



Foreign, Commonwealth
& Development Office



Ministry
of Defence

Conflict, Hunger and International Humanitarian Law

A Practitioner's Legal Handbook



On the cover: A soldier with 1 Mechanised Brigade (1MECH) patrols through a cornfield on Operation Daas Zeer Zamin in Helmand, Afghanistan (Ministry of Defence)

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Foreword by the Parliamentary Under Secretary of State for Foreign, Commonwealth and Development Affairs and the Parliamentary Under Secretary of State for the Armed Forces

Lord Collins of Highbury



Luke Pollard MP



As Ministers at the Foreign, Commonwealth & Development Office (FCDO) and the Ministry of Defence (MoD), we are delighted to introduce *Conflict, Hunger and International Humanitarian Law: A Practitioner's Legal Handbook*.

The United Kingdom's National Committee on International Humanitarian Law (IHL) has led on the production of this Handbook. The purpose of the Committee is to bring together representatives of relevant Government Departments and the Armed Forces, together with the British Red Cross, to promote the relevance and significance of IHL, and to support its effective implementation by the UK. One of the principal roles of the Committee is to encourage the dissemination of IHL to the UK Armed Forces, government officials and civil society.

The UN's Food and Agriculture Organization and World Food Programme predict that, in 2025, in 17 countries where food insecurity is primarily driven by conflict, 175 million people will face a deterioration in their food security. In such contexts, women, children, the elderly, people with disabilities and marginalised groups suffer more.

The root causes of food insecurity are complex. In armed conflict, factors that contribute to food insecurity are not always violations of IHL. However, when parties to armed conflicts do comply with their legal obligations, this can significantly reduce the impact of conflict on food security.

As we launch this Handbook, Sudan is at risk of the worst famine of modern times, with over nine million people facing emergency or famine conditions; there is a risk of famine throughout Gaza; and scores of other conflict-affected populations face emergency levels of food insecurity. IHL compliance by parties to conflict is needed more than ever.

The Handbook presents the rules of IHL that contribute to avoiding and addressing food insecurity in situations of armed conflict. An understanding of the law promotes better compliance, contributing to the UK's broader efforts to prevent and mitigate acute food insecurity and famine. Aimed primarily at practitioners within the UK, and their counterparts in national and international organisations, we have sought to make the material accessible and of practical use.

As a reference text, the Handbook reflects the UK's view on the law, and attempts to clarify areas of uncertainty. The legal analysis is accompanied by guidance and recommendations on possible additional actions. Whilst the guidance and recommendations do not create new legal obligations, we hope that they may be of practical use in minimising food insecurity, both now and in the future. It is also our hope that the Handbook will prove to be accessible to non-legal practitioners and, to facilitate this, we have included case studies which illustrate how the law applies in practice.

We are grateful to the members of the UK National Committee on IHL for their work on this Handbook, including officials from the Foreign, Commonwealth & Development Office and the Ministry of Defence. In addition, the British Red Cross deserves special thanks for assisting with the production of this publication in its capacity as an auxiliary to the UK Government in the humanitarian field.

April 2025

Introduction

FOOD INSECURITY AND ARMED CONFLICT

The drivers of acute food insecurity are complex, often involving multiple and interrelated factors arising from armed conflict and insecurity, economic shocks and weather extremes. Conflict and insecurity impact food production as well as distribution and access to land, food and water. Extreme weather events like droughts and floods, often resulting from climate change, can lead to crop and livestock losses. Food prices often rise in times of conflict and extreme weather events: many poor and vulnerable households, especially in low-income countries, reduce their food consumption when food prices increase. Displacement is both a driver and a consequence of food insecurity: people forced to flee their homes lose access to their livelihoods (including safe access to food, water and other necessities) while also facing major barriers to income, humanitarian aid, healthcare, and other essential services. Conflict can also make addressing malnutrition and disease resulting from acute food insecurity extremely difficult, particularly when access to therapeutic feeding centres is curtailed, humanitarian assistance is impeded, or water and sanitation infrastructure is not operating.

According to the Global Report on Food Crises,¹ in 2023 282 million people experienced high levels of acute food insecurity. Conflict was the primary driver in twenty contexts, where 134.5 million people faced high levels of acute food insecurity, including the Central African Republic, the Democratic Republic of the Congo, Myanmar, Nigeria, Gaza, Sudan and Yemen.

In recent years, conflict has become a predominant factor causing food insecurity. Conflict can drive food insecurity in a number of ways: it can cause economic recession, drive up inflation, increase unemployment and disrupt the functioning of essential services, all of which negatively impact the availability of and access to food. More directly, food stocks may be looted or destroyed, basic infrastructure necessary for its production and distribution damaged, and access to fields disrupted.

In certain situations, depriving civilians of food has been a deliberate strategy. Humanitarian assistance can provide a lifeline for people in need, but humanitarian action also faces numerous challenges: insecurity from ongoing hostilities or a breakdown in law and order; targeted attacks; bureaucratic and other impediments imposed by parties to the armed conflict; as well as complications arising from measures taken by third states, such as those posed by sanctions.

1 Global Network Against Food Crisis, *2024 Global Report on Food Crises*.

THE ROLE OF INTERNATIONAL HUMANITARIAN LAW IN AVOIDING, PREVENTING OR ADDRESSING FOOD INSECURITY

Since the UN Secretary-General's warning in 2017 that more than 20 million people were at risk of famine in Nigeria, Somalia, South Sudan and Yemen, important steps have been taken to advance the normative framework relevant to food insecurity in armed conflict. In April 2018 Switzerland presented a proposal to the Assembly of States Parties to the International Criminal Court (ICC) to amend the Statute of the ICC to include the starvation of civilians as a war crime in non-international armed conflicts.² The Assembly adopted the amendment in December 2019, and it has since been ratified by a number of states.³ The UK fully supported the Assembly's adoption of the amendment in December 2019.⁴

In parallel, in May 2018 the UN Security Council unanimously adopted a landmark thematic resolution on conflict-induced food insecurity. Among other things, Security Council resolution 2417 (2018) repeatedly referred to the importance of compliance by parties to armed conflict with relevant international law, and noted that unlawful denial of humanitarian access could constitute a threat to international peace and security.⁵

While not every factor that contributes to food insecurity in situations of armed conflict is a violation of international humanitarian law (IHL), compliance by parties to armed conflict with their obligations can play a key role in avoiding or at least reducing food insecurity. Although conduct that complies with IHL will generally have less of a negative impact on food security than conduct that violates IHL, it must be acknowledged that IHL, and in particular the rules regulating the conduct of hostilities, do not prohibit all harm to civilians or damage to civilian objects. For example, attacks that comply with IHL inasmuch as they are not directed at civilians or civilian objects nor indiscriminate, may nonetheless lead to loss of life and injury and damage to civilian property. In turn this may lead to displacement and loss of livelihoods for civilian populations, and, consequently, contribute to food insecurity.

A clear understanding of the law is an essential first step for respecting it, promoting compliance by parties to armed conflicts, and enhancing humanitarian access. It also plays a key role in making policy discussions more focused, and contributes to finding appropriate solutions before food insecurity has advanced to emergency levels.

2 ICC Assembly of States Parties, Report of the Working Group on Amendments, ICC-ASP/17/35, 29 November 2018, §§ 9-11; UN Doc C.N.399.2019.TREATIES-XVIII.10, Switzerland: Proposal of Amendment, 30 August 2019.

3 Amendment to Article 8 of the Rome Statute of the International Criminal Court (Intentionally Using Starvation of Civilians as a Method of Warfare), 6 December 2019, UN Doc C.N.394.2020.TREATIES-XVIII.10.g (Depositary Notification).

4 UK ratification of the amendment will require primary legislation.

5 Chapter 10 discusses SCR 2417 in greater detail.

THE AIM OF THE HANDBOOK

This Handbook aims to facilitate this understanding by presenting the key rules of IHL relevant to avoiding, minimising or addressing conflict-induced food insecurity. They provide a range of protections, that go well beyond the prohibition of starvation. Where appropriate, reference is also made to other bodies of international law.

Contemporary armed conflicts impact civilians' access to food in complex and multifaceted ways. The Handbook does not comprehensively address every way that armed conflict may contribute to food insecurity, nor every rule of IHL that can contribute to avoiding, preventing or addressing it, nor every mechanism that could contribute to promoting compliance with the law. Instead, it focuses on key issues raised by recent conflicts.

Whenever possible, the Handbook also makes suggestions of practical measures that could be taken to give effect to these rules—realising that at times these suggestions might go beyond what is required as a matter of law.

This Handbook reflects the position of the United Kingdom on existing law.

Where the Handbook refers to media or other reporting of factual circumstances, it does so to illustrate the application of the law or principle in question, and is not intended necessarily to endorse the account presented. Similarly, where sources are cited or extracts included in the text, it does not mean that the United Kingdom endorses all their contents.

The Handbook focuses on the rules relevant to conflict-induced food insecurity caused or exacerbated by conflict *in* the country or countries party to the armed conflict. However, as the conflict in Ukraine has shown, conflicts frequently have knock-on effects on food security well beyond the borders of the countries at war.

CONFLICT-INDUCED FOOD INSECURITY AND PARTICULAR GROUPS

In food crises, the most vulnerable or marginalised are always disproportionately affected. Gender, ethnicity, age and displacement status influence rates of malnutrition, morbidity and mortality, with infants, the elderly, displaced people and minority ethnic groups faring worse.

Children

Food crises are child protection crises. Children die at double the rate of adults. Above all, food crises significantly impact children, especially children under five, who are most vulnerable to malnutrition.

Wasting, also known as acute malnutrition, is the most visible and lethal type of malnutrition and turns common childhood illnesses such as diarrhoea and malaria into life-threatening conditions due to the detrimental impact of malnutrition on the immune system. Routine immunisations are frequently suspended during armed conflict, compounding the health risks. During the famine in Somalia from 2010 to 2012, half of the 260,000 people who died were under the age of five.

In addition to the immediate threat to life, the impact of malnutrition at this early stage in a child's development is often irreversible, and leads to lifelong health and developmental consequences.

Women

Women across the world play an essential role in food security and agrifood systems, ranging from farmers and unpaid family workers and carers to wage labourers, retailers and entrepreneurs. Gender inequality is closely intertwined with food insecurity. The UN has reported that as global food insecurity increases, women continue to go hungrier than men. A comparison of the food-insecurity status of men and women shows that the prevalence of food insecurity has remained consistently higher among women than among men, globally and in all regions, since data first became available in 2015, although the gender gap has narrowed in most regions in the last two years.⁶

The gaps widen for conflict-induced food insecurity. On average, in countries experiencing protracted armed conflict, the percentage of women likely to be in paid work falls to less than 20%, while the percentage of men remains stable at 66%.⁷ This highlights the impact of conflict on gender equality and on the possibilities for women to access food. Typically, the percentage of women-headed households also increases in conflict, and these households face higher risks of malnutrition and food insecurity. Systemic and exacerbated inequalities faced by women and girls, combined with conflict, subsequent displacement, the breakdown of protective and supportive networks, the loss of livelihoods and economic deterioration, lead to women and girls often being more vulnerable to food insecurity than men and boys in situations of armed conflict. Further, in conflict, the food-related roles women play increase, which contributes to the risk of harm arising from the conduct of hostilities and other violence.

The roll back on women's rights has had a major impact on the ability of women and girls to access services, where conservative rules have reinforced women and girls' exclusion from services and assistance. In Yemen and Afghanistan, the mahram rule, that prohibits women from leaving their homes unless accompanied by a male guardian, has given even more control to men over women, and has led to fewer women accessing food and livelihood opportunities as well as healthcare, all of which leads to a weakened health and nutritional status.

6 FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2024 - Financing to end hunger, food insecurity and malnutrition in all its forms*, 2024.

7 *Report of the Secretary-General on Women Peace and Security*, UN Doc S/2021/827, 27 September 2021.

People with Disabilities

The World Health Organization estimates that about 16% of the world's population is living with some form of disability. However, the overall rate of disability can jump to 18-20% or higher in conflict-affected countries as civilians and combatants acquire physical, sensory, psychosocial, and intellectual disabilities, and people with medical or mobility needs struggle to leave for safer locations.

The links between food security and disability are complex and go in both directions. Food insecurity can lead to disability, and it can exacerbate pre-existing disabilities. Acute malnutrition during pregnancy can significantly impact the growth and development of a foetus, and result in a higher rate of physical, neurological, and/or cognitive impairment of babies. For example, low folate intake can lead to neural tube defects such as spina bifida. Acute malnutrition increases the risk of illnesses such as meningitis or rickets, that can, in turn, lead to disabilities such as amputation.

Conversely, people with disabilities in armed conflicts tend to face even greater barriers to food access and adequate nutrition, which can be linked to inability to travel, limited financial resources, difficulties accessing safer areas, reduced access to healthcare, breakdowns in the provision of formal and informal care, as well as less access to information, which often impacts their awareness and understanding of the situation.

People with impairments, including strokes, cerebral palsy, multiple sclerosis and Down's syndrome, can experience difficulties in eating and drinking safely, and may require a modified diet, which can be very hard to achieve in food insecure conflict settings. People with mental health problems may experience disordered eating behaviours which compound the risk of acute malnutrition in food insecure contexts. Some degenerative neurological diseases, such as Parkinson's disease, can lead to weight loss and malnutrition, which is then exacerbated by conflict-related food insecurity.

TERMINOLOGY

Starvation—As elaborated in Chapter 5, as far as IHL is concerned, starvation is the deprivation of commodities necessary for a person's survival. The contemporary notion, in addition to food and water, encompasses deprivation of other goods indispensable to a person's survival in a particular context, for example, heating oil and blankets.

It is not necessary for a single person to die for starvation to have occurred for the purposes of IHL. Starvation can occur even if there is no famine.

Famine—There is no internationally agreed definition of the notion of ‘famine’. For the purposes of the *Integrated Food Security Phase Classification* system, unlike starvation, famine requires a minimum numerical threshold of deaths. Famine classification requires a large number of people to die as a result of lack of access to adequate food.

Famines can occur with or without a food shortage, for example in situations where food is available but not accessible because people cannot afford it or are denied access to it.

Measuring food insecurity

The Integrated Food Security Phase Classification (IPC) is a multi-partner initiative established in 2004 to provide an objective tool for monitoring levels of food insecurity. It is a preventive tool. Estimating the severity of an imminent food crisis has enormous practical value. The IPC scale seeks to do this in a way that is as technically robust as possible.

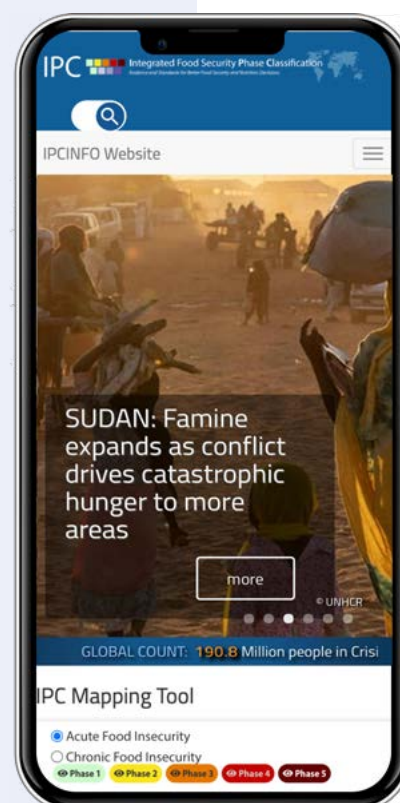
The IPC consists of three separate scales: the Acute Food Insecurity, Chronic Food Insecurity, and Acute Malnutrition scales. The Acute Food Insecurity scale (AFI) is the main tool for identifying, classifying, and declaring famine. The AFI scale consists of five ‘phases’, from 1—‘Stressed’—to 5—‘Famine’. Phases 3 and higher are considered ‘crisis’ phases requiring immediate humanitarian assistance.

Famine should be declared if a specified number of households in a given area are found to be in IPC5 or if the following indicators are met:

- » 1 in 5 people **suffer an extreme lack of food**;
- » 1 in 3 people are **acutely malnourished**; and
- » 2 out of every 10,000 people per day are **dying**.

While the affected state should declare famine along with the UN, the UN Resident Coordinator may make the declaration alone if the affected state is reluctant to do so. The IPC is based on a range of sources of data, including those collected by UN agencies, and it is a consensus-driven process that brings together UN agencies, NGOs, and affected states to arrive at a collective understanding of the food security situation in a context. The consensus-driven nature is both a strength and a weakness; it represents a commonly understood picture of food insecurity, but where a consensus position, including local and national authorities, cannot be reached, the IPC can become stalled or blocked.

The IPC is led at a country-level by a Technical Working Group, comprising analysts from the affected state, UN agencies, funds and programmes, NGOs, and academia. It is responsible for conducting analysis, reaching final conclusions, and producing a report. Where necessary, this process may be



supported by an IPC unit at FAO Headquarters. A Famine Review Committee is convened if the Technical Working Group, the Headquarters, or an IPC partner determine that famine thresholds have been or could be reached in a particular geographical area in a reasonable worst-case scenario.

The role of the Famine Review Committee, which consists of independent experts on food security, nutrition, and health, is to determine whether the analysis that famine thresholds have been breached is plausible or not. The Famine Review Committee can also reach its own conclusions if it disagrees with the analysis of the Technical Working Group or an IPC partner. If the Committee identifies that it is plausible that famine thresholds have been reached, a famine declaration would normally be expected. To date, the Famine Review Committee has only determined that famine thresholds have been breached on three occasions: in relation to Somalia in 2011, in relation to South Sudan in 2017 and in relation to Sudan in 2024.

It is also possible for a 'risk of famine notification' to be issued, if famine thresholds could be reached in a reasonable worst case scenario. The procedure for doing so is the same: the Technical Working Group – or another partner - makes an initial determination that famine thresholds are likely to be reached in a reasonable worst case scenario. This analysis is reviewed by the Famine Review Committee to decide whether the conclusions of the analysis are plausible or not.

Mortality and morbidity in situations of famine and acute food insecurity

Famine-related mortality is rarely just caused by the process of starvation (a lack of sufficient food or calorie intake), but normally through health complications linked to acute malnutrition (especially for young children and pregnant and lactating women), and disease. Indeed, spikes in famine mortality are often linked to major disease outbreaks, such as measles or diarrhoea—especially as malnourished and weakened people move to congested and poorly served areas seeking humanitarian assistance. People who survive malnutrition often go on to lead lives characterised by lower standards of health and wellbeing and lower economic productivity. Malnutrition, in particular during the first thousand days from conception, impacts body and brain development, often leaving children with chronic health issues as well as developmental issues. Health risks resulting from exposure to famine may be passed down through generations as a result of both biological changes, such as methylation of certain regions of DNA, and social processes, such as learned behaviours. Evidence also shows that children born to malnourished mothers are more likely to become malnourished themselves, leading to cyclical and intergenerational malnutrition.

Food security—According to the UN Food and Agriculture Organization ‘food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.’⁷

Four notions underlie food security:

- **Food availability:** The availability of sufficient quantities of food of appropriate quality, supplied through domestic production or imports (including food aid).
- **Food access:** Access by individuals to adequate resources (entitlements) for acquiring appropriate foods for a nutritious diet. Entitlements are defined as the set of all commodity bundles over which a person can establish command given the legal, political, economic and social arrangements of the community in which they live (including traditional rights such as access to common resources).
- **Utilisation:** Utilisation of food through adequate diet, clean water, sanitation and health care to reach a state of nutritional well-being where all physiological needs are met. This brings out the importance of non-food inputs in food security.
- **Stability:** To be food secure, a population, household or individual must have access to adequate food at all times. They should not risk losing access to food as a consequence of sudden shocks (e.g. an economic or climatic crisis) or cyclical events (e.g. seasonal food insecurity). The concept of stability can therefore refer to both the availability and access dimensions of food security.

Conflict-induced food insecurity—This is the expression used by the Security Council in its thematic work that looks at the impact of conflict on food availability and access to food, including in SCR 2417. The term ‘conflict and hunger’ is also sometimes used for this stream of work.

This Handbook uses the expression ‘conflict-induced food insecurity’ to refer to food insecurity caused or exacerbated by conflict *in* the countries experiencing the armed conflict.

In Somalia, Baby Mushtaq (15 months) is held by her mother Ayan (25) while she gets her arm circumference measured as a test for malnutrition. (Samantha Reinders/WFP)





Kivus, Democratic Republic of Congo (DRC). Short information session and discussion about humanitarian principles and basic rules of IHL with fighters of an armed group. (Laetitia Courtois/ICRC)

Chapter 1—The Relevant Bodies of International Law

This Handbook focuses on the role of IHL in avoiding, minimising or addressing conflict-induced food insecurity. IHL is not the only body of international law that has a role to play in this regard. Consideration will also be given, as appropriate, to other bodies of international law, including most notably, international human rights law, and international criminal law.

INTERNATIONAL HUMANITARIAN LAW

What is IHL?

International humanitarian law—also known as the law of armed conflict, the law of war, or *jus in bello*—is the body of international law that regulates the conduct of hostilities, and that protects persons not or no longer taking direct part in hostilities during armed conflict, such as civilians, and wounded, sick or captured fighters.

IHL regulates how conflicts must be fought. It does not address the lawfulness of the resort to armed force in the first place. This is regulated by a different body of international law—sometimes referred to as *jus ad bellum*—found in the UN Charter and customary international law. While they address similar situations, the two bodies of law operate distinctly. IHL does not draw a distinction between lawful or unlawful resort to force, but applies equally to all sides once a situation of armed conflict exists.

Not every act that takes place during an armed conflict is regulated by IHL. For IHL to apply there must be a link—or ‘nexus’—between the act and the armed conflict. It must have been conducted in the context of and be associated with the armed conflict. Sometimes the link is clear, as in the case of the conduct of hostilities or deprivation of liberty of members of the armed forces. At other times it is less evident.

Determining whether there is a nexus between acts that cause or contribute to food insecurity and the armed conflict is necessary in order to determine whether IHL has a role to play, but is frequently difficult as a matter of law and fact.

What is the difference between international and non-international armed conflicts and why is it relevant?

For the purpose of IHL there are two different types of armed conflict: international and non-international. The characterisation of a conflict as international or non-international depends on the status of the parties to it.

International armed conflicts are those between two or more states. Situations of occupation are also considered international armed conflicts.¹ Non-international armed conflicts are between a state and one or more organised armed groups, or between two or more armed groups.

The nature of the conflict determines which body of rules applies.

What are the sources of IHL?

As is the case for all bodies of international law, there are two principal sources of rules of IHL: treaties and customary law.

The principal treaty sources of contemporary IHL are the four Geneva Conventions of 1949, and their two Additional Protocols of 1977.

The four Geneva Conventions set out the rules protecting wounded, sick or shipwrecked members of the armed forces (GC I and GC II respectively), prisoners of war (GC III), and civilians, principally in situations of occupation (GC IV). Additional Protocol I (AP I) elaborates the rules regulating the conduct of hostilities, originally laid down in the Hague Regulations of 1907, and sets out minimum fundamental guarantees to be accorded everyone in the power of a party to a conflict. These instruments apply in situations of international armed conflict.

