

INTERNATIONAL HUMANITARIAN LAW VERSUS INTERNATIONAL POLITICAL WILL

THE ISSUE

UPHOLDING HUMANITY - THE ROLE AND FUTURE OF INTERNATIONAL HUMANITARIAN LAW



The aftermath of a bombing in Chernihiv. January 2023. Photo: Sofia Busk, DanChurchAid

“International humanitarian law is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, directly or actively participating in hostilities.”

The [ICRC’s working definition](#) of International Humanitarian Law (IHL) established a contract that is not always honoured by the same States who agreed to be bound by it. As such, it now represents an intersection where commitments, and the will to uphold commitments, often explicitly diverge.

The humanitarian community has come to regard the laws of armed conflict to be incontrovertible and enduring. However, over recent years, and particularly during the last calendar year, humanitarian actors around the world have responded courageously while watching with disbelief and growing despondency, as the laws of armed conflict failed – on a massive scale - to protect them and civilian populations around the world.

Of course, the laws of armed conflict cannot enforce themselves. Common Article 1 to the 1949 Four Geneva Conventions require State Parties both to respect IHL rules - i.e., to uphold their own legal obligations under the general principle of *pacta sunt servanda* - but also to ensure respect for IHL by others, especially parties to armed conflict.

The ICRC updated [Commentary to the Geneva Conventions](#) further elaborates the negative and positive obligations not only of States involved in armed conflict, but also those of Third States. While not directly implicated in the armed conflict in question, Third States are nevertheless obligated not to aid or assist in violations by others and to do “everything reasonably in their power to prevent and bring violations to an end”.¹ One example offered by the Updated Commentary to fulfil the negative obligation, would be to refrain in transferring weapons if there is an expectation that such weapons would be used to violate the Convention.

1. ICRC, Commentary on the Third Geneva Convention, 2020, available [here](#), para 187 – 216.

“2024, the number of those in need had almost doubled that of those in need 5 years ago. The proliferation of protracted crises has a considerable role to play in this escalation of needs, and in the resulting increase in humanitarian funding needed .”

Positive obligations to bring violations to an end are also expressed as including, inter alia, measures of retorsion such as non-renewal of trade privileges and lawful countermeasures such as arms embargoes, trade and financial restrictions. States remain free to choose between different possible measures, as long as those adopted are considered adequate to prevent violations and to ensure respect.

While recent years have shown some level of adherence across State practice - for example measured taken by Third States in ensuring respect for IHL by the Russian Federation² – such application of Third State obligations has been far from uniform or consistent across other contexts. 2024 has even seen one State taking the worrying and rare step of formally withdrawing from an International Treaty which safeguards norms IHL.³

ACLED, (Armed Conflict Location and event Data) now ranks 50 countries as being exposed to extreme, high or turbulent levels of conflict, with 10 countries now host to extreme levels of conflict including: Palestine, Myanmar, Syria, Mexico, Nigeria, Colombia, Brazil, Sudan, Cameroon and Pakistan. While Ukraine previously held the rank of most violent and deadliest country, Palestine now tops the list, in terms of both deadliness and danger to civilians, followed by Myanmar and Syria.⁴ ACLED also notes a significant increase in conflict activity over recent years with a 13% rate of global exposure to conflict between 2020-2021, now rising to a 64% rate of exposure in 2023-2024, primarily attributed to conflict in Ukraine, Gaza and Myanmar as well as Sudan, Yemen and in the Sahel.



Clearance conducted in Mykolaiv Oblast. August 2024. Photo: Rasmus Emil Gravesen, DanChurchAid

These and other conflicts have a direct impact on sky-rocketing humanitarian needs globally. In 2023, humanitarian response requirements were the highest on record, while as of August 2024, the number of those in need had almost doubled that of those in need 5 years ago.⁵ The proliferation of protracted crises has a considerable role to play in this escalation of needs, and in the resulting increase in humanitarian funding needed. By July 2024, only 18% of funding needed to respond to humanitarian needs globally was received.⁶ Ten years ago, in 2014 – just 29% of interagency humanitarian funding required was directed at protracted crises, while in 2024, 91% of all funding required was for protracted crises.⁷ The vast majority of these are impacted by conflict and many by climate. This makes it abundantly clear – as it was during the World Humanitarian Summit – that the fulfillment of the commitments made by the [signatories to the Grand Bargain](#) requires political leadership and will, to prevent and end conflict and to uphold the norms that safeguard humanity.⁸

During the Annual Meeting of the Grand Bargain signatories in Geneva in October of this year, many Principal-level delegates called attention to the continued need for political will to prevent and end conflict, and to ensure respect for IHL. Some delegates pointed to the apparent inconsistency of committing

2. Consilium, EU Sanctions Against Russia, 28 October 2024, available [here](#).

3. Human Rights Watch, Lithuania Leaving Cluster Munition Ban Undermines Agreement, Threatens Crucial Norms, 1 August 2024, available [here](#).

4. ACLED, Conflict Index Results, July 2024, available [here](#).

5. Development Initiatives, Humanitarian Assistance Report 2024, “Falling Short: Humanitarian Assistance and Reform, October 2024, available [here](#).

6. NRC, Alarming drop in global funding to people in war and crises, 2 July 2024, available [here](#).

7. Ibid.

8. UN General Assembly, Outcomes of the World Humanitarian Summit – Report of the Secretary General, A/71/353, 23 August 2016, para 5, ft 2. available [here](#).

See the 5 Core Responsibilities of the Agenda for Humanity, which include preventing and ending conflict, and respecting the rules of war, available [here](#).

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Kateryna, 66, is standing by the house she has lived in for 38 years in Par-tyzans'ke, Mykolaiv Oblast. The house has been reduced to rubble, but she is hoping to rebuild. May 2024. Photo: Rasmus Emil Gravesen, Dan-ChurchAid

Six UN Member States have recently launched a global initiative to mobilise political commitment to IHL and are calling for a high-level meeting to uphold humanitarian law in 2026. They call on other High Contracting Parties of the Geneva Conventions to join them in this initiative.⁹

The international community will also continue to turn to the UN Security Council for principled leadership in this regard, motivated by humanitarian rather than political interests. Much will hinge on the role of the incoming UN Security Council members, to support this process in ensuring respect for IHL and safeguarding civilians.

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to a more localised response, while concurrently failing to protect the local actors the Grand Bargain seeks to empower, as they face attacks across many areas of operation, enabled by weapons supplied by Third States in breach of their international obligations.

In the coming year, the humanitarian community looks to our political counterparts, to take urgent action and genuine steps toward upholding their own obligations under international humanitarian law, to ensure respect for IHL and to limit the impact of armed conflict on civilians and humanitarian workers. Otherwise, we will never be able to fulfil our humanitarian imperative in meeting continually growing needs linked to protracted crises and conflict.

There are some flickers of hope, however, with some Third States taking actions over the last year to promote compliance with IHL, including through triggering international legal mechanisms such as the International Court of Justice, as well as collectively reaffirming legal imperatives at the UN General Assembly level. It is now up to each State, individually and in relevant international fora, to implement those standards and findings.

9. ICRC, Brazil, China, France, Jordan, Kazakhstan, South Africa launch a global initiative to galvanise political commitment to international humanitarian law and call for a high-level meeting to uphold humanity in war in 2026, available [here](#).