

# THE PALM

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INTERVIEW WITH



## LEA MEHARI REDAE

Founder and Director, Addis Ababa University  
International Humanitarian Law Clinic.

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# EDITOR-IN-CHIEF'S NOTE

Across Africa, humanitarian crisis and armed conflicts have continued to leave deep and painful scars on millions of lives. In Sudan, power struggles between rival military factions have torn communities apart, and disrupted the most basic conditions of survival. In Democratic Republic of the Congo (DRC), armed groups and militia insurgencies, have exposed communities to displacement, sexual violence and insecurity. Also, in Somalia, decades of conflict and political instability, have left millions bearing the burden of prolonged violence, displacement and insecurity.

The Geneva Conventions and their Protocols provide a comprehensive framework for managing conflicts. Yet, multitude of violations across Africa remain unabated, questioning the efficiency of intentional humanitarian laws. This edition is a reminder that: **even in war, humanity must have a place.**



**EZEKIEL ARCHIBONG**

With a focus on Humanitarian Law, we anchored an exclusive interview with Lea Mehari Redae, Lecturer at Addis Ababa University School of Law and Founder of the Addis Ababa University International Humanitarian Law Clinic. Lea demonstrates that there is a persistent gap between legal obligations and political will. She noted that, rather than rewriting humanitarian law, greater emphasis should be placed on strengthening implementation, including investing in legal education, integrating humanitarian law into military doctrine, building judicial capacity, supporting national implementation mechanisms, and reinforcing accountability at both domestic and international levels.

This edition also features three articles written by **Oluwapelumi Mojolaoluwa, Sulaimon A. Badmus and Silver C. Obioha.**

In "Am I My Brother's Keeper? Making a Case for Humanitarian Intervention in the Age of Sovereign Implosions," Oluwapelumi, advances the proposition that sovereignty should be understood not simply as State authority, but as a responsibility towards those whom the State governs. She explores the case for a legally regulated right of humanitarian intervention, while recognising the need for safeguards against its abuse.

In "Civilian Participation in Hostilities in Cyberspace: Challenges in Applying the ICRC's Existing DPH Guidance," Sulaimon examines the increasingly complex involvement of civilians in cyber operations. The article demonstrates that technological change does not merely create new methods of warfare; it also challenges established legal concepts and requires us to reconsider how they should operate.

Silver in "The Enforcement Gap in International Humanitarian Law: Lessons from Contemporary Armed Conflicts," draws lessons from contemporary conflicts, arguing that the central weakness of International Humanitarian Law lies less in the absence of legal standards than in the political, institutional and practical obstacles to accountability. This is perhaps one of the most consequential questions facing humanitarian law today: **what is the essence of a rule when it cannot be enforced?**

My appreciation to all the authors, editors and everyone who contributed to the success of this edition. As you read through the magazine, may you be reminded of the need to preserve something profoundly simple: **our humanity in the midst of inhumanity.**

Cheers !

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# CIVILIAN PARTICIPATION IN HOSTILITIES IN CYBERSPACE: CHALLENGES IN APPLYING THE ICRC'S EXISTING DPH GUIDANCE.

SULAIMON A. BADMUS



## INTRODUCTION

The concept of direct participation in hostilities (“DPH”) is a key notion in the law of the conduct of hostilities, which allows for the removal of the protections afforded to civilians under international humanitarian law (“IHL”) against direct attacks during an armed conflict for the period while such civilians participate in hostilities. The concept of DPH is derived from the underlying obligation of parties to an armed conflict to respect the principle of distinction, proportionality, and precaution, which prohibit attacks against civilians, civilian populations and civilian objects in the conduct of hostilities.

As the International Committee of the Red Cross (“ICRC”) noted, the treaty texts of IHL do not define direct participation in hostilities, nor does a clear interpretation of the concept emerge from state practice or international law jurisprudence. Hence, the ICRC developed three cumulative and constitutive elements for DPH as guidance for States and experts in IHL to identify when a civilian can be held to be directly participating in hostilities. These constitutive elements have been accepted by the majority of States and experts in IHL, though not by all, including Marco Roscini, Marco Sassoli and the International Group of Experts in the Tallinn Manual.

This paper explores the concept of DPH in cyberspace, using the constitutive elements distilled by the ICRC, and drawing on practical examples to analyze the effectiveness of these elements in modern warfare.

Note: In this paper, all examples discussed are presumed to occur within the context of an existing armed conflict, be it an international or non-international armed conflict. Furthermore, in this paper, civilians are persons who are not combatants in an international armed conflict and persons who are not members of the armed forces in a non-international armed conflict, as the case may be.

## THE CONSTITUTIVE ELEMENTS OF DPH

As earlier stated, the ICRC DPH Guidance concluded, based on a broad agreement among experts, that there are three constitutive elements which must be cumulatively satisfied to classify a civilian's act as direct participation in hostilities. These are:

**a**

The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm).

**b**

There must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation); and

**c**

The act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).

### A. THE THRESHOLD OF HARM

Under this first element, there are two alternative ways in which a civilian's act may reach the threshold of harm. The first is where the act is likely to adversely affect the military operations or military capacity of a party; the second is where the act inflicts death, injury, or destruction on persons or objects protected against direct attack.

#### *i. An act of a civilian*

The first issue to determine is what amounts to an act, especially in cyberspace. The Tallinn Manual points towards a positive act, stating that "in the cyber context, it is essential to emphasise that an 'act' is required by the individual concerned." The ICRC DPH Guidance did not discuss this point directly, but gave a hint where it posited that "the conduct of a civilian cannot be interpreted as adversely affecting the military operations or military capacity of a party to the conflict simply because it fails to positively affect them." In the example given by ICRC, it opines that the refusal of a civilian to collaborate with a party to the conflict as an informant, scout or lookout would not adversely affect military operations or capacity. Unfortunately, the ICRC's focus was on whether the act would affect military operations, rather than on the nature of the act itself. Nonetheless, the key takeaway is that the ICRC's example presupposes that negative acts or omissions could suffice as 'acts'.

Although in the above excerpt, the ICRC refers to it as "conduct", the example nonetheless captures the case of possible negative acts or omissions. For example, recently in Australia, TPG disclosed that on

November 12, 2025, a person in Sydney died after their mobile call to the national emergency number “Triple Zero” failed, because TPG omitted to update its systems so that certain Samsung phones on its network could correctly connect to emergency services. Assumed, as mentioned earlier, that this happened in the context of an armed conflict, and that the failure to update the systems was due to the intentional omission of an officer of TPG who acted in support of the enemy in order to wreak havoc on civilians in emergency situations, . Would this be regarded as an act to be considered under the notion of DPH, especially where there is a high rate of fatalities?



**ii. Adversely affect the military operations or military capacity of a party to the conflict**

The threshold for acts under this criterion is that the act is likely to affect military operations or the military capacity of a party. The Tallinn Manual noted that “there is no requirement for physical damage to objects or harm to individuals. In other words, actions that do not qualify as a cyber-attack will satisfy this criterion so long as they negatively affect the enemy militarily.” However, this is not entirely correct. The likelihood of a negative or adverse effect would also suffice. This could be a dilemma in cyberspace, as there are acts which may have such a likelihood but cannot be substantively determined until they actually occur. For example, a tourist passing a military base decides to take several pictures of the base and the equipment on it because he finds it aesthetically appealing. This act alone may adversely affect the enemy’s military operations if the pictures are shared with the enemy party, as they may show the nature and number of their

military weapons. However, it cannot be safely concluded that the tourist is a civilian DPH, even if other conditions are met.

**iii. Inflicting death, injury or destruction on persons or objects protected against direct attack**

The threshold for acts under this criterion is that the act is likely to inflict or inflicts death, injury or destruction on persons or objects protected against direct attack. Here, the mention of attack is not to elevate the threshold of the act but to qualify the nature of the targets, which are civilians, civilian population, and civilian objects, that is, ‘persons or objects protected against direct attacks.’ Hence, it excludes combatants and civilians who are themselves directly participating in hostilities. Acts by civilians inflicting death on combatants would not qualify to be DPH under this criterion because combatants are generally not protected against attacks, but may do so under the former, as such acts affect the enemy’s

military capacity. The apparent issue here is that a gap arises in relation to acts committed by a civilian against another civilian DPH, whose death or injury cannot be regarded as (a) affecting the enemy's military capacity and operations ; (b) or persons protected against direct attack.

