

Summary Map: The Legal Frameworks at a Glance

What is the purpose and application?	What are the key sources of law?	What are key provisions?	What are the implications for humanitarian assistance?
International humanitarian law (IHL)			
<ul style="list-style-type: none"> ■ Seeks to protect persons and property/objects that are (or may be) affected by armed conflict and limits the rights of parties to a conflict to use methods and means of warfare of their choice ■ Operates only in situations of armed conflict ■ Applies to all parties to a conflict. 	<ul style="list-style-type: none"> ■ Key treaties: <ul style="list-style-type: none"> – Hague Convention, 1907 – Four Geneva Conventions, 1949 (GCs) – Additional Protocols I and II, 1977 (API and APII) ■ International customary law: outlined/indicated in 2005 ICRC study on customary IHL ■ General principles of law: <i>jus cogens</i> norms, such as prohibitions against genocide and torture ■ Judicial decisions and teachings: various international court decisions and advisory opinions, in particular those of the International Court of Justice. 	<ul style="list-style-type: none"> ■ Principles of distinction; necessity and proportionality; humane treatment; non-discrimination ■ Obligates an occupying power to ensure that populations in the occupied territory have necessities (e.g. food, medical and health supplies and services) ■ In other international and internal armed conflicts, relief actions ‘shall be undertaken’ but with the consent of state parties. There is debate about whether consent is required in all circumstances. ■ Prohibits deliberate starvation of civilians as a method of warfare ■ Obligates states to ensure the respect and protection of relief workers ■ Rules on access to affected populations and delivery of humanitarian assistance in international armed conflicts (e.g. entry of personnel, customs clearance, taxation of relief) ■ Rules concerning vulnerable groups: entail both non-discrimination and positive measures. 	<p>It is the parties to the conflict who have the legal obligation and primary responsibility to provide humanitarian assistance to civilians under their control. IHL allows, however, for the possibility (with certain conditions) of relief actions to be undertaken by humanitarian organisations.</p> <p>In situations of occupation, the obligation of occupying authorities to facilitate and cooperate with relief schemes is unconditional. Despite the consent requirement in other contexts, there is growing recognition (although still contested) that, as long as there is humanitarian need and organisations and relief actions operate in accordance with humanitarian principles, governments cannot arbitrarily refuse assistance. This runs alongside arguments to recognise a right to humanitarian assistance.</p> <p>Specific provisions on access, delivery of assistance and protection of humanitarian workers aim to reduce ‘red tape’ and allow for the speedy delivery of relief to protected persons.</p>

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International human rights law (IHRL)

<ul style="list-style-type: none"> ■ Outlines the obligations and duties of states to respect, to protect and to fulfil human rights of those persons under their jurisdiction. It enables individuals and groups to claim certain behaviour or benefits from a state authority ■ Operates in peacetime and during armed conflict, crisis and disaster settings ■ Applies to states, but provides individuals with certain direct entitlements ■ Guidelines/regional treaties for internally displaced persons (IDPs) provide protection and assistance to IDPs. 	<ul style="list-style-type: none"> ■ Key treaties: <ul style="list-style-type: none"> – International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights, 1966 (ICESCR) – Convention on the Prevention and Punishment of Genocide, 1948 – Other international treaties, such as the Committee on the Elimination of Discrimination against Women (CEDAW), 1979, and regional treaties, such as regional IDP conventions ■ International customary law ■ General principles of law: <i>jus cogens</i> norms ■ Judicial decisions and teachings: various decisions by human rights bodies (treaty implementing bodies); the International Court of Justice ■ Supplementary non-binding soft law, such as the Guiding Principles on Internal Displacement, 1998; guidelines and resolutions from the UN Security Council and the General Assembly on how to increase the protection of women during times of armed conflict e.g. UN Security Council Resolutions 1325, 1888 and 1889. 	<ul style="list-style-type: none"> ■ Political rights protected include rights to life, freedom from torture, freedom of movement, etc. ■ Economic and social rights protected include rights to food, housing, clothing, health, livelihood, an adequate standard of living etc. ■ No explicit reference to international humanitarian assistance ■ Allows states to derogate from certain civil and political rights in times of public emergency which threatens the nation (including war), following certain procedures. There are certain rights though (e.g. the right to life) from which no derogation is allowed. 	<p>IHRL does not explicitly address the issue of access to humanitarian assistance. Others emphasise that the right to life could indicate a minimal right to assistance; and that the various economic and social rights guaranteed create the legal space for individuals to claim the right to humanitarian assistance. This would have corresponding obligations on the part of states to provide such assistance.</p>
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International refugee law