There are fewer treaty rules applicable in non-international armed conflicts. Article 3 common to the four Geneva Conventions lays down some minimum rules. These are elaborated in Additional Protocol II (AP II).

The Geneva Conventions and their Additional Protocols are supplemented by a number of treaties that regulate the use of particular weapons, like the 1972 Convention on the Prohibition of Biological Weapons; the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its various protocols; the 1993 Chemical Weapons Convention; the 1997 Anti-Personnel Mines Convention; and the 2008 Convention on Cluster Munitions. Other treaties protect cultural property.

Alongside these treaties is an important body of customary law rules of IHL. Customary international law is unwritten law deriving from the practice of states accepted as law. It is for states, as well as judicial and other bodies, to determine whether a particular rule exists as a matter of customary law.

¹ Territory is considered occupied when it is actually placed under the authority of a hostile army, see Article 23 1907 Hague Regulations Respecting the Laws and Customs of War on Land, annexed to 1907 Hague Convention IV.

Officials should seek guidance from government legal advisers on whether a particular rule has attained customary status.

Treaties are only binding on those states that have ratified them. Customary law rules on the other hand are generally binding on all states. Importantly, many of the rules that only apply in international armed conflicts as a matter of treaty law, are also customary rules, and many apply as custom also in non-international armed conflicts.

Customary law therefore plays an important role in expanding the scope of application of IHL, in terms of parties that are bound, and also by expanding the application of certain treaty rules to non-international armed conflicts—including many that are central to avoiding and minimising conflict-induced food insecurity.

This Handbook expressly notes when the rules applicable in international and non-international armed conflicts differ.

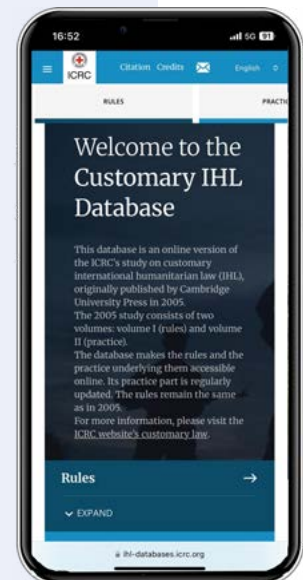
Customary IHL study and database of state practice

The International Committee of the Red Cross (ICRC), at the request of the International Conference of the Red Cross and Red Crescent in 1995, conducted a study on customary IHL. This was published in two volumes in 2005. The rules identified by the ICRC as comprising custom were contained in Volume I; the practice underlying the rules is contained in Volume II.

Since 2007, the ICRC and the British Red Cross have worked together to keep up-to-date the practice section of the customary IHL study. This is accessible in a database which provides recent, accurate and extensive information. It contains national practice of states world-wide, from Afghanistan to Zimbabwe, as well as practice found in international materials. The database is a resource used by governments and military advisers, academics and other specialists involved in the practical application of IHL and in assessing possible developments in state practice.

The customary IHL study is a valuable contribution. The UK, like some other states, has not endorsed all the rules identified by the ICRC as reflecting customary law. The database on national practice is also considered valuable and the UK has provided both technical and financial support.

In determining whether a particular rule has attained customary law status the UK has regard to the practice of states.² The ICRC's customary IHL study and the database provide helpful examples of state practice, which can be examined as part of this determination.



² See Conclusions 4-8, International Law Commission, *Draft Conclusions on Identification of Customary International Law*, 2018.

Who is bound by IHL?

IHL is binding on all parties to armed conflicts: states and organised armed groups. Some obligations also apply in peacetime and are binding on states that have ratified the relevant treaties or on all states as a matter of customary law.

Individuals (members of armed forces and organised armed groups, but also civilians) must also comply with IHL to the extent that their conduct has a nexus with an armed conflict. There is only individual criminal responsibility for violations that amount to war crimes.

IHL and conflict-induced food insecurity

Compliance with IHL constitutes a line of defence against food insecurity in armed conflict.

A number of rules regulating the conduct of hostilities play an important role in this regard. They include:

- the prohibition on directing attacks against civilian objects. These may include objects necessary for food production and distribution, such as agricultural lands, crops, livestock, farms, mills, water installations and markets;
- the prohibition on indiscriminate attacks, i.e. attacks of a nature to strike military objectives and civilian objects, such as those just listed, without distinction;
- the rule of proportionality, which prohibits attacks against military objectives expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof that would be excessive in relation to the concrete and direct military advantage anticipated. In assessing the 'weight' to be assigned in proportionality assessments to incidental damage to objects necessary for the production and distribution of food, consideration must be given to the loss of civilian life or injury to civilians that their destruction may be expected to cause;
- the obligation to take constant care in the conduct of military operations to spare civilians and civilian objects;
- prohibitions, where applicable to a party to a conflict, on the use of particular weapons, such as anti-personnel mines and cluster munitions. These weapons can limit access to and use of areas of land which can thus not be used for farming or grazing;
- the prohibition on the use of means and methods of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment. These weapons and methods of warfare could impair food production and availability of safe water supplies.

Also of particular relevance is the prohibition on forcibly displacing civilian populations. Displacement causes people to lose access to their sources of livelihood and more generally increases vulnerabilities, including to food insecurity.

In addition to these rules of general application, two sets of IHL provisions specifically address food insecurity in situations of armed conflict: the prohibition of starvation of civilians as a method of warfare, and the rules regulating humanitarian relief operations.

The Handbook will present all these rules, with a particular focus on their role in avoiding or addressing conflict-induced food insecurity.

The rules of IHL presented in the Handbook are not the only ones that are relevant to food insecurity. For example, IHL includes rules requiring that people deprived of their liberty in relation to armed conflicts are provided adequate food and water. IHL also includes an important body of rules relating to access to medical care and protecting medical staff and facilities that are also of relevance in view of the health consequences of food insecurity. Although they offer extremely important protections, these aspects are beyond the scope of the Handbook.

INTERNATIONAL HUMAN RIGHTS LAW

What is international human rights law?

As a general proposition, international human rights law is the body of international law that makes provision for rights and obligations relating to individuals within a state's territory. This will include, for example, placing both procedural and substantive obligations on states to act or refrain from acting in certain ways to ensure that persons within their territory can exercise and enjoy their human rights.

It is generally accepted that international human rights law applies in times of peace, and also during armed conflict. As a general starting point, a state will have obligations under human rights law within its territory. This will be the case even during an armed conflict, though it may be possible for the state to derogate from certain obligations. Importantly, however, the applicability of human rights law outside of a state's own territory depends on it exercising effective control, usually over the area or individual concerned. Moreover, obligations under human rights law must be interpreted in light of the specific regulation of armed conflict provided by IHL.

What are the sources of international human rights law?

As with IHL, the primary sources of international human rights law comprise treaties and custom. Core treaties include the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as a number of regional instruments, such as the 1950 European Convention on Human Rights (ECHR).

In addition to these general instruments, there are numerous thematic treaties that focus on specific categories of people, rights or situations. Examples include the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1951 Refugee Convention, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1989 Convention on the Rights of the Child.

Who is bound by international human rights law?

International human rights law technically only binds states—and a state will only be responsible for violations perpetrated by individuals and entities whose conduct is attributable to that state. However, there has been a move in recent years by the UN Security Council, General Assembly and Human Rights Council to condemn the actions of some non-state actors as human rights ‘abuses’, and to call upon them to respect human rights. Similarly, UN human rights treaty bodies, special rapporteurs and commissions of inquiry have applied human rights law standards to the conduct of non-state actors, including organised armed groups in certain circumstances.

They have done so most notably in relation to groups that exercise *de facto* control over territory and people, and exercise ‘governance’ roles. Even in these cases a distinction has been drawn between obligations to *refrain* from certain conduct—for example ill-treatment—which have been considered applicable regardless of the level of control of the territory, and *positive* duties such as establishing law enforcement or judicial institutions—which are dependent on the degree of control exercised.

Nevertheless, the point stands that only states are bound as a strict matter of law. Moreover, in practice, very few organised armed groups have the capacities to act in a ‘state-like’ manner.

Human rights law and conflict-induced food insecurity

Of particular relevance to avoiding and minimising conflict-induced food insecurity are civil and political rights, most notably the rights to life and to bodily integrity and to liberty of movement, as well as the prohibition of discrimination. Economic, social, and cultural rights can also play a role, most notably the rights to adequate food and to be free from hunger.

States are under an immediate obligation to respect and ensure civil and political rights, such as the right to life, but are only required to take steps to achieve economic, social and cultural rights progressively. Nevertheless, these rights are to be enjoyed free of discrimination. This means that access to minimum levels of available food, even where resources are low, must not be made solely dependent on, for example, the ethnicity of the recipient, or their religious belief, political opinion or gender.

INTERNATIONAL CRIMINAL LAW

International criminal law is the body of international law that establishes a framework for holding individuals accountable for particularly serious violations of certain rules of international law.

Ordinarily, international law regulates relationships between states, and it is states that incur responsibility when they violate applicable rules. Exceptionally, violations of certain rules can also give rise to the criminal responsibility of individuals. This is the case for certain rules of IHL, whose violation constitute war crimes; violations of certain human rights, such as torture; violations of some other human rights when committed as part of a widespread and systematic attack against a civilian population, and which thus amount to crimes against humanity; as well as aggression and genocide.

While war crimes may only be committed in situations of armed conflict, crimes against humanity and genocide can be committed in times of peace or armed conflict.

The contemporary system of international criminal law is implemented through national systems (service and civil courts) and by international courts. These include ad hoc tribunals, such as those established by the Security Council in the 1990s in relation to the former Yugoslavia and Rwanda; internationalised or mixed tribunals such as the Special Court for Sierra Leone and the Kosovo Specialist Chambers; and since 1998, the International Criminal Court (ICC).

Violation of some of the rules of IHL that can play a role in avoiding or minimising conflict-induced food insecurity constitute war crimes. This includes, most notably, the prohibition of starvation of civilians as a method of warfare, which is a war crime under the ICC Statute when committed in international or non-international armed conflicts.

At the end of each Chapter the Handbook identifies the war crimes under the ICC Statute that correspond to the rules of IHL addressed in that Chapter.



Deserted village in Ogossagou, Mali after a second deadly attack in less than a year. (ICRC)

Chapter 2—The Conduct of Hostilities

The prohibition on the starvation of civilians as a method of warfare, and the rules relating specifically to the protection of objects indispensable to the survival of the civilian population discussed in Chapter 5, are far from the only rules of IHL of relevance to avoiding or minimising conflict-induced food insecurity. Many other rules, broader in scope, aim to minimise the adverse impact of armed conflict on civilians' safety and health. Compliance with them is a first line of defence against hunger in armed conflict.

Although these general rules do not specifically mention food, water and other assets and infrastructure necessary for food production, transportation and distribution, the starting premise is that these are all civilian objects, and thus benefit from the protections that IHL affords civilian objects.

This Chapter presents the protections afforded to objects necessary for the production, storage, processing and distribution of food, as they are relevant to ensuring food security. This focus on such objects should not overshadow the fact that IHL also affords numerous important protections to civilians themselves, and to other civilian objects.

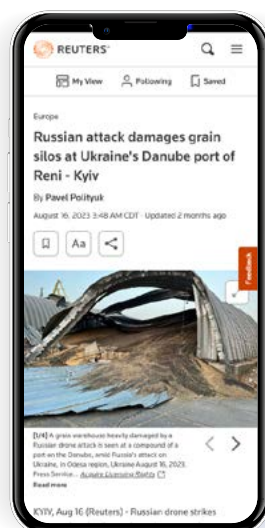
DISTINCTION

Distinction lies at the heart of IHL. It requires parties to armed conflict to distinguish at all times between civilians and combatants, and between civilian objects and military objectives, and to only direct attacks against combatants and others who take a direct part in hostilities, and military objectives.¹

Parties to armed conflict must not direct attacks against civilian objects.² Civilian objects would normally include objects necessary for food production, storage and distribution, such as agricultural lands, crops, grain storage facilities, livestock, water installations, farms, mills, shops and markets.

1 Articles 48, 51 and 52 AP I and Article 13(2) AP II. See also UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, 2004, (Joint Service Publication 383), (UK LOAC Manual), paras 2.5 (as amended) and 15.6 (as amended).

2 Article 52 AP I. See also UK LOAC Manual, paras 2.5 (as amended), 5.24-5.24.4 (as amended) and 15.16-15.16.3 (as amended).



In the media

Reuters, Russian attack damages grain silos at Ukraine's Danube port of Reni—Kyiv, 16 August 2023

KYIV, Aug 16 (Reuters)—Russian drone strikes damaged grain silos and warehouses at the Ukrainian river port of Reni on the Danube, a vital wartime route for Ukrainian food exports, senior officials said on Wednesday.

“Russian terrorists attacked Odesa region twice last night with attack drones,” regional governor Oleh Kiper said on Telegram. “The main target is port and grain infrastructure in the south of the region.”

In addition to objects specifically relevant to food production and distribution, dwellings are also normally civilian objects. Damage to homes affects civilians’ ability to store and prepare food, keep livestock, and continue to work. It can also lead to displacement, which, as elaborated in Chapter 8, in turn exacerbates food insecurity.

Water and infrastructure necessary to its storage, purification and distribution, is also essential for food security, both for direct consumption by civilians, but also for livestock and food production.

Interference with water supply

The Islamic State of Iraq and the Levant (ISIL) in Iraq deliberately destroyed rural irrigation infrastructure (water tanks and pipes), contaminated irrigation water supply with oil and contaminated or blocked wells with rubble, oil and other foreign objects. This was combined with other deliberate blockages of irrigation channels, the destruction of water pumping equipment (cables, generators and pumps) and the theft of pumps and other valuable components in a deliberate targeting of the rural environment underpinning Yezidi livelihoods. This had severe knock-on effects on the environment and food security. The loss of irrigation led to the destruction of trees and crops with subsequent loss of livestock.

Cited in UNEP, *The Environmental Impact of the Conflict in Ukraine—A Preliminary Review*, 2022

A civilian object may become a military objective, and thus lose protection under IHL, if, by virtue of its location or use it makes an effective contribution to military action, and its total or partial destruction in the circumstances ruling at the time offers a definite military advantage.

For example, a shop that sells food could become a military objective if it is used to store weapons. Similarly, if hostilities are taking place in a market, food stalls behind which fighters are sheltering would become military objectives.

In case of doubt as to whether an object that normally serves a civilian purpose, such as a dwelling or a marketplace, is used to make an effective contribution to military action, it should be presumed not to be used in this way, and thus not to constitute a military objective.³

INDISCRIMINATE ATTACKS

IHL also prohibits indiscriminate attacks. These are attacks of a nature to strike military objectives and civilian objects, such as those just listed, without distinction.⁴

Attacks can be indiscriminate because they are not directed at a specific military objective. An example would be a situation where military vehicles are parked in a farmyard, surrounded by agricultural machinery, crop storage facilities and farm buildings, and rather than being directed specifically at the military vehicles, the entire area is shelled.

Attacks can be indiscriminate because they are conducted using weapons that cannot be directed at specific military objectives, or whose effects cannot be limited.



Aleppo, Syria. A large scale destruction of infrastructure is one of the many harsh realities of Syria's armed conflict. (Hagop Vanesian/ICRC)

³ Article 52(3) AP I. See also UK LOAC Manual, para 5.24.3 (as amended).

⁴ Article 51(4) AP I. See also UK LOAC Manual, paras 2.6 (as amended) and 15.15.

PROPORTIONALITY

The rule of proportionality prohibits attacks against military objectives that are expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.⁵

Which types of incidental harm must be considered?

Not every adverse consequence of an attack must be considered in proportionality assessments. Only specific types of harm fall within the scope of the rule: the death of or injury to civilians and damage to civilian objects.

This does not mean that other adverse consequences can be ignored. These must be taken into consideration for the purpose of other rules of IHL—some of which may in fact afford more protection than the rule of proportionality. These rules include the general obligation to take constant care in the conduct of military operations to spare the civilian population, civilians and civilian objects; and other specific prohibitions, such as the prohibition of displacement.

Incidental death of or injury to civilians

What constitutes loss of life is uncontroversial. The difficulties that may arise in identifying the deaths to be factored into proportionality assessments are likely to relate to questions of causation and foreseeability discussed below.

The second type of incidental harm to be considered in proportionality assessments is ‘injury to civilians’. ‘Injury’ covers both physical harm and disease that may be expected to be caused by the attack and that is reasonably foreseeable. Severe food deprivation can give rise to disease, such as Kwashiorkor—a condition caused by severe protein deficiency that mostly affects children, and that gained international recognition in the Biafran civil war in the 1960s.

More generally, while there is no doubt that severe food insecurity has significant adverse impacts, the rule of proportionality requires the expected incidental harm to be caused by a *specific* attack. In the majority of cases, it is unlikely that a specific attack will be the cause of severe food deprivation. However, there may be circumstances when this could be the case, for example, in cases where the sole entry point for food and humanitarian supplies, or the sole source of clean water is destroyed. However, in most situations the significant and well-recorded consequences of food deprivation on health are likely to arise over time.

Rather than for the specific purpose of complying with the rule on proportionality in attacks, this dimension should be included among the factors that parties to

5 Article 51(5)(b) AP I. See also UK LOAC Manual, paras 5.33-5.33.5 (as amended) and 15.22.1 (as amended).

armed conflict consider as part of the obligation to take constant care to spare civilians in the conduct of military operations.⁶

Damage to civilian objects

A wide range of civilian objects play a central role in food production, storage and distribution, including agricultural lands and pastures, crops, grain storage facilities, livestock, farms, mills, shops and markets. They also include goods necessary for its preparation, such as cooking fuel.

In addition to objects directly used for food production and distribution, other relevant civilian objects include installations necessary for water collection, purification, storage and distribution—central to ensuring supplies of potable water; as well as power generation and distribution infrastructure.

Provided these objects have not become military objectives, expected incidental harm to them must be considered in proportionality assessments.

By way of example, if the enemy uses a bridge to move troops and weapons, by virtue of this use, the bridge becomes a military objective. If the bridge is used to bring food to civilian populations, the party considering the attack must assess the expected loss of civilian life or injury to civilians that destroying the bridge would lead to. In addition to civilians who may be injured by the actual strike, in assessing expected incidental harm consideration must also be given to the fact that the bridge is used to bring in supplies for civilians, and that its destruction may cause or contribute to food insecurity.

Knock-on effects

It is not only the incidental harm that occurs and manifests itself immediately upon an attack, like when shell fragments injure a civilian, that must be considered. Relevant incidental harm can occur immediately upon an attack but only manifest itself some time afterwards, as when weapons cause disease that only becomes apparent months after the attack. Relevant harm can also occur long after the attack, as when a civilian is injured by unexploded cluster sub-munitions months or years after they were employed in an attack. The harm can occur in a single step, as in the examples above; or in a number of steps, like when an attack damages an object that provides essential services to the civilian population, such as the electricity generation and distribution system, which in turn prevents water purification systems from operating, leading to an outbreak of waterborne diseases among the civilian population.

Provided the incidental harm is death or injury to civilians or damage to civilian property, its geographic or temporal proximity to an attack is not determinative. Nor is the number of casual steps between the attack and the harm. Instead, what matters is whether the harm meets the criteria of

⁶ Article 57(1) AP I. See also UK LOAC Manual, paras 5.32 (as amended), and noting also the position in para 15.8, which highlights the requirements under IHL to spare civilians, so far as possible, from the incidental effects of military operations.

causation and foreseeability. The incidental harm to be considered is that harm which would not occur but for the attack, and that was reasonably foreseeable at the time the attack was planned or launched, on the basis of information from all sources that is reasonably available at the relevant time.

Foreseeability and the importance of gathering information

Proportionality assessments are conducted *before* launching an attack. The incidental harm to be considered is only that which was reasonably foreseeable at the time the attack was launched on the basis of information from all sources that is reasonably available to the attacker at the relevant time.⁷

The information that the attacker has at its disposal thus plays a key role in foreseeing expected incidental harm. Information is also key to the more general obligation to take constant care in the conduct of military operations to spare civilians and civilian objects. Suggestions of the type of information that could be gathered are set out below.

DUTY TO TAKE CONSTANT CARE IN THE CONDUCT OF MILITARY OPERATIONS TO SPARE CIVILIANS AND CIVILIAN OBJECTS

Parties to armed conflict must take constant care in the conduct of military operations to spare the civilian population, civilians and civilian objects.⁸ This obligation is broader in scope than the limitations imposed by the rule of proportionality in a number of significant ways.

First, it applies to *all* military operations—unlike the rule of proportionality, which only applies to attacks. These are a significantly broader range of activities that may have an adverse impact on civilians and food security, and include troop movements and deployment activities carried out by armed forces in addition to actual combat.

Second, the obligation does not specify the type of harm that should be avoided. ‘Sparing’ the civilian population and civilian objects, covers a wide range of adverse impacts, that go beyond the type of incidental harm considered in proportionality assessments.

Third, ‘sparing’ civilians and the civilian population and civilian objects covers a range of measures to prevent adverse impact, that goes beyond not directly targeting them and avoiding their death, injury or damage when this would be excessive compared to the anticipated military advantage. It requires taking

7 UK LOAC Manual, para 5.32.10 (as amended).

8 Article 57(1) AP I. In relation to non-international armed conflicts, and repeating Article 51(1) AP I, Article 13(1) AP II grants the civilian population and individual civilians ‘general protection against the dangers arising from military operations’. See also LOAC Manual, paras 5.32 (as amended) and 15.8.

adverse impact into account in all decision making relating to military operations that can have an adverse effect on civilians.

As noted above, the information parties to armed conflict have at their disposal is key to sparing civilians, including in terms of food security. In view of this, parties should seek to establish systems to collect and analyse relevant information on the ‘civilian environment’ where they are conducting operations.

Factors that can affect incidental harm or food security include:

- **The location of civilians and civilian objects**, including infrastructure that provides essential services to the civilian population.
- **Structural engineering information.** This includes information on the effects of attacks on infrastructure that provides essential services to the civilian population, and on the impact of damage to such infrastructure on services, infrastructure and systems in the areas where the attacks will be carried out. Consideration should also be given to the effect of previous military operations on such infrastructure.
- **Information on the impact of attacks and military operations on food security specifically.** This includes considering the consequences on food production, storage and distribution.
- **Medical and public health information** on the likely health effects of attacks and military operations.
- **Information on the possible consequences on the environment**, including in terms of impact on food production.
- **The particular circumstances of the state where the attacks will be carried out**, insofar as this is relevant to the consequences of attacks and military operations. For example, if the state is subject to sanctions, blockades or other measures that could restrict its ability to repair damaged infrastructure or to acquire food, or fuel for cooking it.

Detailed instructions for military operations, which could include food security dimensions are generally classified. At present, the publicly available doctrine of states does not specifically include food security dimensions—neither in relation to proportionality assessments, nor in terms of measures to minimise harm to civilians more generally. This is a reflection of the fact that civilian harm tends to be addressed in very general terms.⁹

9 Of the materials that are publicly available, it is the US’s *No-Strike and the Collateral Damage Estimation Methodology* that considers food security in the greatest detail, by including a number of civilian objects necessary for food production and distribution in the general no-strike list. US *No-Strike and the Collateral Damage Estimation Methodology*, CJCSI 3160.01 13 Feb 2009, Enclosure B. While specifically identifying these types of objects on no-strike lists is helpful, this is neither a guarantee that they will not be targeted should they become a military objective, nor that the impact on civilians that damage to such objects would cause will be taken into account.