Another issue, specifically in the context of cyberspace, is cyberattacks on civilians, which do not and are not likely to cause death or injury but are nonetheless prohibited as a method of warfare. For example, it was reported that “the Russian hacktivist group called the People's Cyber Army engaged 7.25 million bots in August 2022 in a bot attack to take the Energoatom website down. A disruption of online services lasted for a few hours, but no permanent negative impact remained. The attack was part of a Russian psyops campaign to create fear of a nuclear disaster and terrorize Europeans” . If it is assumed that this was restricted to Ukraine and intended to cause terror among Ukraine's civilian population, such an act of terror would be prohibited under IHL , but the perpetrators may, however, not qualify as civilian DPH because the acts neither affects any military operations or capacity nor does it directly cause death, injury or destruction to persons or objects protected against direct attack.

## B. DIRECT CAUSATION

For the requirement of direct causation to be satisfied, there must be a direct causal link between a specific act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part.

### *i. Link between the act and the likely result*

To simplify the extent of the link between the act and the resulting consequences, the ICRC's view is that direct causation should be understood as meaning that the harm in question must be brought about in one causal step. Therefore, individual conduct that merely builds up or maintains the capacity of a party to harm its adversary, or which otherwise only indirectly causes harm, is excluded from the concept of direct participation in hostilities. Hence, the view of some members of the International Group of Experts (“IGE”) that “acts that enhance

one's own military capacity are included, as they necessarily weaken an adversary's relative position” may ordinarily lack direct causation. The same applies to the view of some members of the IGE that “if individuals use cyber means to steal funds, private or public, such theft would constitute direct participation if, for example, the operation was conducted to finance particular military operations.” However, the IGE's examples above may satisfy the condition of direct causation where they constitute an integral part of a concrete and coordinated tactical operation, as would be discussed below.

### *ii. Military operation which the act is an integral part*

The key issue under this criterion is how to know the military operation of the enemy. The ICRC and Geneva Academy Paper appears to share this view, positing that “it will likely

be difficult to ascertain whether specific information is needed or used for targeting purposes”. Military operations are not necessarily made public in a way that enables a determination of whether a given act forms an integral part of them; such a link is usually inferred from the result of, or an attempt at, a military operation. However, the concept of DPH is temporal—the removal of protection is only for such period as they participate in hostilities, and it defeats the purpose if determination is always delayed until an attempt or conduct of a military operation. Another issue that may arise is whether the civilian's knowledge that the act would form part of a military operation is relevant. For example, in the earlier scenario of a tourist who took pictures of a military base and its equipment for aesthetic purposes. Assume he uploads them to his social media page, and that these pictures are

used by the enemy as integral information in planning their military operation. Would such a civilian be assumed to have directly participated in hostilities?

### C. BELLIGERENT NEXUS

To satisfy this requirement, an act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another. To determine whether an act was done in support of a party and to the detriment of another, the state of mind of the perpetrator is not considered; rather, it is the objective purpose of the act. One of the key exceptions to this, where the subjective state of mind would be considered, is when civilians are totally unaware of the role they are playing in the conduct of hostilities. The issue would then be how to determine, in cyberspace, whether the perpetrator is aware of the role he is playing in cases where the result of an act could be for multiple purposes.

For instance, a civilian engineer is engaged to install or repair a communication antenna which provides civilian radio and internet services. However, the sole intention of the military, without the knowledge of the engineer, is to use the antenna to transmit encrypted battlefield communications and support drone operations in its attack against the other party. In this case, it would hardly be practical to expect the other party, who is aware of this possibility, to inquire into the mind of the engineer before an attack is directed against the civilian engineer while installing the antenna.

## THE TEMPORAL AND GEOGRAPHICAL SCOPE OF DPH IN CYBERSPACE HOSTILITIES



### i. *The Temporal Scope*

Under IHL, the loss of protection for civilians DPH is only for such time as they participate in hostilities. However, the determination of “such time” has been subject to various interpretations. ICRC’s view is that the time spans from the preparatory to the execution of such an act, as well as the deployment to and return from the location of its execution, where they constitute an integral part of such a specific act or operation. This view is also adopted by the Tallinn Manual.

In the context of cyberspace, the Tallinn Manual, Marco Roscini, and the ICRC and Geneva Academy Paper have all noted that it may be difficult to ascertain the temporal scope of a cyberattack with a delayed effect. If the position of the ICRC DPH Guidance were adopted in literal terms, namely that “the return from the execution of a specific hostile act ends once the individual in question has physically separated from the operation, for example by laying down, storing or hiding the weapons or other equipment used and resuming activities distinct from that operation.”

then a civilian who has installed a sleeper malware on a computer which is to cause a cyberattack at a future date would no longer be civilian DPH as soon as he had separated from the computer and resumed other activities unrelated to the operation.

Hence, while the majority of the IGE took a similar but more nuanced position than the above, that the duration of the DPH extends to the point when the civilian terminates an active role in the operation, the ICRC and Geneva Academy's Paper posits that the duration is limited to when the civilian has control over the deployment or effects of the operation. In both cases, the conclusion appears to be that the temporal scope of DPH in the cyber context extends well beyond the physical separation of the civilian from the equipment or operation, as posited in the ICRC DPH Guidance.

## **ii. The Geographical Scope**

The consideration of the geographic scope of hostilities is important as cyber operations can readily be conducted far from where actual hostilities are taking place. Generally, where there is an act of hostility in an existing armed conflict, the relevant issue would be whether there is a belligerent nexus, as discussed above, between the cyber operation and the armed conflict, irrespective of the proximity of the perpetrator to the armed conflict. If there is a belligerent nexus, amongst other constitutive elements, then such an individual can be considered a civilian DPH, notwithstanding the geographical location of the perpetrator.

However, it is worth mentioning that there exists a debate as to what constitutes *lex specialis*, between IHL and international human rights law, over acts of hostilities which occur far from where the armed conflict is taking place, especially in cases of non-international armed conflicts. Notwithstanding these controversies, in any case where there is doubt, during the conduct of hostilities, on whether a person is a civilian or not, that person shall be considered to be a civilian.

## **CONCLUSION**

As the ICRC Vice-President mentioned recently, the involvement of civilians in military operations is accelerating with the world's digitalization, which makes it easier for large numbers of civilians to take part in armed conflict. The involvement of civilians extends beyond individual participation, and there are further considerations, albeit unable to be covered by this paper, that arise where civilians organise themselves into hacker groups ('hacktivists'), or act through private tech companies. Nonetheless, this paper has shown that, in the context of cyberspace, the nature of civilians' involvement, such as omissions, indirect causal acts, acts against another civilian DPH, and the concept of physical separation from operations, poses a challenge to the ICRC's constitutive elements of DPH. Hence, there is a need for continued research and dialogue in this area to further refine the applicability of the rules of IHL to cover these gaps created by civilians' involvement in hostilities occurring in cyberspace.

