



Parallel duties: Navigating International Humanitarian Law and Heightened Human Rights Due Diligence in Conflict-Affected Areas

Overview

Around the world, respect for the laws that were designed to regulate warfare – International Humanitarian Law (IHL) – is under intense pressure. With over 120 active conflicts, the risk of violence escalating and new conflicts emerging is real – often with devastating consequences for civilians. As companies expand their presence in, or connection to, conflict-affected areas, their exposure to IHL implications also increases. In this environment, businesses face a critical two-layered challenge: to ensure their activities neither fuel conflict nor contribute to harm on the one side, and to play an active role in upholding the principles of IHL on the other. Meeting this challenge is essential not only to safeguard civilian protections, but also to manage serious legal, operational, financial, and reputational risks.

While governments and armed groups remain the primary duty-bearers, there is growing recognition that upholding IHL is a shared responsibility. Companies with operations or supply and value chains in conflict-affected areas – jurisdictions where IHL is in force – are also expected to play a role in mitigating harm and avoiding complicity in violations. This expectation is reflected in the UN Guiding Principles on Business and Human Rights (UNGPs), which recognise that the heightened risk of gross human rights abuses in conflict settings requires businesses to strengthen their due diligence efforts – under a principle of “proportionality” – and that businesses should respect the standards of IHL in situations of armed conflict.

Heightened human rights due diligence (hHRDD) has emerged as a critical tool for companies to navigate the risks of operating in conflict settings.¹

About this series:

The Responsible business in conflict-affected areas series, led by TrustWorks, provides timely insights to questions raised by our company clients and partners; the briefs are designed to support company representatives navigate the responsible business in conflict agenda. This is the fourth brief in the series.

The brief is structured to cater for both busy and avid readers: on the left hand column, busy readers can skim through the main messages of the brief. Avid readers, with a bit more time on their hands, can read the right-hand side for a more in-depth understanding of the issues at hand.

Check out the other briefs in this series on our website trustworksglobal.com

¹ See United Nations General Assembly. *Protection of Civilians in Armed Conflict: Report of the Secretary-General*. A/75/212. July 21, 2020. <https://docs.un.org/en/A/75/212>; United Nations Development Programme. *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide*. 2022. <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>.



However, there is insufficient understanding and awareness of the need for companies to account for both hHRDD and IHL risks. It is important to recognise that IHL and hHRDD are distinct frameworks: IHL imposes specific legal obligations in times of armed conflict that are not covered by human rights law or the UNGPs; this sits separate from, but alongside, a typical hHRDD process. Accordingly, in conflict contexts, both IHL and hHRDD risks and impacts should form part of a company's due diligence process. Doing this will help companies manage their legal, operational, financial, and reputational risks in a manner that allows them to do business in the most challenging contexts, while also protecting communities and making a positive contribution to respect for international legal norms.

This brief explores the relationship between IHL and hHRDD, highlighting why companies cannot afford to overlook their IHL responsibilities in today's increasingly volatile global landscape. The brief covers the following questions:

1. What is IHL?
2. How is IHL relevant to companies, their personnel and their activities?
3. Why is it necessary to respect both IHL and hHRDD?
4. What does this mean for companies with business activities in conflict-affected areas?

IHL is a set of universal and legally binding rules that protects people in war and limits how wars are fought.

Wherever there is war, IHL will apply.

1. What is IHL?²

IHL is a set of rules that aims to limit the effects of armed conflict by protecting people who are not or are no longer taking part in hostilities – such as civilians, the wounded, and prisoners of war – and by restricting the weapons, tactics, and strategies used in war.

This legal framework consists of fundamental norms and principles that have deep historical roots, spanning centuries and transcending cultural and religious boundaries. Today, these rules are enshrined in the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, along with other specialised treaties, such as those that prohibit certain weapons and protect special objects. Beyond treaty law, these binding rules also evolve as customary law through long-standing and widespread practice.

Every situation of armed conflict is governed by IHL. There are two types of armed conflict recognised under the law: i) international armed conflicts, which occur between two or more States and include situations of military occupation; and, ii) non-international armed conflicts, which take place between a State and

² For a more detailed introduction to IHL, see the ICRC's 2024 publication, 'Private Businesses and Armed Conflict: An Introduction to Relevant Rules of International Humanitarian Law'. <https://shop.icrc.org/private-businesses-and-armed-conflict-an-introduction-to-relevant-rules-of-international-humanitarian-law-pdf-en.html>.



Non-State Armed Group(s) (NSAG), or between such groups, within the borders of a State. IHL does not apply to any other context, such as riots or isolated and sporadic acts of violence (even if such contexts are considered “high risk”).