PRECAUTIONS IN ATTACK

Parties to armed conflict must also take a number of specific precautionary measures when carrying out attacks.¹⁰ Of particular relevance to food security, those who plan or decide upon attacks must:

- **Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects** and are not subject to special protection. One practical way of giving effect to this obligation with regard to food security is providing general guidance on the types of civilian objects relevant to food production, storage and distribution that should be considered and then specifically identifying such objects and infrastructure in the particular context where strikes are being conducted.
- **Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects.** These types of precautions include the choice of weapons. For example, when attacking enemy troops in an area that is normally farmed, the use of weapons likely to leave explosive remnants that contaminate the field and render farming dangerous or impossible long after the attack should be avoided.

Damage from explosive weapons



Damage from explosive weapons can affect food production, transport and distribution infrastructure, even when their use does not violate IHL.

Air-delivered explosive weapons have damaged industrial food production sites. For example, in Syria in November 2015, air delivered explosives damaged a factory that supplied bread to around 45,000 internally displaced people daily, and a chicken farm in a different part of the country.

Air-delivered explosive weapons have also caused damage to important transport hubs. Depending on the strategic importance of these hubs, their destruction can have a devastating impact on food security. For example, when the port of Hodeida, Yemen, was hit by air strikes in August 2015, cranes and warehouses were destroyed and the port was closed. Six weeks later, one crane was working but a fuel shortage made it likely that the port would be closed again. As Hodeida is Yemen's most important entry point for imports and handles over half of all unloaded dry bulk cargo, this had a devastating impact on food security in the country. The United Nations reported a 28 per cent rise in food prices across Yemen between August and September 2015.

¹⁰ Articles 57(2) and (3) AP I. See also UK LOAC Manual, paras 5.32-5.32.10 (as amended) and 15.22 (as amended).

Local markets are often also damaged. Some incidents have involved air-delivered weapons, such as the bombing of the livestock market in Fayyoush district, Lahj Province, Yemen, in July 2015. Markets have also been damaged by IEDs and suicide bombings, such as the destruction of Yola market in Nigeria in November 2015. Use of explosive weapons in the vicinity of markets tends to cause high numbers of casualties (45 dead, 50 injured in Fayyoush, Yemen, 32 dead, dozens injured in Yola, Nigeria). Such attacks also destroy food stocks and disrupt trade.

Damage to water supply infrastructure can impact civilians and agricultural land, as happened for example in November 2015 in Deir ez Zor, in Syria, when air-delivered explosives destroyed a water pumping station that provided water for 100,000 people and 50,000 acres of land.

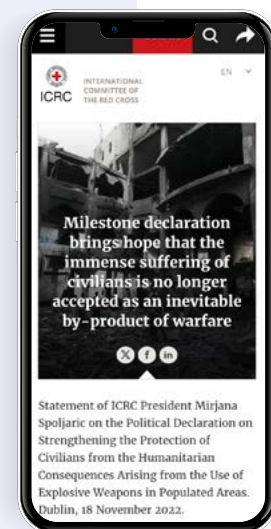
UNIDIR 2016 Report—*The Implications of the Reverberating Effects of Explosive Weapons Use in Populated Areas for Implementing the Sustainable Development Goals*

Explosive Weapons in Populated Areas (EWIPA)

In November 2022, 83 states, including the UK, adopted the *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas*. The Declaration is an international political commitment to address the humanitarian consequences of the use of explosive weapons in populated areas. It considers the immediate and longer-term impacts of these weapons, during and after conflict. In the Declaration states have committed to:

- » Developing national policy and practice to restrict or refrain from the use of explosive weapons in populated areas when such use may be expected to cause harm to civilians or civilian objects.
- » Developing national policy and practice to protect civilians and civilian objects, including infrastructure critical to the survival of the civilian population, from the foreseeable direct and indirect or reverberating effects of military operations.
- » Establishing capacities to gather and share data to better understand the humanitarian consequences of military operations, including data on civilian harm and damage to civilian infrastructure, and on the use of explosive weapons.
- » Assisting victims, their families and affected communities, and facilitating humanitarian access to civilians in need.

In elaborating these policies, states should ensure that they include considerations relating to the possible impact of the use of explosive weapons on food security.



PRECAUTIONS IN DEFENCE

Parties to armed conflict must, to the maximum extent feasible, also take measures to protect civilians and civilian objects under their control from the dangers arising from military operations.¹¹

These measures may include removing civilians and civilian objects under their control from the vicinity of military objectives, and avoiding locating military objectives within or near densely populated areas, as well as other necessary precautions to protect civilians.

These precautions can play a role in minimising the impact of hostilities on food security. By way of example, to the extent feasible, parties to armed conflict should refrain from placing military hardware or troops in or in the vicinity of markets, or using agricultural lands for staging military operations, especially at particular moments of the farming cycle, like when crops are ready to be harvested.

PROTECTION OF THE ENVIRONMENT

Elements of the environment, such as fields and pastures, are usually civilian objects and protected as such by the general rules outlined above. They must not be the object of direct attack, unless a specific element becomes a military objective. Incidental damage to elements of the environment expected to be caused by an attack against a military objective constitutes damage to a civilian object and must be considered in proportionality assessments and for the purpose of precautions.

Damage to elements of the environment may result from a direct attack, for example, by the use of defoliants. In many circumstances damage is a knock-on effect of an attack against or damage to another object. For example, damage to the electricity network could prevent water treatment facilities from operating and lead to waste seepage into water and soil. In turn this could contaminate the land and prevent cultivation.

In addition to protection under the general rules regulating the conduct of hostilities, IHL also affords certain additional special protection to the environment. Additional Protocol I requires care to be taken to protect the environment against widespread, long-term and severe damage, and prohibits the use of means and methods of warfare that are intended or that may be expected to cause widespread, long-term and severe damage to the natural environment.¹²

11 Article 58 AP I. See also UK LOAC Manual, paras 5.32-5.32.10 and 15.24.

12 Article 35(3) AP I. See also UK LOAC Manual, paras 5.29-5.29.4 (as amended) and 15.20.

Additional Protocol I also prohibits methods or means of warfare that are intended or may be expected to cause such damage to the natural environment, and thereby to prejudice the health or survival of the population.¹³

Both the general rules and, when applicable, the additional specific protections, play a central role in minimising food insecurity, including because the types of prohibited attacks would lead to contamination that would, in turn, severely impair food production and the availability of clean water supplies.

Harm to the environment

Damage to water supply and sewage treatment infrastructure can lead to the release of chemicals used in water treatment itself, which can be harmful to human health and/or the environment when released in an uncontrolled and concentrated manner. Damage to water filtration stations since the start of the invasion of Ukraine in 2022 have not only hindered access to drinking water for hundreds of thousands of civilians, but also pose a risk of the release of substantial amounts of chlorine.

If hostilities take place in areas where extractive activities are conducted there is a risk any flooding of mines increases the risk of ground and surface water pollution. For example, prior to the 2022 invasion of Ukraine, the Organization for Security & Co-operation in Europe (OSCE) warned that the disruption to the pumping out of water at the Pervomaisk and Holubovsk mines in eastern Ukraine could result in the outflow of these mine waters into agricultural lands. Depending on the type of pollutants present in freshwater used in agriculture, experts pointed out the risk of salinisation of agricultural land, leading to reduced crop productivity not just within the area directly affected by conflict, but potentially as a transboundary issue if the contaminated water flowed to neighbouring states.

Military munitions can also pose problems. As a result of heavy metal contamination of soil from munitions, thousands of hectares of arable land near the border between Romania and Yugoslavia became unfit for agricultural use.

UNEP, *The Environmental Impact of the Conflict in Ukraine: A Preliminary Review*, 2022



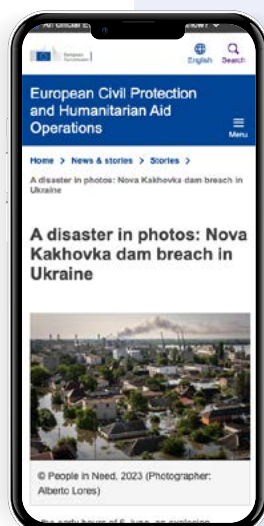
13 Article 55 AP I. See also UK LOAC Manual, paras 5.29-5.29.4 (as amended) and 15.20.

ATTACKS ON WORKS AND INSTALLATIONS CONTAINING DANGEROUS FORCES

IHL also prohibits directing attacks on works and installations containing dangerous forces—namely dams, dykes and nuclear electrical generating stations—even if these objects are military objectives, if such attacks may cause the release of dangerous forces and consequent severe losses among the civilian population.¹⁴

In addition to causing immediate civilian casualties, attacks on such objects can also have severe consequence for food security. They can cause damage to agricultural lands and facilities, render them unsuitable to farming, and lead to long-term contamination.

Damage to the Nova Kakhovka Dam



In the early hours of 6 June [2023], an explosion destroyed a critical infrastructure in southern Ukraine—the Nova Kakhovka dam. The dam held back the amount of water equal to that of the Great Salt Lake in the USA. This vast amount of water was unleashed downstream along the Dnipro river, flooding dozens of settlements.

This disaster has put thousands of lives at risk, making the already dire conditions faced by Ukrainian people even worse. Entire villages have been swept away, the farmland has become unusable, and deadly mines are being washed up onto the shores...The consequences of this disaster extend beyond human suffering, as there will likely be significant ecological devastation in years to come.

ECHO, *A Disaster in Photos: Nova Kakhovka Dam Breach in Ukraine*

- 14 Article 56 AP I and Article 15 AP II. See also UK LOAC Manual, paras 5.30-5.30.10 (as amended) and 15.51. On ratification of AP I, the UK made the following declaration: “The United Kingdom cannot undertake to grant absolute protection to installations which may contribute to the opposing Party’s war effort, or to the defenders of such installations, but will take all due precautions in military operations at or near the installations...in the light of the known facts, including any special marking which the installation may carry, to avoid severe collateral losses among the civilian populations; direct attacks on such installations will be launched only on authorisation at a high level of command.” Article 56(2) AP I sets out the circumstances in which the special protection granted by Article 56(1) AP I ceases.

WAR CRIMES

Violations of a number of the rules just outlined constitute war crimes under the ICC Statute:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities is a war crime in international and non-international armed conflicts.¹⁵
- Intentionally directing attacks against civilian objects is a war crime in international armed conflicts.¹⁶
- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated is a war crime in international armed conflicts.¹⁷
- Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations is a war crime in international armed conflicts.¹⁸

LOOKING FORWARDS

A key step that states can take to minimise the impact of military operations on food security, is to elaborate doctrine, policies and directives that specifically bring out, in a granular manner, the specific elements of food production and supply chains; how they can be impacted by military operations; and specific measures that can be taken to reduce this negative impact. This facilitates compliance with the law, and can impose greater restrictions than those in the law, for humanitarian or policy reasons.

Some states are elaborating more general instruments to take civilian harm into account more fully. For example, in 2022 the US adopted the *Civilian Harm Mitigation and Response Action Plan (CHMR-AP)* which establishes an institutional architecture and supporting processes to more effectively avoid or minimise civilian harm.

Central to this is the commitment to achieving a more robust understanding of the ‘civilian environment’. This includes the civilian population and the personnel,

15 Articles 8(2)(b)(i) and 8(2)(e)(i) ICC Statute.

16 Article 8(2)(b)(ii) ICC Statute.

17 Article 8(2)(b)(iv) ICC Statute. Although this has not been included in the list of war crimes in the ICC Statute, Article 85(3)(c) AP I includes among the grave breaches of AP I, ‘launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii)’.

18 Article 8(2)(b)(xxiii) ICC Statute.

organisations, resources, infrastructure, essential services, and systems on which civilian life depends. The Action Plan requires incorporating the goal of protection and restoration of the civilian environment as much as practicable across all steps of the joint planning process.

When the precise contents of the concept of ‘civilian environment’ is elaborated, it will be important to include the range of factors that are relevant to food security.

Other states have included particular aspects of protection of civilians in their military doctrine and processes. For example, the NATO Allied Joint Doctrine for Joint Targeting requires a gender analysis to be included in target development. The same approach could be adopted for food security considerations. Processes could be elaborated to identify conduct that contributes to food insecurity as well as specific measures to prevent and minimise it.

Vegetable Market, Old Town, Benghazi. Libya, 2019. (Giles Clarke/OCHA)



Underpinned by the UN factors of human security,¹⁹ which include food security, in 2021 the UK adopted a Policy on Human Security in Defence.²⁰ Supported by a 12-year change programme, the policy aims to ensure that the breadth of human security factors are considered and mitigated in the course of UK Defence activities. This includes understanding how food insecurity may be instrumentalised by adversaries during conflict to advance their agenda, or how conflict dynamics may affect food access, production and distribution at local and global levels.

Human Security in Defence Policy

The 12-year change programme aims to integrate Human Security considerations into the way UK Defence operates. Guided by the UN factors of human security, which include food security, the policy directs intelligence, strategy and operational personnel to consider the spectrum of human security factors and risks of civilian harm into their work. In this way, the risks that conflict may pose to access to food, environmental factors that support food production, global food trade and humanitarian response can be considered with a view to mitigation.

The approach builds upon existing IHL obligations and encourages UK Defence to better understand how its activities may affect the civilian environment, how adversary action may exploit vulnerabilities in the human population to advance its objectives, and to consider how Human Security can be a constructive vehicle to positively shape the international environment and protect the rules-based international order. Investments are underway to deliver the policy through training, analysis and technical support.



19 United Nations Trust Fund for Human Security, *Human Security Handbook, An integrated approach for the realization of the Sustainable Development Goals and the priority areas of the international community and the United Nations system*, (2016). The UN Factors of Human Security include economic; food; health; environmental; personal; community and political. The UK considers information as an additional factor of insecurity given the risks associated with fake news, disinformation and personal data breaches.

20 JSP 985 Human Security in Defence, Version 2.0 (2024).



A British soldier uses a mine prodder as part of a training exercise (Ministry of Defence)

Chapter 3—Weapons

The general rules on the conduct of hostilities outlined in Chapter 2 limit how *all* weapons may be used. For example, regardless of what weapons are used, attacks may never be directed against civilians or civilian objects.

The general rules also prohibit the use of weapons that are by their nature indiscriminate. These are weapons that cannot be directed at a specific military objective; or whose effects cannot be limited as required by IHL; and consequently, are of a nature to strike military objectives and civilians or civilian objects without distinction.¹

In addition, a body of treaty law restricts the use of specific weapons. These include biological weapons,² chemical weapons,³ anti-personnel mines⁴ and cluster munitions,⁵ all of which—albeit in different ways—in addition to the harm they cause upon use, may also cause long-term contamination of land and water which can thus not be used for farming, grazing or human consumption.⁶

Also of relevance are the restrictions on the use of incendiary weapons. These are weapons or munitions primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target.

The 1980 Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) to the 1980 Convention on Certain Conventional Weapons contains a restriction of particular relevance to food security. This is the prohibition on attacking forests or other kinds of plant cover with incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.⁷

1 Article 51(4) AP I. With regard to non-international armed conflicts, neither common Article 3 GCs nor AP II include a similar express prohibition. See also UK LOAC Manual, para 6.4.

2 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

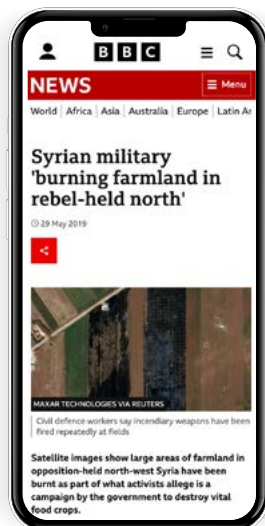
3 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

4 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

5 2008 Convention on Cluster Munitions.

6 In relation to non-international armed conflicts see UK LOAC Manual, para 15.28.

7 Article 2(4) 1980 Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons to the 1980 Convention on Certain Conventional Weapons. See also UK LOAC Manual, para 6.12.5.



In the media

BBC News, Syrian military 'burning farmland in rebel-held north', 29 May 2019

The Syria Civil Defence—whose rescue workers are known as the White Helmets ... says the Syrian and Russian militaries have targeted farmland with rockets and shells containing incendiary chemicals, causing “large pervasive fires which have destroyed all farm crops and deprived peasant farmers of their coming harvests”.

A longstanding prohibition on the use of poison or poisoned weapons also exists.⁸ This covers any use of poison, including the poisoning or contamination of water supplies.⁹ The prohibition extends to water supplies and foodstuffs used exclusively by enemy forces.

Poisoning of water sources

According to Stratfor, between 2013 and 2015, ISIL launched around 20 major attacks (and countless smaller attacks) against Syrian and Iraqi water infrastructure—including flooding villages, threatening to flood Baghdad, closing the dam gates in Fallujah and Ramadi, cutting off water to Mosul, and allegedly poisoning water in small Syrian towns.

CTED Trends Report, *Physical Protection of Critical Infrastructure Against Terrorist Attacks*, March 2017

EXPLOSIVE REMNANTS OF WAR

The use of explosive weapons, even when in compliance with IHL, can continue to pose a threat long after the end of hostilities.

Explosive remnants of war (ERW) are explosive ordnance that have failed to explode after being fired or launched, or that have been abandoned by a party to an armed conflict in a territory over which it no longer has control. They are defined in the Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons), as ‘conventional munitions containing explosives, with the exception of mines, booby traps and other

⁸ Article 23(a) Hague Regulations 1907. See also UK LOAC Manual, paras 6.19-6.19.1 and 15.28(d).

⁹ See UK LOAC Manual, para 6.19.1.

devices as defined in Protocol II of [the Convention]’.¹⁰

ERW pose a severe and long-term threat. Not only do they continue to kill and maim, but they also limit movements of civilians, including to access services, return to their places of residence and resume normal lives. Additionally, they also hinder the delivery of humanitarian assistance, and hamper agricultural activities, trade and reconstruction of key infrastructure.

Voices from the field

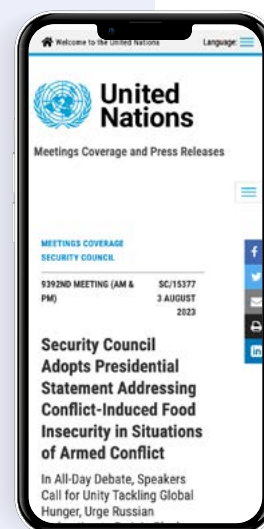
Secretary-General's Report on the Protection of Civilians 2023

58. In South Sudan, the Syrian Arab Republic, Yemen and other conflicts, explosive ordnance hindered humanitarian access to communities. In western Central African Republic, it impeded assistance to at least 30,000 people.

80. In South Sudan, an estimated 16.1 km² were contaminated with explosive ordnance, spoiling fertile agricultural land, mainly in southern greater Equatoria. In Yemen, landmines in farmland and agricultural areas severely disrupted livelihoods reliant on agricultural production. Similar patterns were seen in Burkina Faso, the Central African Republic, the Democratic Republic of the Congo, Mali, the Sudan and elsewhere.

Mines Advisory Group—Why we work in Laos

In the Lao People's Democratic Republic, a third of all land is still contaminated with ERW from the war in 1964–1973. An estimated 30% of the 270 million sub-munitions dropped on the country did not detonate. Four decades after the war, contamination prevents communities from fully utilising their land, with the main economic activities for rural communities—forestry and agriculture—accounting for a large proportion of unexploded bomb accidents.



The 2003 Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons) sets out a number of important obligations that aim to spare civilians from the long-term threats posed by ERW. The UK has supported the general aims of Protocol V since its adoption. It abides by the spirit of the Protocol and is committed to its humanitarian aims. Existing UK Armed Forces operational policy and practice are in line with Protocol V obligations. In 2024 the UK ratified the Protocol.

¹⁰ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996).

All states parties to the Protocol and parties to an armed conflict to which the Protocol applies, must, to the maximum extent possible and, as far as practicable, record and retain information on the use or abandonment of explosive ordnance, to facilitate the rapid marking and clearance, removal or destruction, and to educate the civilian population about the risks they pose.

All states parties to the Protocol and parties to an armed conflict to which the Protocol applies that have used or abandoned explosive ordnance that may become ERW must, without delay after the cessation of active hostilities, and as far as practicable, subject to their legitimate security interests, make available such information to the party or parties in control of the affected area.

In cases where a user of explosive ordnance which has become ERW, does not exercise control of the affected territory, it must, after the cessation of active hostilities, where feasible, provide technical, financial, material or human resources assistance to facilitate the marking and clearance, removal or destruction of such ERW.

After the cessation of active hostilities, and as soon as feasible, parties in control of territory affected by ERW must:

- mark and clear, remove or destroy ERW in affected territories under their control. Areas affected by ERW that are assessed as posing a serious humanitarian risk must be accorded priority status for clearance, removal or destruction.
- survey and assess the threat posed by explosive remnants of war; assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction; mark and clear, remove or destroy ERW; and take steps to mobilise resources to carry out these activities.

Parties must also take all feasible precautions in the territory under their control affected by ERW to protect the civilians and civilian objects from the risks and effects of ERW, both during and after the cessation of active hostilities. This could include issuing warnings, providing risk education to the civilian population, and marking, fencing and monitoring of the affected territory.

DEMINEING

Mine clearance is key to eliminating the risks posed by anti-personnel mines, other mines and ERW. It is essential to allow people in mine-affected communities to live in safety and, as land is cleared, to permit it to be returned to productive use, including for food production.



Collection of unexploded ordinance in Aden governorate, Al-Twahi district, Yemen, 2018. (Matteo Minasi/OCHA)

The Convention on the Prohibition of Anti-Personnel Mines (the Ottawa Convention) requires states party to it to:

- identify all areas under their jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced; ensure, as soon as possible, that all such mined areas are perimeter-marked, monitored and protected by fencing or other means in order to prevent civilians from entering and being injured by the mines;
- destroy all anti-personnel mines in the mined areas as soon as possible, but not later than ten years after the entry into force of the Convention for that state.¹¹

The Convention on Cluster Munitions (the Oslo Convention) requires states party to it to:

- destroy cluster munition remnants located within territory under their jurisdiction;
- provide age and gender-sensitive cluster munition victim assistance;
- give and receive international assistance in support of fulfilling obligations under the convention.

The 1996 Amended Protocol II to the Convention on Certain Conventional Weapons contains similar obligations for the weapons covered by the Protocol. Without delay after the cessation of active hostilities, states parties and parties to a conflict must clear, remove, destroy or maintain all minefields, mined areas, mines, booby-traps and other devices in areas under their control.¹² The 1997 Anti-Personnel Mine Ban Convention contains additional obligations in respect of the anti-personnel mines covered by that instrument.¹³

As outlined above, Protocol V on ERWs also includes obligations to remove ERWs. The UK ratified Protocol V in 2024, and even before doing so supported a significant number of initiatives relating to the removal of ERW, primarily through the Global Mine Action Programme (GMAP).

