

SUMMARY REPORT

Is the IHL system in jeopardy?

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Aid workers and civilians under fire. Attacks on essential infrastructure such as hospitals and schools. Blocked humanitarian action. Withdrawal from international agreements and institutions. International Humanitarian Law (IHL) is under pressure, and it is strongly affecting the operations of humanitarian organisations. Compliance with and enforcement of IHL is often said to be declining. Its application is subject to allegations of double standards/selection and interpretation. Often, ongoing diplomatic efforts to re-state commitments and obligations under IHL – do not meaningfully improve adherence, or the operational reality for aid organisations. This raises a fundamental question: are current challenges primarily about compliance and enforcement, or do they point to deeper structural tensions within the IHL system?

Humanitarian organisations are taking the initiative to strengthen IHL. To support this action, it helps to deepen the understanding of what IHL is, its origins, and what it is for. Since law reflects power dynamics, it matters to look at what is codified as law and which interests are weighed in that process. Critical reflection is needed on how IHL has historically been shaped within prevailing power structures. Also, where and how has IHL worked for whom, and for whom has it not? This session reflected on these foundational dimensions, as well as on how this strategically informs the responses of NGOs.

Historical origins

The first speaker gave a perspective on the origins of IHL. Namely that from its inception, IHL was meant to protect only some victims, in some wars. A selective approach was built into the law from the start. IHL does not originate from a history of compassion; it originates from imperialism and Europe, at the peak of the worst colonising spree by Europeans in Africa. Colonialism and racialised visions have shaped the application of IHL both historically and in the present. This history matters for understanding the law as it exists and as it is applied today. The first IHL instruments focused on protecting combatants, for instance by banning expanding bullets and by protecting wounded, shipwrecked and captured soldiers. It was only in 1949, with the Fourth Geneva Convention, that civilians fell under the protection of IHL. Still under this framework, victims of war are considered passive recipients of aid, but do not have any kind of political agency. For a long time, IHL was also meant to be applied only among “civilised” European states, and it did not apply to colonial wars. The underlying assumption was that “savages” would be unable to comply with these rules, which reflected a racialised logic still shaping the application of the law.

Things changed to an extent with the adoption of the First Additional Protocol to the Geneva Conventions. However, the very definition of combatant contained in this instrument is based on Western ideals and stereotypes, and the label of “terrorist” continues to be deployed to exclude some people from the protection of the law. Even those who want to push back against this logic may end up reinforcing it, for instance, by speaking of “innocent civilians” or insisting on the protection of “women and children”. This is problematic because IHL protection should apply to all civilians.

At present, states are undermining their own domestic rule of law and legal systems while also destroying international law. The rise of far-right parties is closely linked to the decline of international law. At the same time, it is the Global South now pushing for commitment to international law, for example, through the [Hague Group](#) (as contrasted with the Board of Peace). IHL remains a site of contestation, and NGOs

have been and continue to be involved in advocacy, lobbying, and litigation, pushing for progressive and protective interpretation of IHL, and conducting open-source investigations. These actors are holding the line where states are retreating.

IHL in practice

The notion that IHL is "in jeopardy" suggests a shift from stability to crisis. This framing can be questioned: IHL is not the result of stable or symmetrical processes, nor has it ever operated in a fully stable or symmetrical environment. The selective application of IHL is not only geopolitical, it is also done through legal and professional practice. This can lead to over-qualification and hesitation, delayed or softened legal assessments, symmetrical framing of asymmetrical realities, and an uneven distribution of urgency and clarity. Still, IHL's effectiveness depends on how it is applied and communicated: too often, practitioners respond similarly regardless of context. Professional habits shape the credibility of IHL. The danger is not new, and the system of IHL is not newly fragile. However, more should be done for the protection of the system.

Ukraine makes the stakes clear; IHL is indispensable in Ukraine. It is the framework for the conduct of hostilities, and it is central to accountability efforts: investigations, prosecutions, evidence collection, and adjudication. Different actors use it to shape cases, and without IHL, that would not be possible. At the same time, IHL was not designed for the kind of conflict playing out in Ukraine. What is happening there are new forms of warfare: drones, cyber operations, AI, and they place a strain on the core concepts of IHL, which are proportionality and targeting. IHL is essential, but it is also struggling to remain relevant. Its credibility is shaped by whether it feels responsive, consistent, and applicable to the reality on the ground.

