



Lesson 8

Legal Frameworks for Civil-Military-Police Relations

Learning Objectives:

At the end of the lesson, participants will be able to:

- Identify five relevant legal frameworks guiding civil-military-police relations:
National constitution, International Human Rights Law, International Humanitarian Law /Law of Armed Conflict, International Refugee Law and International Criminal Law
- Define the central content of these five legal frameworks; including definitions and principles
- Identify three principles of the Law of Armed Conflict and International Humanitarian Law (LOAC/IHL)
- Identify the relevance of LOAC/IHL to civil-military-police coordination

This lesson provides a concise overview of legal frameworks that are relevant to civil-military-police relations. This lesson provides a foundation for other lessons in this *Handbook* that explore civil-military-police coordination.

1. National Legal Frameworks

Every country has its own national security framework that describes how security forces relate to civilians and civil society organisations. Each country's constitution lays out the legal responsibilities of the security forces toward civilians, and civilians' responsibilities to the security sector. (Training Note: If conducting this training course within a specific country, a guest speaker with a background in the specific legal frameworks of the country can provide a one-hour lecture here).

National legal frameworks usually contain the following:

- A description of the relationship between civilian government agencies and institutions with the security sector. This often includes an outline of civilian government oversight.

- A description of the relationship between civil society and the security sector. In most cases, legal frameworks uphold international legal standards that include the prioritisation of the protection of civilians. In most countries, security forces have an explicit mission to protect the state's territory and its citizens. Some countries also include a provision for civil society's rights and capacity to provide oversight to the security sector.

2. Both national and international legal frameworks provide guidance for how civilians (both governmental and civil society) relate to the military and police.

This chart compares five relevant legal frameworks that shape civil-military-police relations.³² The chart compares the purpose of the legal framework, the stakeholders responsible for upholding the legal framework, and the time period in which the legal framework is relevant.

Legal Framework	Purpose	Responsible Stakeholders	Relevant Time
National constitution and other legal frameworks	Identifies responsibilities and obligations	All national stakeholders	At all times
International Human Rights Law (IHRL)	Identifies responsibilities of the state to protect basic human rights of individuals in their jurisdiction	All stakeholders	At all times
International Humanitarian Law (IHL)/ Law of Armed Conflict (LOAC)	Identifies responsibilities of all parties to a conflict to protect persons and property not participating in the conflict and that may be affected by an armed conflict; to balance military necessity with humanitarian concerns	All stakeholders	During international armed conflict and, in part, during non-international armed conflict
International Refugee Law	Identifies state responsibilities toward protection of individuals at risk of persecution and who have crossed an international border	States	At all times; peacetime and during armed conflict
International Criminal Law	Identifies state responsibilities to prosecute individual perpetrators of crimes against humanity	All stakeholders	During armed conflict; both internal and international

Figure 17: Comparison of Legal Frameworks

3. International Human Rights Law (IHRL)

International human rights law (IHRL) details the obligations and duties of states to respect, to protect, and to fulfil human rights of those persons under their jurisdiction. All stakeholders are responsible for upholding human rights law. IHRL enables individuals and groups to claim benefits from a state authority in times of peace and in times of armed conflict, crisis and disaster.

4. IHRL includes a variety of treaties and legal guidance including:

- Treaties such as the International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights
- Conventions such as
 - Prevention and Punishment of Genocide
 - Rights of the Child
 - Rights of Persons with Disabilities
 - Elimination of Discrimination against Women
 - Elimination of all forms of Racial Discrimination
 - Against Torture
 - Protection of Persons from Forced Disappearance
 - Protection of Migrant Workers and their families
- International Customary Law
- Judicial decisions from human rights bodies such as the International Court of Justice
- Guiding Principles on Internal Displacement (non-binding)

5. International Humanitarian Law (IHL)/ Law of Armed Conflict (LOAC)

International Humanitarian Law (IHL) also known as the Law of Armed Conflict (LOAC) applies to state and non-state parties during situations of armed conflict and contains certain key principles that inform and guide civil-military relations. IHL/LOAC comprises the customs, conventions, laws, and regulations that regulate the conduct of armed conflict. IHL/LOAC consists primarily of four Geneva Conventions (1949) and two Additional Protocols (1977).

IHL/LOAC seeks to **balance military necessity with considerations of humanity** through rules to protect people who are not or are no longer participating in hostilities and by restricting the methods and means of warfare. While most of IHL/LOAC addresses the conduct and responsibilities of parties to conflict, neutral states and individuals engaged in hostilities – in relation to each other and to “protected persons” -- it also importantly addresses the role of impartial humanitarian organisations and how they relate to the military forces involved in the armed conflict.