Since 2014, the UK has invested over £120 million in mine action, resulting in over 689 million square metres of land being cleared and confirmed safe, and over 5.4 million people reached by education on mine risk. The UK currently funds mine action in twelve countries, responding to the most pressing needs around the world in Ukraine, Afghanistan, Sub Saharan Africa and Southeast Asia while exploring innovative further ways to enhance support in countries such as Cambodia and Ukraine.

11 Articles 5 and 6 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. See also UK LOAC Manual, para 6.14.10.

12 Article 10 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, to the Convention on Certain Conventional Weapons.

13 Article 4 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

Mine removal in the Falkland Islands

In November 2020 a UK-funded programme that had commenced its work in 2009 completed its mission to de-mine the Falkland Islands. The islands are free of lethal minefields almost forty years after the end of the conflict during which thousands of exploding devices were laid.

WAR CRIMES

The following violations of IHL related to the use of particular weapons constitute war crimes under the ICC Statute when committed in international or non-international armed conflicts.¹⁴ The terminology used takes into account historical instruments such as the 1907 Hague Regulations and the 1925 Geneva Gas Protocol, so their precise application to modern weapons is not settled.

- Employing poison or poisoned weapons.¹⁵ The weapons covered by this crime likely include a range of biological and toxin weapons as well as chemical weapons, whose *primary* effect is poisonous.
- Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices.¹⁶ This crime principally covers chemical weapons.
- Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production.¹⁷ The wording of this crime is taken from the 1972 Biological and Toxin Convention, where it is understood to include microbial and other biological agents and toxins that affect humans, animals and plants.

14 At the time of publication of this Handbook the UK has not yet ratified the amendments to the ICC Statute that established these crimes in non-international armed conflicts.

15 Articles 8(2)(b)(xvii) and 8(2)(e)(xiii) ICC Statute.

16 Articles 8(2)(b)(xviii) and 8(2)(e)(xiv) ICC Statute.

17 Articles 8(2)(b)(xxvii) and 8(2)(e)(xvi) ICC Statute.



Wheat storage hangar destroyed by airstrikes during the Russian invasion of Ukraine. (Miguel Medina/AFP)

Chapter 4—Other Restrictions on the Conduct of Warfare

In addition to the general rules on the conduct of hostilities, and those regulating particular weapons outlined in Chapters 2 and 3 respectively, IHL also contains rules regulating particular methods of warfare. A number of these are of direct relevance to food security. Most notable among them is the prohibition on starvation of civilians as a method of warfare, presented in detail in Chapter 5. This Chapter addresses six types of such regulated conduct that are of particular relevance to conflict-induced food insecurity.

The objective of certain military operations is to restrict access to and exit from particular areas. As civilians are likely to be present, there is a potential for such operations to have severe adverse consequences for food security. This Chapter also presents two such types of operations that have been resorted to in recent years: sieges and blockades.

PILLAGE

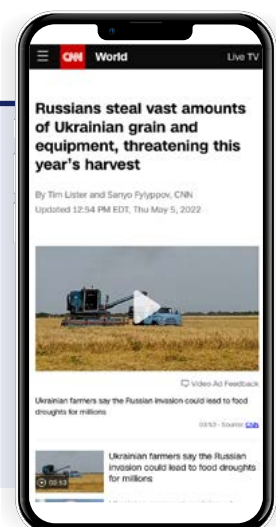
IHL prohibits the taking of property for personal use.¹ A number of different terms are used for this prohibited behaviour—some in legal instruments and others colloquially: pillage, plunder, looting and appropriation.

The essence of the prohibited conduct is the same: appropriation of property for personal use, without the owner's consent. The prohibition covers both organised pillage, ordered by commanders, and individual acts.

In the media

CNN, Russians steal vast amounts of Ukrainian grain and equipment, threatening this year's harvest, 5 May 2022

In late April, Russian soldiers removed 1,500 tons of grain from storage units known as elevators in the Kherson village of Mala Lepetykha, using trucks with Crimean number plates. The next day, those same trucks—35 in all—returned and emptied large storage units known as grain silos at nearby Novorajsk across the river Dnieper.



¹ Article 28 Hague Regulations. See also Article 15 GC I, Article 18 GC II, Article 33 GC IV and Article 4(2)(g) AP II. See also UK LOAC Manual, paras 5.35-5.35.2 and 15.23-15.23.1.

Pillage must be distinguished from taking of property that is permissible under IHL. IHL permits the taking of movable property belonging to the enemy when such seizure is imperatively demanded by the necessities of war. Essentially, this allows the taking of property that can be used for military operations.² The exception does not cover private property. So, for example, if troops came upon an enemy camp it would be permissible to seize the food stocks to feed themselves, but taking harvested grain belonging to civilians would constitute pillage. Similarly, fuel may be taken from state depots, but not from civilians.

War crime

Pillage is a war crime under the ICC Statute in international and non-international armed conflicts.³

DESTRUCTION NOT JUSTIFIED BY MILITARY NECESSITY

In addition to the rules regulating attacks, IHL also prohibits the destruction of public and private property unless this is justified by military necessity.⁴ The prohibition covers the scorched earth practices sometimes carried out by retreating forces but also smaller scale destruction.⁵

By way of example, this prohibition means that a resupply vehicle should not drive through a planted field of crops if a less destructive route is apparent that offers the same operational advantage.

War crime

Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war is a war crime under the ICC Statute in both international and non-international armed conflicts.⁶

2 Article 23(g) Hague Regulations. In situations of occupation, the occupier may only requisition foodstuffs, articles or medical supplies in the occupied territory for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. In such cases, the occupier must ensure that fair value is paid for any requisitioned goods. Article 55 GC IV and UK LOAC Manual, paras 11.83-11.84.1.

3 Article 8(2)(b)(xvi) and Article 8(2)(e)(v) ICC Statute.

4 Article 23(g) Hague Regulations. In situations of occupation, Article 53 GC IV prohibits destruction of private or public property unless such destruction is rendered absolutely necessary by military operations. See also UK LOAC Manual, paras 11.75 and 15.17.

5 Article 54(5) AP I allows states defending their territory from invasion to derogate from the prohibition to destroy objects indispensable to the survival of the civilian population where this is required by imperative military necessity.

6 Article 8(2)(b)(xiii) and Article 8(2)(e)(xii) ICC Statute.

COLLECTIVE PUNISHMENT

IHL prohibits collective punishment.⁷ Collective punishment is the imposition of punitive measures on a group of persons, for acts allegedly perpetrated by one or more members of that group, without establishing the individual responsibility of each person who is punished.⁸ The notion of ‘collective punishment’ is broad. It extends well beyond the imposition of legal sentences, to measures and harassment of any sort, by administrative measures or enforcement action.

Collective punishment only occurs when the conduct in question has a punitive aim or purpose. This can be inferred when a measure is motivated by the desire to punish a group of people for activities for which they bear no personal responsibility but also, more generally, when it seeks to harass, intimidate or exert pressure on the group as a whole.

Collective punishment is sometimes conducted by means that have severe consequences for civilians’ food security. In recent years this has been by depriving particular communities of food or curtailing their access to basic services. At times the punishment has taken the form of ‘taxation’ levied in crops.

Voices from the field

Looting of food, crops, agricultural equipment and livestock and collective punishment in Syria

At least 115 incidents were identified in which food, crops, agricultural equipment or livestock was looted in the 2017-2022 period. Crops such as wheat and barley were looted most frequently. Conflict parties included over 30 armed groups, but the most frequently named were Turkish-backed factions acting under Operation Peace Spring and the Syrian armed forces.

Approximately 37% of incidents were recorded in 2020 alone. This was mainly driven by Turkish-backed factions who looted multiple places on single days, most frequently in Al-Hasakah governorate. On 9 May 2020 they looted wheat and barley crops and civilian houses from seven separate locations in Al-Hasakah. It is possible that these were strategic revenge attacks against farmers and other civilians deemed to be disloyal to the Turkish-backed groups. Indeed, later that same month the Turkish-backed Hamza Division imposed levies of “seven bags of harvest of wheat and barley on farmers and farmlands’ owners” who refused to pledge allegiance or leave areas under the control of Operation Peace Spring. This was in addition to threatening to burn and loot their harvests.



7 Article 87 GC III, Article 33 GC IV, Articles 75(2)(d) and 75(4)(b) AP I and Article 4(2)(b) AP II. See also UK LOAC Manual, paras 8.121, 9.24, 15.30.5 and 15.38.

8 Special Court for Sierra Leone, *Brima, Kamara and Kanu* (SCSL-2004-16-PT), Trial Chamber II, Judgment, 20 June 2007, paras 678-680.

War crime

Collective punishment is not a war crime under the ICC Statute, nor a grave breach of the Geneva Conventions or Additional Protocol I. It is included in the list of war crimes of the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.⁹

SEXUAL VIOLENCE

Disruption of livelihoods and food insecurity in conflict-affected areas exposes women and girls to many forms of gender-based violence, including sexual violence.

IHL prohibits sexual violence. While common Article 3 GCs does not expressly refer to sexual violence, it prohibits ‘violence to life and person’, including cruel treatment and torture and ‘outrages upon personal dignity’. Similarly, Article 14(1) GC III provides that prisoners of war are entitled to ‘respect for their persons and their honour’. It is understood that these expressions cover sexual violence.

Additional Protocols I and II recognise the prohibition of ‘outrages upon personal dignity’ as a fundamental guarantee for civilians and persons *hors de combat*. Article 75 AP I specifies that the prohibition covers in particular ‘humiliating and degrading treatment, enforced prostitution and any form of indecent assault’. Article 4 AP II adds ‘rape’ to this list.¹⁰

Additionally, Article 27 GC IV and Articles 76(1) and 77(1) AP I require parties to armed conflict to protect women and children against rape, enforced prostitution or any other form of indecent assault.

Sexual and gender-based violence and food security in armed conflict

Disruption of livelihoods and food insecurity in conflict-affected areas exposes women and girls to many forms of gender-based violence, including sexual violence. Male out-migration, death, detention and disappearance leave women with little to no resources, exposing them to increased risk of sexual exploitation and abuse when they try to access food and meet their basic needs. During the 2017 drought in Somalia, the absence of husbands and the disruption of livelihoods increased women and girls’ vulnerability to sexual exploitation by men with greater control over resources and access

9 Article 4(b) Statute of the International Tribunal for Rwanda and Article 3(b) Statute of the Special Court for Sierra Leone.

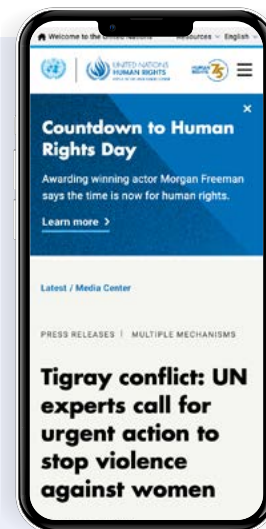
10 See also UK LOAC Manual, paras 9.21 and 15.38.

to opportunities.¹¹ In conflict settings women and girls also face sexual and gender-based violence when they leave their homes to care for others and to meet their household needs, including by purchasing food. Often such abuse is at the hands of members of the armed forces of parties to the conflict.

For example, in 2021, a group of UN Special Rapporteurs appointed by the UN Human Rights Council condemned widespread sexual and gender-based violence against women and girls that appeared to have been used as part of a deliberate strategy to terrorise populations by the parties to the conflict in Tigray.¹²

According to the ICRC, measures to prevent and address sexual and gender-based violence can include the integration of the prohibition into domestic legal frameworks and military codes, training of military personnel, the use of gender assessments and analysis, and the investigation of allegations of violations.

Gender-based violence is rooted in gender inequalities and harmful gender roles and social norms which are exacerbated by conflict-induced food insecurity. As a consequence, women and girls are at higher risks of gender-based violence in conflict settings. The most widespread type of gender-based violence is intimate partner violence and family violence. When households are food insecure, this impacts gender roles in the household, decreases sense of control, and elevates household stressors, which in turn contribute to a higher rate of intimate partner violence and family violence against women and girls.



War crime

Under the ICC Statute committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence are war crimes in international and non-international armed conflicts.¹³

BLOCKADES

A naval blockade is a lawful method of naval warfare, provided it meets the requirements provided for in customary international law. A blockade is the blocking of the approach to the enemy coast, or a part of it, for the purpose of preventing the ingress and egress of ships and aircraft of all states.¹⁴

11 See InterAction GBV Working Group and Protection Working Group, *Famine-Affected Countries Gender-Based Violence and Protection Concerns*, (2017).

12 OHCHR Press Release, *Tigray conflict: UN experts call for urgent action to stop violence against women*, 3 December 2021.

13 Article 8(2)(b)(xxii) and Article 8(2)(e)(vi) ICC Statute.

14 UK LOAC Manual, paras 13.65-13.76 (as amended).

A belligerent's purpose in establishing a blockade is to deny the enemy the use of enemy and neutral vessels or aircraft to transport personnel and goods to or from its territory, or part of it. A blockade must not bar access to neutral ports or coast, nor to straits used for international navigation or archipelagic sea lanes.

To be valid under international law, a blockade must be fully declared (extent, duration, scope) and notified. A practical method of notification would be the use of a Notice to Mariners (for a maritime blockade) and a Notice to Airmen (where the blockade is also operative against aircraft). Once notified, the blockading state must then ensure that the following requirements are met, for the blockade to remain lawful under international law.

A blockade must be maintained effectively, by sufficient forces to ensure that there is a danger of capture or interdiction for vessels or aircraft attempting to breach the blockade. Effectiveness is a question of fact in each circumstance. There is no rule limiting the type of forces a belligerent state may use in enforcing a blockade. Therefore, a maritime blockade may be enforced purely by aerial assets; an aerial blockade may be enforced purely by maritime assets. So long as vessels or aircraft are prevented from reaching or leaving the blockaded coast due to the risk of capture or attack, the blockade will satisfy the 'effectiveness' requirement. A blockade must also be impartial: it should therefore be enforced against all shipping, regardless of flag, ownership or indeed status in the conflict.

Importantly for the context of this Handbook, the establishment of a blockade is prohibited if it is intended to starve the civilian population; or to deprive the civilian population of objects essential to its survival, or if the suffering of the civilian population is excessive in relation to the military advantage to be gained from the blockade.¹⁵

Provided these requirements are met, then all vessels, including merchant vessels, breaching or attempting to breach a blockade are liable to capture or diversion. Vessels which resist capture or diversion may render themselves military objectives and liable to attack.

Once a blockade is established, if the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must allow the free passage of such items.¹⁶

¹⁵ See also UK LOAC Manual, para 13.74.

¹⁶ See also UK LOAC Manual, para 13.75.

The concept of blockades only exists in relation to international armed conflicts.¹⁷ This said, at times parties to non-international armed conflicts have imposed significant restrictions on the entry of ships into areas controlled by organised armed groups. In such circumstances the rules of IHL prohibiting starvation of civilians and regulating humanitarian relief operations continue to apply.

OTHER MARITIME RESTRICTIONS

Although not a blockade, the maritime enforcement of arms embargoes and other sanctions adopted by the Security Council can cause delays to the entry of commercial goods into ports, which can have consequences for food security.

Processes can be implemented to minimise the impact on food security. For example, in order to mitigate the impact of enforcing the arms embargo on Yemen, the UN established UNVIM, the UN Verification and Inspection Mechanism for Yemen, to facilitate the unimpeded flow of commercial goods and services to Yemen, while ensuring compliance with the arms embargo established pursuant to Security Council Resolution 2216 (2015).

UNVIM achieves this by processing and granting clearances for commercial vessels destined for particular Yemeni ports, limiting inspections only to those vessels in respect of which suspicions arise concerning their cargo. Cleared vessels are permitted to proceed directly to their destination port.

SIEGES

IHL treaties refer to ‘besieged’ or ‘encircled’ areas, but do not define them.¹⁸ Nor are sieges defined in other areas of public international law. Unlike occupation, or blockades, there are no specific conditions that must be met for a siege to be established, and for specific rules to become applicable

The purpose of siege operations is the isolation of besieged enemy forces in terms of their separation from reinforcements and logistical supplies. There is no need for total encirclement. What matters is the effect of the positioning of the besieging forces. They must be able to control entry and egress from a particular area, and thus movement in and out of weapons and ammunition, supplies and people.

17 This said, the law of naval warfare, including the law of blockade, applies in a non-international armed conflict, where there has been a recognition of the belligerency of the non-state party to the armed conflict. International law allows a state party to a non-international armed conflict to recognise their non-state actor enemy’s belligerency. While rare, when belligerency is recognised, the law of naval warfare applies in full to both (or all) parties to the conflict. For example, in the American Civil War, the declaration of a blockade of the Confederate coast was held to be an implicit recognition of the Confederacy’s belligerency.

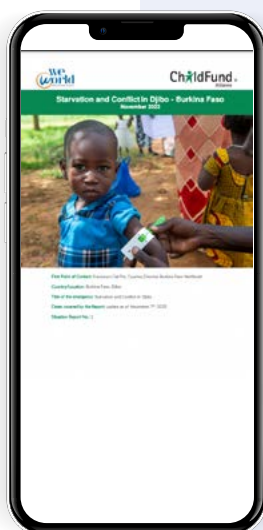
18 Article 15 GC I, Article 18 GC II and Article 17 GC IV.

Concerns about the compatibility of sieges with IHL arise because in most situations besieged areas contain both civilians and fighters. Consequently, attacks into these areas, and their isolation, will also adversely impact civilians.

Sieges are not prohibited as such under IHL. The besieging party is entitled to attack enemy forces and other military objectives in besieged areas, and to limit supplies that reach them. However, in doing so it must comply with all relevant rules of IHL.

Sieges have two constituent elements: the encirclement of an area, and bombardment—the frequency and intensity of which will vary. For the purpose of the application of IHL these two dimensions must be considered separately.

Spotlight on Djibo in Burkina Faso



On the 26th of September [2022], a supply convoy to the besieged Djibo was ambushed by armed groups, leading to the death of 27 soldiers, the kidnapping of 50 civilians, and more than 71 people dead. The supply convoy was largely destroyed by flames: more than 80 trucks transporting mainly food burned out, causing urgently needed food and supplies not to arrive in the city. This latest violent attack leaves the town of Djibo even more vulnerable and isolated, with the population suffering from conflict and starvation.

Since February 2022, jihadist armed groups have surrounded the northern town of Djibo, in Soum province, located at the border with Mali. The groups have been controlling the access routes to the city, preventing the entry and exit of people and goods. This “siege” interrupted almost all commercial activity, vital to enable the population to obtain basic goods, especially food items, which traditionally arrived in Djibo by land.

By early March, shortages of food and water were already creating a dire humanitarian situation, which is until today not fully addressed. Since the attack on the supply convoy, the situation in Djibo consistently deteriorates and first reports are coming out that people are starving. On the 3rd October alone, it was reported that at least eight children died of starvation.

The city of Djibo has seen its population increase from about 60,000 in 2019 to more than 350,000 today following successive waves of displacement in the region.

Child Fund Alliance, *Starvation and Conflict in Djibo—Burkina Faso*, November 2022



Displaced women at an NGO-built water point in the town of Djibo. (Naomi Frerotte/UNOCHA)

Conduct of hostilities

The rules regulating the conduct of hostilities elaborated in Chapter 2 also apply to sieges.¹⁹ Any use of force conducted in the context of a siege that amounts to an ‘attack’, be it bombardment, sniping or other small arms fire, must comply with the general rules outlined in Chapter 2. It must be directed exclusively against military objectives; it must not be indiscriminate; and it must comply with the rule of proportionality. Moreover, in the conduct of all military operations, parties must take constant care to spare the civilian population and civilian objects, and besieging and besieged forces must take a number of precautionary measures.

The confined environment of a siege, where fighters and civilians find themselves in extremely close proximity, is relevant to the application of these rules as it shapes the context in which the attacks and other military operations are conducted. For example, the particularities of sieges must be taken into account when conducting proportionality assessments. Of particular relevance in siege situations are the limitations on movement and the isolation of the area. This must be taken into account, for example, with regard to expected damage to civilian property. Destruction of foodstores and damage to facilities for their production and safe storage will have a greater impact in view of the limited supplies and restrictions on entry of goods. Similarly, with regard to drinkable water supplies, if previous attacks have already damaged water treatment facilities, any further damage will be more significant than if they had been intact.

When planning or launching attacks, parties to armed conflict must take a range of precautions to spare the civilian population. These play an extremely important role in sieges.

It is not just besieging forces that have obligations. Besieged forces must also take precautions to spare civilians from the effects of attacks. In particular, to the maximum extent feasible they must endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; and avoid locating military objectives within or near densely populated areas.²⁰

As is the case for precautions in attack, what is feasible depends on the context. Depending on the size of the besieged area and how densely populated it is, the possibilities for removing civilians from the proximity of military objectives may be limited. The second obligation may be simpler to comply with—always bearing in mind the size of the besieged area—and besieged forces can avoid locating military objectives close to essential infrastructure and objects necessary for food storage and distribution.

19 UK LOAC Manual, para 5.34.

20 Article 58 AP I. See also UK LOAC Manual, paras 5.36 and 15.24.

The prohibition of starvation and the rules on humanitarian relief operations

A second set of IHL rules of relevance to sieges are the prohibition of the starvation of civilians as a method of warfare, and the rules regulating humanitarian relief operations, elaborated in Chapters 5 and 6 respectively. These are of pertinence to the encirclement aspect of sieges.²¹

The rules of IHL regulating humanitarian relief operations play an extremely important role in alleviating the impact on civilians of the encirclement and isolation of sieges. They are of particular significance because they come into play when civilians are facing a lower level of deprivation than starvation.

Evacuations

Evacuations are a way of striking a balance between the military aims pursued in sieges and parties' obligations towards civilians. Removing the civilian population from besieged areas ends their exposure to hostilities and to the deprivations associated with sieges.

Although not specifically mentioned in the provisions on precautions, evacuations of civilians from besieged areas are a way of giving effect to the general obligation to take constant care to spare the civilian population in the conduct of military operations. For the besieged party, evacuating civilians can be a way of discharging the obligation to take necessary precautions to protect the civilian population and individual civilians under their control against the dangers resulting from military operations.

Depending upon the size of the besieged area, failure by the besieged party to allow civilians to leave could amount to a violation of the prohibition on using the presence of civilians to shield military objectives from attacks or impede military operations.

IHL does not require evacuations to be conducted. But it does encourage parties to conclude agreements for the evacuation of the wounded and sick on land or at sea, or of particularly vulnerable members of civilian populations from besieged or encircled areas.²²

Civilians who do not participate in evacuations and who remain in besieged areas do not forfeit their status and protections. Once evacuations have been conducted, hostilities cannot be conducted on the presumption that anyone who chose not to be evacuated is a combatant or taking a direct part in hostilities.

21 See also UK LOAC Manual, para 5.34.2.

22 Article 15 GC I, Article 18 GC II, and Article 17 GC IV. In non-international armed conflicts common Article 3(3) GCs encourages parties to armed conflicts to enter into agreements to give effect to the other provisions of the Conventions, which include these on evacuations.



A Syrian family gathers to eat a plate of corn and cabbage on November 6, 2017 in Saqba, in the besieged rebel-held Eastern Ghouta area near Damascus. (Abdulmonam Eassa/AFP)

Chapter 5—Starvation

The rules of IHL on starvation of civilians are complex.¹ An accurate understanding is necessary to properly apply the rules themselves, and also to interpret the corresponding war crime of starvation of the civilian population.

