides that the following rights may never be derogated from:

- **The right to life;**
- **The prohibition of torture or cruel, inhuman or degrading; treatment or punishment;**
- **The prohibition of slavery and servitude;**
- **The prohibition of retroactive application of criminal law;**
- **The right to freedom of thought, conscience and religion.**

Most human rights treaties, among them the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, do not provide for the possibility of derogation at all.

Question **14**:

What kinds of human rights are commonly violated in an armed conflict?

Typically, an armed conflict will result in the violation of a wide range of human rights of civilians. The right to life will certainly be violated, as well as the right to liberty and security of person and often, the right not to be tortured. Probably there will be grave abuse of economic, social and cultural rights, for instance in the context of conflict-induced humanitarian emergency. What is more, armed conflict is often caused by and entails widespread discrimination – whether on racial, ethnic, religious or other grounds. Very often women and children will suffer disproportionately and will be specifically targeted for abuse and attack.

Question **15**:

What is international refugee law?

International refugee law has been developed to protect and assist individuals who have crossed an international border and are at risk or victims of persecution in their country of origin. International refugee law prohibits the forcible return of a refugee to his or her country of origin (the principle of non-refoulement) and provides basic human rights guarantees during their stay in the country of asylum.

The non-refoulement principle of international refugee law has received such wide recognition and application that it has reached the status of customary law and is, therefore, binding even on states not party to the 1951 Convention relating to the Status of Refugees.

Question **16**:

What are the instruments of international refugee law?

International refugee law encompasses international legal instruments and international customary law that identify refugees in need of international protection and the rights to which they are entitled. The main international instruments are:

- **The 1951 Convention relating to the Status of Refugees;**
- **The 1967 Protocol relating to the Status of Refugees;**
- **The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.**

As with international human rights law, there is also an important body of soft international refugee law (UNHCR Executive Committee Conclusions). The full range of international humanitarian and human rights law is equally applicable to refugees.

Question **17**:

Who is a "refugee"?

Not everyone crossing an international border qualifies for refugee status. According to Article 1 of the 1951 Convention relating to the Status of Refugees:

A refugee is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group or political opinion, is outside the country of his origin and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Complementary legal regimes exist at the regional level. In Africa, according to the 1969 OAU Convention, persons crossing a border for reasons related to the indiscriminate effects of armed conflict or events seriously disturbing public order are also considered refugees. A similar definition is also found in the Cartagena Declaration of 1984, which applies in Latin America.

Refugee protection does not extend to persons who have committed a crime against peace, a war crime or a crime against humanity; a serious non-political crime outside the country of refuge; or acts contrary to the purposes and principles of the United Nations. While, in such situations, refugee law might not be applicable, the protection provided by human rights and humanitarian law remains in place.

Example

Individuals who took part in a genocide, and hence fled to neighbouring countries, may not qualify for refugee status according to the 1951 Convention. However, they still remain under the protection of international humanitarian and human rights law, e.g. it is prohibited to return a suspected war-criminal or a genocidaire to their country of origin or any other country where they may face torture. The principle of non-refoulement continues to apply as a matter of human rights law (Convention against Torture).

Question **18**:

How is refugee status determined when thousands of civilians are fleeing an armed conflict?

In situations of armed conflict, there are usually massive movements of civilians across international borders, hampering the ability to conduct case-by-case interviews and individual status determination. In those cases, the fleeing civilians might be given protection on a prima facie basis, which means that they are assumed to have fled a situation where civilians are targeted and persecuted en masse.

Question **19**:

Are internally displaced persons protected by international law?

Along with domestic law, international humanitarian law (in cases of internal armed conflict), and human rights law are applicable to persons who flee from one area to another within the borders of their own country and who thus become internally displaced persons (IDPs). In an effort to strengthen protection and draw attention to the plight of IDPs, in 1998 the Representative of the UN Secretary-General on Internally Displaced Persons formulated the “Guiding Principles on Internal Displacement”. While not in themselves legally binding, the Principles draw extensively on legally binding provisions of international humanitarian and human rights law and, by analogy, on the basic principles of refugee law.

Guiding Principles on Internal Displacement

Principle 5:

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6:

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

Principle 8:

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

International Humanitarian Law

Article 3 common to the Geneva Conventions:

an impartial humanitarian body, such as the ICRC, may offer its services to the parties to the conflict.

**Article 17
Additional Protocol II,**
prohibits displacement of civilians unless security or imperative military reasons so demand.

International Human Rights Law

**Article 12
The International Covenant
on Civil and Political Rights,**
stipulates freedom of movement, which implies a right to remain, to leave and to return.

Question **20**:

Do non-state actors have obligations under international humanitarian, human rights and refugee law?