## **REFERENCE**

- See Marco Sassòli, *IHL Rules, Controversies, and Solutions to Problems Arising in Warfare*: 2nd edition (Edward Elgar 2019) 384 at 8.320 "civilians lose their protection against direct attack as well as their protection against the incidental effects of attacks if and for such time as they participate directly in hostilities." The ICRC and Geneva Academy of IHL and Human Rights, *International Humanitarian Law and the Growing Involvement of Civilians in Cyber Operations and Other Digital Activities During Armed Conflict* (ICRC 2025) (hereinafter the "ICRC and Geneva Academy Paper") at all relevant times only made reference to loss of protection against direct attacks with no inclusion of "incidental effects". This has a great implication where there is an assessment of the principle of proportionality and precaution. See the Protocol Additional to the Geneva Conventions of 12 August

1949 and relating to the Protection of Victims of International Armed Conflicts ("Protocol I"), together, the provisions of Article 51(3) and 51(5)(b). See also, the Tallinn Manual, Rule 97, paragraph 3, "harm to direct participants is not considered when assessing the proportionality of an attack (Rule 113) or determining the precautions that must be taken to avoid harming civilians during military operations (Rules 114–120)"

- IHL per se does not expressly provide for the targeting of civilians because they participate in hostilities but merely removes the protections granted to such civilians for such time as they directly participate in hostilities. Furthermore, loss of protection is limited to conduct of hostilities and does not constitute a concomitant loss of their status as protected civilians in the hands of the enemy, if qualified, under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("GCIV") but may be prosecuted for taking up arms and war crimes committed. See ICRC, Commentary of 2025 on the GCIV at 1064. "unprivileged belligerents' are protected persons under the Fourth Convention if they fulfil the nationality criteria."
- Common Article 3 to the Geneva Conventions; The Protocol I, Article 51; and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts ("Protocol II"), Article 13(3).
- Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (International Committee of the Red Cross 2009) ("ICRC DPH Guidance") page 41, paragraph 1.
- ICRC DPH Guidance, page 46, paragraph 1 and 2.
- The ICRC and Geneva Academy Paper, page 12, footnote 27.
- The ICRC and Geneva Academy Paper, page 12, footnote 27.
- Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', *Cyber Operations and the Use of Force in International Law* (Oxford University Press 2014) page 204.
- Marco Sassòli, *International Humanitarian Law Rules, Controversies, and Solutions to Problems Arising in Warfare: 2nd edition* (Edward Elgar 2019) 384, 8.320.
- Michael N. Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press 2017) (hereinafter the "Tallinn Manual"), Rule 97, paragraph 5.
- As the ICRC noted in the ICRC DPH Guidance, 41, paragraph 2, "Where treaty law refers to hostilities, that notion is intrinsically linked to situations of international or non-international armed conflict. Therefore, the concept of direct participation in hostilities cannot refer to conduct occurring outside situations of armed conflict, such as during internal disturbances and tensions, including riots, isolated and sporadic acts of violence and other acts of a similar nature".

This is true as under international human rights law, civilians whether participating in internal disturbances or tensions, or not, cannot become lawful targets of attacks and lethal force can only be used against civilians in (a) self-defence or defence of others against the imminent threat of death or serious injury, (b) to prevent the perpetration of a particularly serious crime involving grave threat to life, (c) to arrest a person presenting such a danger and resisting their authority, (d) or to prevent his or her escape; and only when less extreme means are insufficient to achieve these objectives. See the the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Article 9.

- Combatants are members of the armed forces of a belligerent party (other than medical and religious personnel), armed groups assimilated to the armed forces, organised armed groups belonging to a party to the conflict, or levée en masse. See the Protocol I, Article 50 and Article 4 of GCIII.

There exists a different view that irregular armed groups who do not fulfil one or more of the cumulative conditions in GCIII, Article 4A (2) but belongs to a Party to the conflict are still combatants for the purpose of conduct of hostilities as it would contradict logic to offer them more protection afforded to civilian population for their failure to comply with GCIII conditions. See ICRC DPH Guidance, page 22,

paragraph 2. This is not the view of ICRC. See ICRC DPH Guidance, page 22, footnote. 15.

- See ICRC, Customary International Humanitarian Law, Rule 5: Definition of Civilians in Non-International Armed Conflict at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule5> accessed on December 6, 2025.
- See the Introduction at Page 1 of this paper.
- See ICRC DPH Guidance, page 46.
- The Tallinn Manual, Rule 97, paragraph 4.
- ICRC DPH Guidance, page 49, paragraph 1.
- ICRC DPH Guidance, page 49, paragraph 1.
- It appears the ICRC had used the word conduct interchangeably with an act while discussing “acts that adversely affects the military operations or military capacity of a party to the conflict” in a bid to perfectly describe it a negative act. ICRC DPH Guidance, page 49, paragraph 1.
- As at the December 9, 2025, two persons have been discovered dead due to the omission of TPG to update its softwarer. See The Guardian, ‘Second death linked to triple-zero connection failure revealed as explosive inquiry hears minister was not informed.’ Accessed at <https://www.theguardian.com/australia-news/2025/dec/09/second-death-linked-to-triple-zero-connection-failure-revealed-as-explosive-inquiry-reveals-minister-was-not-informed>.
- I would agree that it suffices for the threshold of harm. Hence, while the example described in the Tallinn Manual, Rule 97, paragraph 4 is apposite, it is insufficient to conclude that “an ‘act’ is required by the individual concerned.” It could as well be an omission. In the example discussed, the sole omission led to the natural consequences, and not due to a supervening act such as a hack or malware issue.
- The Tallinn Manual, Rule 97, paragraph 5.
- See ICRC DPH Guidance, page 47, paragraph 1 “Therefore, the relevant threshold determination must be based on “likely” harm, that is to say, harm which may reasonably be expected to result from an act in the prevailing circumstances”. See also Marco Roscini, ‘Cyber Operations and the Conduct of Hostilities’, Cyber Operations and the Use of Force in International Law (Oxford University Press 2014) Paragraph 206.
- The apparent issue would be belligerent nexus but this may arise at a later point where the images are intentionally shared with the other party and until then, may not be DPH. For direct causation, in my opinion, it may be satisfied if this information or pictures forms an integral part of a military operation.
- Marco Roscini, ‘Cyber Operations and the Conduct of Hostilities’, Cyber Operations and the Use of Force in International Law (Oxford University Press 2014) Paragraph 206; ICRC DPH Guidance, page 47, paragraph 2.
- Hence, it is not useful while considering DPH to see if the act amounts to an attack under Article 49 of the Protocol I.
- See also Resolutions of the 34th International Conference of the Red Cross and Red Crescent’ (2024) 106 (927) International Review of the Red Cross 1303, Resolution 2.
- Article 43(2) of Protocol I. They have the right to participate in hostilities and can be lawful targets of attack, provided it is not a method of attack prohibited under IHL.
- Civilians DPH, even if they are assisiting the military, cannot be regarded as ‘part of the military capacity’ as they are not members of the armed force. See ICRC, Customary International Humanitarian Law, Rule 5: Definition of Civilians in Non-International Armed Conflict at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule5> accessed on December 6, 2025.
- Culled from Fortinent, “Recent Cyber Attacks & Emerging Cybersecurity Trends”. Accessed on December 7, 2026 at <https://www.fortinet.com/resources/cyberglossary/recent-cyber-attacks>.  
Acts or threats of violence the primary purpose of which is to spread terror among the civilian popula

tion are prohibited. Protocol I, Article 51(2); and Protocol II, Article 13(2). See also ICRC, Customary International Humanitarian Law, Rule 2: Violence Aimed at Spreading Terror among the Civilian Population at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule2> accessed on December 7, 2025.