The prohibition is found in greatest detail in the rules applicable in international armed conflicts. Article 54 AP I sets out two related but distinct rules that aim to prevent the starvation of civilians.

- The first paragraph of Article 54 AP I lays down a *general* prohibition of starvation of civilians as a method of warfare. It is not restricted to starvation caused by any particular type of conduct. Every method of warfare that has the purpose of causing the starvation of civilians is prohibited.
- Paragraphs 2 and 3 of Article 54 AP I address *particular acts* that can cause the starvation of civilians: attacking, destroying, removing or rendering useless ‘objects indispensable to the survival of the civilian population’. These acts are prohibited if they are conducted with the specific purpose of denying these objects for their sustenance value to the civilian population.

Although the two elements of Article 54 AP I share the same objective of preventing the starvation of civilians, their approach is different in important ways. In particular, the precise scope of the prohibition varies with the nature of the conduct that could lead to starvation. Accordingly, the two provisions must be considered separately.

THE GENERAL PROHIBITION OF STARVATION

The general prohibition of starvation of civilians as a method of warfare in Article 54(1) AP I is repeated in similar but not identical wording in relation to non-international armed conflicts in Article 14 AP II.

1 There are divergences of views among academics on many aspects of the prohibition. See, for example, Dapo Akande and Emanuela-Chiara Gillard, ‘Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: the Underlying Rules of International Humanitarian Law’, *Journal of International Criminal Justice*, Vol 17(4), September 2019, 753; Tom Dannenbaum, ‘Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence’, 55 *Vanderbilt Law Review* 681 (2023); and ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today’s and Future Conflicts*, 2024.

Must the conduct have the purpose of starving civilians?

A central question is whether the general prohibition is limited to situations where the *purpose* of particular conduct is starving the civilian population, or whether it also covers situations where, although it is not the purpose of that party, the starvation of the civilian population is the *foreseeable consequence* of a particular course of action.

The negotiations of what became Article 54 AP I, as well as leading commentaries to the text, support the position that only ‘deliberate’ starvation of civilians is prohibited. Relevant state practice essentially takes the form of military manuals. The majority simply reiterate the wording of Articles 54 AP I and 14 AP II. The few that do enter into a substantive discussion largely support this narrow interpretation.

For these reasons, it can be concluded that the *general* prohibition of starvation set out in Article 54(1) AP I, only covers conduct whose *purpose* is to starve civilians.

What constitutes ‘starvation’?

A second question is what amounts to ‘starvation’ for the purpose of this general prohibition. Which commodities must be denied, and what degree of deprivation must occur?

The term ‘starvation’ has been given a wider interpretation than the literal meaning of life-threatening deprivation of food and water. It also encompasses deprivation of other goods essential to survival in a particular context, such as, for example, heating oil and blankets.

This broad interpretation became apparent in the formulation of the related war crime in the ICC Statute. This expressly refers to ‘starvation of civilians as a method of warfare by depriving them of *objects indispensable to their survival*’ (emphasis added), which, during the negotiation of the Statute was considered to cover this broader range of life-sustaining commodities.² This is significant because it is not possible for a war crime to be broader in scope than the underlying rule of IHL. Consequently, by the time of the negotiation of the ICC Statute it was generally considered that the underlying prohibition also covered this broader range of commodities.

‘Starvation’ implies a high degree of deprivation, where survival is threatened. It is more extreme than the ‘not adequately supplied’ standard that brings into play the rules of IHL regulating humanitarian relief operations.³ However, it is not necessary for death to occur.

2 Article 8(2)(b)(xxv) ICC Statute.

3 Article 70(1) AP I. Article 18(2) AP II uses the expression ‘suffering undue hardship’.

THE PROHIBITION ON ATTACKING, DESTROYING, REMOVING OR RENDERING USELESS OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

The second part of Article 54 AP I focuses on particular acts that could lead to the starvation of the civilian population: attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.

Must the conduct have the purpose of starving civilians?

Importantly, the prohibition only applies when this conduct is *for the specific purpose* of denying these objects for their sustenance value to the civilian population.⁴ The objective of such conduct is irrelevant. It could be to starve civilians, to lead to their displacement or any other motive.

What are ‘objects indispensable to the survival of the civilian population’?

Article 54(2) AP I affords specific protection to ‘objects indispensable to the civilian population’. It gives a number of indicative examples of such objects:

- foodstuffs
- crops
- livestock
- drinking water installations and supplies
- irrigation works.

The inclusion of ‘drinking water installations’ and ‘irrigation works’ in this indicative list demonstrates that Article 54(2) AP I protects more than just food and water themselves. It is clear that destroying other objects and infrastructure, the denial of which can undermine the sustenance value ultimately provided to the civilian population is also prohibited, when done for that purpose.

4 UK LOAC Manual, para 5.27.2. Upon ratification of Additional Protocol I the UK made a declaration in relation to Article 54(2) AP I stating that ‘[t]he United Kingdom understands that paragraph 2 has no application to attacks that are carried out for a specific purpose other than denying sustenance to the civilian population or the adverse party.’ The Geneva Conventions Act (First Protocol) Order 1998, Declaration m. The prohibition in Article 54(2) AP I also covers situations where the conduct has the specific purpose of denying the objects in question for their sustenance value to the adverse party. This aspect is elaborated in Article 54(3) AP I.

The fact it is now understood that ‘starvation’ under Article 54(1) AP I can result from the denial of a wider category of objects essential to survival, beyond those connected directly with the provision of food and water, provides support for the conclusion that Article 54(2) AP I protects a similar range of objects.⁵

Significantly, the protection is accorded to objects, and not to services. Disrupting services as part of the use of starvation of the civilian population as a method of warfare would fall within the general prohibition in Article 54(1) AP I.

What is prohibited?

It is prohibited to ‘attack, destroy, remove or render useless’ objects indispensable to the survival of the civilian population. The type of prohibited interference is broader than that ordinarily accorded to civilian objects, by their protection from direct or indiscriminate attack. For example, ‘destroying’ and ‘rendering useless’ prohibit a broader range of forms of interference or harm than attacks. This could include contaminating water sources, for example.

The prohibition applies even when the objects in question are military objectives, for example, by virtue of their location or use. This could be the case if a water tower is used for observation purposes, for example. Significantly, however, as already noted, Article 54(2) AP I prohibits these acts if they are conducted *for the specific purpose* of denying the objects in question for their sustenance value to the civilian population.

The prohibition is thus not absolute. By way of example, it is not prohibited to attack a wheatfield that has become a military objective by virtue of enemy troops using it as cover. The wheatfield has become a military objective by virtue of its use. As it is not being destroyed for the specific purpose of denying the crops for their sustenance value to civilians, the attack does not fall within the scope of the prohibition in Article 54(2) AP I. However, consideration of the impact of the attack on the civilian population is required under Article 54(3)(b) AP I, discussed below, as well as under the rule of proportionality discussed in Chapter 2.

Similarly, looting of supermarkets by enemy forces in order to feed themselves is also unlikely to fall within the scope of the prohibition. In such cases the purpose of the looting is to benefit the perpetrators rather than for the specific purpose of denying the local civilian population of the sustenance value of the looted goods. Although not conduct that would be relevant to the prohibition in Article 54(2) AP I, this behaviour could nonetheless amount to pillage.⁶

The existence—or absence—of the requisite purpose may be relatively easy to infer in certain situations, and in other cases less so. Rather than from individual acts, the requisite purpose is more likely to be evinced by a pattern of behaviour.

5 See Akande and Gillard at footnote 1 above.

6 Pillage is discussed in Chapter 4.

Focus on South Sudan

Over a period of two years members of armed forces:

- » Systematically looted a town
- » Pillaged food and livestock: goats, chickens, grains, food and the previous year's harvest
- » Burned the local market to the ground
- » Erected checkpoints around the area to prevent civilians from selling their wares at the local market and extorted money from them at checkpoints
- » Caused the displacement of civilians to the bush where they did not have access to adequate food, potable water, and shelter
- » Stole pumps used to pump water from boreholes, depriving the communities of access to water for consumption and sanitation. Boreholes were targeted systematically.

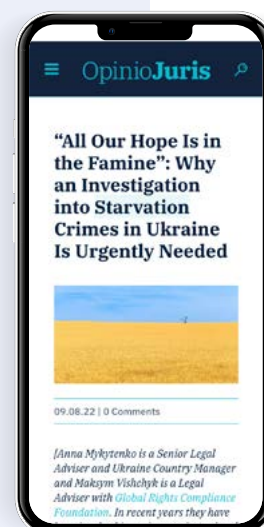
This pattern of behaviour against particular communities in South Sudan led the Commission on Human Rights in South Sudan to conclude that there had been a violation of the prohibition of starvation of civilians.⁷

Voices from the field

Siege tactics employed by Russia in the early weeks of the war left thousands of civilians trapped in the besieged cities, such as Mariupol, Chernihiv, Sumy, Izium and other areas where the UN and its partners were unable to reach and where 'people [were] in desperate need of support'.

Specifically, the residents of Mariupol could not leave the city, and humanitarian aid convoys on their way in were either blocked, looted or both.... Russia is said to have blocked humanitarian relief to those in need in Mariupol. As a result, residents were deprived of water, food, electricity, heat and other utilities during the winter months. Three weeks into the siege, people in Mariupol were 'so hungry they are killing stray dogs for food' and drinking snow.

Global Rights Compliance, *"All Our Hope Is in the Famine": Why an Investigation into Starvation Crimes in Ukraine Is Urgently Needed*, 9 August 2022



7 Conference room paper of the Commission on Human Rights in South Sudan, UN Doc A/HRC/45/CRP.3, 5 October 2020.

What if the enemy armed forces are using the objects indispensable for the survival of the civilian population?

Article 54(3) AP I addresses situations when the objects indispensable to the survival of the civilian population are used by enemy forces. It deals with two possible scenarios.

First, the prohibition under 54(2) AP I does not apply if the objects are used as sustenance *solely* for members of the adverse party's armed forces. Article 54(2) therefore does not prohibit attacking, destroying or rendering useless objects used as sustenance solely for the enemy's armed forces,⁸ such as targeting food stores located within the perimeter of a military installation, when it is known they are only used to feed the enemy's troops.

Second, if the objects are not used as sustenance for the adverse party's armed forces, but are nevertheless used in direct support of military action, the prohibition in Article 54(2) AP I also does not apply. This is subject to the safeguard that in no event may action be taken which 'may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement'.

An example of when the objects in question could be used in direct support of military action would be where a corn field or orchard is used as cover by advancing infantry or when enemy troops take cover behind a barn containing grain. In such cases, Article 54(2) AP I would not prohibit action being taken against the field, orchard or barn, provided that action may not be expected to starve or displace the civilian population.⁹

NON-INTERNATIONAL ARMED CONFLICTS

In relation to non-international armed conflicts, Article 14 AP II sets out the same general prohibition of starvation of the civilian population, albeit using slightly different language to Article 54 AP I.¹⁰ The prohibition on attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population only applies when this conduct has the purpose of starving civilians.

Unlike Article 54(3) AP I, Article 14 AP II does not address the situation when objects indispensable to the survival of the civilian population are used as sustenance solely for members of the armed forces or armed groups, or in direct support of military action. Attacking, destroying, removing or rendering useless the objects in question in such circumstances is not prohibited, provided doing so does not have the purpose of starving civilians.

These rules apply as a matter of customary law to all non-international armed conflicts.

8 Article 54(3)(b) AP I. See also UK LOAC Manual, para 5.19.

9 UK LOAC Manual, para 5.19.1 (as amended).

10 Article 54(1) AP I prohibits starvation of the civilian population 'as a method of warfare', while Article 14 AP II uses the expression 'as a method of combat'. The difference in terminology does not affect the scope of the rule.

CONCLUSIONS ON THE PROHIBITION OF STARVATION OF CIVILIANS

To sum up:

- The *general* prohibition on starvation of civilians as a method of warfare covers conduct carried out for the *purpose* of starving civilians. This prohibition applies in international and non-international armed conflicts.
- In international armed conflicts, Article 54(2) AP I lays down a more specific prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population *for the specific purpose* of denying them for their sustenance value to the civilian population.
- Article 54(3) AP I clarifies that the prohibition in Article 54(2) does not apply if the objects in question are used by an adverse party:
 - as sustenance *solely* for members of the adverse party's armed forces; or
 - if not as sustenance then in direct support of military action.

In the latter case, no action may be taken against these objects *if it may be expected* to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

- In non-international armed conflicts, the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population only applies when this conduct has the *purpose* of starving civilians.

WAR CRIMES

The ICC Statute as adopted in 1998 only included the war crime of starvation in relation to international armed conflicts. It is formulated as:

[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.¹¹

In 2019 the Statute was amended to include a war crime in relation to non-international armed conflicts. The language used does not include a reference to the Geneva Conventions:

[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.¹²

11 Article 8(2)(b)(xxv) ICC Statute.

12 Article 8(2)(e)(ix) ICC Statute. At the time of publication of this Handbook, the UK has not yet ratified the amendment to the ICC Statute establishing the crime in non-international armed conflicts.



In Mogadishu, internally displaced persons receive food from the ICRC in a joint operation with the Somali Red Crescent. (ICRC)

Chapter 6—Humanitarian Access: Humanitarian Relief Operations

WHAT IS ‘HUMANITARIAN ACCESS’?

The expression ‘humanitarian access’ is not found in IHL, but it is frequently used in Security Council resolutions and policy documents. It has two dimensions:

- the ability of humanitarian actors to conduct humanitarian relief operations as foreseen by IHL and in accordance with humanitarian principles;
- the ability of civilians to access basic goods and services, including when provided as humanitarian assistance.

This Chapter focuses on the rules of IHL underlying the first dimension. Chapter 7 addresses the second.

The rules of IHL regulating humanitarian relief operations become relevant when the civilian population of a territory under the control of a party to an armed conflict ‘is not adequately provided’ with certain essential items.¹ This is a lower level of need than ‘starvation’. The rules on relief operations therefore play an extremely important role in preventing and alleviating conflict-induced food insecurity.

In such situations IHL foresees two successive steps: first, an acceptance of offers to conduct humanitarian relief operations. Second, once consent has been obtained, an obligation to allow and facilitate rapid and unimpeded passage of supplies, equipment and personnel involved in such operations.²

1 Article 70(1) AP I. In non-international armed conflicts, the corresponding provisions in Article 18(2) AP II become applicable when the civilian population is suffering ‘undue hardship’.

2 The analysis in this Chapter is drawn, in part, from the *Oxford Guidance on the Law Regulating Humanitarian Relief Operations in Situations of Armed Conflict*, (2016). This publication offers a comprehensive analysis of the relevant rules of IHL.

WHAT ARE HUMANITARIAN RELIEF OPERATIONS?

For the purpose of IHL, humanitarian relief operations include, but are not limited to, operations to provide food, water, medical supplies, clothing, bedding, means of shelter, heating fuel, and other supplies and related services essential for the survival of a civilian population.³

For the rules of IHL to apply, the operations must be exclusively humanitarian in character: their purpose must be solely to assist people in need. They must also be impartial: they must be conducted without adverse distinction on any ground, priority being given to those in greatest need. This does not however, preclude giving preferential treatment to particular categories of people, including for example, children and expectant or nursing mothers.

Focus on humanitarian principles

Humanitarian principles provide guidance to actors carrying out humanitarian activities. They promote a way of operating that provides assurance to parties to armed conflict that humanitarian activities will not interfere in the conflict or provide an advantage to their opponent. Compliance with humanitarian principles should make it more likely that operations will be accepted by parties, and implemented in a manner that is unimpeded and safe for humanitarian actors and beneficiaries.

Humanity: 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.

Impartiality: 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 opinions.

Neutrality: Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.

Independence: Humanitarian actors must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

A variety of actors may offer to carry out relief operations: states, international organisations, and private actors, such as non-governmental organisations. To benefit from the rules of IHL their operations must be exclusively humanitarian in character, and conducted impartially.

3 Articles 69 and 70 AP I. Article 18(2) AP II refers to 'supplies essential' for the survival of the civilian population, 'such as foodstuffs and medical supplies'.

In practice it is principally intergovernmental organisations (UN agencies, funds and programmes such as the World Food Programme, the United Nations Children’s Fund and the Office of the United Nations High Commissioner for Refugees); the components of the International Red Cross and Red Crescent Movement (the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and National Red Cross or Red Crescent Societies); and non-governmental organisations (NGOs) that conduct relief operations. In highly insecure contexts, it is often local and national NGOs and the National Red Cross and Red Crescent Societies that conduct relief operations. States tend to fund their operations.

This Chapter focuses on collective relief operations for civilian populations. IHL also includes provisions on relief for particular individuals, and for people deprived of their liberty in connection to an armed conflict.⁴

MEETING THE BASIC NEEDS OF CIVILIANS

In situations of occupation IHL expressly requires the occupier, to the fullest extent of the means available to it, to ensure the food and medical supplies of the population of the occupied territory.⁵

In other situations of armed conflict, the party to the conflict in whose effective control civilians find themselves—state or organised armed group—has a primary role to meet their basic needs in terms of food, water, medical supplies and other commodities essential to survival.

This is recognised, more generally, for example, in UN General Assembly resolution 46/182 on *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*.

OFFERS TO CONDUCT HUMANITARIAN RELIEF OPERATIONS

If the relevant party to the conflict is unable or unwilling to meet these needs, and consequently, a civilian population is inadequately supplied with food, water or other supplies essential for its survival, offers may be made to conduct humanitarian relief operations.⁶

Various actors may offer to conduct humanitarian relief operations: states, intergovernmental organisations, and NGOs. Rather than their status, what matters is their capacity to conduct relief operations that

4 See, for example, Articles 72 and 73 GC III with regard to prisoners of war; Article 62 GC IV with regard to civilians in occupied territories; and Articles 108-109 GC IV with regard to civilian internees.

5 Article 55 GC IV.

6 Article 70 AP I, Article 18(2) AP II and common Article 3(2) GCs.

are exclusively humanitarian and impartial in character and conducted without adverse distinction.⁷

Offers to conduct humanitarian relief operations may be made to any party to an armed conflict and must not be considered as interference in the armed conflict or unfriendly acts. Such offers do not affect the legal status of parties to an armed conflict.

CONSENT

The consent of affected states to the offers to conduct relief operations is required. Consent is the initial and general authorisation to carry out operations in a particular country.

UN trucks carry food assistance for the people of east Aleppo, 2016. (David Swanson/OCHA)



7 Article 70(1) AP I and Article 18(2) AP II.

States have no latitude to withhold consent to offers to conduct humanitarian relief operations in two situations.

- In situations of occupation: if an occupying power is not in a position to ensure the adequate provision of supplies essential for the survival of the civilian population of the occupied territory, it must accept offers to conduct relief operations that are humanitarian and impartial in character.⁸
- If the United Nations Security Council has adopted binding measures requiring parties to consent to humanitarian relief operations or, more radically, imposed relief operations. To date this has only occurred once, in relation to the conflict in Syria.

The Security Council and humanitarian action in Syria

A defining characteristic of the conflict in Syria has been the severe restrictions on the provision of humanitarian assistance. Operations have been impeded by a range of constraints, including active hostilities; repeated attacks against those providing humanitarian and, in particular, medical assistance; proliferation of parties to the conflict; and the instrumentalisation of assistance by all belligerents. It is unquestionable that a principal impediment was the constraints imposed by the government of Syria, particularly, but not exclusively, to relief operations for people in opposition-held areas. These were so severe that, following repeated requests to allow and facilitate rapid and unimpeded access that went unheeded, in July 2014 the Security Council took the unprecedented step of adopting a resolution—Security Council Resolution 2165 (2014)—that imposed cross-border and cross-line operations into and within Syria without the need for the government's consent.

SCR 2165 authorised UN humanitarian agencies and their implementing partners to use routes across conflict lines and four named border crossings in addition to those already in use at the time of the adoption of the resolution. It thus overrode the rules of IHL, authorising the operations without the need for the consent of the government of Syria.

SCR 2165 also established a monitoring mechanism, under the authority of the United Nations Secretary-General, to monitor the passage into Syria of relief consignments at the four named crossings.

Security Council arrangements were renewed for nine years, although the number of named crossings were progressively reduced, reflecting the change of circumstances on the ground at the relevant border areas.

In July 2023 the Security Council failed to reach agreement on renewing the arrangements, bringing the ordinary rules of IHL back into play.

8 Article 59 GC IV.

In all other situations the consent of the state where the operations will be conducted is required,⁹ but it may not be withheld arbitrarily.

While as a matter of law it is the consent of states that is required, including in non-international armed conflicts, in practice it is essential for humanitarian organisations to obtain the agreement of all parties that have control over or a presence in territory through which relief operations must transit or where they are conducted in order to operate in a manner that is efficient and safe—for the staff of humanitarian organisations and recipients of assistance.

What amounts to arbitrary withholding of consent?

Consent to humanitarian relief operations must not be withheld arbitrarily. However, there is no definition or guidance in any treaty and, to date, the precise meaning of the concept has not been addressed by any international or national tribunal, human rights mechanism or fact-finding body.

Consent is withheld arbitrarily in a number of situations. These include if consent is withheld in circumstances that result in the violation by a state of its obligations under international law with respect to the civilian population in question. Examples relevant to conflict-induced food insecurity include:

- Withholding consent to humanitarian relief operations in situations where the civilian population is inadequately supplied and the state intends to cause, contribute to, or perpetuate starvation. This would violate the prohibition on starvation of the civilian population as a method of warfare.
- Withholding consent to punish the civilian population for acts allegedly perpetrated by one or more members of the population, without establishing individual responsibility. This would violate the prohibition on collective punishment.
- Selective withholding of consent with the intent or effect of discriminating against a particular group or section of the civilian population. For example, systematically rejecting offers to conduct humanitarian relief operations in areas populated by ethnic groups perceived as favouring the enemy. This would violate the prohibition on discrimination.

Who gives consent and how?

IHL does not specify which organ within a state should review offers to conduct relief operations. This is determined by domestic law. Frequently, humanitarian actors initially negotiate authorisation to operate with ministries of foreign affairs, but this is not necessarily the case. It is normally some organ of a state's central government.

9 Article 70(1) AP I and Article 18(2) AP II. See also UK LOAC Manual, paras 9.12.3 and 15.54. In non-international armed conflicts not regulated by Additional Protocol II, there remains a divergence of views on whether the consent of the state is required for relief operations for civilians in territory under the control of organised armed groups that do not transit through territory under the control of the state.

IHL also does not prescribe the manner in which consent is to be granted, for example whether in writing or orally. What matters is that there be a freely given statement evidencing a binding intention to consent made by a person entitled to represent the state. The procedures for requesting and obtaining consent, as well as the requirements that must be met, often differ, depending on whether the offer is made by a local humanitarian actor, or one based outside the state in question.

When offers of assistance by international organisations, such as UN agencies, funds and programmes, and the ICRC, are accepted, the organisations often negotiate status agreements to give effect to the privileges and immunities to which they are entitled under international law. These play an important role in allowing the organisations to comply with their mandates and operate in an independent manner. It is much less common for private actors, such as NGOs, to be accorded similar privileges and immunities.