The rules of international humanitarian law are binding on both states that have ratified the relevant treaties and on non-state actors (rebel and other armed groups) in a non-international armed conflict. It is obvious that international humanitarian law would be rendered meaningless unless it was applicable to all the parties to an internal armed conflict. Individuals belonging to armed groups - as well as government officials - can be held internationally criminally responsible for war crimes committed in non-international armed conflict.

Human rights law is, primarily, designed to protect individuals from state abuse and is generally not considered to bind non-state actors. There is, however, a growing body of opinion according to which non-state actors - particularly if they exercise government-like functions in a given territory - may also be expected to

respect human rights. Under international refugee law an individual may be recognized as a refugee on the ground that s/he has a well-founded fear of persecution by a non-state actor.

Members of non-state armed groups- along with government officials - may also be held individually criminally responsible in situations where violations committed constitute crimes under international law (genocide, crimes against humanity). Practice in a number of countries is also increasingly showing that non-state actors, such as rebel groups, can be successfully persuaded to comply with human rights treaties such as the Convention on the Rights of the Child (e.g. on issues such as child soldiers)

Question **21**:

What are the rules on humanitarian assistance in armed conflict?

Humanitarian assistance in situations of armed conflict is primarily regulated by international humanitarian law. In international armed conflict, the basic rule is that a state must accept relief actions for the civilian population of any territory under its control (other than occupied territory, mentioned below) when the population is not adequately supplied and when relief, which is humanitarian and impartial in nature, is available. Refusing a relief action is thus not a matter of discretion and agreement could be withheld only for exceptional reasons. In any event, offers of relief shall not be regarded as interference in the armed conflict or as unfriendly acts.

The basic rule with respect to occupied territory is that the occupying power has the duty of ensuring the food and medical supplies of the population and that it should bring in the necessary foodstuffs, medicine and other articles if the resources of the occupied territory are inadequate. If, however, the whole or part of the population in an occupied territory is inadequately supplied, the occupying power must agree to relief schemes and must facilitate them by all means at its disposal.

Similar rules apply in non-international armed conflicts as well. Humanitarian agencies may offer their services, and the state involved must, in principle, allow humanitarian assistance.

Humanitarian Law

Fourth Geneva Convention, Articles 23, 55, 59, 60-63:

Passage of relief supplies in blockades; obligations of Occupying Power to provide itself for civilians or to permit humanitarian assistance to population of occupied territory.

Additional Protocol I, Article 70:

Relief actions in favour of the entire civilian population may be conducted with the consent of the parties to the conflict. Offers of such relief shall not be considered interference in the armed conflict or an unfriendly act.

Additional Protocol I, Article 54:

Starvation of civilians as a method of warfare is prohibited.

Article 3 common to the Geneva Conventions:

an impartial humanitarian body, such as the ICRC, may offer its services to the parties to the conflict.

Additional Protocol II, Article 18:

If the civilian population is suffering hardship, relief actions shall be undertaken subject to the consent of the party concerned.

Article 14:

Starvation of civilians as a method of combat is prohibited.

Articles 4 and 7:

protection of children, the wounded and sick.

Human Rights Law

International Covenant on Economic, Social and Cultural Rights, Articles 11 and 12:

The right to an adequate standard of living, including adequate food, clothing and housing; the right to health.

International Covenant on Civil and Political Rights, Article 6:

The right to life.

Convention on the Rights of the Child, Articles 6, 22 and 38:

The right to survival and development, including food, medical treatment and shelter.

Refugee Law

Convention Relating to the Status of Refugees, Article 35:

The Contracting States undertake to cooperate with UNHCR in the exercise of its functions, and shall facilitate its duty of supervising the application of the Convention.

This article guarantees access to ensure that all rights that are afforded to refugees according to the Convention are respected.

Like other humanitarian organizations, UNHCR provides assistance and protection on the basis of international humanitarian and human rights law.

Question **22**:

What is the protection under international law of humanitarian and other personnel?

International humanitarian law contains numerous provisions obliging parties to an armed conflict to respect and protect humanitarian personnel and to enable them to assist and protect victims of armed conflict. The parties also have an obligation to protect relief consignments and facilitate their rapid distribution.

While the exact principles operationally guiding the work of humanitarian agencies are determined by each individual organization, it is also a general IHL rule that assistance missions must be humanitarian and impartial in character and be conducted on a non-discriminatory basis ("**without any adverse distinction**").

Under the Statute of the International Criminal Court (ICC – see below) it is a war crime to intentionally attack "**personnel, installations, material, units or vehicles involved in a humanitarian assistance**" mission in both international and non-international armed conflict. In addition to the protection enjoyed by all humanitarian personnel under international humanitarian law, UN humanitarian workers also enjoy legal protection under the 1994 Convention on the Safety of United Nations and Associated Personnel.

Question **23**:

How do the three bodies of law relate to each other in practice?