- ICRC DPH Guidance, page 51, paragraph 1.
- ICRC DPH Guidance, page 53, paragraph 1.
- ICRC DPH Guidance, page 53, paragraph 1; and Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', *Cyber Operations and the Use of Force in International Law* (Oxford University Press 2014) 207 "The 'one causal step' standard should not be applied to the secondary and tertiary effects of cyber operations, but rather to their primary ones, of which the other effects are consequences."
- The Tallinn Manual, Rule 97, paragraph 5.
- The Tallinn Manual, Rule 97, paragraph 7. This sort of example was particularly exempted as indirect and lacking direct causation by the ICRC DPH Guidance in page 53, paragraph 1. "For example, imposing a regime of economic sanctions on a party to an armed conflict, depriving it of financial assets, ...would have a potentially important, but still indirect, impact on the military capacity or operations of that party."
- See also Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', *Cyber Operations and the Use of Force in International Law* (Oxford University Press 2014) page 207.
- The ICRC and Geneva Academy Paper, page 13, paragraph 3.
- See Manuel Galvis and Marko Milanovic, 'Improving Fact-Finding for IHL and Harnessing Modern Technology' (EJIL: Talk!, 15 October 2025) <https://www.ejiltalk.org/improving-fact-finding-for-ihl-and-harnessing-modern-technology/>, paragraph 1, accessed 12 December 2025. "When civilians get killed in the course of hostilities, for example, the actors concerned will only rarely provide a legal argument about (say) the notion of direct participation in hostilities, which can result in the removal of protection from attack. What they will do instead is argue that the attack never happened, or that it was done by some other party, or that it may have resulted from an honest mistake and that the civilians or civilian objects were not targeted intentionally. Thus, most disputes involved alleged violations of IHL are disputes about the facts, not about the law."
- ICRC DPH Guidance, page 70, paragraph 2, "civilians enjoy protection against direct attack "unless and for such time" as they take a direct part in hostilities." This is with the exception of members of an armed group in NIAC, albeit civilians, who may be regarded as fighters with continuous combat function. See ICRC DPH Guidance, page 70, paragraph 1. This is because DPH may occur prequel to the actual attempt or conduct of a military operation during an armed conflict.
- My answer would be in the negative. This is similar to the example in Tallinn Manual, Rule 97, paragraph 6 that "designing malware and making it openly available online, even if it may be used by someone involved in the conflict to conduct an attack, does not constitute direct participation". Regarding whether there would be belligerent nexus, see footnote 24 of this paper.
- ICRC DPH Guidance, page 58, paragraph 2.
- ICRC DPH Guidance, page 59, paragraph 2.
- See ICRC DPH Guidance, page 60, paragraph 2. See further exceptions at ICRC DPH Guidance, page 61 – 64 to wit: (a) in individual self-defence or defence of others against violence prohibited under IHL, (b) in exercising power or authority over persons or territory, (c) as part of civil unrest against such authority, or (d) during inter-civilian violence.
- Nonetheless, the other party still has an obligation not to attack the engineer. Protocol I, Article 50(1) provides that where there is doubt about whether a person is a civilian or not, that person shall be considered to be a civilian. However, it is possible to argue that this act is not a direct participation that causes harm until used by the military. This is similar to the example of the Botnets in Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', *Cyber Operations and the Use of Force in International*

Law (Oxford University Press 2014) Paragraph 210.

- Protocol I, Article 51(3); Protocol II, Article 13(3); ICRC, Customary International Humanitarian Law, Rule 6: Civilians' Loss of Protection from Attack at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6> accessed on December 6, 2025; and Prosecutor v. Blaskic, case no. it-95-14-a, Judgment of 29 July 2004, page 157.
- The ICRC and Geneva Academy Paper, page 14, paragraph 2.
- ICRC DPH Guidance, page 65, paragraph 3, "as long as the return from the execution of a hostile act remains an integral part of the preceding operation, it constitutes a military withdrawal and should not be confused with surrender or otherwise becoming hors de combat"
- See ICRC DPH Guidance, page 65, paragraph 2.
- Rule 97, paragraph 8. All of the Experts agreed that this would at least include actions immediately preceding or subsequent to the qualifying act.
- Rule 97, paragraph 8.
- Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', Cyber Operations and the Use of Force in International Law (Oxford University Press 2014) Paragraph 209.
- The ICRC and Geneva Academy Paper, page 14, paragraph 2.
- The Tallinn Manual, Rule 97, paragraph 9.
- The ICRC and Geneva Academy Paper, page 14, paragraph 2.
- ICRC and Geneva Academy Paper, page 7, paragraph 2.
- ICRC and Geneva Academy Paper, page 13, paragraph 4. "For instance, in times of armed conflict, mere cyber criminality, even if that was causing significant harm, would not show a nexus to the conflict and would therefore not amount to direct participation in hostilities"
- Marco Roscini, 'Cyber Operations and the Conduct of Hostilities', Cyber Operations and the Use of Force in International Law (Oxford University Press 2014) Paragraph 207. 'a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may' takes direct part in hostilities. See Paragraph 208 'the remote character of the act and the distance from the battlefield would not necessarily imply that the cyberoperation is not related to the hostilities'.
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- See also the ICRC and Geneva Academy Paper, page 22, paragraph

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# AM I MY BROTHER'S KEEPER? MAKING A CASE FOR HUMANITARIAN INTERVENTION IN THE AGE OF SOVEREIGN IMPLOSIONS.

OLUWAPELUMI MOJOLAOLUWA MOFOLUWAWO

This article examines the contradictory concepts of sovereignty and humanitarian intervention against the backdrop of gross human rights abuse within a State. It contends that sovereignty be viewed from the lens of State responsibility rather than control; and affirms that the protection of human rights must take precedence over sovereignty in the instance of an imploding State. It advocates for the canonization of an additional human right, the right to humanitarian intervention which must be vested in the international community and held in trust for every sovereign State, to be exercised in cases of State sponsored repression of human rights and large-scale abuse.

## INTRODUCTION

**A**rticle 2(7) of the United Nations ("UN") Charter is the legal bedrock for the international law principle of non-interference. By this article, sovereign nations enjoy protection from external interference, in their affairs and territory. It states: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State...' This provision of law has served as a shield against external interference in domestic affairs for a long time. However, it has contemporaneously morphed into a sword, used by authoritarian governments to disregard the rule of law and suppress the fundamental rights of their citizens. It has also been relied upon by the international community to ignore and abandon troubled States. But this is not ideal. When a democracy is imploding, such that hitherto legitimate government evolves into a tyranny, when the leader becomes a despot, and fundamental rights are repressed, the international community should assume a brother's keeper role to stem the tide of atrocities and preserve human lives and human rights. It must not look away. This is the crux of the Responsibility to Protect ("R2P") doctrine.

## SOVEREIGNTY

Traditionally, sovereignty is the exclusive right to exercise supreme political authority (legislative, judicial, executive) over a geographical region or over a group of people. It refers to the control a State has over its own affairs, free of external interference, which mirrors the spirit of Article 2(7) of the UN Charter. In the same vein, Article 2(4) stipulates that Member States of the UN should refrain from threat or use of force against the territorial integrity or political independence of any State. This means that each sovereign State makes its own decisions regarding its people and its territory, decisions that must not be fettered or hindered by other sovereign States however power

ful. The R2P doctrine however calls the absoluteness of this control into question.

## THE RESPONSIBILITY TO PROTECT (R2P) DOCTRINE

The R2P doctrine provides a robust understanding of the principle of sovereignty as it moves from the traditional perspective of State control towards State responsibility. In 2005, the World Summit Outcome Document formalised the R2P doctrine as world leaders acknowledged their collective duty to intervene if national authorities clearly fail to safeguard their populations from genocide, war crimes, and crimes against humanity.

By this doctrine, when a sovereign State implodes into violence, the international community's intervention will not be viewed as an affront to sovereignty, but a proactive response to a sovereignty that has already been compromised or lost. This means that

sovereignty viewed through this lens, is not absolute. Rather, it is conditional upon the continued respect for and protection of the rights of citizens, by the government.

The primary responsibility of the State is to safeguard the lives and properties of its citizens, including protection from mass atrocities. When a sovereign State fails in this responsibility, it transfers the responsibility to the international community. As such, the international community has a responsibility to respond collectively, in a timely and decisive manner through the UN Security Council (UNSC) when a State manifestly fails to protect its own people.

### IMPLOSION METRICS

When a democratic government that is meant to protect and safeguard lives and properties, turns against its citizens, and begins to repress their rights and freedoms including the right to life, freedom of speech, right to personal liberty, freedom of movement and freedom of association via a clamp down on protesters, news publication censoring, unlawful arrests, illegal detentions, State supervised abductions etc., a democratic implosion is inevitable. Other metrics could be the weakening or suspension of the judiciary, and the disenfranchisement of citizens. These are all precursors to the loss of legitimacy and regime collapse; ushering in grave crimes such as genocide, war crimes, ethnic cleansing, and crimes against humanity; as highlighted in the R2P mandate.

Notably, this phenomenon is described as an implosion because it all happens within the State, with no external interference. It is a democracy being undone from within by its stakeholders, such that one party is the aggressor (the State) and the other the victim (the populace). While international law does not explicitly mandate a specific form of domestic government, the International Covenant on Civil and Political Rights ("ICCPR") establishes clear obligations regarding the right to political participation and the rule of law. It stipulates that:

*every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) To have access, on general terms of equality, to public service in his country.*

Therefore, if a democracy implodes as a result of State-sponsored violence, the legal requirement for the activation of the international community's responsibility to protect is met. And this responsibility is discharged via a vehicle known as humanitarian intervention.