Similarly, IHL does not concern itself with the legality of war or with ending war. The set of legal principles that deals with the conditions under which a State may lawfully initiate armed conflict is known as *jus ad bellum* – the right to go to war. IHL, instead, focuses on the rules that apply during the conduct of armed conflict itself, including how war is fought, the treatment of civilians and prisoners of war, and the use of certain weapons, etc.

**The application of IHL is
not necessarily limited
by geography.**

It is important to note that IHL is not always limited by geography. In principle, once IHL comes into effect, it applies throughout the entire territory of the States that are party to the armed conflict (beyond the immediate battlefield or combat zone). For example, conflict in the eastern part of the Democratic Republic of Congo (DRC) will not preclude IHL from applying to relevant activities and operations in other parts of the DRC in certain circumstances.

Additionally, IHL may apply to the actions of individuals irrespective of where they are located, provided those actions are sufficiently connected to the armed conflict (as discussed below). For instance, a weapons manufacturer in one country could face legal consequences if it knowingly supplies arms to regimes or groups violating IHL in an armed conflict taking place in another country.

**At the centre of IHL is the
careful balance of humanity
and military necessity.**

In many ways, IHL accepts the harsh reality of war – seeking to regulate and mitigate the impacts of armed conflict, rather than prohibiting conflict altogether. Core to IHL are two key principles: the principle of humanity, which seeks to preserve life, health and dignity; and the principle of military necessity, which permits only the degree of force required to achieve one's military objectives while minimising loss of life and resources. Underpinning this careful balance are key rules. For example, distinguishing between civilians and combatants, prohibiting disproportionate attacks that cause excessive civilian harm, and affording impartial care to the wounded and sick, amongst others.

2. How is IHL relevant to companies, their personnel and their activities?

Companies face unique risks and have distinct responsibilities and protections under IHL.

IHL is not a new body of law. However, aside from the notable exception of German businesses and executives prosecuted at Nuremberg in the 1940s, the consideration of how IHL is relevant to corporate actors has only recently regained attention.

Companies operating in, or connected to, conflict-affected areas need to be mindful of their legal obligations under IHL. This is because IHL is binding on any individual whose activities are sufficiently connected to an armed conflict, making it a legally enforceable framework for companies rather than a voluntary, opt-in standard. States and NSAGs bear the primary responsibility for respecting and ensuring respect for the law. However, other actors, such as the personnel of private businesses, including directors and other management, will also be subject to certain rules of IHL where a connection can be established between a particular business activity and an armed conflict.

In addition to these obligations, companies are also afforded protections under IHL, including for their people, property, and other assets. IHL restricts when they can be harmed, seized, damaged or destroyed, ensuring they are not directly targeted as long as they remain civilian in nature. However, herein also lies a responsibility for companies, to be cautious that their decisions or actions do not lead to the loss of this civilian protection.

Companies should take steps to clarify any connections between their business activities and armed conflict.

As highlighted above, IHL is binding on any individual whose activities are sufficiently connected to an armed conflict. As the activities of businesses in conflict-affected areas increase, companies must carefully assess and clarify any connections between their activities and armed conflict. While the concept of a “sufficient connection” lacks a precise definition, it may be interpreted as business conduct that occurs within, or which is significantly influenced by, an armed conflict.

For instance, connections that carry implications for legal liability.

In the most serious of cases, the connection will relate to a violation of IHL or war crime. It is possible for a company to be involved either directly (direct perpetration) or indirectly (for instance, through aiding and abetting a third-party perpetrator), both of which give rise to **legal liability implications**. Examples of the types of scenarios that companies should be mindful of include, but are not limited to:

- A company that sells weapons, fuel, technology or other goods to a regime that uses those products in the commission of war crimes.
- A company in a conflict-affected region that pays protection money to a NSAG that commits atrocities against the local civilian population.



Companies should take steps to clarify any connections between their business activities and armed conflict.

For instance, connections that might lead to the loss of protection afforded to civilians under IHL.

- A company that is knowingly engaged in the destruction of property or construction of illegal settlements in an occupied territory.
- A financial institution that provides significant funding to a warring party known for committing war crimes.

There are also circumstances in which a company's connection to armed conflict might lead to the **loss of protection afforded to civilians and civilian property** under IHL. Namely, through "direct participation in hostilities" (DPH) or if company property becomes a "military objective".

