

The Effectiveness of International Humanitarian Law in Protecting Civilians in Syria's Non-International Armed Conflicts

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ABSTRACT

Syria had more than 11 years of conflicts, where armed forces severely violated International Humanitarian Law. The time the law became applicable and the lack of sanctions after violating the International Humanitarian Law caused limited compliance with the law. Despite the limitations, International Humanitarian Law is still effective in protecting and encouraging the humanitarian works of the International Committee of the Red Cross and setting the legal framework to limit the degree of conflicts. Based on the limitations, this paper will provide some sound suggestions to improve compliance with the law.

Introduction

International Humanitarian Laws (IHL) are rules established by treaties and customs that list legal rules to limit the effects of armed conflicts. Nevertheless, there are many examples of limited compliance with IHL, for instance, in the armed conflicts in Syria. There are reportedly 1,500 armed groups and militias active in the Syrian conflict. Syria's eleven years of upheavals revealed countless violations of IHL. Analysis showed a pattern of repeated targeting and intentionality to shut down healthcare.

Most research about Syria focuses on the violation of IHL but without any further analysis of the overall impacts of IHL in protecting civilians in Syria. This lack of information raises the question of the effectiveness of the IHL in protecting civilians in Syria. More specifically, the International Committee of the Red Cross (ICRC) defines "protecting civilians" as civilians must be protected and treated humanely in all circumstances, and there should be respect for their lives and physical and mental integrity. The legal rules involved Common Article 3 and Additional Protocol II to the Geneva Convention.

This paper will evaluate the effectiveness of IHL in protecting civilians in Syria's Non-International Armed Conflicts (NIAC), as NIAC is the most common conflict in Syria. The paper will start with introducing the violations of IHL, followed by an analysis of the positive impacts and limitations of IHL regarding protecting civilians in Syria's NIAC, including the reasons behind the drawbacks and some advice.

Literature Review

The violations of IHL in Syria's NIAC

Several researchers described and analyzed the violations of IHL. Eleonora Heim prepared a case about the Syria battle for Aleppo in 2016, where the pro-government forces and armed groups fought to control eastern Aleppo city. Heim examined numerous violations of IHL committed by both parties and concluded that the battle involved horrible suffering for civilians on both sides. Referencing the United Nations Human Rights Council's Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Heim found that pro-Government forces targeted and destroyed vital civilian infrastructure: hospitals, markets, water stations, schools, and residential buildings. Civilians experienced devastating losses, especially children and women. Approximately 300 people – including 96 children – were killed in the first four days of the offensive alone. Vincent Bernard conducted an overall review of the conflicts in Syria. Continuous bombardments were targeting vital services and infrastructure as a tactic employed by various parties, sexual violence, displacement, and limited access to humanitarian aid, and civilians were suffering from severe physical and psychological dangers. A New York Times article published in April 2018 puts the most widely accepted death count at 470,000. According to a UNICEF report, as of March 2018, around 30,000 people were wounded per month, 1.5 million were living with a permanent handicap, 6.5 million were suffering from food shortages, and 70% of the population was living in extreme poverty. 1.75 million children were unable to attend school, with one out of every three schools unfit for use owing to the war.

The Positive Impacts of IHL on protecting civilians in Syria's NIAC

Little research revealed the positive impacts of IHL in Syria. Vincent Bernard described the works of the ICRC in Syria's 2017's conflicts. The organization provided food assistance to 3,269,593 beneficiaries in 2017, and 15 million people country-wide have benefited from a regular water supply and adequate living conditions. He explained the importance of IHL as the minimum standard and quoted Peter Maurer's notes that the Geneva Convention is a framework for parties to negotiate and engage, thus establishing guidance to follow the rules. Ouarda Belkacem Layachi researched the role of International Humanitarian Intervention in containing the repercussions of COVID-19 during NIAC for Lybia, Yemen, and Syria. The research examined the ICRC and United Nations' efforts to encourage an immediate ceasefire in all parts of Syria to cope with COVID-19, which could lead to a complete ceasefire until the end of the spread of COVID-19. Due to these analyses, Layachi concluded international humanitarian intervention plays a crucial role in shedding light on the dire humanitarian conditions and providing assistance to contain them. The ICRC's 2015 work report in Syria also revealed the positive impacts of IHL. ICRC benefited civilians by working with the Syrian Arab Red Crescent (SARC) to provide protection and aid to the needy.

The Limitations of IHL on protecting civilians in Syria's NIAC

Lots of research discovered and examined the failure of IHL. The ICRC explains IHL is only applicable when extreme conflicts happen, resulting in limited compliance with IHL. Vincent Bernard explained the restricted space for humanitarian workers led to the suffering of civilians. He cited Red Cross' three recommendations for Syria: clarifying responsibilities, improving accountability, and adding safeguards. David J. Scheffer wrote an article about Jeremy Sarkin's book *The Conflict in Syria and the Failure of International Law to Protect People Globally: Mass Atrocities, Enforced Disappearances and Arbitrary Detentions*. The article explained that IHL is being weakened, by issues of

consent, several violations, and limited enforcement choices. ICRC, 2004, also conducted thorough research on *Improving compliance with International Humanitarian Law*. It pointed out two suggestions: the role and responsibility of third States not a party to an armed conflict to take appropriate action to “ensure respect” for international humanitarian law; the strategies or tools to influence parties to non-international armed conflicts to adhere to their IHL obligations.

