



The Applicability of International Human Rights Law and International Humanitarian Law in Situations of Violence Linked to Organized Crime

This third volume in our series on 'Internal Displacement in the Context of Organised Criminal Violence' examines international law on the use of force in situations of violence linked to organised crime. Such violence can reach the thresholds for armed conflict, in which case international humanitarian law (IHL) applies, in addition to international human rights law (IHRL). While an armed conflict classification can activate international protection mechanisms, the application of IHL reduces the protections afforded under IHRL and may do more harm than good for IDPs and those at risk of displacement. The author calls for a reorientation of international protection mechanisms to ensure fuller protection of IDPs.

The initial five papers in this series draw on research by experts at the [Internal Displacement Research Programme](#) of the Refugee Law Initiative (RLI), working collaboratively with the UN Special Rapporteur on the Human Rights of Internally Displaced Persons in relation to her [2025 Call for Inputs](#) on this theme.

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Introduction

In general, international human rights law (IHRL) applies in situations of violence linked to organized crime networks and groups. Only when a situation of violence meets the international humanitarian law (IHL) thresholds for armed conflict does IHL apply. With a focus on Latin America, this short paper suggests that those thresholds may have been

met in some contemporary cases of violence linked to organized crime. It argues, however, that an armed conflict classification and the concomitant application of IHL represent a double-edged sword. While an armed conflict classification can serve to activate some kinds of international protection mechanisms, the application of IHL can equally serve to legitimize militarized responses to organized crime and tends to reduce, rather than extend, the legal protections enjoyed by internally displaced persons (IDPs) and those at risk of displacement.

Violence linked to organized crime networks and groups

Organized crime networks and groups use violence against each other, state agents, and the wider population. In response, and frequently in collusion with criminal actors, state agents use violence against criminal actors and the population. Conflict scholars increasingly argue against dichotomising [“criminal violence” and “political violence”](#). They have shown, however, that an empirically sound and analytically useful distinction can be made between actors who seek to overthrow or secede from the state, as in traditional insurgencies, and [those whose ambitions are limited to influencing the making or enforcement of state policy](#). In Latin America, for example, most organized crime groups have more limited aims vis-à-vis the state and, consequently, employ violence according to [a logic of coercion rather than conquest](#). Empirical studies have shown that they tend to [minimize direct confrontations with police or military](#), and that they depend on collusion with state agents.

[Violence linked to organized crime drives displacement](#). We lack adequate data on the scale and nature of such displacement, but the available evidence suggests that displacement is sometimes [a deliberate strategy](#) of organized crime groups and sometimes [an incidental consequence](#) of other strategies (extortion, forced recruitment etc). Through [acts of commission](#) and [acts of omission](#), state agents also bear responsibility for displacement.

International human rights law

In general, IHRL applies in situations of violence linked to organized crime. IHRL emerged in the aftermath of World War II, and for decades it was widely held that it did not apply in situations of armed conflict, which

were the exclusive preserve of IHL. Now, however, it is [widely accepted](#) that IHRL applies both in peacetime and during armed conflict.

IHRL imposes tight restrictions on the use of (lethal) force by state agents, and in peacetime, they are expected to operate under a law enforcement paradigm. This means that the use of force should normally be limited to the police, and the use of firearms is permissible [“only where necessary to counter an imminent or grave threat to life or physical integrity, and when less violent means are not or would not be effective.”](#) The lowest amount of force necessary to achieve a law enforcement objective is to be applied. IHRL also sets out a range of protections specifically for IDPs and those at risk of displacement, as collected and set out in the [Guiding Principles on Internal Displacement](#). While the rights of individuals laid out in IHRL primarily imply duties or obligations of states, it is also now well established that [non-state actors, including armed non-state actors, have obligations under IHRL](#). Non-state actors are also bound by domestic law; by definition, murder and other criminal activities are prohibited.