Fundamental to IHL is the principle of distinction, which implies that a party to an armed conflict must, at all times, distinguish between the civilian population and combatants, and between civilian objects and military objectives. This civilian immunity from direct attack is absolute unless a civilian takes a direct part in hostilities. A uniform definition of DPH does not exist in IHL. However, the International Committee of the Red Cross offers some guidance:

"An individual participates directly in hostilities when they carry out acts that aim to support one party to the conflict by directly causing harm to another party, either by directly inflicting death, injury or destruction, or by directly harming the enemy's military operations or capacity."³

Examples of this might include:

- Operating surveillance drones or software that identifies enemy positions for specific attacks.
- Executing or enabling cyber operations in the context of military operations (e.g., jamming communications, or disrupting military logistics).
- Transporting weapons, fuel, or troops directly to front-line positions.
- Constructing roadblocks or fortifications to block enemy troop movements.
- Embedding employees or contractors with military units to operate or maintain weapons systems, or advise on operations that result in direct military action.

Companies should also ensure its properties do not qualify as "military objectives". Under IHL, whether company property can be targeted depends on whether it meets certain criteria. If it is not considered a military objective, it is protected as civilian property and cannot be attacked. However, if it is or becomes a military objective, it may be attacked as long as other rules of IHL are adhered to. "Military objectives" can generally be described as objects or assets that, due to their nature, location, purpose or use, play a role in supporting military operations, and

³ International Committee of the Red Cross (ICRC), Australian Red Cross and French Red Cross, 'Private Businesses and Armed Conflict: An Introduction to Relevant Rules of International Humanitarian Law'. (2024). <https://shop.icrc.org/private-businesses-and-armed-conflict-an-introduction-to-relevant-rules-of-international-humanitarian-law-pdf-en.html>. See also: ICRC, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law'. (2009). <https://www.icrc.org/en/publication/0990-interpretive-guidance-notion-direct-participation-hostilities-under-international>.



taking them out (either by destroying, capturing or disrupting them) would provide a clear military advantage in the given situation.

Depending on the precise circumstances, some examples of this could include:

- A malware detection system that protects military networks.
- A manufacturing plant or factory producing components for military drones, parts for military vehicles, or other military equipment.
- Buildings storing military supplies, arms, or ammunition.
- A civilian port taken over for military purposes.

What is important to note here is that although the activities that give rise to these types of connections may not always have legal implications (unless, for example, those directly participating in hostilities fail to respect the relevant rules), a company may lose the protection afforded to its personnel and property under IHL, giving rise to other risks, such as disrupted operations, production delays, or targeted attacks by a party to an armed conflict.

Companies connected to conflict in a neutral or positive way should nevertheless be mindful of the rules and principles of IHL.

Companies can also have connections to armed conflict without crossing legal red lines, as long as their activities are compliant with international law. Indeed, a company might be connected to conflict in a neutral or even positive way, for instance by:

- Providing food, pharmaceuticals, or medical equipment to civilian populations or humanitarian organisations, in a conflict-affected area.
- Building civilian infrastructure (roads, hospitals, housing) in conflict zones.
- Delivering essential services such as clean water, electricity, or telecommunications to civilians in a conflict-affected area.
- Hiring private security to monitor and protect property or local assets in a conflict zone.

However, even if the risk of legal liability or loss of civilian protection is minimal, any proximity to armed conflict should compel companies to engage with IHL, as outlined in section 4 below. Proactive engagement with IHL will give companies a framework to act responsibly, ensuring that they pre-emptively address associated risks in conflict-affected areas.

This notion of a “sufficient connection” between a business activity and an armed conflict is still evolving.

It is important to acknowledge that the circumstances that establish a “sufficient connection” continue to develop through the decisions of courts and tribunals, particularly with respect to matters concerning corporate accountability for war crimes. This evolving legal landscape underscores the need for businesses to more effectively and proactively incorporate IHL considerations into their due diligence and compliance processes.

3. Why is it necessary to respect both IHL and hHRDD?

hHRDD triggers a complementary set of actions above and beyond HRDD

Unlike standard human rights due diligence (HRDD) processes – whereby companies identify, assess, and manage their human rights impacts to prevent, mitigate, and address potential harm to people – in conflict-affected and high-risk areas (CAHRAs) a different approach, which is encapsulated by the practice of hHRDD, is required. This demands a deeper, more comprehensive analysis of two critical issues:

- 1) The risk of a company's adverse impacts **on the conflict**; and
- 2) The **heightened** risk of a company's adverse impacts on human rights.

hHRDD is a stepwise process of analysis, action planning, implementation, and disclosure that aims to address adverse impacts that a company might have upon human rights and conflict in operational contexts and throughout value chains. Although hHRDD includes HRDD as a subset of its processes, the former goes well beyond the latter. An assessment of these risks and impacts must then be accompanied by an action plan to address them.⁴

Although the UNGPs encourage companies to consider IHL, many do so insufficiently or not at all.

The UNGPs urge companies to consider and adhere to the standards of IHL when operating in situations of armed conflict. This responsibility exists regardless of the UNGPs. As described above, IHL is a universally applicable and legally-binding framework, under which businesses can have particular obligations and protections. However, while relevant guidance encourages companies to consider IHL as part of their due diligence process in conflict-affected areas, in practice, few companies actually do this. In terms of practical implementation, companies can identify IHL risks alongside an hHRDD process as part of a comprehensive, integrated due diligence process.