The broader context of IHL

IHL is in crisis. Too often, aid workers are getting killed. It is being tested precisely because it still matters, but there is a lack of willingness to enforce it. After an attack, there is much reference to legal obligations of IHL, yet the presence of law apparently has little effect in many contexts. The gap between obligations and reality is stark. The increased attacks on aid workers have direct and serious implications for the humanitarian community. Responders have had to adapt, invest more in security protocols and even sometimes have to shift their focus from needs to risk. At the same time, states are stepping away from international treaties and multilateral frameworks, leaving civilians more vulnerable.

IHL was never designed to eliminate war. It was designed to limit the effects of war, to guarantee a minimum of dignity and protection. What can be observed now is that legal concepts are stretched when they become inconvenient for actors. The system is only as strong as the trust, reciprocity in IHL, and willingness to enforce it, even when doing so is difficult.

And yet IHL works. The moments where it is applied - when an attack is not carried out because civilians are present - do not make the headlines. But these applications of IHL happen. The risk now is that if the perception takes hold that IHL no longer holds, it affects the minds of those who should be respecting and protecting it. What is required now is not conviction, but a renewed commitment. IHL is not failing because it is irrelevant, but it is tested because it matters. The question is not whether it is in jeopardy, but what will be done to protect it.

Breakout conversations

When participants were asked how they felt about the IHL system and its (lack of) compliance, most indicated feeling overwhelmed about IHL being under attack and the lack of accountability. In three breakout groups, they discussed different angles to IHL.

1: Operationalising IHL strengthening

How can organisations operationalise their actions, think as a collective and coordinate. The group explored imaginative action, breaking out of a "ritualistic" responses.

- **Keep channels open:** maintain diplomatic and institutional lines of communication – including with Embassies
- **Sustain dialogue on IHL practice with people on the ground:** talking about IHL needs to happen with and through people who are in conflict environments, not just in conference rooms.
- **Accountability requires operational perspectives.** Bringing in the perspectives of those with direct operational experience in meaningful ways is essential
- **Promoting IHL among militaries, armed groups, and individual commanders:** this remains difficult when application (by others) is selective, and the condemnation of violations of IHL is inconsistent
- **Self-reflection in the Global North:** meaningful progress on IHL requires Northern states and institutions to commit to investigating and holding themselves accountable — not just others.

2: History and politics, defining action

Historical understanding of organisations involved in development of treaties helps to develop lobby and advocacy approaches. This requires considering the political pushback to standing up for I(H)L and the misuse of responsibility to protect by political actors.

- There is **capitulation** happening: organisations that are dependent on government funding are now forced to change language, which can cause the organisations to be deligitimised.
- The timing may form an **opportunity:** with the erosion of IHL, a global consensus emerged that principles should be upheld. Western states have predominantly created IHL, but it is now a broader framework. Key is that current rules must be applied, but there is also opportunity to push for change.
- **Relevance for IHL:** IHL is not only relevant during war, but also in peace; there are obligations under IHL. IHL has a regulatory, protective, and preventive function, but also an accountability function. That's why there are courts such as domestic courts and the International Criminal Court.
- **Strategic litigation** /individual prosecutions: The legal cases on violations of international (humanitarian) law have a great effect on accountability, of course, but also as a prevention mechanism (for example, the [F35 case](#)). Still, there is not only progress when a case is won, but also when a case is lost, namely that attention is raised to the matter.

3: Division of roles across actors

Different actors have had different roles in enabling or protesting the breakdown of IHL, for example the academic community, NGOs, UN agencies, ICRC. Understanding what has been done and which roles have been played by whom helps to define which roles can be played moving forward.

- **Different tactics** have been applied: the Red Line demonstrations, court cases, lobbying behind closed doors. This calls for imaginative thinking, beyond the known templates. It should also be highlighted what works, not just the violations. Media campaigns on IHL compliance can help with this. However, how to address perpetrators with zero IHL respect versus those upholding it? Positive incentives do not work on violators.

- **Governance actors:** Politicians are not stepping up and are hiding behind "silent diplomacy". NATO resists including IHL in its Centres of Excellence, sees IHL as a member state issue. Also, key terms (such as 'combatants') are deliberately kept vague. There is a need for the UN Security Council to lobby, and to strengthen the International Criminal Court. An idea is to have a non-partisan masterclass on IHL for newly installed Members of Parliament.
- **Access negotiations:** Transnational versus state-based: should access negotiations go beyond States? INGOs and diplomats resist this shift. **A red line** is that humanitarian action and Protection of Civilians should never be negotiation tools.