### HUMANITARIAN INTERVENTION AND THE UN CHARTER: ARTICLE 2(4) VS. CHAPTER VII

Humanitarian intervention refers to armed intervention to defend the human rights of another country's population without their government's permission. It is the use of armed force by a State to intervene in another State, without the latter government's consent, to prevent or stop severe violations of human rights or international humanitarian law. While Article 2(4) of the UN Charter prohibits the threat or use of force against the territorial integrity of any State; Chapter VII provides the exception, allowing the UN Security Council ("UNSC") to authorize force to maintain or restore international peace and security.

To this end, several humanitarian interventions were carried out in the 1990s, such that humanitarian intervention can safely be described as a customary principle of international law. The UNSC in the period, authorised military actions in Somalia, Bosnia, and Rwanda, and this intervention, with debatable success rates, go to show



how crucial human rights are and what lengths the international community will go to protect them, as part of the global security architecture.

After President Siad Barre of Somalia was ousted in 1991, Somalia descended into a convoluted civil war, sustained by clan rivalries. This ushered in famine and total breakdown of State institutions. As a result, the UNSC authorised the United Nations Operation in Somalia I (UNOSOM I) and later the UNITAF (Unified Task Force), led by the United States and backed by Resolution 794. The UNSC decided that the ensuing internal humanitarian crisis constituted a threat to international peace and security thus giving it leeway to activate Chapter VII of the UN Charter. The UN intervention eventually morphed into a hunt for Somali warlord, Mohamed Farrah Aidid, and resulted in the 1993 Battle of Mogadishu. However, when the UN withdrew in 1995, a leadership vacuum was created which left a big question mark on the success of the intervention.

The Bosnian war lasted from 1992-1995. After the collapse of the former Yugoslavia, three distinct groups were at loggerheads regarding the direction the new State should assume. Bosnian Serbs, who were mostly orthodox Christians, wanted to join Serbia or create a new mono-ethnic Serbian State. Bosniaks who were mostly Muslims, wanted an independent united State. And Croats, who were mostly Catholics, wanted to join the neighboring State of Croatia. In 1995, over 7,000 Bosniak men and boys were executed in a safe area designated by the UN. The acts of ethnic cleansing carried out in this period is what is now known as the 1995 Srebrenica massacre and was designated a genocide by the International Criminal Tribunal for the former Yugoslavia (ICTY).

Since the UN Protection Force (UNPROFOR) deployed to Croatia, Bosnia and Herzegovina beginning from 1992 until 1995 could not prevent the massacre where thousands of Bosniaks were slaughtered and their city (Srebrenica) captured by the Serbs, NATO was called in to stem the tide of the killings via an air campaign tagged "Operation Deliberate Force". This ultimately, albeit not immediately, forced the parties into the 1995 Dayton Accords, and created the Bosnia-Herzegovina State structure that remains in place today.

Following the assassination of President Juvenal Habyarimana of Rwanda, Hutu extremists and the Interahamwe militia launched a widespread hunt down and massacre of Tutsis and moderate Hutus in a State backed genocide that spanned about 100 days. During this time, the international community watched as the killings went on, unwilling and unable to intervene. The United Nations Assistance Mission for Rwanda (UNAMIR) was short-staffed with a narrow mandate. And after Belgium withdrew

his troops owing to the killing of 10 Belgian peacekeepers in the genocide, the UNSC voted to reduce the mission by 90% as the Rwandan State collapsed under the weight of the violence. The unfortunate turn of events, the sheer carnage and the considerations for what could have been, had the UN mustered the will to intervene in the nick of time, led to the emergence of the R2P doctrine. Subsequently, the UN adopted an interventionist stance as it collectively redefined sovereignty as a responsibility a State owed to its citizens to protect their human rights and ensure their security, rather than the mere control it has over its territory and people.

In 2011, the Arab Spring wafted into Libya. At this time, angry Libyans had begun to protest the Muammar Gaddafi regime's repression of human rights. Gaddafi's response led to the death of over 100 citizens in violent clashes between government forces and protesters. Recognising the urgency of the situation, the international community swiftly intervened, invoked the R2P doctrine and the UNSC passed Resolution 1973, authorising all necessary measures to protect civilians and establishing a no-fly zone. This timely NATO-led intervention successfully prevented a predicted massacre in Benghazi, although it eventually evolved into a much-criticised regime change. Gaddafi was killed and the Libyan State collapsed, heralding a protracted civil war that has generated a global legal debate over the legitimacy of using R2P as a justification for overthrowing sovereign governments.



## THE HIGH COST OF NON-INTERVENTION

From the foregoing, the international community has tasted both intervention and non-intervention and perhaps, the argument in support of humanitarian intervention is best marshalled by interrogating the catastrophic consequences of inaction. In 1994, the world looked on as nearly one million people were slaughtered in Rwanda because of a lack of political will to intervene. Similar tragedies occurred in Cambodia in the 1970s and during the Biafran conflict in Nigeria.

The ongoing crisis in Syria also provides a contemporary warning of the dangers of non-intervention. Despite years of conflict, millions of displaced persons, and widespread human rights abuses, the UNSC has failed to authorize a humanitarian intervention similar to the Libyan model. This lack of action has allowed the conflict to spread, destabilizing the entire region and causing untold civilian suffering. Choosing not to act is not a neutral stance; it is a decision that emboldens repressive regimes to continue their violence with impunity. Non-intervention in the face of sovereign implosion ultimately undermines the credibility of the international legal order and promotes global anarchy.

## WAY FORWARD

To permanently resolve the tension between sovereignty and humanitarian intervention, the international community must advance toward the canonization of the right to humanitarian intervention. This requires establishing clear, definitive criteria to guide future decision-making and ensure interventions are not misused for political or territorial ambitions.

A settled international legal framework should recognize that intervention is justified when:

- i. There is gross violation of fundamental rights, such as genocide or ethnic cleansing.
- ii. National authorities fail or refuse to fulfill their duty to protect their citizens.
- iii. There is unanimity of concern and calls for action from relevant regional organizations.
- iv. No viable peaceful alternatives remain to stop the violence.
- v. The intervention is proportionate and consistent with international law.

Furthermore, the international community must acknowledge that humanitarian intervention is a temporary encroachment that must be paired with comprehensive post-conflict planning. The failure to institute a central generally accepted government in Somalia and Libya for instance, undermined the success of both interventions. This calls for a commitment to long-term stabilization of troubled States by the international community.

## CONCLUSION

Humanitarian intervention is an invention of necessity. In an age where internal conflicts often pose a greater threat to human life than interstate wars, the international community cannot afford to be paralyzed by an absolute interpretation of State sovereignty. Human rights are inalienable and must always take precedence over the borders of a failing State. When a sovereign State implodes, the international community must step into the gap. We must be our brothers' keepers, and international law must reflect this ideal by canonizing the international custom of humanitarian intervention, and vesting the right in the United Nation to be exercised on behalf of an imploding state when the earlier identified criteria have been met. Only through a nuanced understanding of sovereignty and a principled approach to intervention can we hope to protect the most vulnerable amongst us, from the ravages of sovereign implosions.

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INTERVIEW WITH

# LEA MEHARI REDAE

Founder and Director, Addis Ababa University  
International Humanitarian Law Clinic.

**Q Could you tell us about your background, professional journey and some of the milestones that have shaped your career thus far?**

**Answer:** My journey into law began at Addis Ababa University, where I earned my LL.B with very great distinction. Looking back, what shaped my career was not simply studying law but realizing that law is one of society's most powerful tools for protecting human dignity, especially during its most difficult moments.

After graduating, I pursued an LL.M. in International Humanitarian Law and Human Rights at the Geneva Academy in Switzerland, followed by an LL.M. in Business Law at Addis Ababa University. While these two fields may appear different, they have given me complementary perspectives. One focuses on protecting people during armed conflict, while the other examines how institutions, markets, and governance function. Together, they have strengthened my appreciation of how law operates across different dimensions of society.