To meaningfully account for IHL, due diligence processes in conflict-affected areas must go beyond addressing a company's adverse impacts on conflict contexts and human rights, which are typically captured in a robust hHRDD process. They must also involve an assessment of whether a company's activities are sufficiently connected to an armed conflict in a way that could trigger legal or loss of civilian protection risks under IHL, as described above.

Only an integrated approach to IHL and hHRDD will fulfil the most salient requirements of responsible business in CAHRAs.

Responsible business conduct in conflict-affected areas requires a meaningful commitment to both IHL and hHRDD. While compliance with IHL is essential, it is not sufficient on its own. Without addressing the broader risks of a company's potential adverse impacts on conflict contexts and human rights, businesses will fall short of meeting the expectations set out in the UNGPs and, indeed, in international law.

⁴ For more on hHRDD, see the [second](#) and [third](#) briefs in our Responsible Business in Conflict series.

Conversely, carrying out hHRDD without genuinely integrating the rules and principles of IHL fails to capture the distinct legal and protection risks that arise under IHL. These risks go beyond general human rights concerns and require specific attention in the context of armed conflict.

By developing an integrated and robust due diligence framework that addresses the spirit and letter of both IHL and hHRDD (which is at the core of the TrustWorks approach to due diligence), companies can better identify and manage complex risks, fulfil legal responsibilities, and operate more responsibly in areas affected by conflict.

4. What does this mean for companies with business activities in CAHRAs?

Companies in CAHRAs must engage with both frameworks: IHL and hHRDD.

Ultimately, aligning with IHL and hHRDD frameworks is a long-term investment in the resilience of the business and the preservation of responsible business practices. To do this effectively, companies that are operating in or connected to conflict-affected areas should embed IHL awareness and adherence into their existing due diligence processes.

This means:

- Acquiring specialist knowledge, and undertaking training, in IHL.
- Assessing how business activities in conflict-affected areas (and those of any direct contractors, suppliers or partners) might be connected to armed conflict.
- Assessing and mitigating the risks of harm, including the risk of directly or indirectly contributing to IHL violations, and the risk of losing civilian protection.

Failing to engage with both IHL and hHRDD frameworks exposes companies to harm and weakens their resilience.

Failing to engage with the standards of IHL exposes companies to significant legal, operational, financial, and reputational harm. It also undermines their obligations under international law, as well as their responsibilities under the UNGPs.

Ignoring IHL might mean that a company or investor, either intentionally or inadvertently, engages in activities that support or facilitate violations of IHL; or, it might mean increased risk for a company's people and property if personnel are not provided with appropriate training in IHL or the implications of taking a direct part in hostilities. On the other hand, companies that do understand and respect IHL, and integrate it into their hHRDD due diligence processes, will increase their resilience and ability to grow and have positive impacts even in the most challenging environments.




About TrustWorks

No more business as usual.

TrustWorks Global (TrustWorks) is a Geneva-based social enterprise – in operation since 2013 – enabling public and private actors to engage responsibly and effectively in FCAS.

We work diligently and discreetly to support our public and private sector clients and partners to minimise their negative impacts on conflict and, where possible, to maximise their positive impacts on peace.

We protect our clients' interests by managing their risks, impacts and opportunities in line with legal requirements, normative expectations and evolving best practices across the following three key pillars of work:

-  We enable **companies** to operate, source and supply in line with legal requirements, normative frameworks and best practices on International Humanitarian Law, heightened human rights due diligence and conflict-sensitivity; where possible, we support companies to go beyond 'minimum standards' to have positive impacts on the lives and livelihoods of those affected by violence and conflict.
-  We enable **investors** – including development finance institutions (DFIs), private/institutional and impact investors, as well as private banks – to manage conflict risks and impacts in line with legal requirements, normative frameworks and best practices; where possible and leveraging conflict-sensitive approaches, we support investors to go beyond 'minimum standards' to have positive impacts on the lives and livelihoods of those affected by violence and conflict.
-  We equip **governments, international, regional and local organisations** to address pressing, highly complex challenges to peacebuilding and peacemaking; our support creates bridges across diverse constituencies and organisations, public and private sectors, local and global actors with a view to fostering relevant, responsible and risk-informed initiatives in the contexts where they are needed the most.

In the context of our work with both our public and private sector clients, our work is practical, our approach is pragmatic, and our ethos informed by our commitment to improving the lives and livelihoods of those affected by violence and conflict.

For more information contact

Josie Lianna Kaye, CEO & Founder | josie@trustworksglobal.com