

UPHOLDING ACCOUNTABILITY FOR INTERNATIONAL HUMANITARIAN LAW

THE ISSUE

UPHOLDING HUMANITY - THE ROLE AND FUTURE OF INTERNATIONAL HUMANITARIAN LAW



Destruction following Israeli airstrikes in Gaza (ACT Alliance Mediabank - Credit DSPR)

INTRODUCTION

The purpose of International Humanitarian Law (IHL) is to limit human suffering during all armed conflicts whilst allowing legitimate military aims to be pursued. Its rules apply to all parties involved in the fighting, and irrespective of the reasons underpinning the conflict.

The current global situation is dire. Protracted and devastating armed conflicts are raging in many regions. There is an ever-growing sense that parties to armed conflicts act without regard to fundamental rules of IHL, which require protection of civilians and civilian infrastructure, hospitals and schools, and mandate the provision of humanitarian assistance. The consequences of a lack of adherence to these most basic protections are alarming, as evidenced by skyrocketing numbers of civilian casualties worldwide.

RESPONSIBILITY AND ACCOUNTABILITY MECHANISMS IN IHL

The responsibility for implementing IHL lies firstly with all parties to armed conflict, and encompasses both state and non-state actors (Hamas for example). Additionally, all States, whether or not they are involved in conflict, must respect IHL themselves, and also ensure that it is respected by other States and other parties to armed conflicts.¹

Where IHL is violated, there must be accountability. Some crimes, including particularly serious breaches of the Geneva Conventions, are so grave that they affect the international community as a whole. Therefore, any State may – or sometimes must - prosecute persons on their territory who may have committed such crimes, irrespective of where the crime was committed or the nationality of the accused.² This is referred to as “universal jurisdiction”, and it represents an important way to secure accountability for IHL. To date, 99 cases have been brought before national courts on the basis of universal jurisdiction for serious violations of IHL.³ For instance, Germany and several other EU States have pursued multiple cases involving Syrian officials accused of torture and other war crimes, highlighting that national courts can serve as important avenues for justice.

1. This obligation is contained in Article 1 Common to the Four Geneva Conventions of 1949

2. Articles 49, 50, 129 and 146 Common to the Four Geneva Conventions of 1949

3. Trial International, Universal Jurisdiction Interactive Map, Available at : <https://ujim.trialinternational.org>. Last Accessed 25 October 2024



Woman walking alongside the Separation Wall in the occupied Palestinian territory - Credit Jeffrey

Alongside national courts, international courts and tribunals also play an important role in securing accountability for IHL violations. Examples include two permanent international courts.

The first is the International Court of Justice (ICJ), established in 1945 under the Charter of the United Nations. The ICJ hears cases involving disputes between States, including cases involving alleged violations of IHL. An example is the *Armed Activities* case, brought by the Democratic Republic of the Congo against Uganda, in which the Court concluded that Uganda was responsible for serious violations of IHL, including the pillaging of DRC's natural resources during the conflict.⁴ The ICJ also provides advisory opinions. It was recently requested by the United Nations General Assembly to provide such an opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. In this groundbreaking advisory opinion, the Court declared Israel's occupation of Palestinian territory illegal. It also highlighted other violations, including of IHL, attributable to Israel, such as forcible transfer.

The International Criminal Court (ICC) is another permanent international court that plays a vital role in securing accountability for IHL. Under the ICC, individuals can be prosecuted for serious violations of IHL, as well as genocide, and crimes against humanity. The ICC has made significant strides in cases involving child recruitment, emphasizing the accountability of individuals who exploit vulnerable populations in conflict. For example, in 2012, the ICC convicted Thomas Lubanga for enlisting and conscripting children in the Democratic Republic of the Congo, and sentenced him to 14 years imprisonment for his crimes.

Accountability for IHL violations can also be promoted through the use of investigative bodies. These include commissions of inquiry mandated by the United Nations or regional organizations. Examples include the Independent International Fact-Finding Mission for the Sudan, established in October 2023 and the Independent International Commission of Inquiry on Ukraine, established in March 2022. These commissions and others like them play a vital role in gathering evidence, raising awareness, amplifying the voices of survivors and informing international responses to IHL violations. One investigative mechanism has been established under IHL itself - the International Humanitarian Fact-Finding Commission (IHFFC).⁵ Despite its potential, it has only been activated once, to investigate the facts surrounding the death of a Polish citizen, who, together with seven other humanitarian workers, was killed during an Israeli attack on a World Central Kitchen convoy.⁶ The underuse of the IHFFC is a source of frustration for many in the international community and can be attributed to several factors, including political complexities, security concerns, lack of awareness of the mechanism, and the challenging nature of garnering support from states to activate the Commission.