Professionally, I have been fortunate to work in academia, humanitarian practice, and policy. I have served with the International Committee of the Red Cross (ICRC), both at its International Review of the Red Cross and as a Policy Advisor in Geneva and later as Humanitarian Affairs Advisor to the African Union delegation in Addis Ababa. Those experiences allowed me to observe how international humanitarian law is interpreted, negotiated, and implemented in complex political and operational environments.

Today, I serve as a Lecturer at Addis Ababa University School of Law, lead the Addis Ababa University International Humanitarian Law Clinic, and Director for Partnerships at the University. Alongside these roles, I continue to engage in research, public speaking, and policy advisory work across Africa.

If there is one thread connecting every stage of my journey, it is the belief that scholarship should not remain confined to classrooms or journals.

Research should inform policy, teaching should inspire action, and law should ultimately improve people's lives.

**Q You have created a niche for yourself in an area of law that is less considered. Could you tell us what inspired you to specialize in Humanitarian Law?**

**Answer:** My interest in international humanitarian law grew from a simple but profound question: what happens to the law when everything else seems to collapse?

Most legal systems are designed for times of peace. Yet millions of people around the world experience conflict, displacement, and violence, where the normal functioning of institutions is disrupted. International humanitarian law exists precisely for those moments. It seeks to preserve humanity even when humanity itself is under immense strain.

Being from Ethiopia also influenced my perspective. The Horn of Africa has witnessed both the devastating consequences of armed conflict and remarkable efforts toward peace and resilience. Living in this region makes humanitarian law more than an academic subject; it becomes deeply relevant to everyday realities.

During my studies and later through my work with the ICRC, I came to appreciate that humanitarian law is often misunderstood. Many people perceive it as abstract or disconnected from reality. In truth, it governs some of the most practical issues imaginable: protecting civilians, regulating the conduct of hostilities, ensuring access to humanitarian assistance, and preserving human dignity during war.

What continues to motivate me is the opportunity to bridge the gap between legal theory and practice. Whether I am teaching students, training judges, advising policymakers, or conducting research, my goal is always the same: to strengthen understanding of humanitarian law so that it can better protect those who need it most.



**Q** Several humanitarian crises have unfolded across Africa, from Sudan to Somalia and the Democratic Republic of Congo. Can you tell us statistically how serious humanitarian crises are in Africa?

**Answer:** The scale of humanitarian need across Africa is staggering.

Today, the continent accounts for a significant proportion of the world's humanitarian emergencies. Tens of millions of Africans require humanitarian assistance every year. More than 45 million people are internally displaced across the continent, while millions more have sought refuge in neighboring countries. Food insecurity affects hundreds of millions, and climate change increasingly compounds the effects of conflict, making humanitarian crises longer, more complex, and more difficult to resolve.

Countries such as Sudan, the Democratic Republic of Congo, Somalia, the Sahel region, and Ethiopia illustrate how armed conflict intersects with economic instability, environmental shocks, weak governance, and displacement.

However, I think it is equally important to avoid

reducing Africa to statistics alone. Behind every number is a family that has lost a home, a child whose education has been interrupted, a farmer who can no longer cultivate land, or a community struggling to rebuild after violence.

We should also remember that Africa is not merely a recipient of humanitarian assistance. Across the continent, local communities, national institutions, humanitarian organizations, and regional bodies such as the African Union and Regional Economic Communities are leading remarkable efforts to respond to crises, promote resilience, and build sustainable peace. These stories deserve greater attention alongside the challenges.

**Q** What role do you think external forces play in the humanitarian crisis in Africa and what practical measures can be taken to restore peace and development in the affected regions?

**Answer:** Humanitarian crises are rarely caused by a single factor. They emerge from a combination of domestic and international dynamics.

External actors certainly influence conflicts in various ways. Geopolitical competition, the flow of weapons, illicit financial networks, transnational armed groups, foreign military involvement, climate change and competition over natural resources can all intensify existing tensions. Decisions made far beyond Africa's borders often have direct consequences for communities on the continent.

At the same time, we should resist explanations that attribute Africa's conflicts solely to external actors. Internal governance challenges, political exclusion, weak institutions, inequality, corruption, and unresolved historical grievances are equally important. Sustainable solutions require acknowledging both dimensions.

Restoring peace requires more than ending armed violence. It demands investment in accountable institutions, inclusive political

dialogue, transitional justice, education, economic opportunities for young people, and respect for the rule of law.

Regional organizations, particularly the African Union and Regional Economic Communities, have a critical role to play because they possess contextual understanding and political legitimacy. International partners should support African-led solutions rather than substitute for them.

Ultimately, humanitarian assistance saves lives, but peacebuilding addresses the reasons those lives are placed at risk in the first place. Both are indispensable.

**Q Do you think the existing international legal framework and conventions on humanitarian law are adequate to manage humanitarian crises in Africa and globally? If not, what do you perceive as the lapses and what are your proposed reforms?**

**Answer:** Contrary to a common perception, I do not believe the primary challenge is that international humanitarian law lacks rules. The Geneva Conventions and their Additional Protocols remain among the most universally accepted legal instruments in the world. Their core principles of humanity, distinction, proportionality, necessity, and precaution continue to provide a robust legal framework. The greater challenge lies in implementation.

Many contemporary conflicts involve non-state armed groups, urban warfare, cyber operations, autonomous technologies, and the increasing weaponization of information. While humanitarian law remains adaptable to many of these developments, compliance has become increasingly difficult.

Equally concerning is the persistent gap between legal obligations and political will. Violations are often well documented, yet accountability remains inconsistent. Selective application of international law undermines confidence in the

legal system and weakens respect for humanitarian norms.

Rather than rewriting humanitarian law, I believe greater emphasis should be placed on strengthening implementation. This includes investing in legal education, integrating humanitarian law into military doctrine, building judicial capacity, supporting national implementation mechanisms, and reinforcing accountability at both domestic and international levels.

One area that deserves particular attention is Africa's judicial sector. National courts have an increasingly important role in prosecuting international crimes, interpreting humanitarian law, and ensuring that international obligations are translated into domestic justice. Building judicial capacity is therefore an investment in the rule of law and lasting peace.

Ultimately, humanitarian law should not be judged solely by the elegance of its treaties but by whether it succeeds in protecting people during the darkest moments of conflict. That remains our collective responsibility.

**Q You founded the Addis Ababa University International Humanitarian Law Clinic. Can you tell us what led to this pioneering initiative and some of the achievements the Clinic has recorded in recent years?**

**Answer:** The idea for the Addis Ababa University International Humanitarian Law Clinic was born from a simple observation: there was a significant gap between studying humanitarian law and practising it.

Many law students learn international humanitarian law as a theoretical subject, but few have opportunities to apply it to real-world problems. I wanted to create a platform where students could engage critically with contemporary humanitarian challenges, conduct meaningful research, participate in simulations, interact with practitioners, and contribute to policy discussions. The Clinic was established to bridge that gap.

Over the years, it has evolved into much more than a student initiative. It has become a platform for legal education, professional training, research, and public engagement.

Among our achievements, we have trained many law students, organized national and international conferences, delivered specialized capacity-building programs for judges, police, and humanitarian practitioners, and represented Ethiopia in prestigious international humanitarian law competitions. We have also expanded public awareness through our IHL 101 video series, webinars, and blogpost publications aimed at making humanitarian law more accessible beyond academic circles.

One of the achievements I am particularly proud of is our work with members of the judiciary. As African courts increasingly deal with issues relating to international crimes and transitional justice, strengthening judicial understanding of international humanitarian law is both timely and necessary.

Looking ahead, my vision is for the Clinic to evolve into a broader centre for African conflict and humanitarian studies, one that brings together international humanitarian law, international criminal law, refugee and displacement law, human rights in armed conflict, peacebuilding, and transitional justice. Africa deserves institutions that generate knowledge from African experiences while contributing meaningfully to global legal discourse.