IHL/LOAC applies to *both* state and non-state parties to conflict. In addition to seeking to limit undue suffering on the part of soldiers, for example, through the prohibition on the use of certain weapons, IHL/LOAC establishes the notion of “protected persons”, namely those not participating in hostilities (“civilians” in the sense of those who have never taken part in fighting) and those no longer participating in hostilities (those who have been wounded, captured or have laid down their arms). Under IHL/LOAC, protected persons must, at all times, be treated humanely whereby violence to their life or person, humiliating or degrading treatment and hostage taking are strictly prohibited. In particular, parties to conflict are obliged to take all necessary measures to refrain from causing harm to civilian populations and must ensure that the civilian population remains well supplied with basic necessities.

LOAC represents minimum standards of civilisation agreed upon by nations to prevent unnecessary suffering and destruction while not impeding the effective waging of war. For example, the requirements of uniforms and markings exist not only to assure combatants that enemy targets, and not their own, are being attacked, but to reinforce the protection afforded to civilian populations and civilian objects. Non-state armed groups are similarly obliged to offer protections for prisoners of war, wounded and sick, and the civilian population to the maximum extent possible.

To avoid violations of the LOAC, military commanders must ensure that its principles and requirements are known and understood by all subordinate personnel. The military commander’s servicing Staff Judge Advocate (SJA) is the appropriate person to arrange for or provide training in IHL/LOAC for all personnel.

6. Origins of IHL/LOAC

Customary laws developed over time prescribed basic moral and ethical standards for the conduct of war, particularly concerning the treatment of civilian populations. The codification of these norms emerged in the latter half of the 19th century, forged primarily in the context of the U.S. Civil War and a variety of European wars.. Florence Nightingale brought attention to the needs of wounded soldiers during the Crimean War. During the U.S. Civil War, the Lieber Code established a code of conduct for the humane treatment of civilian populations by the Union Army. Europeans used the Lieber Code as the basis for negotiations that ultimately resulted in The Hague Convention of 1899, the principles of which are still evident in the Geneva Conventions and its Additional Protocols.

Early humanitarians, such as Henri Dunant who began the Red Cross Movement, and Clara Barton, who later started the American Red Cross, argued that in order to help people on all sides of the conflict, those offering humanitarian assistance should be considered neutral, independent and allowed safe passage to relieve human suffering in an impartial manner without becoming targets themselves.

7. Three Principles of IHL/LOAC

Distinction: Distinction obliges parties to a conflict to distinguish principally between the armed forces and the civilian population, and between unprotected and protected objects. Only combatants and military objects are legitimate targets under IHL. The principle of *distinction* obliges parties to a conflict to take certain measures, in offence or defence, to help ensure that military forces and civilians can be visually distinguished from one another.

Proportion: Parties to conflict are further required to adhere to the principle of *proportion*, whereby any use of force which may be expected to cause some civilian harm, must be proportional and not excessive in relation to the concrete and direct military advantage anticipated by an attack on a military objective.

Precaution: Furthermore, parties to conflict are required to exercise *precaution* in their use of force, whereby all feasible precautions must be taken to reduce the risk of harm to civilians and other protected persons and objects.

8. IHL and humanitarian assistance

During armed conflict, civilians commonly suffer displacement and destruction of their homes and property, are killed and injured during hostilities, and are subject to various forms of unlawful violence, coercion and deprivation. While the state and non-state parties to a conflict are obliged to refrain from harm to civilians, and have the primary responsibility for the protection and wellbeing of the civilian population under their control, they may be unable or unwilling to do so. In such cases, an impartial humanitarian body may offer their services to prevent and alleviate human suffering of the civilian affected population. In order to proceed with humanitarian aid, this offer of services must have the consent of the parties to the conflict. However, this consent must not be arbitrarily withheld and the parties to the conflict are then obliged to facilitate and allow rapid and unimpeded passage of humanitarian relief for civilians in need.

These rules regarding the wellbeing of the civilian population, and the role of humanitarian organisations, provide the basic framework for international humanitarian action. Not only must the services offered be strictly humanitarian in character, they must be provided on a solely impartial basis. In other words, the aid provided must be based on need alone and make no distinctions on the basis of nationality, race, religious beliefs, class or political opinions.

In addition, in order for humanitarian actors to obtain consent from the parties to conflict, these parties must have confidence in the *neutrality* of the humanitarian organisation offering its services. If there is reason to believe that the entity offering its services favours one party to the conflict over another, or has a political purpose underpinning its motivations, this may serve as a reason to deny consent on the grounds of national sovereignty and military necessity. In order to provide an assurance of their neutrality, the strictly humanitarian character of their services provided on a solely impartial basis, humanitarian organisations additionally need to maintain their *independence* and autonomy from other actors present in the operational context.

This is the origin of the four *humanitarian principles* detailed in Module 7 on Civilian Assistance. While IHL/LOAC does not specify neutrality and independence explicitly, the principles of neutrality and independence are operational requirements to adhere to the principles of humanity and impartiality in highly complex environments. These principles provide a foundation for how humanitarian actors conduct themselves, how they relate to parties to conflict, and how military forces should understand the role of humanitarian organisations.

