

Overview

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Mechanisms for Victims of IHL Violations

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I. Introduction

International humanitarian law is of crucial importance as it aims to limit the damage and suffering of war while minimizing its impact on individuals and property through clear obligations.

However, numerous violations of IHL continue to occur in various regions worldwide, causing significant harm to affected populations. In this context, it is imperative that victims have effective avenues for recourse to assert their rights and obtain redress for violations of IHL committed against them.

Access to justice is a fundamental principle for victims of IHL violations. Indeed, the obligation to provide access to justice for victims of IHL violations is reflected in several sources of international law, including :

- The Geneva Conventions of 1949
 - Geneva Convention I (Article 49)

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to

*the provisions of the present Convention other than the grave breaches defined in the following Article*¹.

The obligation imposed on parties to take legislative measures against perpetrators of IHL violations also encompasses access to justice for victims.

- Geneva Convention II (Article 50): contains the same content as Article 49 of Geneva Convention I².
 - Geneva Convention III (Article 129): contains the same content as Article 49 of Geneva Convention I³.
 - Geneva Convention IV (Article 132): contains the same content as Article 49 of Geneva Convention I⁴.
- Additional Protocol I to the Geneva Conventions (Articles 85 and 86)

*"The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to put an end to other breaches of the Conventions or of this Protocol which result from a failure to act when under a duty to do so"*⁵.

- The Statute of the International Criminal Court (Article 75)

According to S. PELLET : *"Article 75 of the Rome Statute, which provides for the possibility for the international judge to grant reparation to victims and their dependents, upon their request or proprio motu without any specific request being made to that effect, constitutes a real innovation in the sphere of international law. Reparation orders are made against a convicted person and therefore intervene at the end of a criminal trial resulting in the guilt of the accused"*⁶.

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14, paragraph 1)

¹ Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 august 1949, 12 august 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/365-GC-I-EN.pdf>, art.49.

² Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea of 12 august 1949, 12 august 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/370-GC-II-EN.pdf>, art.50.

³ Geneva Convention relative to the treatment of prisoners of war of 12 august 1949, 12 august 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/375-GC-III-EN.002.pdf>.

⁴ Geneva Convention relative to the protection of civilian persons in time of war of 12 august 1949 (IV), 12 august 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf>.

⁵ Protocole additionnel aux conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I), du 8 juin 1977, available on : <https://ihl-databases.icrc.org/assets/treaties/470-PA-I-FR.pdf>, art.86 ch.1.

⁶ S. PELLET, Statut de Rome de la Cour pénale internationale, commentaire article par article, sous la direction de J. Fernandez, X. Pacreau et la coordination éditoriale de L. Maze Editions Pedone, Paris, 2012, available on : https://pedone.info/Statut_Rome/3-75-Pellet.pdf, article 75 ; CPI, Statut de Rome de la Cour pénale internationale, 1998, available on : <https://www.icc-pi.int/sites/default/files/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283948/RomeStatuteFra1.pdf>.

*"Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation"*⁷.

Thus, for IHL to truly fulfill its objective of protecting victims of armed conflicts, it is essential that effective recourse mechanisms be established.

In addition to these sources of international law, many states have also adopted national laws providing access to justice for victims of IHL violations.

In this context, it is also important to emphasize that access to reparation for victims of IHL violations should be a right. This is concretized by the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," which were adopted by the United Nations General Assembly. This instrument has played a crucial role in this area by affirming the right of victims of serious violations of international humanitarian law to "full and effective reparation." Although not legally binding, this instrument reflects a strong consensus among stakeholders, including states. Furthermore, it is important to note that it has marked an important step in the evolution of the right to reparation⁸. According to the ICRC, the majority doctrine considers that "*victims of serious violations of IHL have the right to demand and receive reparation*"⁹.

We will thus explore the main mechanisms available to victims of IHL violations. We will examine the different options offered by international law, as well as national and international mechanisms designed to ensure access to justice and redress for the harm suffered by victims of IHL violations.

⁷ Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, 1984, available on : https://www.fedlex.admin.ch/eli/cc/1987/1307_1307_1307/fr, art.14 ch.1.