Silence in response to an offer to conduct humanitarian relief operations may be construed as consent thereto only in exceptional circumstances, for example where it is impossible to determine who represents the government of the state.

Once consent to operate has been obtained, the modalities for the entry into the country of humanitarian relief supplies, equipment and personnel may be negotiated with different organs of the state. Some administrative questions may still remain the domain of the organ that granted the consent; other issues—such as the issuing of visas for foreign staff—may be the responsibility of different ministries; while other aspects will be negotiated at regional or local level, with civil or military authorities. These are all dimensions of the obligation to allow and facilitate rapid and unimpeded passage of relief operations discussed below.

OBLIGATION TO ALLOW AND FACILITATE THE RAPID AND UNIMPEDED PASSAGE OF HUMANITARIAN RELIEF OPERATIONS

Once consent has been obtained, all parties to an armed conflict must allow and facilitate rapid and unimpeded passage of supplies, equipment and personnel involved in humanitarian relief operations throughout the territory under their control. The obligation covers initial entry into the country as well as movement within it. Parties are entitled to prescribe technical arrangements for such passage.¹⁰

10 Article 70(2) AP I. Article 18(2) AP II does not mention technical arrangements. Upon ratification of Additional Protocol I the UK made a declaration stating that Article 70 AP I does not affect the existing rules of naval warfare regarding naval blockade, submarine warfare or mine warfare. The Geneva Conventions Act (First Protocol) Order 1998, Declaration q. See also UK LOAC Manual, para 9.12.

States that are not parties to an international armed conflict, including most notably neighbouring states, are under the same obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief supplies operations.¹¹ In relation to non-international conflicts, neither Article 18(2) AP II nor common Article 3(2) GCs address the position of states not parties to the conflict.

While, as a matter of law, it is only the consent of states that is required, all parties to a conflict, including organised armed groups, are required to allow and facilitate rapid and unimpeded passage of relief operations—and also entitled to impose technical arrangements.

Apart from circumstances where specific conduct is required, the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief operations may be discharged in a variety of ways, leaving parties considerable discretion in its implementation.

IHL only prescribes a small number of specific measures parties to armed conflicts are required to take to allow and facilitate passage of relief operations.

- They may not divert relief consignments from their intended purpose or delay their forwarding, except in cases of urgent necessity in the interests of the civilian population concerned.¹²
- Restrictions may be imposed on the activities and the freedom of movement of humanitarian relief personnel only in the event of imperative military necessity, such as in the case of military operations in a particular location. Even in such circumstances restrictions may be imposed only temporarily.¹³
- In situations of occupation, humanitarian relief consignments must be exempt from all charges, taxes or customs unless these are necessary in the interests of the economy of the occupied territory.¹⁴

11 Article 70(2) AP I.

12 Article 70(3)(c) AP I.

13 Article 70(3) AP I. See also UK LOAC Manual, paras 9.13 and 11.49.

14 Article 61 GC IV.

In practice, there are a range of practical measures that could be taken to facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel into and within a country, including:

- Simplifying and expediting entry-visa procedures for personnel participating in humanitarian relief operations, or temporarily waiving the requirement for visas altogether.
- Waiving or reducing customs inspection requirements. If this is not possible, expedited procedures could be established and humanitarian relief supplies and equipment, should be granted priority treatment in handling.
- Granting permits for the passage of humanitarian relief supplies, equipment and personnel. Instructions to this effect should be provided to customs and other relevant officials, such as those staffing checkpoints, to ensure that different or additional requirements on passage are not imposed.
- Ensuring offices responsible for issuing the necessary authorisations are adequately staffed, and operate on a schedule that enables the necessary formalities to be completed as efficiently and expeditiously as possible.
- Allowing the import of telecommunications equipment for the exclusive use in humanitarian relief operations without restrictions, except as required for imperative reasons of security.
- Reducing administrative procedures and other formalities as far as possible, dispensing with any that are superfluous. Instructions to this effect should be provided to all persons acting on behalf of parties to the armed conflict to ensure that different, additional or more onerous requirements are not imposed at local level.
- Extending the exemption from taxes and charges that is obligatory in situations of occupation to other situations of armed conflict.

While it is *states* parties to armed conflicts that are most likely to be in a position to take the more formal measures set out above, organised armed groups are under the same obligation to allow and facilitate rapid and unimpeded passage of relief supplies, equipment, and personnel by taking all appropriate measures.

Good practice by states and organised armed groups to allow and facilitate rapid and unimpeded passage of relief supplies

IRAQ

Simplification of administrative procedures in 2018

1. Streamlined procedures: UN humanitarian movements in Ninewa/Kirkuk resumed following successful OCHA advocacy to simplify Kurdish Regional Government access-related administrative requirements. The Joint Crisis Coordination Centre (JCC) had initially requested significant documentation for issuing short-term access approvals, making the process overburdening and time intensive, and causing a three-week impasse at key checkpoints and a temporary re-routing of UN missions. The agreed access process is a more streamlined procedure that will facilitate greater humanitarian access.
2. Blanket operating permits: Kirkuk authorities agreed to grant blanket interim operating permits valid until 31 March 2018 to all international NGOs present in the governorate. This development came after OCHA's focused advocacy to remove imposed recruitment restrictions based on mandatory ethnic quotas. There were indications of a possible renewal of the permit, if necessary.

SOMALIA

1. Authorities in Cadaado town (Galgaduud region), in collaboration with security forces, forcefully removed all illegal checkpoints erected by local militia in the outskirts of town on 11-12 March 2018. Reports indicate that two people were killed during the operation. This was the third time that local authorities forcefully removed illegal checkpoints in the area this year.
2. Illegal checkpoints between Cadaado and Galinsoor towns removed. On 9 January 2018, the Cadaado district commissioner and local clan elders removed five illegal checkpoints between Cadaado and Galinsoor (Galgaduud region) following negotiations with armed men who had erected the checkpoints. This was the first time illegal checkpoints in the area were removed peacefully. Partners and commercial transporters resumed using the main road.

Drawn from OCHA Collection of Good Practice, February 2018.

TECHNICAL ARRANGEMENTS FOR THE PASSAGE OF RELIEF OPERATIONS

While parties to an armed conflict are required to allow and facilitate the rapid and unimpeded passage of humanitarian relief operations, they may prescribe technical arrangements—sometimes referred to as ‘measures of control’—for such passage.¹⁵

¹⁵ Article 59 GC IV and Article 70(3) AP I. This dimension is not addressed in Article 18(2) AP II. See also UK LOAC Manual, paras 9.12.1 and 9.12.2.

Administrative procedures and formalities and other technical arrangements must be applied in good faith and their nature, extent, and impact must not prevent the rapid delivery of humanitarian relief in accordance with humanitarian principles.

Technical arrangements can serve a number of purposes: they allow parties to armed conflict to assure themselves that relief consignments are exclusively humanitarian; they can prevent humanitarian relief convoys from being endangered by military operations or hampering them; and they can ensure that humanitarian relief supplies and equipment meet minimum health and safety standards.

Examples of technical arrangements are searches of consignments to check that they do not contain weapons or other military equipment or items that may be used for military purposes; or requiring relief convoys to use particular routes at specific times to ensure that they do not hamper and are not endangered by military operations. The practical arrangements for passage will usually be the subject of special agreements and coordination arrangements between the parties to an armed conflict and the actors conducting the humanitarian relief operations. Parties to armed conflict may also make the passage of relief consignments conditional on their distribution under the local supervision of an impartial organisation or on other measures to guarantee that the supplies will reach their intended beneficiaries.¹⁶

Applying the rules concerning the provision and facilitation of humanitarian relief and imposition of technical arrangements in practice

Due to the armed conflict in Gaza following the appalling October 7th 2023 terrorist attack by Hamas, during which some 1,200 people were killed and over 250 taken hostage, the UK Government had to consider Israel's compliance and commitment to IHL, in order to adhere to UK export licensing criteria. The criteria states that the Government will not issue export licences if there is a clear risk that the items might be used to commit or facilitate serious violations of international humanitarian law. Assessing compliance with the rules on the provision and facilitation of humanitarian relief, the assessment concluded:

“...While Israel has both a right to conduct security inspections and an obligation to deconflict aid from military activities, and while there are credible allegations of Hamas looting aid, it was assessed that overall, Israel could reasonably do more to facilitate humanitarian access and distribution. For example, Israel should establish a speedier and more effective system for deconflicting humanitarian aid from military operations. It could also better resource security control procedures and adopt a less restrictive approach to dual-use items (those with both military and civilian uses).”

Policy paper: Summary of the IHL process, decision and the factors taken into account, FCDO, 2 September 2024. The UK's IHL assessment is kept under careful review by the FCDO. HMG's assessment may change to reflect the most up to date position.

16 Article 70(3) AP I.

Humanitarian Assistance and Women and Girls



Parties to armed conflict must allow and facilitate the rapid and unimpeded passage of relief supplies. However, in an increasing number of contexts, access by humanitarian organisations to women and girls has been dramatically impeded.

In addition, the current roll back on women rights in some countries means that women and girls may only leave their homes accompanied by a male guardian, and may only interact with female aid workers. This reduces their ability to participate in consultations, to ensure assistance is adapted to their needs, and to access services and distributions.

In Afghanistan, in December 2022, the Taliban issued a decree banning women from working in national and international NGOs. In April 2023 this was extended to local UN female workers. In

Yemen, women are not allowed to travel outside of the office without a male guardian accompanying them. Consequently, women aid workers who do not have a male guardian for travel purposes are increasingly unable to carry out their work. In these two countries, these restrictions have dramatically limited women and girls' access to desperately needed aid and healthcare services as they can only interact with female aid workers. In addition, they impacted the life and livelihood of thousands of female aid workers and families.

Humanitarian distributions, especially those that provide food, can pose risks of gender-based violence for women and girls travelling to and from the distributions, as well as sexual exploitation and abuse by aid workers involved in the distributions. The risks of gender-based violence in relation to food distributions prevents women and girls from accessing food assistance, which exacerbates the cycle of food insecurity. Humanitarian actors have elaborated sectoral policies to give effect to their responsibility to provide assistance in a manner that is safe and free from sexual exploitation and abuse.¹⁷

WHEN ARE THE RULES OF IHL ON HUMANITARIAN RELIEF OPERATIONS VIOLATED?

The rules of IHL regulating humanitarian relief operations can be violated in two circumstances. The first is when consent to offers to carry out relief operations is withheld in violation of international law. This occurs either when states are obliged to consent to offers to conduct relief operations but fail to do so; or when consent is withheld arbitrarily.

¹⁷ See for example, *Strategy: IASC, Championship Role Protection from and response to Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH)*, 4 March 2021.

Second, the rules of IHL on relief operations are violated if, once consent has been obtained, parties to armed conflict do not comply with the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief operations.

Determining when humanitarian relief operations have been impeded to such a degree as to amount to a violation of this obligation is complex as a matter of law and of fact. As noted above, parties have considerable discretion in the implementation of this obligation. IHL treaties do not provide guidance on this point and to date it has not been addressed by any national or international tribunal.

WAR CRIMES

The Statute of the ICC as adopted in 1998 only included a war crime that referred to relief operations in international armed conflicts, formulated as

intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.¹⁸

In 2019 the Statute was amended to include a similar war crime in non-international armed conflicts, albeit with a slightly different formulation:

intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies.¹⁹

18 Article 8(2)(b)(xxv) ICC Statute.

19 Article 8(2)(e)(ix) ICC Statute. At the time of publication of this Handbook, the UK has not yet ratified the amendment to the ICC Statute establishing the crime in non-international armed conflicts.

PROTECTION OF HUMANITARIAN PERSONNEL AND SUPPLIES AND EQUIPMENT

Personnel participating in humanitarian relief operations are usually civilians, and thus entitled to the protection afforded by IHL to civilians. Parties to armed conflicts must respect and protect them and must not direct attacks or commit other forms of violence against them,²⁰ or take them hostage.

Despite these clear prohibitions, the number of attacks against humanitarian personnel continue to rise. Working in situations of armed conflict exposes staff of humanitarian organisations to a multitude of threats. Some casualties are directly related to the conflict and occur because staff operate in the proximity of active hostilities, or, less frequently, because they are directly targeted. Humanitarian personnel also face significant risks from violent actors who attack for purely economic or opportunistic reasons. In many insecure operational settings today, economic criminality (as opposed to attacks by parties to an armed conflict) accounts for a third or more of serious incidents against humanitarian personnel and can involve extreme violence.²¹

Supplies, vehicles and equipment that form part of humanitarian relief operations are, in principle, civilian objects and, consequently, entitled to the protection afforded by IHL to such objects. Parties to armed conflicts must respect and protect them. Their destruction or looting is prohibited.²²



Upper Nile State, South Sudan, 2014: Evidence of looting in Malakal. Incidents like this have been reported across the country, placing further constraints on the ability of the aid community to support people who lost or fled their homes. (OCHA)

20 Article 71(2) AP I. See also UK LOAC Manual, paras 9.13 and 11.49.

21 Based on *Aid Worker Security Report 2021*.

22 Article 59 GC IV, and Articles 48 and 70(4) AP I. In relation to non-international armed conflicts, neither common Article 3 GCs nor Article 18(2) AP II specifically addresses the protection of humanitarian relief supplies and equipment.

Parties to armed conflicts must also refrain from and prevent the diversion of relief supplies from their intended destination or beneficiaries, including by providing clear instructions to this effect to all persons acting on their behalf, and investigating allegations of looting, destruction, or diversion, and holding accountable those found responsible.²³

In the media

Looting and attacks on aid workers rise as hunger adds to unrest in South Sudan in 2022

Looting of emergency food supplies and attacks on aid workers are rising in South Sudan, where hunger is worsening unrest.

A security vacuum is fuelling the violence as communities take up arms to fend for themselves amid unprecedented food shortages, aid agencies have warned.

There is concern among aid agencies that the regularity of attacks is a symptom of the widespread unrest prompted by a lack of government services and insecurity, rather than coordinated action by organised militias.

Two humanitarian workers were killed in separate incidents in February [2022] in the Abyei region and neighbouring Unity state in the north of the country, and there have been numerous attacks this year on aid convoys, warehouses and medical teams.

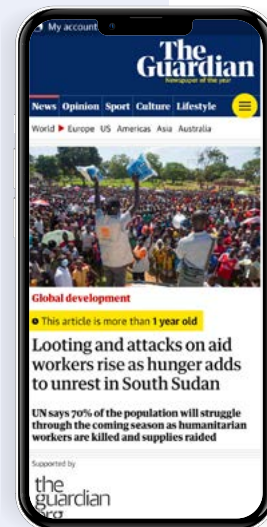
The Norwegian Refugee Council said its warehouses were looted four times in February in Unity state, depriving about 23,000 people affected by flooding of crucial aid. The attacks led aid workers to leave, meaning the agency had to suspend some operations.

A World Food Programme (WFP) warehouse in Leer, Unity state, which has become a focal point for people displaced by fighting in the region, has also been looted. Almost 40,000 people had arrived in the town in Unity state by the end of February due to fighting nearby. Last week a convoy of WFP trucks delivering food was ambushed in Jonglei state.

The UN said at least 130 humanitarian workers, mostly from South Sudan, have been killed in the country since 2013. Five died during 370 violent attacks recorded last year.

Médecins Sans Frontières said a health team was robbed at gunpoint and two of their vehicles were burned in the Yei district of Central Equatoria state this month, forcing them to temporarily halt operations.

The Guardian, 15 March 2022



23 Article 60 GC IV and Article 70(3) AP I.

Conducting attacks against humanitarian personnel or diverting or looting humanitarian supplies have been the basis for the imposition of targeted measures by the UN Security Council. Al Shabaab was designated under the Somalia sanctions *inter alia* for diversion of humanitarian food supplies and the kidnapping of aid workers;²⁴ and an Anti-Balaka commander was designated under the Central African Republic sanctions *inter alia* for attacks against humanitarian personnel and looting of supplies and equipment.²⁵

The 1994 Convention on the Safety of United Nations and Associated Personnel

In addition to these prohibitions under IHL of general application, the 1994 Convention on the Safety of United Nations and Associated Personnel requires states parties to criminalise the murder, kidnapping or other attacks upon the person or liberty of any UN or associated personnel; and violent attacks upon the official premises, the private accommodation or the means of transportation of United Nations or associated personnel likely to endanger their liberty. States parties to the Convention are required to prosecute or extradite persons suspected of these crimes.

The 1994 Convention applies to operations established by the competent organ of the UN in accordance with the UN Charter and conducted under UN authority and control for the purpose of maintaining or restoring international peace and security; or where the Security Council or the General Assembly has declared, for the purposes of the Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation. The Optional Protocol of 2005 to the 1994 Convention expands its scope to all similarly established UN operations to deliver humanitarian, political or development assistance in peacebuilding, or emergency humanitarian assistance.²⁶

WAR CRIMES

Intentionally directing attacks against personnel involved in humanitarian assistance missions, as long as they are entitled to the protection given to civilians by international humanitarian law, is a war crime under the ICC Statute in both international and non-international armed conflicts.²⁷

24 UNSC Committee established pursuant to Resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, *Narrative Summaries of Reasons for Listing*. UNSC, Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1853 (2008) (10 March 2010), UN Doc S/2010/91, at 59–67.

25 UNSC Committee established pursuant to Resolution 2127 (2013) concerning the Central African Republic, *Narrative Summaries of Reasons for Listing*. Final Report of the Panel of Experts on the Central African Republic established pursuant to Security Council Resolution 2127 (2013) (29 October 2014), UN Doc S/2014/762, Annexes 59–61.

26 The UK has given effect to the 1994 Convention and its 2005 Protocol by the United Nations Personnel Act 1997 and the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 respectively.

27 Articles 8(2)(b)(iii) and 8(2)(e)(iii) ICC Statute.

As humanitarian personnel are usually civilians, the war crime of intentionally directing attacks against individual civilians not taking direct part in hostilities is also relevant.²⁸

Intentionally directing attacks against installations, material, units or vehicles involved in a humanitarian assistance mission, as long as they are entitled to the protection given to civilian objects under international humanitarian law, is a war crime under the ICC Statute in international and non-international armed conflicts.²⁹

As supplies, vehicles and equipment that form part of humanitarian relief operations are, in principle, civilian objects, the war crime of intentionally directing attacks against civilian objects, which under the ICC Statute only exists in international armed conflicts, is also relevant.³⁰

28 Articles 8(2)(b)(i) and 8(2)(e)(i) ICC Statute.

29 Articles 8(2)(b)(iii) and 8(2)(e)(iii) ICC Statute.

30 Article 8(2)(b)(ii) ICC Statute.



Rural road in Karawa, Democratic Republic of Congo. (iStock)

Chapter 7—Humanitarian Access: Civilians' Access to Basic Goods and Services and Humanitarian Assistance

As outlined in Chapter 6, there are two dimensions to the notion of 'humanitarian access'. It covers the ability of humanitarian actors to conduct relief operations as foreseen by IHL, and the ability of civilians to access basic goods and services, including when provided as humanitarian assistance. This Chapter focuses on this second dimension.

WHAT DOES IHL SAY ABOUT CIVILIANS' ACCESS TO GOODS AND SERVICES?

With the exception of the rules on access to medical care,¹ IHL does not expressly address general access to goods and services by civilians.

IHL also does not expressly address liberty of movement by civilians more generally. The rules on humanitarian relief operations address the freedom of movement of the staff of organisations carrying out such operations. Implicitly, the obligation to allow and facilitate the rapid and unimpeded passage of relief operations should also cover the ability of civilians to reach such operations.

As far as the rules of IHL regulating the conduct of hostilities are concerned, the impact of military operations on civilians' capacity to access basic goods and services could be something that parties to armed conflict should consider as part of the obligation to take constant care to spare civilians.

¹ The wounded and sick must be treated humanely and are entitled to receive, to the fullest extent practicable, and with the least possible delay, the medical care and attention required by their condition. Article 10 AP I and Article 7 AP II. See also UK LOAC Manual, paras 7.3-7.3.2 (as amended) and 15.43.

WHAT DOES HUMAN RIGHTS LAW SAY?

To the extent that it is applicable in specific situations of armed conflict, as elaborated in Chapter 1, international human rights law may provide support to civilians' ability to access basic goods and services.

Access to goods and services includes both the practical aspect of being able to reach the goods and services, and also the entitlement to access and receive the goods and services in a manner that is equitable and non-discriminatory. Two human rights are particularly relevant: liberty of movement, and the right to adequate food.

Liberty of movement

Everyone lawfully within the territory of a state has, within that territory, liberty of movement.² Generally, this means that a state must not interfere with the liberty of individuals who are lawfully present to move within its territory, and should protect that liberty from interference by others. Such liberty does not need to be exercised for a particular purpose, and is relevant to movement at all scales—locally, regionally and nationally—to obtain goods and services, including in response to variations in availability arising from armed conflict.

This is not an absolute right, and restrictions on liberty of movement can be imposed in order to achieve legitimate objectives, such as the protection of national security and to maintain public order. Such objectives may well arise in the course of an armed conflict taking place in a state's territory. However, where any restrictions are imposed, they must be established by law and must be necessary for, and proportionate to, the achievement of the objective in question.³

Liberty of movement is also a right from which a state may be able to derogate in the event of public emergency threatening the life of the nation, providing a further basis for restricting liberty of movement in armed conflict. However, any measures taken under such a derogation must go no further than is strictly required by the exigencies of the situation, and must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.⁴

2 Article 12(1) ICCPR. Liberty of movement is also protected under regional human rights instruments, including ECHR Protocol No. 4 (to which the UK is not a party).

3 Article 12(3) ICCPR.

4 Article 4(1) ICCPR. The possibility of derogating, and the conditions with which any derogation must comply, may vary between instruments.

Voices from the field

The impact of domestic counterterrorism measures on food security in the Lake Chad Basin

The Lake Chad Basin is a vast and economically dynamic area that spans parts of Cameroon, Chad, Niger, and Nigeria. Given its economic, agricultural, pastoralist and commercial potential, it engages more than two million people economically, and their activities benefit more than 13 million people in the four countries.

The four countries around the basin implemented a series of CT measures between 2013 and 2015, including states of emergency whose combined effect has been to shut down cross-border trade and bring the region to an economic standstill. These were accompanied by a range of localised measures in each country, which further limited mobility and constrained economic activity.

Depending on the location, they have included three broad types of restrictions: movement restrictions such as curfews, border closures, constraints on the movement of livestock on certain routes, road and market closures, curbs on access to the lake's shores and bans on the use of certain vehicles; land control and planning measures such as restrictions on cultivation outside cities, the relocation of certain populations, trenching and a ban on the cultivation of tall crops; as well as restrictions on the marketing of certain products such as livestock, fish, coal, wood, beans, peanuts, fuel and fertilisers. All countries have also imposed restrictions on exports such as grain, livestock and fish, and the import and use of fertilisers and fuel.

NSAGs' involvement in socioeconomic activities, including food production, is extensive in the areas they control, and the measures were introduced to shut down their economic activities and financing options. ... The authorities also said the ban on growing crops above waist height was intended to prevent NSAG members hiding in fields, particularly around military bases, and that prohibiting the sale of nitrogen-based fertilisers and fuel is meant to limit the manufacture of explosives and the refuelling of vehicles.