9. Applicable law in situations other than armed conflict

LOAC only applies in situations of armed conflict. However, humanitarian action – and sometimes military deployments to support civilian assistance – takes place in situations other than armed conflict, including other situations of violence and civil unrest, and in natural or environmental disaster. In these contexts, the national law of the affected state applies. Where a humanitarian crisis exceeds their capacity to respond, other states, multi-lateral organisations such as UN entities and international NGOs, may offer assistance. These and other principles relating to the use of foreign military assets in disaster relief are discussed in Module 7 on Civilian Assistance related to civil-military-police guidance.

10. International Refugee Law

International Refugee Law is a set of rules and procedures that aims to protect and assist individuals who have crossed an international border and are at risk or have already suffered from persecution in their country of origin. International Refugee Law applies to states in both peacetime and during armed conflict.

11. Refugees are defined by three basic characteristics:

- they are outside their country of origin or outside the country of their former habitual residence;
- they are unable or unwilling to avail themselves of the protection of that country owing to a well-founded fear of being persecuted; and
- the persecution feared is based on at least one of five grounds: race, religion, nationality, membership of a particular social group, or political opinion.

It is important to stress that the term “asylum seekers” refers to persons who have applied for asylum but whose refugee status has not yet been determined. .

12.The principle of “non-refoulement”

The obligation exists under Article 33 of the *1951 Refugee Convention* not to return a refugee to a country of territory where he/she would be at risk of persecution: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

13.Internally displaced persons

The 1998 Guiding Principles on Internal Displacement defines IDP as “persons or groups of persons who 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, and who have not crossed an internationally recognised State border.”

IDPs and refugees are distinct in several ways. IDPs do not leave their state. The definition of an IDP is wider than that of a refugee, who by definition fear persecution. An international treaty does not guide treatment of IDPs.

14.International Criminal Law

International Criminal Law seeks to hold individual perpetrators accountable for crimes such as war crimes, crimes against humanity and genocide. States have primary responsibility to prosecute crimes. The International Criminal Court includes a list of war crimes under both internal and international armed conflict. Attacks against humanitarian personnel vehicles, buildings and materials are considered serious violations, since civilians are entitled to protection and humanitarian assistance.

15.Responsibility to Protect

International norms and legal framework continue to evolve. For example, in response to an escalating sense of urgency for humanitarian interventions in situations involving mass atrocities toward civilians, the UN General Assembly endorsed a political framework of states’ “Responsibility to Protect” (R2P). R2P is not a mandate for intervention to establish democracy or to remove a government. Its purpose is to guide states in terms of their obligations to protect their citizens and to guide international action in specific situations of mass atrocities where states are unable or unwilling to offer such protection. R2P relates to the responsibility of states and the international community to prevent crimes against humanity, war crimes, ethnic cleansing and genocide. R2P puts victims’ rights to survival above national sovereignty. The 2001 Report of the *International Commission on Intervention and State Sovereignty* (ICISS) that outlined the following R2P principles:³³

- A State has a responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing (mass atrocities).
- If the State is unable to protect its population, the international community has a responsibility to help build state capacity for early warning, mediating conflicts, security sector reform, and many other actions.
- If a State fails to protect its citizens from mass atrocities or commits these acts against its own citizens, the international community has the responsibility to intervene at first diplomatically using a wide array of peaceful measures, then more coercively through various forms of sanctions, and using force as a last resort.

REVIEW

Legal frameworks outlined in this lesson create a foundation for guidance and coordination on conflict assessment, civilian assistance, and protection of civilians detailed in Modules 3-8.

Citations

³² See also Huma Haider. *International Legal Frameworks for Humanitarian Action: Topic Guide*. (Birmingham, UK: GSDRC, University of Birmingham, 2013).

³³ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: IDRC, 2001).

Lesson 8

Learning Exercises

Anchor

10 minutes

Anchor the content in this lesson with an open question. Participants can share in groups of two or three people their response to these questions:

- What legal frameworks guide the relationship between security forces and civilians?
- How have these legal frameworks impacted you positively or negatively in the past?

Add

20 minutes

Present the PowerPoint slides or ask participants to discuss the lesson readings in a small group.

Apply

25 minutes

The goal of this exercise is to practice using legal frameworks in a specific context. Each scenario stakeholder team has fifteen minutes to determine which legal frameworks are relevant to the scenario. In each scenario, the national constitution asserts that the role of the state's security forces is to protect citizens and to pursue national interests. Each stakeholder team can interpret this point and draw on relevant international legal frameworks to make their case. A national television station will host a live debate on national security with one representative from each stakeholder team. The scenario facilitator will moderate the televised debate, giving each representative two minutes to make their case on relevant legal frameworks. Debrief with open questions about the challenges and trade-offs in this role-play.

See the "Scenario-based Learning" section in the [Handbook on Human Security: A Civil-Military-Police Curriculum](#) for explanation of the scenarios and teams.

Away

5 minutes

In a large group, participants can discuss this question:

- What will I take away from this lesson on the security sector that might impact the way I do my work in the future?

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