Analysis

Violations of IHL in Syria

Through the research, the most common violations of IHL relating to civilians include:

- 1) the use of chemical weapons that threaten the life of civilians;
- 2) the continuous indiscriminate bombardments pose direct threats to civilians’ safety;
- 3) the tactics of targeting vital services and infrastructures, such as healthcare and water access, which caused great inconvenience to civilians;
- 4) Sexual violence humiliates civilians’ dignity.

Due to these violations, there are 470,000 deaths; 30,000 were wounded per month; 1.5 million suffered from permanent handicap; 6.5 million suffered from hunger; 70% lived in extreme poverty; 1.75 million children were unable to receive an education.

Positive Impacts of IHL

The positive impacts of IHL in Syria can divide into short-term and long-term benefits. In the short term, ICRC is encouraged and protected by the IHL to provide immediate aid to citizens during the Syrian Crisis. As a guardian of IHL, IHL forced and pushed ICRC to accomplish its role to protect and help the needy. Besides, IHL had specific legal rules to protect the ICRC and Red Crescent from attacks, enabling them to respond to the needs of millions that are affected by the fighting. The humanitarian works of ICRC and SARC include the following:

- 1) Access to food: In 2015, they distributed food parcels to over 8.3 million people. In 2017, they distributed food assistance to more than 3.2 million people;
- 2) Access to relief items: In 2015, they distributed relief items such as blankets, mattresses, and other household items to about 1.6 million people;
- 3) Access to clean water and reparation of sanitation infrastructures: In 2015, they improved access to water for 16 million people. In 2017, they ensured regular water supply for 15 million people;
- 4) Access to healthcare: In 2015, they provided supplies and covered running costs to treat over 58-thousand people, and provided healthcare infrastructure like generators, dialysis consumables, and other medical equipment to hospitals;
- 5) Protect and help the needy: In 2015, they provided hospital kits to 1,150 severely injured and donated 1,094 wheelchairs and 2,373 pairs of crutches.
- 6) Ceasefire: During COVID-19, the ICRC and UN encouraged the ceasefire of Syrian conflicts to coping the epidemic.

Without the incentive and the protections of IHL, the work of ICRC will diminish. In the long term, IHL is essential because of its intrinsic value. Its fundamental value is setting the framework for the negotiation of peace. IHL is establishing guidance to limit the extent of armed conflicts. Even though there are violations of IHL, in the absence of IHL, the armed conflicts would only be exacerbated. Without any restrictions and sanctions, chemical weapons will be even more prevalent, and the direct targeting of citizens and ICRC will be a popular tactic. With the legal framework constructed by IHL, the education of legal rules unconsciously influenced the armed groups. Rational people and responsible government members would be obligated by the law to comply with the rule and protect civilians. Overall, IHL provides the legal framework to draw a line for armed groups and pulls rational people back to the legitimate zone.

Limitations of IHL

The main challenge the IHL faced is the limited compliance with IHL during conflicts. The manifestation of the limited compliance includes the following:

- 1) The repeated violations of IHL during NIAC. It is observed that the conflicts in Syria continued for more than 11 years;
- 2) The limited access to humanitarian aid, such as the difficulties for ICRC workers to pass the battlefields. Even though there are laws protecting ICRC and SARC, the humanitarian work became harder when the tension was exacerbated. From the 2015 and 2017 food access comparison, the number of beneficiaries declined from 8.3 million to 3.2 million people. Another example would be the decline of water access from 16 million to 15 million from 2015 to 2017.

Reasons behind the limitations

The main reason for the limited compliance with IHL is the lack of respect for the rules. This lack of respect had several causes:

- 1) The Law is only applicable during an armed conflict. When an armed conflict happened, the two parties were determined to win the war, thus becoming irrational regarding respecting the rules. Blinded by the determination, armed groups would neglect the proportionality principle of IHL and harm civilians directly or indirectly continuously and repetitively.
- 2) The lack of enforcement of sanctions after the violation of IHL will also indulge the disrespect of rules. Throughout the whole process of research, there are myriads of research describing and summarizing the violations of IHL, but no study revealed the sanctions armed forces received after the violation. Two problems reveal from this discovery:

A. The sanctions are hard to put into effect. Philippe revealed that sanctions are rarely pronounced, and those pronounced are too lenient to rehabilitate and deter the perpetrators. States were unwilling to do so for political reasons. IHL relies too heavily on the competence of states, and it is up to the state to prosecute and punish such violations. When states don't prosecute, the problems remain unsolved. When considering the International Criminal Court (ICC), Philippe also pointed out ICC has difficulty in accelerating the trial process. With little and lenient sanctions, armed forces showed little respect toward IHL.