Fishing is the primary livelihood source around Lake Chad. In 2015, it supported the livelihoods of more than 170,000 people and generates more than \$24 million a year. Bans and restrictions on the activity have led to a decline in fishing grounds, a drop in production and loss of income. Some families have been left unable to feed themselves either directly or indirectly from fishing. Mobility restrictions and curfews have further impeded access to fishing areas and the transport of catches. This in turn has led to shortages and soaring prices at markets in all four Lake Chad countries. In Maiduguri for example, the price of fish more than doubled in three months in 2018.

Measures such as relocations, road and border closures, the set-up of 'no-go zones', and other movement restrictions have had knock-on effects for the agricultural sector in a region with high potential. The loss of arable land has

led to a decline in production, both in terms of quantity and diversity, leading to a loss of livelihoods and income, and reduced availability at local markets. Farmers are no longer able to cultivate large areas because they do not have the resources to do so or because restrictions prevent them from reaching their land. In some of the worst affected areas, harvests of millet, beans, sorghum, and other crops have halved because farmers are no longer allowed to purchase fertiliser. The closure of transhumance routes towards and within Nigeria has also deprived pastoralists of large areas of pasture. Some estimate they have lost between 10 and 50 per cent of their grazing land.

NRC, *Between a Rock and a Hard Place—The Impact of Countries' Domestic Counterterrorism Measures on Principled Humanitarian Action and Communities Affected by Conflict*, January 2022

The right to adequate food

Alongside a right to be free from hunger, international human rights law recognises a right to adequate food.⁵ These are broad objectives, the full realisation of which, like other economic, social and cultural rights, is to be achieved progressively.⁶ Nevertheless, such rights are to be exercised free from discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷

With respect to these rights, the UN's Human Rights Council has stressed that: "... the primary responsibility of States is to promote and protect the right to food, including in humanitarian emergencies, and that the international community should provide, through a coordinated response and upon request, international cooperation in support of national and regional efforts by providing the assistance necessary to increase food production and access to food."⁸

5 Article 11(1) and (2) ICESCR.

6 Article 2(1) ICESCR.

7 Article 2(2) ICESCR.

8 Human Rights Council, Resolution 46/19 on The Right to Food, para 18.

Vulnerable groups' access to goods and services

As outlined in the Introduction, vulnerable and marginalised groups face additional challenges in accessing goods and services in situations of armed conflict and food insecurity. People with disabilities may face higher barriers in accessing the goods and services they need in conflict because of impairments, and less financial resources and information. Their formal and informal health and social care and support can be seriously undermined by conflict.

Conflict and exacerbated gendered norms affect the ability of women to access food and livelihoods, forcing women and girls to resort to harmful coping mechanisms to fend for their families. Gendered food distribution and consumption at household level often mean that women and girls eat less, and after men and boys.⁹ These practices increase during conflict, when food is sparse. For pregnant or lactating women, low nutrition leads to premature births, low birth weight and delays in child development.



Access to land

Gendered norms impact women and girls' ability to access and control productive resources such as agricultural lands and livestock. Worldwide only 15% of land is owned by women, even though they constitute at least 43% of the agricultural labour force.¹⁰ This gendered ownership is particularly problematic in situations of conflict as many men are killed, disappear or travel for economic reasons, and the number of female-headed households increases. This gendered land ownership, coupled with the breakdown of rule of law, exposes women to land grabbing, leading them further into impoverishment and food insecurity.

ACCESS TO WHAT?

Recent conflicts have highlighted the range of goods and services to which civilians need access in conflict to minimise food insecurity.

Goods and services provided by commercial actors

IHL focuses on the provision of life-saving commodities by humanitarian operations. In practice, goods and services provided through commercial channels play a central role in minimising need during conflict. Their availability is also negatively impacted by conflict. Disruptions of markets

9 Plan International, *Beyond Hunger: the Gendered Impact of the Global Hunger Crisis*, 2023.

10 Care, *Food Security and Gender Equality: A Synergistic Understudied Symphony*, 2022.

exacerbate needs, often leading to shortfalls the extent of which humanitarian action simply cannot compensate for.

Despite this, IHL only requires the free passage of a very limited number of goods by commercial actors rather than in the form of humanitarian relief: medical items, and foodstuffs, clothing and tonics for children under fifteen, expectant mothers and maternity cases.¹¹

Access to cash and banking services

There may be circumstances when basic commodities are available in a particular context, but civilians are unable to access them either because they cannot afford them or because, as recently occurred in the conflict in Tigray, they are deprived of access to cash and banking services.

Access to services

In recent conflicts parties have also interfered with services to which civilians need access for their livelihoods, including electricity, telecommunications, and internet. For example, in 2020, the Ethiopian Federal Government shut down electricity and telecommunications services in Tigray, and access to the banking system. This had severe effects on the civilian population, including in terms of food security.

OHCHR International Commission of Human Rights Experts on Ethiopia

Report of 19 September 2022

The Commission noted that:

1. The Federal Government suspended electricity, internet and telecommunications, and banking services in Tigray on 4 November 2020, restoring some of these services in some areas in the months that followed.
2. When Tigrayan forces retook control of large parts of Tigray, including Mekelle, in late June 2021, the Federal Government responded by again shutting down electricity, internet and telecommunications, and banking services for the region. It suspended the payment of salaries.



¹¹ Article 23 GC IV. Article 23 GC IV also includes objects necessary for religious worship. There is no equivalent treaty provision in relation to non-international armed conflicts. See also UK LOAC Manual, para 9.12.

3. The Federal Government and its allies further obstructed the import of cash, fuel, and commercial goods into Tigray by establishing roadblocks and checkpoints. This led to an extreme shortage of medicines and medical equipment; water and sanitation equipment; fertilisers, seeds, pesticides, and agricultural equipment; and food in a region that relies primarily on subsistence agriculture.
4. In addition, all organisations must also apply for government permission to transport cash into Tigray. Interviewees said there are no obvious criteria for such applications, the amount permitted per application is capped, and decisions on permission are often arbitrary. According to UNOCHA, only 15% of cash needs for humanitarian operations have entered Tigray since June 2021.
5. On the basis of these and other acts, including restrictions on the entry of cash, fuel, and commercial goods as well as severe restrictions on humanitarian operations, the Commission found reasonable grounds to believe that the Federal Government and allied regional State governments had implemented a widespread range of measures designed to systematically deprive the population of Tigray of material and services indispensable for its survival, including healthcare, shelter, water, sanitation, education and food.

The Commission considered the suspension of services and restrictions on bringing cash into Tigray as one element in a pattern of behaviour designed to deprive the population of Tigray of material and services indispensable for its survival.

The legal framework of analysis for deprivation of access to services is straightforward if services are suspended as a result of damage caused in the course of hostilities. Taking electricity infrastructure as an example, prior to launching an attack, the following questions need to be addressed:

- Can the electricity network be considered a military objective in the particular circumstances?
- If so, is the expected incidental harm excessive compared to the anticipated military advantage from attacking it?
- Have all feasible precautions to minimise incidental harm been taken?

However, while the impact on civilians remains the same, IHL does not address the situation when services are simply suspended, including, as occurred in Tigray, when a party is in a position to close banks. In such circumstances, particularly in situations of non-international armed conflict, states' rights and obligations under other bodies of law, including any that arise under applicable human rights law, continue to apply.



People have breakfast in displaced persons camp, Juba, South Sudan. (iStock)

Chapter 8—Displacement

Displacement in armed conflict can occur for a variety of reasons. People may be forcibly removed from their homes, or other violations of IHL may have caused them to leave their homes. Often they also leave pre-emptively as a coping mechanism, whether or not in response to direct threats or violations of IHL.

Displacement is not necessarily caused by a violation of IHL. In fact, it might actually be the result of compliance by a party to an armed conflict with its obligations, for example, when it removes civilians from the proximity of military objectives.

Regardless of the reasons underlying the displacement, the fact of having left homes, possessions and sources of livelihoods severely impacts people's food security.

THE RELATIONSHIP BETWEEN DISPLACEMENT, CONFLICT AND HUNGER

Conflict drives displacement

According to UNHCR, 122.6 million people were displaced by mid-2024. This figure covers refugees, asylum seekers and internally displaced people. The principal driver of displacement is armed conflict, although disasters, persecution and other violence also lead to displacement.

Displacement and food insecurity share complex links that are often intertwined and reinforce each other to create lasting vulnerabilities and numerous challenges for displaced people. Today, the most food insecure countries also have sizeable populations of people displaced due to conflict. People displaced because of conflict and people made food insecure because of conflict are often the same people.¹

Food insecurity drives displacement

There are many aspects of conflict that cause people to move; lack of safe access to food, water and livelihoods is often one of these aspects. Where possible, people will move to areas where they perceive that they will have better prospects of livelihoods and access to food.

¹ IDCM, *2023 Global Report on Internal Displacement*.

Displacement drives food insecurity

Conversely, displacement is a driver of food insecurity and its associated morbidity and mortality. People forced to flee their homes lose access to their livelihoods, including access to food, water and other necessities, while also facing major barriers to income-generating activities, and access to humanitarian assistance, healthcare, and other essential services.

Displacement worsens food insecurity

Less food—Farming and food production systems cease or are compromised: land, crops and livestock are abandoned when farming and pastoralist communities are displaced. This contributes to disrupted markets and increases in food prices.

Less money—Displaced people lose their livelihoods so are less able to purchase food. According to World Vision's 2023 report, 85% of forcibly displaced families cannot meet their daily nutrition needs.² There is a reduction in the quantity and the quality of food that displaced people can access. They often become dependent on host communities and humanitarian assistance.

Sites of displacement

Refugee and IDP camps and other displacement settings often do not have adequate facilities for preparing, storing and cooking food. They are rarely near shops, markets, available arable land or water sources. There are frequent outbreaks of infectious diseases among displaced populations, including diarrhoea, cholera and measles, which risk leading to death when people are weakened by a lack of food and have insufficient access to water, sanitation and healthcare.

Multiple displacements

Recurrent conflict can lead to recurrent displacements. Displaced people may also experience secondary displacement, moving multiple times in search of somewhere they can reside. Such repeated displacements undermine the resilience and livelihood opportunities of the communities affected by fluid conflict dynamics.

Returns and relocations

At times displaced people are returned to their communities or relocated to new locations before the conditions are suitable for safe and sustainable returns or relocations. In particular, there may be insufficient food assistance or basic

2 World Vision, *Invisible and Forgotten—Displaced Children Hungrier and More at Risk than Ever*, 2023.

services such as healthcare, nutritional assistance, safe water and sanitation. On return it can be hard to re-establish food systems because land has not been cultivated and livestock and crops are gone. Agricultural tools and assets may have been destroyed or looted and land may have been appropriated.

The rules of IHL relevant to displacement and to minimising its impact on food security must be considered at three key junctures: to prevent displacement, to provide protection during displacement, and in relation to returns.

PREVENTION OF DISPLACEMENT

Express prohibition of displacement

IHL expressly prohibits the displacement of civilians in situations of occupation and in non-international conflicts.

In situations of occupation individual or mass forcible transfers and deportations are prohibited, both within the occupied territory and beyond its borders, either into the territory of the occupying power or into third states.

There is a limited exception to this rule, allowing an occupier to evacuate the inhabitants of a particular area, if this is required for the security of the civilian population or for imperative military reasons. Even in such cases, the evacuations must not involve the displacement of civilians outside the occupied territory unless for material reasons this is impossible to avoid. Moreover, displaced persons must be transferred back to their homes as soon as the hostilities in the area in question have ceased.³

In non-international armed conflicts, there is a similar prohibition on displacing the civilian population for reasons related to the conflict unless the security of the civilians or imperative military reasons demand their evacuation.⁴

WAR CRIMES

Violation of these prohibitions is a war crime under the ICC Statute. In situations of occupation, the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory is a war crime in international armed conflicts.⁵

In non-international armed conflicts, it is a war crime to order the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.⁶

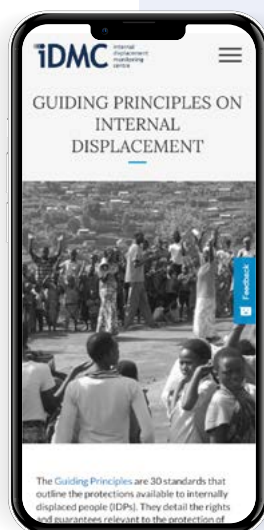
3 Article 49 GC IV. See also UK LOAC Manual, para 11.55.

4 Article 17 AP II. See also UK LOAC Manual, para 15.53.

5 Articles 8(2)(a)(vii) and 8(2)(b)(viii) ICC Statute. Article 8(2)(b)(viii) also covers the grave breach in Article 85(4)(a) AP I of the transfer, directly or indirectly, by an occupying power of parts of its own civilian population into the territory it occupies.

6 Article 8(2)(e)(viii) ICC Statute.

Focus on terminology: Forcible displacement



UNHCR uses the term ‘forcible displacement’ to refer to displacement caused by persecution, conflict, violence, and human rights violations. Forcibly displaced people include refugees, asylum-seekers and internally displaced people.

Similarly, according to the Guiding Principles on Internal Displacement, forced displacement occurs when individuals and communities have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters.

The term ‘forcible displacement’ or ‘forced displacement’ thus covers a broad variety of causes of displacement, that go well beyond violations of the express prohibition of displacement in IHL.

Compliance with IHL to prevent displacement

In addition to these express prohibitions on forcibly displacing civilians, the rules of IHL that aim to spare civilians from the effects of hostilities also play an important role in the prevention of displacement, as it is often violations of these rules that are at the root of displacements in situations of armed conflict. These rules are outlined in Chapters 2 to 5 and include:

- the prohibition to direct attacks against civilians and civilian objects;
- the prohibition of indiscriminate attacks;
- the rule of proportionality, which prohibits attacks against military objectives expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof that would be excessive in relation to the concrete and direct military advantage anticipated;
- the obligation to take feasible precautions in attack and defence to spare the civilian population and civilian objects;
- the obligation to take constant care in the conduct of military operations to spare civilians from the effects of military operations; and civilians’ general protection against dangers arising from military operations;
- the rules regulating the use of specific weapons;
- the prohibition of starvation of civilians as a method of warfare.
The connected prohibition to destroy objects indispensable to the survival of the civilian population specifically mentions causing the civilian population to move away as one of the possible prohibited motives; and
- the prohibition of collective punishment, which frequently takes the form of destruction of homes and agricultural lands and assets, that can lead to displacement.

The rules regulating humanitarian relief operations and relating to civilians' access to basic goods, services and assistance outlined in Chapters 6 and 7 also provide important safeguards to avoid displacement. It is frequently lack of access to food, livelihood opportunities and basic services—whether as a result of violations of IHL or just the reality of conflict—that leads to displacement.

While compliance with these rules can play an important role in avoiding the circumstances that lead to displacement, it is important to note the limitations of the law.

For example, displacement of civilians is not specifically identified as one of the types of incidental harm to be considered in proportionality assessments—which are limited to death of or injury to civilians and damage to civilian objects. Expected displacement can nonetheless be considered in the 'weight' assigned to the destruction of civilian objects.

More generally, conduct that does not violate IHL may still lead to displacement, internally or across borders. As noted in the Introduction, not all damage to civilian property, or infrastructure is a violation of IHL, nor is the presence of explosive ordnance in agricultural areas. Nonetheless, they can have significant adverse impact on civilians, including on their capacity to produce or access food, which in turn can lead to displacement.

Looking forwards

In view of the significant adverse impact of displacement on food security, policies elaborated for the purpose of conducting proportionality assessments, as well as precautionary measures and other steps to take constant care to spare civilians, could also expressly consider displacement.

PROTECTION DURING DISPLACEMENT

Regardless of what has led civilians to leave their homes, displacement is a time of heightened vulnerability—including in terms of food security.

IHL only expressly addresses displacement in relation to the exceptional circumstances when civilians may be lawfully temporarily displaced. The party to the conflict that undertakes such evacuations must ensure, to the greatest practicable extent, that proper accommodation is provided to receive displaced civilians; that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition; and that members of the same family are not separated.⁷

IHL does not refer to displaced persons as a specific category of protected persons. However, they remain civilians and entitled to the range of protections accorded to civilians. The party to the conflict in whose control they find themselves has a primary role to meet their basic needs, and, should

⁷ Article 49 GC IV and Article 17 AP II. Article 17 AP II does not include the obligation to ensure that members of the same family are not separated.

humanitarian activities be conducted, displaced persons must be able to benefit from them, without discrimination.

Human rights law plays a central role in addressing some of the challenges that may arise in relation to displacement and that are simply not covered by IHL. The Guiding Principles on Internal Displacement are a non-binding document that helpfully brings together the protections afforded to internally displaced persons under human rights law and IHL.⁸ They present the rules relevant to each phase of internal displacement, from prevention to return, in a clear and comprehensive manner.

The following principles are of particular relevance to minimising the effect of displacement on food security in conflict and build upon the protections in IHL.

Principle 7

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

8 Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998. The UK co-sponsored Commission on Human Rights Resolution 2004/55 which was adopted by consensus. The resolution welcomed the dissemination, promotion and application of the Guiding Principles, and encouraged all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (b) The right to seek freely opportunities for employment and to participate in economic activities.

RETURN AND OTHER SOLUTIONS

At times, displacement ends with return. This is the only solution expressly referred to in IHL, which, in relation to the permissible types of displacement, provides that evacuated persons must be returned to their homes once the hostilities in the area in question have ceased.⁹

However, return might not be a viable option. It might not be safe or sustainable, including from a food security perspective. Assets necessary for food production, such as agricultural machinery and tools, and inputs, such as seeds and fertilisers, may have been looted or destroyed, water infrastructure may have been damaged, and arable land and pastures contaminated or dispossessed.

In such cases, alternative options should be considered, such as settlement in the place of displacement or in other locations. Returns and other solutions should be voluntary and informed, with due regard given to Article 45 GC IV and the more general obligations imposed on states by the principle of *non-refoulement*.

The Guiding Principles on Internal Displacement bring out key responsibilities and rights in relation to returns and other solutions.

Principle 15

Internally displaced persons have:

- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

⁹ Article 49 GV IV. Article 17 AP II does not include an equivalent provision on returns. See also UK LOAC Manual, para 11.55.

Principle 28

7. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

8. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.



A wide view of the Security Council chamber with curtains open. (Evan Schneider/UN Photo)



Chapter 9—Sanctions

In recent years frequent recourse has been made to targeted sanctions to achieve various foreign policy objectives without resorting to the use of force. The aims of sanctions can include, among other things, promoting compliance with IHL, including ensuring the delivery of humanitarian assistance.

SANCTIONS IN RESPONSE TO VIOLATIONS OF IHL

On a number of occasions, the UN Security Council has determined that the commission of violations of IHL could constitute a ground for the imposition of targeted sanctions, including in relation to conflicts marked by severe food insecurity as a result of parties' conduct.

The Council has framed this possibility both in general terms, by referring to acts that violate IHL, and also by referring to specific violations. Of particular relevance to food security are the instances when the Council specifically singled out the obstruction of humanitarian activities or of access to humanitarian assistance as a possible basis for the imposition of targeted sanctions.

To date, the Security Council has included this ground, formulated in slightly different ways, in seven sanctions regimes: those in relation to Somalia, Democratic Republic of Congo (DRC), Central African Republic (CAR), South Sudan, Yemen, Mali and Haiti.¹

Sanctions have actually been imposed for obstructing the delivery of humanitarian assistance on Al Shabaab in Somalia;² the anti-Balaka commander in the CAR;³ the President of the Humanitarian Commission of

1 SCR 1844 (2008), OP 8(c) in relation to Somalia; SCR 1857 (2008), OP 4(f) in relation to DRC; SCR 2196 (2015), OP 12(e) in relation to CAR; SCR 2206 (2015), OP 7(f) in relation to South Sudan; SCR 2216 (2015), OP 19 in relation to Yemen; and SCR 2653 (2022), OP 16(g) in relation to Haiti. SCR 2374 (2017), OP8(e) also included this ground in the sanctions imposed in relation to Mali. This sanctions regime expired in August 2023.

2 UNSC Committee established pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, *Narrative Summaries of Reasons for Listing*: the listing relates to food aid diversion and kidnapping of aid workers.

3 UNSC Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic, *Narrative Summaries of Reasons for Listing*: the listing is principally related to attacks against humanitarian workers and looting of supplies and equipment.

the *Bureau Regional d'Administration et Gestion de Kidal in Mali*; ⁴ the Houthis and the Deputy Head of the Houthi National Security Bureau in Yemen; ⁵ and on a gang leader in Haiti. ⁶

Averting the potential adverse impact of sanctions on humanitarian action

In parallel, one unintended consequence of sanctions has become increasingly apparent: restrictions in sanctions can affect humanitarian actors' ability to operate in accordance with humanitarian principles and as foreseen by IHL. Groups designated under UN sanctions, as well as under sanctions adopted by the EU or by states autonomously, are sometimes organised armed groups that are parties to non-international armed conflicts with control over civilian populations in severe need. These have included ISIL affiliates in Syria and the Sahel, Al-Qaeda in the Arabian Peninsula in Yemen, Boko Haram in Nigeria, and Hamas in Gaza. Many of these contexts have been identified as 'Hunger Hotspots' by FAO and WFP.

Financial sanctions prohibit providing funds or assets directly or indirectly to designated persons or groups. There is a risk that transactions and activities carried out by humanitarian actors in contexts where such sanctions have been imposed may fall within the scope of the restrictions. This can include incidental payments that humanitarian actors may have to make to designated groups as part of their operations.

Sanctions can also fuel the risk-adverseness of commercial actors whose services are necessary for humanitarian action, including financial institutions, commodity providers, freight companies and insurers.

As sanctions can be extremely complicated to navigate, at times the fear of violating the restrictions, as well as risk aversion, has led humanitarian actors to 'over comply', restricting their operations.

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- 4 UNSC Committee established pursuant to resolution 2374 (2017) concerning Mali. *Narrative Summaries of Reasons for Listing*: Albachar is a prominent businessman, listed because he manipulated humanitarian aid to fulfil his personal interests and the political interests of the HCUA by exercising terror, threatening NGOs and controlling their operations, all of which resulted in obstruction and hindrance of aid affecting beneficiaries in need in the region of Kidal. The Mali sanctions regime expired in August 2023.
 - 5 UNSC Committee established pursuant to resolution 2140 (2014) concerning Yemen, *Narrative Summaries of Reasons for Listing*: the Houthis have obstructed the delivery of humanitarian assistance to Yemen, or access to, or distribution of, humanitarian assistance in Yemen. Motlaq Amer Al-Marrani was designated for obstructing access to humanitarian assistance in Yemen.
 - 6 UNSC Committee established pursuant to resolution 2653 (2022) concerning Haiti, *Narrative Summaries of Reasons for Listing*: Cherizier and his G9 gang confederation are actively blocking the free movement of fuel from the Varreux fuel terminal—the largest in Haiti. His actions have directly contributed to the economic paralysis and humanitarian crisis in Haiti.