Contemporary armed conflicts and complex humanitarian emergencies typically involve serious violations of the legal framework outlined above. In fact, lack of compliance by states and non-state actors of their obligations and responsibilities, respectively, under international law is the primary reason that humanitarian agencies are called on to assist and protect victims

of armed conflict. The following is an example of events with which humanitarian workers may be confronted and the corresponding provisions of international law:

Example

A rebel movement and government forces are fighting against each other within the borders of Country X. The practice of the government forces is to attack villages in which they suspect the presence of rebels. In the course of these attacks, the army murders some of the villagers and arrests - and then tortures - others. For its part, the rebel group frequently orders the displacement of the civilian population of villages they capture. As the result of these events, some villagers from the affected areas flee to another area within Country X, while others attempt to seek refuge across the border in Country Y, which intermittently seals the border. The internally displaced persons (IDPs) and refugees find themselves without home and means of survival.

Example of applicable law

Humanitarian Law

Article 3 common to the 1949 Geneva Conventions prohibits

I (a) Violence to life and person, in particular murder of all kinds, torture or cruel treatment.

Additional Protocol II of 1977 prohibits

4 (a) Violence to the life, health and physical or mental well-being of persons, in particular murder, torture or cruel treatment. Collective punishments are also prohibited.

Human Rights Law

The International Covenant on Civil and Political Rights 1966

6 (1) Every human being has the inherent right to life. No one shall be arbitrarily deprived of his or her life.

7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Refugee Law

The Convention Relating to the Status of Refugees of 1951

33 (1) No contracting party shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

Humanitarian Law

13 (2) The civilian population as such, as well as individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

17 (1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.

Human Rights Law

9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

12 (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The International Covenant on Economic, Social and Cultural Rights of 1966

11 The State Parties to the Convention recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.

Refugee Law

The 1951 Convention highlights certain fundamental rights for refugees that are derived from human rights, such as rights relating to work (Art. 17-19), housing (Art. 21) education (Art. 23) and relief (Art. 23)

Question **24**:

How are the three bodies of law implemented?

...nationally?

The duty to implement international humanitarian, human rights and refugee law lies first and foremost with states.

States have a duty to take a number of legal and practical measures - both in peacetime and in armed conflict situations - aimed at ensuring full compliance with international humanitarian law. States must, for example, adopt national legislation implementing their treaty obligations, disseminate the rules of international humanitarian law, train military and other personnel to apply them, translate the relevant texts and have legal advisers guiding them in the application of norms. They also have a duty to search for persons suspected of having committed or having ordered the commission of “grave breaches” of the Four Geneva Conventions and of Additional Protocol I, and to bring such persons either before their own courts or to hand them over to another state for trial. They should also enable their courts to exercise universal jurisdiction over other serious violations of the laws and customs of war, i.e. war crimes, whether committed in international or non-international armed conflict.

Human rights law also contains provisions obliging states to implement its rules, whether immediately or progressively. States must adopt a variety of legislative, administrative, judicial and other measures that may be necessary to give effect to the rights provided for in the various treaties. This includes providing for a remedy before domestic courts for violations of specific rights and ensuring that the remedy is effective. The fact that a state has a federal or devolved system of government does not affect a state's obligation to implement human rights law.

Neither the 1951 Refugee Convention nor its 1967 Protocol contain any provisions requiring legislative incorporation or any other formal implementing step. The choice of means in implementing their provisions is left to the States themselves: they may select legislative incorporation, administrative regulation, informal and ad hoc procedures, or a combination of all of these.

...internationally?

As regards international implementation, states have a collective responsibility under Article 1 common to the Geneva Conventions “to respect and to ensure respect for” the Conventions “in all circumstances”. The supervisory system also comprises the Protecting Power mechanism, the enquiry procedure and the International Fact-Finding Commission envisaged in Article 90 of Additional Protocol I. Pursuant to that Protocol, states parties also undertake to act in cooperation with the United Nations in situations of serious violations of the Protocol or of the Conventions.

The ICRC is a key component of the international supervisory system by virtue of the mandate entrusted to it under the Geneva Conventions and their Additional Protocols, as well as under the Statutes of the International Red Cross and Red Crescent Movement. These texts specifically entrust or allow the ICRC to protect and assist victims of war, to encourage states to implement their IHL obligations, and to promote and develop IHL.

The international human rights law supervisory system consists of bodies established under the United Nations Charter or other international treaties. The principal UN Charter-based organ is the UN Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights. The Commission frequently appoints independent experts (often called “Special Rapporteurs”) to investigate and report on either country-specific human rights problems or on thematic human rights issues (e.g. torture).

Each of the six main international human rights treaties also provide for the establishment of committees of independent experts charged with monitoring their implementation. State parties to these treaties are obliged to report regularly to the treaty bodies. Some committees are also empowered to examine individual complaints against governments for violations of the rights protected.

