

Chapter 3 - Legal Imperative

This is not a detailed examination of either international human rights law, or the law of armed conflict³⁰. The purpose is merely to review both categories of rights and duties in outlining the legal imperative and legal parameters for human rights in UN field operations.

3.1 International Human Rights Law

Various international human rights laws apply in any conflict situation or complex emergency for all of the standard reasons. States have binding legal obligations under all international human rights treaties which they have signed and ratified. Even where countries have not ratified such treaties, there are parts of some of the more important treaties, declarations, or resolutions, that have become binding on all countries through international customary law, ie. widespread practice by states and their stated policy that they perceive those norms as legally binding on them. Most of these same laws bind the UN for three reasons.

First of all, legally binding universal norms apply not only to the state(s) where a particular conflict is occurring, but also impose obligations reference that conflict on all other UN member states and by extension the UN. Secondly, those international legal norms created within a UN fora that a particular country in question has ratified, bind them as well as imposing obligations on other states that have ratified those norms and the UN per se as the 'sponsor'. Thirdly and largely ignored, national contingents and individuals on loan to the UN remain firmly bound, logically and legally, by their home state's international legal obligations.

Thus the UN itself has certain obligations to protect and promote the rights of individuals or particular group of peoples. These obligations are commensurately greater in the face of gross and systemic violations, particularly where a government is failing in its obligations to protect human rights or is actually a party to violations. UN obligations become particularly imperative where there is a UN field operation, and become absolute when the UN becomes the de facto authority in all or part of the operation area.

³⁰ Various titled the law of armed conflict, the law of war, international humanitarian law, etc., this body of international norms includes the Geneva Conventions (Law of Geneva), the Hague Conventions (Law of the Hague), and the more recent Law of New York. This study will use the 'law of armed conflict' to refer to all of the above.