<ul style="list-style-type: none"> ■ Provides protection and assistance to individuals who have crossed an international border and are at risk or victims of persecution in their country of origin. Does not apply to IDPs ■ Operates in peacetime and during armed conflict ■ Applies to states. 	<ul style="list-style-type: none"> ■ Key treaty: Convention on the Status of Refugees, 1951 ■ International customary law ■ General principles of law ■ Judicial decisions and teachings. 	<ul style="list-style-type: none"> ■ Defines a 'refugee' as someone externally displaced through a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' (1951 Convention). ■ Allows for concurrent application of other instruments granting refugees rights and benefits ■ Individuals who have engaged in certain violations of IHL may not be entitled to refugee protection. 	<p>Where a victim of armed conflict is forced to leave his or her country due to violations of IHL or IHRL, such violations could trigger refugee protection.</p> <p>IHL may in some instances afford more protection and assistance to refugees in internal armed conflicts as it binds all organised armed groups, versus solely states.</p> <p>IHRL has been important to developing protection for IDPs.</p>
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International criminal law (ICL)

<ul style="list-style-type: none"> ■ Prohibits certain categories of conduct viewed as serious violations (primarily war crimes, crimes against humanity and genocide) and seeks to hold accountable individual perpetrators of such conduct ■ Criminal responsibility is individualised. Superiors can under certain conditions be held responsible for actions of their subordinates under 'command responsibility' ■ States have primary responsibility to prosecute crimes. 	<ul style="list-style-type: none"> ■ Treaties: The statutes of international/hybrid criminal courts grant jurisdiction over war crimes (serious IHL violations), crimes against humanity and genocide. ■ Geneva conventions and API: Obligates state parties to investigate persons accused of carrying out or ordering grave breaches of IHL ■ International customary law ■ General principles of law ■ Judicial decisions and teachings: Court decisions are not simply declaratory of the law, but are important in its development and in some cases its establishment. 	<ul style="list-style-type: none"> ■ Individuals can be held accountable for grave breaches of the GCs and serious violations of common Article 3 of the GCs ■ The ICC Statute expands the list of war crimes under international armed conflict. It also extends individual accountability to war crimes in internal armed conflicts ■ Serious violations of the laws and customs applicable in armed conflict includes intentionally directing attacks against personnel, vehicles, structures and materials involved in humanitarian assistance (that are entitled to civilian protection). 	<p>Private individuals can be held criminally liable for attacks against humanitarian personnel and supplies.</p>
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International disaster response laws, rules and principles (IDRL)

<ul style="list-style-type: none"> ■ Aimed at improving the international humanitarian framework covering humanitarian assistance to populations in the context of natural disasters ■ Applies to states and non-state actors. 	<ul style="list-style-type: none"> ■ Treaties: international, regional and bilateral treaties on specific sectors (e.g. health, transport), technical assistance, mutual assistance and agreements regulating humanitarian relief between the state parties ■ Non-binding UN resolutions ■ Non-binding 'Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance', 2007 ■ International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters. 	<ul style="list-style-type: none"> ■ UN General Assembly Resolutions emphasise that sovereignty is a key feature of international disaster assistance ■ The affected state has primary responsibility for all aspects of humanitarian assistance within its territory (initiation, organisation, coordination and implementation) ■ International assistance should be provided with the state's consent. 	<p>The emphasis is on the 'importance' rather than the 'right' of humanitarian assistance in disaster contexts.</p> <p>Regulatory problems in the delivery of humanitarian assistance are exacerbated in disaster contexts due to the absence of an established comprehensive legal framework and an undeveloped coordination mechanism.</p>
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