**Q You wear multiple hats, including serving as the Director for Partnerships at Addis Ababa University, Founder and Director of the Addis Ababa University International Humanitarian Law Clinic, a Lecturer, Public Speaker and Consultant. How do you manage the demands of these roles while maintaining a healthy work-life balance?**

**Answer:** People often ask me how I manage multiple responsibilities, and my honest answer is that I am still learning.

I do not believe in being busy for the sake of being busy. I believe in ensuring that the different roles I undertake reinforce one another. My teaching informs my research. My research strengthens my policy work. My engagement with practitioners enriches my classroom discussions. My leadership responsibilities help me identify institutional challenges that deserve scholarly attention. Rather than viewing them as separate careers, I see them as different expressions of the same mission.

That said, balance is not something one achieves once and for all. It is something that requires constant adjustment.

Over time, I have learned the importance of prioritizing, delegating where possible, and accepting that not every opportunity needs to be pursued. I also try to make time for family, friends, reflection, and (try, often unsuccessfully) moments away from work because those moments ultimately make me a better professional.



**Q Many people have preconceived notions about what it means to be a lawyer. What are some of the biggest misconceptions about the profession that you wish more people understood?**

**Answer:** Perhaps the biggest misconception is that lawyers spend most of their time litigating in court.

In reality, much of legal work happens long before disputes reach a courtroom. Lawyers solve problems, negotiate agreements, shape public policy, draft legislation, advise institutions, conduct research, and often prevent conflicts from arising in the first place.

Another misconception is that the law is primarily about winning. I believe the law is fundamentally about serving justice. Sometimes that means representing clients; other times it means helping institutions make better decisions, promoting accountability, or protecting vulnerable communities.

For those of us working in international humanitarian law, success is not measured by winning cases alone. Sometimes success is measured by preventing violations before they occur, improving understanding among decision-makers, or ensuring that legal principles influence humanitarian action on the ground.

The legal profession is ultimately a profession of service. Technical knowledge is essential, but empathy, integrity, humility, and a genuine commitment to the humanity are equally important.

**Q The legal landscape is constantly evolving. In your opinion, what qualities define a truly exceptional lawyer in today's world, and how can young professionals cultivate these attributes?**

**Answer:** The legal profession is changing rapidly. Artificial intelligence, digital technologies, cyber operations, climate change, cross-border disputes, and increasingly interconnected societ-

ies are transforming the kinds of legal questions we must answer. As a result, technical legal knowledge alone is no longer sufficient.

An exceptional lawyer is intellectually curious. They continue learning long after graduation. They understand that the law does not exist in isolation but interacts with politics, economics, technology, history, and society.

Equally important is integrity. A lawyer's credibility is one of their greatest assets. Once lost, it is extremely difficult to regain.

I also encourage young lawyers to develop strong communication skills. Some of the best legal minds struggle to create impact simply because they cannot communicate complex ideas clearly. Whether addressing a courtroom, advising policymakers, teaching students, or writing for the public, the ability to communicate effectively is indispensable.

Finally, I believe exceptional lawyers remain humble. The law is constantly evolving, and no one ever finishes learning.

**Q For law students and young lawyers who are considering a career in Humanitarian Law, would you encourage them to walk this path? If you could leave them with one message, one call to action, what would it be?**

**Answer:** Without hesitation, yes.

International humanitarian law is not the easiest path, and it is certainly not the most conventional one. It demands intellectual discipline, emotional resilience, and a willingness to work on some of the world's most difficult problems. Yet it is also one of the most meaningful fields a lawyer can pursue.

The future of humanitarian law will increasingly be shaped by today's young lawyers. The nature of conflict is changing, and new legal questions continue to emerge. Africa, in particular, needs scholars, judges, advocates, policymakers, and practitioners who understand both the universal princi-

ples of international humanitarian law and the realities of our continent.

My message to young lawyers is this: do not wait until you think you are an expert before you begin contributing. Read widely. Ask difficult questions. Seek mentors. Build networks across borders. Be willing to serve where your expertise is needed most.

Most importantly, never lose sight of why the law exists. Behind every treaty, every court decision, and every legal principle are real human beings whose lives and dignity depends on the choices that lawyers, judges, governments, and institutions make.

If our work as lawyers can help preserve even a small measure of humanity during humanity's darkest moments, then it is work worth dedicating a lifetime to.



# THE ENFORCEMENT GAP IN INTERNATIONAL HUMANITARIAN LAW: LESSONS FROM CONTEMPORARY ARMED CONFLICTS

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## INTRODUCTION

International Humanitarian Law (“IHL”), also known as the law of armed conflict, regulates the conduct of hostilities and protects persons who are not, or are no longer, participating in hostilities. It is principally grounded in the Geneva Conventions of 1949, their Additional Protocols, and customary international law. Despite the development of a comprehensive body of rules governing armed conflict, contemporary conflicts continue to generate serious allegations of violations, raising concerns about the effectiveness of available enforcement mechanisms.

Recent conflicts, particularly the Russia-Ukraine war and the conflict in Gaza, have exposed the gap between the existence of legal norms and their practical enforcement. Allegations concerning attacks on civilians and civilian objects, unlawful displacement, destruction of infrastructure and restrictions on humanitarian access continue to attract international scrutiny. The persistence of such allegations despite investigations, diplomatic pressure and judicial proceedings demonstrates the difficulty of translating legal obligations into effective accountability.

This persistent pattern underscores a fundamental challenge within the international legal system: while the substantive rules of IHL are relatively well established, enforcement remains dependent on a combination of domestic prosecution, international cooperation and institutional mechanisms that may be affected by political considerations. The International Criminal Court (“ICC”), for example, was established to prosecute individuals for the most serious international crimes within its jurisdiction, but its ability to secure arrests and obtain cooperation depends substantially on States.

This article examines the enforcement gap in IHL through an analysis of contemporary armed conflicts. It argues that the principal weakness of IHL lies not in the absence of legal standards but in limitations affecting their implementation and enforcement at both the international and domestic levels. By considering the legal framework and recent conflicts, the article highlights the structural and political challenges that undermine accountability and proposes practical measures for strengthening compliance with IHL.

## CONCEPT OF IHL

IHL comprises a set of rules that seek to limit the effects of armed conflict for humanitarian reasons. It protects civilians and other persons who are not, or are no longer, participating in hostilities, while also regulating the conduct of hostilities by restricting the means and methods of warfare.<sup>4</sup> IHL applies in both international armed conflicts and non-international armed conflicts, although the applicable treaty rules may differ according to the nature of the conflict.

The Geneva Conventions provide the principal treaty framework for the protection of persons affected by armed conflict. Common Article 2 addresses international armed conflicts, while Common Article 3 establishes minimum protections applicable to non-international armed conflicts. Additional Protocol I develops the rules applicable to international armed conflicts, while Additional Protocol II supplements Common Article 3 in certain non-international armed conflicts.

The fundamental principles underpinning the conduct of hostilities include distinction and proportionality, together with the requirement to take feasible precautions in attack. The principle of distinction requires parties to distinguish between civilians and combatants and between civilian objects and military objectives. Proportionality prohibits an attack expected to cause incidental civilian harm that would be excessive in relation to the concrete and direct military advantage anticipated. Parties must also take feasible precautions to avoid, and in any event minimise, incidental harm to civilians and civilian objects.

Despite the clarity of these principles, their application in modern warfare has become increasingly complex. Contemporary conflicts often involve non-State armed groups, asymmetric warfare, dense urban environments and rapidly developing technologies. These circumstances can make the identification of military objectives, the attribution of responsibility and the collection of reliable evidence more difficult. The International Criminal Tribunal for the former Yugoslavia's decision in *Prosecutor v Tadić*<sup>9</sup> also demonstrated the importance of distinguishing between international and non-international armed conflicts when determining the applicable rules and the responsibility arising from violations.

## LEGAL FRAMEWORK FOR THE ENFORCEMENT OF IHL

The enforcement of IHL operates through a combination of international and domestic mechanisms. At the international level, the ICC has jurisdiction over genocide, crimes against humanity, war crimes and, subject to the applicable conditions, the crime of

aggression. Under the principle of complementarity, national jurisdictions retain the primary responsibility for investigating and prosecuting crimes, while a case may become admissible before the ICC where the State with jurisdiction is unwilling or unable genuinely to carry out the investigation or prosecution.