Other accountability mechanisms include sanctions—both economic and diplomatic. These serve as tools to hold violators of the law accountable. The European Union's sanctions against Russia, following its annexation of Crimea and its subsequent invasion of Ukraine, exemplify how collective international action can signal disapproval of violations and pressure states and individuals to comply with IHL. Similarly, the U.S. has imposed sanctions on individuals linked to the Assad regime in Syria for their involvement in chemical weapons attacks against civilians.

4. International Court of Justice, *DRC v. Uganda (Merits)*, p. 252, para. 245

5. Established under Article 90 of Additional Protocol I

6. For the Memorandum of Understanding between Poland and the IHFFC, see : <https://www.ihffc.org/index.asp?Language=EN&mode=shownews&ID=934>, Last Accessed 25 October 2024

Accountability mechanisms not only serve to punish past violations but also act as deterrents, signaling to all parties that violations of IHL will not be tolerated. By reinforcing the principles of justice and responsibility, these mechanisms help uphold the integrity of international humanitarian law – and international law more broadly – and contribute to the ultimate goal of maintaining peace and security. The overarching importance of accountability lies in its role in ensuring compliance with IHL, protecting vulnerable populations, and preventing the erosion of legal standards-often referred to as “standard slipping.”

WHAT HAPPENS IF THERE IS NO ACCOUNTABILITY FOR BREACHES OF IHL?

As with other branches of international law, there is no overarching entity charged with the enforcement of IHL. Therefore, the effectiveness of accountability mechanisms hinges significantly on political will and inter-state cooperation. In the current geopolitical environment, characterized by competition, mistrust and tension, such political will and cooperation have proved hard to secure. The result is that those that violate IHL often enjoy impunity while victims remain without redress. A recent trend also of great concern is the manipulation and improper interpretation of IHL by parties to conflict to serve their own military interests. The consequences of an IHL accountability deficit are profound – the erosion of legal protections and norms that are essential for protecting humanity – on all sides of the conflict. This erosion matters greatly; not only does it impact the lives, livelihoods, physical integrity of persons caught up in conflict, hamper humanitarian access and contribute to a culture of impunity, it also threatens the broader integrity of international law and global governance. A lack of adherence to IHL undermines the principle of good faith and creates unpredictability in international relations, ultimately jeopardizing sustainable peace and reconciliation efforts.

THE ROLE OF THE EU AND ITS MEMBER STATES

EU Member States and EU institutions, including the European Parliament, have a role to play in promoting accountability for IHL violations. This includes providing political support to the accountability mechanisms detailed above.

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Furthermore, encouraging collaboration among states, NGOs, and international bodies, including courts and tribunals, is vital for strengthening compliance with IHL. Such collective efforts can enhance accountability mechanisms and reinforce the importance of adhering to international legal standards.

To support humanitarian actors and promote accountability, Diakonia’s International Humanitarian Law Centre offers rapid, free and tailored legal and policy advice on international humanitarian law through its IHL Advisory Service. We provide guidance to stakeholders, such as international and civil society organizations, as well as governmental actors, to facilitate their use of IHL in protection advocacy. The Advisory Service enables humanitarian actors to respond to urgent needs and queries by providing rapid and in-depth legal analysis as well as carrying out capacity building and training activities centered on IHL. The IHL Advisory Service is available at: <https://www.diakonia.se/ihl/advisory-service/>

CONCLUSION

Millions of people worldwide are affected by armed conflicts, with incalculable human suffering as the result. Increased compliance with the rules of IHL, and a meaningful commitment to accountability for violations of those rules will reduce the level of human suffering and contribute to strengthening the legal order and securing sustainable peace. European institutions and humanitarian organizations have a very important role to play, especially in the current global context. Diakonia’s IHL Centre stands ready to support these institutions to reach our shared objective of achieving greater protection for all persons affected by armed conflicts around the world.

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