B. The limited propaganda on the punishment of the violation of IHL. All the articles published revealed the dark side of wars and countless examples of violations of IHL, but limited studies showed how the legal system and justice are punishing these violations. The lack of propaganda will also mitigate the severity of the breaches of IHL.

Above all, the lack of respect became the root cause of the repeated violations of IHL in Syria.

Advice

The advice provided by ICRC in 2004 and 2018 can be divided and summarized into the following:

1. Increase the role and responsibility of third States to take actions to ensure respect for IHL;
2. Increase the choice of sanctions to influence parties to adhere to the IHL obligations;
3. Clarifying responsibility;
4. Clear procedure to collect and investigate the violation

The advice should address the limitations and reasons behind the limitations. However, this advice failed to address the root cause of the limitations.

Advice 1 still relied on the third State but failed to recognize many third states won't prosecute and don't want to get involved due to their political interests. Therefore, under Advice 1, the sanctions are still hard to put into effect. Advice 2 can be plausible when the action wasn't solely carried out by the state. States can have diplomatic and economic sanctions, but there should also be a third party to pronounce and enforce the sanctions. Advice 3 and Advice 4 are less urgent compared to the enforcement of sanctions as there is abundant information on the violation already.

Based on the problems mentioned above, I suggest establishing an impartial third party under the control of an international organization. When the conflict begins, the UN can intervene and establish a temporary commission. Just like ICRC, the temporary commission has no political bias, and its only role is to discover, prosecute, collect information, and analyze the violations. Different than the peacekeeping force, this temporary commission has no interest to stop the conflict, as this is quite impossible. The main goal is to inform the two parties of the legal framework of the war, as soon as the parties violate the law, there will be prosecution and punishment. The commission can also have its own court to specifically address cases involving Syria's violation of IHL to accelerate the trial process.

Conclusion

Regarding the effectiveness of IHL in protecting civilians in Syria's NIAC, this paper reaches the following conclusions:

- 1) There are repeated violations of IHL, revealing the primary limitation of IHL: limited compliance;
- 2) The reasons behind this limited compliance is the lack of respect of the law, primarily caused by the time the law is applicable and the lack of sanctions;
- 3) Despite the limitations, the IHL is still effective by protecting and encouraging the humanitarian work of ICRC, and sets the legal framework to at least limit the degree of some armed conflicts;
- 4) Regarding the limitations of IHL and the reasons behind it, compliance with IHL can be improved by setting an impartial, temporary commission, under the regulation of the UN, to inform the law, prosecute the violation, and enforce the sanctions.

References

- David J. Scheffer, *The Conflict in Syria and the Failure of International Law to Protect People Globally*, Council on Foreign Relations, 2022.
<https://www.cfr.org/article/conflict-syria-and-failure-international-law-protect-people-globally>.
- Eleonora Heim, *Syria, the Battle for Aleppo*, ICRC. <https://casebook.icrc.org/case-study/syria-battle-aleppo>.
- F Ghaddar et al., *Violations of international humanitarian law in Syria: A 7-year analysis*, European Journal of Public Health, Oxford Academic, 2018.
https://academic.oup.com/eurpub/article/28/suppl_4/cky218.026/5191974.
- ICRC, *What is International Humanitarian Law?*, Advisory Service on international humanitarian law, ICRC, 2004.
https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.
- ICRC, *IMPROVING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW*, ICRC, 2004.
https://www.icrc.org/en/doc/assets/files/other/improving_compliance_with_international_humanitarian_law.pdf.
- ICRC, *Our work in Syria: Facts and figures 2015*, ICRC.
<https://www.icrc.org/en/download/file/18634/syria-war-icrc-action-015.pdf>.
- Megan Specia, *How Syria's Death Toll Is Lost in the Fog of War*, The New York Times, 2018.
www.nytimes.com/2018/04/13/world/middleeast/syria-death-toll.html. Quoted by Vincent Bernard.
- Ouarda Belkacem Layachi, *THE ROLE OF INTERNATIONAL HUMANITARIAN INTERVENTION IN CONTAINING THE REPERCUSSIONS OF COVID-19 DURING NON-INTERNATIONAL ARMED CONFLICTS: LIBYA, YEMEN, AND SYRIA*, PalArch's Journal of Palaeontology and Egyptology, 2021.
<https://archives.palarch.nl/index.php/jvp/article/view/8828/8217>.
- Terry D. Gill, *Classifying the Conflict in Syria*, Stockton Center for the Study of International Law, U.S. Naval War College, 2016.
- UNICEF numbers (gathered with WHO and Handicap International), *Seven Years of War in Syria Facts and figures*, UNICEF MENA, 2018. www.unicef.org/mena/stories/seven-years-war-syria-numbers.
- Vincent Bernard, *CONFLICT IN SYRIA: FINDING HOPE AMID THE RUINS*, International Review of the Red Cross, 2018. https://international-review.icrc.org/sites/default/files/906_1.pdf.
- Xavier Philippe, *Sanctions for violations of international humanitarian law: the problem of the division of competences between national authorities and between national and international authorities*, ICRC, 2008.
https://international-review.icrc.org/sites/default/files/irrc-870_11.pdf.