International humanitarian law

Different rules of international law apply where the violence in question meets the thresholds for armed conflict. Also known as the law of armed conflict, IHL applies in international and non-international armed conflicts (IACs and NIACs). An IAC occurs when there is a resort to armed force between states, including even minor skirmishes between armed forces, with no minimum threshold for the intensity of violence. The difference between NIAC and other kinds of organized armed violence is [defined by thresholds relating to the intensity of lethal violence, and the level of organization and territorial control](#) of participating non-state armed groups. The motives of those armed groups are irrelevant, and the applicability of IHL depends on the facts of the situation and not on any recognition of armed conflict by its parties.

Classifying situations of violence linked to organized crime

Despite levels of lethal violence equalling or exceeding those in conventional wars, situations of violence linked to organized crime are often not formally classified as armed conflict. Given the motives of participating armed groups are irrelevant, in principle this kind of violence

can constitute armed conflict as per IHL. There is [no central authority](#) to provide a definitive assessment of the facts in any given situations of violence, and while the International Committee of the Red Cross (ICRC) has the moral and expert authority to make such an assessment, [it does not always make its classifications public](#). The parties to any conflict are expected to determine the applicable legal framework, but they may face incentives to classify a situation as NIAC when the IHL thresholds have not been met or, conversely, to deny the existence of a NIAC even when the thresholds have been met.

Looking at Latin American countries with high levels of violence linked to organized crime, we see a range of positions on the classification of particular situations of violence. As of 2023, the ICRC had [publicly identified six NIAC dyads in Colombia](#), including some involving organized crime groups (e.g. the *Autodefensas Gaitanistas*). In early 2024, the Ecuadorian president recognized a NIAC involving twenty-two criminal groups, but the country's constitutional court ruled that [the violence did not constitute NIAC](#). For their part, legal scholars have argued that the IHL thresholds for NIAC have been met in [Rio](#), [El Salvador](#), and at least some parts of [Mexico](#), some of the time since 2006. By contrast, the governments of Brazil, El Salvador and Mexico have denied the existence of armed conflict on their territories, and the ICRC has not made public its classifications of these contexts.

Implications of an armed conflict classification

There remains some debate as to the precise relationship between IHRL and IHL, but the dominant perspective (held by the UN High Commissioner for Human Rights, among others) is that [IHRL and IHL are complementary and mutually reinforcing in armed conflict contexts](#). Nevertheless, the two bodies of law are sometimes inconsistent with one another (for example, over the targeting of combatants or incidental civilian casualties). In such cases, the principle of *lex specialis derogat legi generali*, according to which the more specific rule is applied over the more general rule, means that in armed conflict situations, the rules of IHL often have precedence over those of IHRL. As such, an armed conflict classification—and the concomitant application of IHL—risks displacing

IHRL's tight restrictions on the use of force and its explicit protections for IDPs and those at risk of displacement.

The invocation of IHL carries serious risks as it legitimises the militarized responses that have been [shown to contribute to more, rather than less, violence](#). When a situation of violence is treated as NIAC, the relatively more permissive IHL norms on the use of force apply. Under IHL, civilians may not be targeted, but enemy fighters are a legitimate target even when they are not posing an immediate threat, and an attack on a military target may be legitimate even if it results in civilian casualties, [provided that the expected civilian harm and loss of life is not excessive relative to the expected military advantage](#).

At the same time, however, various international protection mechanisms are activated or strengthened where there is armed conflict. For example, the UN Security Council and Secretary-General engage consistently on the protection of civilians *in armed conflict*. In situations of violence that fall short of armed conflict, there is [no clear-cut obligation in states to accept external humanitarian assistance](#). By contrast, under IHL, while humanitarian agencies require the consent of the affected state, [the state must not arbitrarily withhold consent](#) to an offer from an impartial humanitarian body to assist the population with relief actions to provide such necessities as food, water, medical supplies, clothing, and means of shelter.

Conclusions

The application of IHL tends to reduce, rather than extend, the legal protections enjoyed by IDPs. The human rights of IDPs and those at risk of displacement may thus not be best served by the application of IHL but rather through a fuller application of IHRL, including the Guiding Principles. In practical terms, this may require a reorientation of international protection mechanisms and institutions away from an exclusive focus on armed conflict, and in this regard, the interest of the UN Special Rapporteur on the human rights of internally displaced persons in situations of violence linked to organized crime is especially welcome.

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