These tensions are not new. They came to the fore in relation to targeted sanctions in 2010 when famine was looming in parts of southern Somalia, including in areas under al-Shabaab control, a group designated under UN sanctions. The Security Council adopted an exception, clarifying that the prohibitions in the financial sanctions did not extend to transactions necessary for the delivery of humanitarian assistance.⁷

As the extent of the problems became more apparent, the Security Council took steps to reduce any such tensions. In December 2021, it adopted a resolution excluding from the scope of the Afghanistan financial sanctions transactions to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.⁸ The Haiti sanctions regime established in October 2022 included a similar safeguard from the outset.⁹

Most significantly, in December 2022 the Security Council adopted Security Council Resolution 2664 (SCR 2664), a resolution that introduced a broad express exception applicable to all existing financial sanctions in UN sanctions regimes. It also applies to all future UN sanction regimes unless the Council expressly decides otherwise.

The exception in SCR 2664 excludes from the scope of the prohibitions in UN asset freezes the provision, processing or payment of funds, other financial assets, or economic resources; and the provision of goods and services that are necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by a broad, but not unlimited, list of humanitarian actors.¹⁰

The exception only applies to the prohibition in financial sanctions adopted by the UN Security Council. It does not cover other types of restrictions in UN sanctions that may, in certain circumstances, affect humanitarian action, such as restrictions on the exports of certain commodities. Safeguards for humanitarian action with regard to these other restrictions continue to need to be negotiated sanctions regime-by-sanctions regime as and when issues are identified.

Moreover, the exception in SCR 2664 only applies to UN sanctions. It does not apply to additional autonomous sanctions regimes that other inter-governmental organisations—such as the EU—or states may adopt.

7 SCR 1916 (2010), OP 5.

8 SCR 2615 (2021), OP 1.

9 SCR 2653 (2022), OP 10.

10 SCR 2664 (2022), OP 1. The UK gave effect to SCR 2664 in domestic law by *The Sanctions (Humanitarian Exception) (Amendment) Regulations 2023*.

LOOKING FORWARDS

Important steps have been taken at UN level to address the tensions between financial sanctions and humanitarian response.

The exception in SCR 2664 only covers UN sanctions, but the underlying legal and policy concerns apply to sanctions adopted by all actors. Actors like the EU and individual states have begun to include similar exceptions in their own autonomous measures.

The UK's autonomous financial sanctions include humanitarian licensing mechanisms. There is the possibility for the Office of Financial Sanctions Implementation (OFSI) to issue both 'General Licences' and individual licences to authorise the provision of funds or assets necessary for humanitarian activities that would otherwise be prohibited. The UK was a co-sponsor of SCR 2664 and has used its licensing powers to protect humanitarian delivery since leaving the EU, including issuing relevant General Licences for the Syria and Russia sanctions regimes, and for the international counterterrorism regime in relation to the conflict in Israel and the Occupied Palestinian Territories and Lebanon.

Where NGOs and other actors encounter sanctions-related difficulties in the provision of humanitarian assistance for issues not covered by an existing General Licence, they are able to apply to OFSI for a specific licence to permit the activity that would otherwise be prohibited. Licence applications relating to humanitarian action are always prioritised. The UK is considering what more could be done to reduce any unintended impacts of its autonomous sanctions.

In addition to including appropriate safeguards, the Security Council and other actors that adopt sanctions could undertake risk assessments at key junctures in the adoption and implementation of sanctions to mitigate any potential adverse impact on humanitarian action and their effect on conflict-induced food insecurity more broadly.

The UK has long factored the unintended impact on humanitarian action—but also on humanitarian situations more generally—in its sanctions-related decision-making.

Focus on Russia sanctions and global food security

The UK, US and the EU have adopted the most severe sanctions ever imposed on a major economy in response to Russia's invasion of Ukraine. As Ukraine and Russia are among the largest global producers and exporters of grain, sunflower seed oil and fertilisers, these measures have all included safeguards to ensure that exports of these commodities are not adversely affected, so as to minimise their impact on global food supplies and prices.

Guidance has also been issued to provide clarification on these safeguards, including the 28 June 2023 OFAC and OFSI *Joint Factsheet on Humanitarian Assistance and Food Security Fact Sheet: Understanding UK and U.S. Sanctions and their Interconnection with Russia*.





The inhabitants of Buhumba in the Democratic Republic of Congo move towards the town of Goma, fearing clashes between M23 fighters and the Armed Forces of the Democratic Republic of Congo. (Moses Sawa Sawa/ICRC)

Chapter 10—The Security Council and Conflict-Induced Food Insecurity: SCR 2417

In May 2018, as part of its thematic work on protection of civilians, the Security Council unanimously adopted resolution 2417 (SCR 2417) on conflict-induced food insecurity.¹ This landmark resolution recognised the link between armed conflict and food security, and brought together key aspects of the Council's engagement on protection of civilians in armed conflict, seen through the lens of food insecurity. Although the only specific follow up required by SCR 2417 is enhanced reporting, the resolution is nonetheless an extremely important affirmation of the Council's awareness of this dimension of conflicts.

There are three tracks for assessing progress made and identifying possible next steps in implementing SCR 2417 within the Security Council:

- thematically;
- in a country-specific manner; and
- in mainstreaming conflict-induced food insecurity in the Council's work.

THEMATIC IMPLEMENTATION

In view of current Security Council dynamics, advancing the topic by means of thematic discussions is hard. Efforts are likely best directed to giving effect to the relevant elements of SCR 2417 in a country-specific manner.

COUNTRY-SPECIFIC IMPLEMENTATION

One key step in country-specific implementation of SCR 2417 at Security Council level is bringing situations of conflict-induced food insecurity to the Council's attention. SCR 2417 foresees three types of reporting:

- the provision of information on the humanitarian situation and response, including on the risk of famine and food insecurity, as part of the Secretary-General's regular reporting on country-specific situations;

1 SCR 2417 (2018).

- annual briefings on the implementation of SCR 2417 in the Secretary-General's annual reports on the protection of civilians in armed conflict; and
- what have subsequently been referred to as 'early warning reports' or 'White Notes': swift reporting by the Secretary-General to the Security Council when the risk of conflict-induced famine and widespread food insecurity in armed conflict contexts arises.

There has been increasing resort to the third, and probably most impactful type of reporting - the White Notes. Since the adoption of SCR 2417, the Emergency Relief Coordinator has issued such reports on eight occasions:

- July 2018 on South Sudan;
- October 2018 on Yemen;
- September 2020 on Yemen, South Sudan, North-eastern Nigeria, and the DRC;
- May 2021 on Tigray;
- August 2022 on Northern Ethiopia, Northeast Nigeria, South Sudan, and Yemen;
- June 2023 on Burkina Faso, DRC and Haiti;
- February 2024 on Gaza; and
- March 2024 on Sudan.

The practice on White Notes is evolving. In addition to setting out the situation on the ground, the more recent Notes also make recommendations of measures that could be taken by Security Council members and other Member States.

Looking forwards

- The emerging practice on White Notes could be strengthened. In addition to setting out the situation on the ground, the Notes should make specific recommendations of measures that could be taken by the Security Council and by other actors. Following the issuing of a White Note, the Security Council should undertake to quickly convene a meeting to consider the Note and discuss next steps.
- Country-specific discussions could be facilitated by tools that assist the Council's systematic and consistent consideration of conflict-related food insecurity in its work. One such product could be a checklist setting out the possible measures the Council could take in relation to food insecurity. This would be similar to the *Security Council Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict*, but would focus on conflict-induced food insecurity.²

2 Aide Memoire—For the consideration of issues pertaining to the protection of civilians in armed conflict, UN Doc S/PRST/2018/18, 21 September 2018.

MAINSTREAMING CONFLICT-INDUCED FOOD INSECURITY IN THE SECURITY COUNCIL

SCR 2417 can also be operationalised by mainstreaming references to conflict-induced food insecurity in the Council's work. In particular, SCR 2417 expressly recognises that compliance with a number of rules of IHL is essential to prevent and minimise conflict-induced food insecurity. These rules are presented in detail in earlier Chapters in this Handbook.

There are a range of measures that the Council can—and has—taken to promote compliance with different rules of IHL. These can also be taken with a particular focus on conflict-induced food insecurity.

Looking forwards

The impact of violations of IHL on food security should be highlighted in all Security Council discussions on the conduct of hostilities, forced displacement and other rules of IHL. This can be done:

- thematically—for example, during the discussions of the Secretary-General's reports on the protection of civilians; and
- in a country-specific manner, when discussing the Secretary-General's reports, and when adopting resolutions and Security Council Presidential Statements.

The Security Council did so in relation to Sudan, where resolution 2736 (2024) called upon the parties to the conflict to withdraw fighters as necessary to enable agricultural activities throughout the planting season to avoid compounding the risk of famine.³

3 SCR 2736 (2024), OP 3.



The International Criminal Court in The Hague (iStock)

Chapter 11—Promoting Compliance with IHL

Promoting compliance with IHL is a broader endeavour than pursuing accountability for its violation. Significantly, it includes approaches that aim to avoid violations in the first place.

Individual Chapters of this Handbook have noted when the violation of particular rules of IHL amounts to a war crime under the ICC Statute and other IHL agreements. Consequently, the definitions of relevant war crimes are not elaborated further here. An analysis of the jurisprudence of criminal courts is also beyond the scope of the Handbook.¹

The references to war crimes—for which individual responsibility exists—should not lead to overlooking the overarching and frequently broader responsibility of parties to armed conflict—states and organised armed groups—to comply with IHL, and their responsibility for violations.

Another avenue for promoting compliance with IHL is the imposition of sanctions. This approach is discussed in detail in Chapter 9 and is also not considered below.

The first section of this Chapter is on the measures states can take at national level to implement their IHL obligations. It will be followed by a section listing some of the actions a state may take at the international level to encourage parties to armed conflict to comply with the law. There is then a brief consideration of promoting compliance by organised armed groups, and the measures they themselves may take to implement IHL. Suggestions for development are given in conclusion. All these are provided with the aim of giving effect to the IHL rules relevant to avoiding, preventing and addressing conflict-induced food insecurity.

IHL IMPLEMENTATION BY STATES AT THE NATIONAL LEVEL

There are a number of ways in which states can give effect to their IHL obligations. Some rely upon formal legal frameworks and processes, others are of a more informal or practical nature.

1 The *Starvation Jurisprudence Digest* compiled by Global Rights Compliance analyses the findings of international courts, commissions of inquiry, panels of experts and fact-finding missions, on conduct that affects food security in armed conflict and in other emergency situations.

Treaty ratification/accession

All states are parties to the 1949 Geneva Conventions, and many are parties to their 1977 Additional Protocols. Additional IHL treaties relevant to conflict-induced food insecurity have been mentioned throughout the Handbook, from those concerning weapons, to the Rome Statute of the International Criminal Court. It is important that states consider becoming parties to these agreements in order to clarify and strengthen international law and to be clear about their own obligations.

Implementing the treaty through domestic legislation

The provisions of a treaty may require changes to a country's existing laws in order for the state to give effect to its terms. In some states, such as those with a civil law legal system, this will be done automatically through ratification of the treaty. In others, including the UK, the country's domestic legal system may require the enactment of legislation for this specific purpose. Examples are Geneva Conventions Acts, found in many countries with a common law legal tradition, and International Criminal Court Acts, required to make the war crimes and other offences in the ICC Statute part of national criminal law.

Military Manuals

Many states provide their armed forces with detailed military manuals on IHL/the law of armed conflict (LOAC). These set out the state's IHL obligations and explain the state's interpretation of them. Military manuals can provide effective instructions for the armed forces, including on issues related to conflict-induced food insecurity.

As the international law on these matters develops, and the state's obligations change or are reinterpreted, it is important for the military manual and its subordinate documents to be kept under review and amended or updated when required. The need to ensure that states elaborate in more detail the relevant rules of IHL is also increasingly important as understanding of the issues that impact food security in modern conflict improves. To this end, the UK will ensure that food security dimensions are addressed in its Manual on the Law of Armed Conflict and any relevant subordinate policy and doctrinal documents.

Policies and doctrine

States should adopt policies and doctrines to give effect to their obligations under IHL. Armed forces frequently adopt doctrine and policies that guide their conduct during military operations. As elaborated in earlier Chapters, the impact of operations on food security should be included among the issues to

consider in relevant doctrine and policies. The UK will continue to review and update its doctrine and processes where necessary to reflect best practice.

Doctrine related to food security may be included as part of a broader topic such as Human Security, or joint operations. Military doctrine may be national or shared with partners in a military alliance, such as NATO.

Relevant policies and doctrine can help to raise awareness of food security issues at high-levels in government and the armed forces and play an important role in minimising the adverse impact of military operations on food security.

States should also formulate policies relevant to conflict-induced food insecurity for civilian officials, including diplomats. These may directly address the topic or form part of policies on wider issues, such as the protection of civilians.

Presence and input from military/civilian legal advisers

Government and armed forces legal advisers play an important role in helping to keep IHL at the forefront, for example, when establishing policy, updating doctrine and planning operations. This includes giving prominence to the IHL provisions relating to conflict-induced food insecurity.

Dissemination/Training

It is a truism that in order for the law to be applied, it must first be known. Dissemination of knowledge of the IHL rules governing conflict-induced food insecurity, and effective training in the subject, are required at all levels in the armed forces. The same applies for the civilian officials who will have responsibility for applying IHL. It is important too for the general public to be aware of relevant principles and basic rules. National Red Cross and National Red Crescent Societies and the International Committee of the Red Cross (ICRC) may help relevant state authorities in providing such education. In addition, states may provide support to other states' armed forces, in the form of Defence Training Missions. An example is the support provided by the UK Government to the Somali National Army through three different training programmes.

National IHL Committees

Many states have established a committee composed of representatives of relevant government ministries and the armed forces to advise on and consider matters of IHL, in particular, its implementation and dissemination. The National Red Cross or Red Crescent Society is often a member of the committee, in its special auxiliary and IHL roles. The committee helps to keep IHL on the government's agenda and can support effective implementation of the state's IHL obligations. The committee can raise awareness of issues related to conflict-induced food insecurity and consider practical measures to address them.

Producing a voluntary report on IHL implementation at domestic level

In recent years, an increasing number of states have produced a voluntary report, identifying the IHL treaties of which they are a party and listing the ways they have implemented them at national level.² Some voluntary reports have also been produced by groups of states e.g. at regional level. A voluntary report could cover the measures taken by the state to address conflict-induced food insecurity, including perhaps action at the international level.

Military and civilian justice systems

Even if a state has effective laws and mechanisms in place to facilitate respect for IHL, violations may still occur. It is important, therefore, for a state to establish and maintain laws and procedures governing the conduct of members of the armed forces (e.g. military laws and courts-martial) and of civilians (e.g. civilian criminal laws and courts) which may be used in the event of a contravention of the IHL rules related to conflict-induced food insecurity.

Investigations of allegations of violations/official complaints mechanisms

Related to the above, it is vital that a state has mechanisms in place for allegations of a violation of IHL to be made and properly considered. Thus, it should establish appropriate processes within the armed forces and within civilian institutions for the reporting of incidents to the authorities responsible for launching investigations.

COMPLIANCE MEASURES AT THE INTERNATIONAL LEVEL

There are a number of measures states can take to encourage parties to armed conflict to comply with IHL, including the rules relevant to avoiding, preventing or minimising food insecurity. These include the following.

Independent supervision

IHL treaties give a role to Protecting Powers (i.e. specially designated neutral states) and to the ICRC in supervising implementation of their provisions during armed conflicts. The Protecting Power system has not often been used in recent times, although the ICRC has consistently taken on the humanitarian and supervisory parts of the role according to its mandate.

2 The UK published its *Voluntary Report on the Implementation of IHL at Domestic Level* in 2019, and a second edition in 2024.

The ICRC also helps to facilitate the application of a treaty by parties to a conflict e.g. through its visits to prisoners of war and its provision of humanitarian assistance to civilians. Through confidential engagement with parties to a conflict, be they states or organised armed groups, the ICRC plays a significant role in assisting the relevant authorities to carry out their IHL obligations. But, even when given a mandate by international law, in practice Protecting Powers and the ICRC can only act with the consent of the party to the conflict concerned. Both must also give importance to the safety and security of their personnel in the field.

Fact-Finding

IHL treaties also provide for fact-finding and enquiries. The International Humanitarian Fact-Finding Commission, established in Additional Protocol I, is a body of independent experts available to conduct enquiries into alleged violations of IHL and to facilitate, through its good offices, the restoration of an attitude of respect for the law. In practice, states have often set up ad hoc inquiries through UN bodies. These commissions of inquiry and other investigative bodies have been established by the Security Council, the General Assembly, the Secretary-General, the High Commissioner for Human Rights and the Human Rights Council. Other intergovernmental organisations, such as the Organisation for Security and Co-operation in Europe (OSCE), may undertake similar fact-finding/monitoring missions and reporting on the application of IHL in specific contexts.

In recent years a number of these bodies have addressed conduct that led to or contributed to conflict-induced food insecurity in particular contexts.

Diplomatic pressure

States can seek to encourage non-compliant parties to an armed conflict to respect IHL through a variety of measures. These can be undertaken at different levels—bilaterally, as part of a group of states, or through relevant regional and international organisations. UN Security Council and General Assembly resolutions are part of this toolkit. UN Security Council Resolution 2417 on conflict-induced food insecurity, discussed in detail in Chapter 10, is an important example. A state with a close relationship to a party to an armed conflict may be able to provide them with practical assistance in improving their implementation of the law.

Public opinion

The perception of a party to a conflict by the general public may also play a role in encouraging compliance. Thus, reports by media professionals, and by relevant international organisations and NGOs, may be influential. Social media may also play a role - positive or negative.

Knowing that there is compliance with the law by one side, for example, that they are giving access to relief shipments, is more likely to encourage compliance by the other side. Although legally, compliance with IHL is a unilateral obligation of a state or organised armed group, in practice, this positive reciprocity is often an important factor.

Reprisal

A party to an armed conflict has traditionally been able to use reprisals as a means to encourage the other party to return to compliance with IHL. However, resort to reprisal measures is controversial, and they have not often been used in the modern era.³

Compensation

Under IHL, a state is responsible for violations of the law committed by persons forming part of its armed forces and may be liable to pay compensation or make restitution. This potential liability may be another inducement to ensure that the law is respected.

IHL COMPLIANCE BY ORGANISED ARMED GROUPS

As mentioned in Chapter 1, IHL is binding on all parties to armed conflicts, both states and organised armed groups. It is generally accepted by states and in international case law that organised armed groups are bound by common Article 3 to the 1949 Geneva Conventions and, where applicable, Additional Protocol II. They are also bound by customary IHL. Many of the IHL rules relevant to avoiding, preventing or minimising conflict-induced food insecurity may be regarded as part of customary IHL.

Organised armed groups cannot ratify treaties. However, depending on their level of organisation and sophistication, they may be able to take many of the measures outlined above to give effect to their obligations under IHL. These include elaborating manuals or instruments that set out their obligations, and

3 The UK, on ratification of Additional Protocol I, made a specific statement about reprisals in relation to violation of certain provisions, including Article 54 AP I (The Geneva Conventions Act (First Protocol) Order 1998, Schedule, paragraph (n)). In effect, the UK will regard itself as entitled to take measures otherwise prohibited by Article 54 AP I to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations under Article 54 AP I. See also UK LOAC Manual, paras 16.19.1-2. Reprisals would only be taken by the UK in specified circumstances and only after a decision taken at the highest level of Government.

doctrines and policies to give effect to them; and establishing disciplinary systems and complaints procedures.⁴

The structure and motivation of organised armed groups vary widely. Practice has shown that they may apply IHL norms for different reasons and their respect for IHL may be encouraged through a variety of means.⁵ Several examples follow.

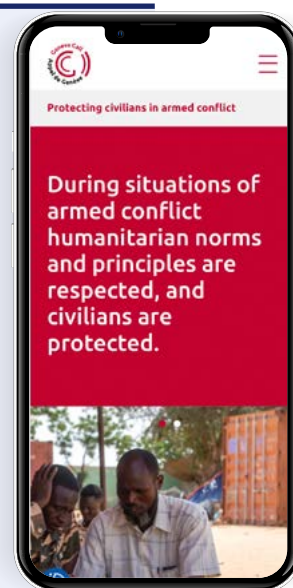
It can be effective to ensure that members of organised armed groups understand that, if they lose, they are less likely to receive amnesty if they commit acts that amount to war crimes (including the starvation of the civilian population as a method of warfare).

Focus on Geneva Call

The organisation Geneva Call specifically works with organised armed groups to encourage their compliance with IHL. One way it does this is by encouraging such groups to sign ‘Deeds of Commitment’ on specific aspects of IHL. These are public pledges by the groups to adhere to and comply with key international humanitarian norms.

The deeds include a monitoring and implementation plan that allows Geneva Call to deepen its engagement with the signatories, with the aim of leading to long-term behavioural change.

In 2021 Geneva Call launched a Deed of Commitment on the *Prevention of Starvation and Addressing Conflict-Related Food Insecurity*.⁶



Depending on the armed group, appeals from religious and other influential authorities or networks not tied to the government may have an effect in encouraging the group's compliance with IHL norms. Similarly, dialogue demonstrating that IHL rules reflect local cultural and religious beliefs can prove effective.

Pressure from state sponsors may also affect behaviour. For example, a state sponsor of an organised armed group may withhold its support in response to that group's alleged violations of the IHL rules which prevent conflict-induced food insecurity.

4 The report *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms*, 2022, by A Bellal, P Bongard and E Heffes, contains case studies providing examples of such documents.

5 Two relevant studies are the ICRC, *Roots of Restraint in War*, 2020, and A Bellal, P Bongard and E Heffes, *From Words to Deeds*, above.

6 Geneva Call, *Deed of Commitment under Geneva Call for the Prevention of Starvation and Addressing Conflict-Related Food Insecurity*, 2022.

Organised armed groups may also be sensitive to public opinion, particularly if they are seeking legitimacy for their cause. Consequently, journalism and reports by well-respected organisations may promote compliance amongst such groups.

LOOKING FORWARDS

- States may wish to consider ensuring that, when they are required to assess compliance with IHL, by themselves and by third parties, they include compliance with the rules on conflict-induced food insecurity. Such assessments may occur when assessing whether to aid and assist a state that is party to a conflict.
- States may wish to review and refresh their IHL manuals, doctrine, policies, guidance and training to ensure they include sufficient coverage of the impact of operations on food security.
- In 2005 the UN Security Council established a monitoring and reporting mechanism to collect accurate, timely and objective information on six grave violations committed against children in armed conflict. One of these grave violations is ‘denial of humanitarian access’.⁷

At the time of the establishment of the mechanism, parties to armed conflict found to have recruited or used children were listed in an annex to the Secretary-General’s annual report on children and armed conflict. Over the years the Security Council developed the system incrementally and, by July 2015, five of the six grave violations were triggers for listing, with the exception of ‘denial of humanitarian access’.

Nonetheless, the country-specific conclusions and reports, as well as the Secretary-General’s comprehensive annual report, are a valuable opportunity to highlight problematic conduct by parties to armed conflicts. Information on behaviour that impacts children’s food security could be provided under the heading of ‘denial of humanitarian access’.

7 SCR 1612 (2005) and Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Monitoring and Reporting on Grave Violations*.



Foreign, Commonwealth
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Ministry
of Defence

April 2025

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