In addition to the ICC, enforcement and accountability mechanisms include international and hybrid tribunals, domestic courts exercising universal jurisdiction, United Nations investigative mechanisms and other fact-finding bodies. These mechanisms perform different functions: some prosecute individuals, while others investigate, document or preserve evidence of alleged violations.

At the domestic level, the Geneva Conventions impose obligations on States Parties in relation to grave breaches. Common provisions in the four Conventions require States Parties to enact legislation providing effective penal sanctions for grave breaches and to search for persons alleged to have committed, or ordered the commission of, such breaches and bring them before their courts or, where permitted, hand them over for trial to another concerned State.

This dual system of enforcement reflects the complementary roles of national and international institutions. However, its effectiveness depends heavily

ly on cooperation. The Rome Statute requires States Parties to cooperate fully with the ICC in its investigations and prosecutions, while requests for arrest and surrender are executed through national authorities. The ICC does not possess its own police force or an independent coercive apparatus capable of executing arrest warrants without State cooperation.

### THE ENFORCEMENT GAP IN IHL

Despite the existence of a well-developed legal framework, the enforcement of IHL remains inconsistent and, in many instances, ineffective. This disconnect between legal norms and practical accountability may be described as an “enforcement gap”. The gap is not necessarily a reflection of inadequate substantive rules but of weaknesses in the institutions and processes through which those rules are implemented.

One of the primary factors contributing to this enforcement gap is the lack of political will. Enforcement frequently depends on cooperation by States, particularly in relation to arrest, evidence gathering and prosecution. A State may be reluctant to investigate or prosecute alleged offenders where doing so conflicts with political, strategic or diplomatic interests. This challenge is particularly acute where alleged violations involve powerful States, senior officials or politically influential actors.

The reliance on State cooperation also limits the effectiveness of the ICC. Although the ICC has jurisdiction over serious international crimes, the Court depends substantially on States for the arrest and surrender of suspects. The Rome Statute establishes cooperation as a legal obligation for States Parties, but the practical execution of arrest warrants remains dependent on national authorities.<sup>15</sup> The experience of cases in which suspects remain at large demonstrates the gap between judicial decisions and their enforcement.

Selective justice further exacerbates the enforcement gap. Critics of international criminal justice have questioned whether international accountability is applied consistently across different conflicts and political contexts. Perceptions that weaker States or actors are more readily subjected to international prosecution than powerful actors can undermine confidence in the legitimacy and impartiality of international justice.

Additionally, the complexity of modern conflicts contributes to enforcement challenges. The involvement of non-State actors, the use of irregular warfare tactics and the increasing prevalence of urban combat environments may make it difficult to establish individual criminal responsibility and gather evidence capable of satisfying the high standard required in criminal proceedings. These

factors complicate both investigation and prosecution and may reduce the likelihood of accountability.

Taken together, these issues demonstrate that the enforcement gap in IHL is deeply rooted in political, institutional and practical constraints rather than in the absence of legal standards.

### CASE STUDIES OF CONTEMPORARY CONFLICTS

Recent armed conflicts provide illustrations of the difficulties associated with enforcing IHL. The Russia-Ukraine war has generated numerous allegations of violations, including attacks affecting civilians and civilian objects, unlawful deportation and transfer of children, and other alleged war crimes. In response, the ICC issued arrest warrants in March 2023 for Vladimir Putin and Maria Lvova-Belova in relation to alleged war crimes involving the unlawful deportation and transfer of Ukrainian children.

The issuance of the warrants illustrates both the capacity and the limitations of international criminal justice. The warrants demonstrate that an international judicial institution can investigate allegations and issue judicial measures against senior political figures. However, the Court requires State cooperation to execute arrest warrants and secure the surrender of suspects. The existence of a warrant therefore does not automatically result in arrest.

The conflict in Gaza has similarly generated extensive international concern regarding alleged violations of IHL, including allegations concerning civilian casualties, destruction of civilian infrastructure and humanitarian access.<sup>19</sup> These allegations have prompted investigations and proceedings before international institutions and have intensified debates about the effectiveness and consistency of international accountability mechanisms.

These case studies highlight a recurring pattern: violations may be documented, investigated and subjected to judicial scrutiny, yet accountability may remain difficult to achieve. Investigations and arrest warrants are important steps, but their deterrent and remedial value is weakened where suspects cannot be brought before a competent court or where domestic and international institutions lack the capacity or political support necessary to act.

The contrast between the existence of legal norms and the difficulties of enforcement reinforces the argument that the primary challenge facing IHL today lies not principally in its formulation but in its implementation.



### IMPLICATIONS OF WEAK ENFORCEMENT

The persistent enforcement gap in IHL has far-reaching implications for the integrity of the legal system and the protection of human life during armed conflict. One significant consequence is the risk of normalising violations. When parties to a conflict perceive that breaches of IHL will not result in meaningful accountability, the deterrent effect of the law may be weakened.

Weak enforcement also undermines confidence in the binding nature of IHL. The law of armed conflict is not merely a collection of moral aspirations; its rules impose legal obligations on parties to armed conflicts. Where violations are repeatedly met with limited consequences, however, the credibility of those obligations may be diminished in practice.

Furthermore, lack of accountability can erode public confidence in international institutions. Perceptions of bias, selectivity and inefficiency may diminish the legitimacy of institutions responsible for

investigating or prosecuting international crimes and weaken confidence in the broader international legal order.

From a humanitarian perspective, the consequences are particularly severe. Civilians and other protected persons remain exposed to the consequences of armed conflict, while inadequate enforcement may contribute to displacement, loss of life, destruction of civilian property and prolonged suffering. Effective enforcement is therefore not merely an institutional concern; it is central to the protective purpose of IHL.

## RECOMMENDATIONS

Addressing the enforcement gap in IHL requires both institutional reform and sustained political commitment.

First, cooperation with the ICC should be strengthened. States Parties should ensure that their domestic legal systems contain effective procedures for responding to requests for arrest, surrender and other forms of judicial assistance. Greater cooperation would improve the ability of the ICC to translate judicial decisions into practical outcomes.

Second, greater emphasis should be placed on domestic implementation of IHL. States should enact and maintain legislation criminalising grave breaches and other serious violations falling within their jurisdiction. National judicial and investigative institutions should also be equipped to investigate and prosecute international crimes effectively.

Third, the international community should promote greater consistency and transparency in accountability processes. Clear and consistent criteria for investigations, prosecutions and other enforcement measures can help address perceptions of selective justice and strengthen confidence in international institutions.

Fourth, technological tools should be used responsibly to improve evidence gathering and preservation. Satellite imagery, digital forensics and open-source information can assist investigators in documenting incidents and establishing chains of evidence, provided that appropriate standards of authentication and reliability are maintained.

Finally, diplomatic and other lawful measures should complement judicial enforcement. Where appropriate, coordinated political and economic measures can reinforce accountability efforts and increase the costs of persistent violations. Such measures should, however, remain consistent with international law and should not undermine humanitarian protections.

## CONCLUSION

IHL remains one of the most developed areas of international law, providing essential protections during armed conflict and regulating the conduct of hostilities. Yet the existence of detailed legal rules does not by itself guarantee compliance. The effectiveness of IHL depends substantially on the willingness and capacity of States and international institutions to investigate violations, prosecute offenders and implement judicial decisions.

The analysis of contemporary conflicts, including the Russia-Ukraine war and the conflict in Gaza, demonstrates the continuing tension between established legal norms and practical enforcement.

The challenge is therefore not principally the creation of new rules but the effective implementation of existing ones.

Ultimately, bridging the enforcement gap requires stronger domestic institutions, genuine State cooperation, consistent application of international criminal justice and effective mechanisms for preserving evidence and securing accountability. Without meaningful enforcement, the protective purpose of IHL risks being undermined. Strengthening implementation is therefore essential to ensuring that IHL remains capable of protecting those most vulnerable during armed conflict.

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