A key role is played by the Office of the High Commissioner for Human Rights which has primary United Nations responsibility

for the overall protection and promotion of human rights. The Office aims to enhance the effectiveness of the UN's human rights machinery, to increase UN system-wide implementation and coordination of human rights, to build national, regional and international capacity to promote and protect human rights and to disseminate human rights texts, as well as other human rights information.

Other UN agencies, such as UNICEF, UNDP, etc., also significantly contribute to the promotion of international human rights, humanitarian and refugee law in their field activities around the world, and do so in partnership with NGOs.

Refugee law is implemented in a different manner to international human rights and international humanitarian law. No international tribunal exists to conduct enquiries or to adjudicate claims that refugees' rights under the 1951 Convention and 1967 Protocol have been violated. However, under its Statute and Article 35 of the 1951 Convention, UNHCR is responsible for supervising states and advising them on compliance with their treaty obligations. States also have an obligation under the Convention to cooperate with UNHCR in the exercise of its supervisory function. These texts also entrust UNHCR to provide international protection to refugees, and to seek permanent solutions for their problems.

....regionally?

The work of regional human rights courts and commissions established under the main regional human rights treaties in Europe, the Americas and Africa is a distinct feature of international human rights law.

The European system is based on the European Convention for the Protection of Human Rights and Fundamental Freedoms and its main supervisory body, the European Court of Human Rights. The main texts of the inter-American human rights system are the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, with the Inter-American Commission and Inter-American Court of Human Rights as the main supervisory organs. The African Charter on Human and Peoples' Rights has the African Commission on Human Rights as its main supervisory body. A treaty establishing an African

human rights court has not yet come into force.

As evidenced in their jurisprudence, regional human rights mechanisms are increasingly examining violations of international humanitarian law.

Question **25**:

What are "war crimes" and "crimes against humanity"?

War crimes are acts prohibited in either international or internal armed conflict for which a person may be held individually criminally responsible. The term includes both "grave breaches" of the Geneva Conventions of 1949 and of Protocol I of 1977 and other serious violations of the laws and customs of war, committed in either international or non-international armed conflict. A non-exhaustive list of such acts is found in the 1998 Rome Statute for a permanent International Criminal Court (ICC). The Court will have jurisdiction over individuals for war crimes, crimes against humanity and genocide committed after July 1, 2002, when its Statute came into force.

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

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

Example:

Shelling of Bosnian cities during the Balkan conflict.

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

Under the ICC Statute, crimes against humanity include:

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

Example:

Enforced disappearances in Latin America in the 1970s.

Question **26**:

How do war crimes and crimes against humanity differ from "genocide"?

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

- 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.**

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

Example:

The genocide perpetrated against ethnic Tutsis in Rwanda in 1994.

Question **27**:

How are individuals held accountable for crimes under international law?

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

As opposed to the implementation mechanisms outlined in question 24 above, the primary aim of which is to ensure state compliance with international law obligations, there are also international judicial mechanisms for holding individuals accountable for violations that constitute crimes under international law when states are unable or unwilling to do so.

In 1993 and 1994, the UN Security Council established ad hoc international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). The tribunals are authorized to prosecute and try persons suspected of having committed crimes

under international law in the conflicts that had taken place in those two regions of the world. All states are obliged to cooperate with the Tribunals in the performance of their mandate, including by arresting and surrendering suspects who might be found in their territory. The two tribunals are expected to complete their tasks within the next several years.

Based on the need for a permanent judicial mechanism, the international community decided in 1998 to establish, by treaty, the world's first permanent International Criminal Court. As already mentioned, the ICC will have jurisdiction only over individuals suspected of having committed genocide, war crimes and crimes against humanity (as well as aggression once a definition of that crime has been agreed to). The Court became operational in 2003, after the election of its judges and prosecutor. The ICC will be able to investigate cases upon the referral of a situation by the UN Security Council, by referral of a state party or by the Prosecutor, but will be complementary to national judicial systems. This means that the Court will be able to exercise jurisdiction only when a domestic criminal justice system is unable or unwilling to do so.

Since the adoption of the ICC treaty, another type of international court has been created - the Special Court for Sierra Leone, mandated to prosecute and try persons responsible for crimes committed during the armed conflict in that country. The Court was created by special Agreement between the UN and the Government of Sierra Leone.

For more information, please see the following web-sites :

IASC: <http://www.humanitarianinfo.org/iasc>

IASC Taskforce on Humanitarian Action and Human Rights – Resources on Protecting Rights through Humanitarian Action

<http://www.icva.ch/cgi-bin/browse.pl?doc=HRHA>

For a direct link to international human rights law see:

<http://www.ohchr.org>

For a direct link to international humanitarian law see:

<http://www.icrc.org>

For a direct link to international refugee law see:

<http://www.unhcr.ch>

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Questions

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