⁸ E. SALMON, J-P PEREZ-LÉON-ACEVEDO, Reparation for victims of serious violations of international humanitarian law: New developments, IRRC No. 919, June 2022, available on : <https://international-review.icrc.org/articles/reparation-for-victims-of-serious-violations-of-ihl-new-developments-919>; United Nations, Principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l'homme et de violations graves du droit international humanitaire, 2005, available on : <https://www.ohchr.org/fr/instruments-mechanismes/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

⁹ E. SALMON, J-P PEREZ-LÉON-ACEVEDO, *op.cit.*

II. Main Available Mechanisms

Several avenues are available for victims of IHL violations, including access to international tribunals, access to regional mechanisms, access to national jurisdictions, civil remedies, as well as access to non-judicial mechanisms.

1. International Tribunals

1.1. International Criminal Court (ICC)

The ICC has jurisdiction to prosecute and adjudicate individuals accused of crimes against humanity, genocide, and war crimes. However, its jurisdiction is limited to countries that have ratified the Rome Statute.

According to the Rome Statute of the ICC: "*As an institution with the ability to exercise its jurisdiction over individuals for the most serious crimes of international concern, within the meaning of this Statute*"¹⁰.

Under Article 5 of the Statute, the Court is only competent for the most serious crimes affecting the international community as a whole. "*Under this Statute, the Court shall have jurisdiction with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression*"¹¹. These different notions are detailed in Articles 6 to 8 bis.

The Court will also have jurisdiction over countries that have accepted the Court's jurisdiction through a specific declaration. Indeed, according to Article 12(3): "*If acceptance of the jurisdiction of the Court by a State which is not a Party to this Statute is necessary for the purposes of paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The State accepting the jurisdiction of the Court shall cooperate with the Court without delay and without exception in accordance with Chapter IX*"¹².

Therefore, if a State has not ratified the Rome Statute establishing the ICC or has not consented to the Court's jurisdiction for specific crimes on its territory, victims cannot directly appeal to the ICC for justice for IHL violations. In this case, the Court does not have the power to exercise its jurisdiction. Victims must therefore seek other avenues of recourse, such as national courts or other national or international justice mechanisms, to obtain redress for the IHL violations they have suffered.

1.2. International Court of Justice (ICJ)

The ICJ is the judicial organ of the United Nations. Its purpose is to settle legal disputes between states in accordance with international law¹³.

¹⁰ CPI, *op.cit.*, art.1.

¹¹ *Ibid*, art.5-8bis.

¹² *Ibid*, art.12.

¹³ ICJR, International Court of Justice, n.d., available on : https://casebook.icrc.org/a_to_z/glossary/international-court-justice.

It is also possible for a State to initiate proceedings before the ICJ in the event of an alleged violation of IHL. Indeed, if a State considers that another State has violated its obligations under IHL, it can bring a lawsuit before the ICJ¹⁴.

The role of the ICJ in situations of armed conflict remains complementary to the action of the UN Security Council regarding the action of international criminal tribunals and peacekeeping. *"In various decisions, the ICJ has reaffirmed its jurisdiction to act in parallel with the action of the Security Council when it is seized by other United Nations organs to render an advisory opinion on situations already under consideration by the Council"*¹⁵.

However, it should be noted that the ICJ has limited jurisdiction. Indeed, it has optional jurisdiction because not all States necessarily recognize its compulsory jurisdiction. Therefore, the States concerned must accept its jurisdiction to be bound by its decisions. Consequently, access to the ICJ to settle alleged IHL violations often depends on the willingness of the States involved to submit their dispute to the Court's jurisdiction¹⁶.

1.3. Ad Hoc Tribunals

There have been several ad hoc tribunals established. Ad hoc tribunals are temporary international courts that can be created to adjudicate serious crimes between states or other international actors¹⁷, allowing victims of serious crimes to obtain justice. Ad hoc tribunals are usually established in a specific context and have a specific mandate related to that particular context. This means that they can only judge crimes and situations for which they have specifically been created, for the duration necessary to carry out their mandate.

Let's take the examples of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were ad hoc tribunals.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the United Nations to prosecute individuals alleged to be responsible for war crimes committed in the Balkans during the conflicts of the 1990s. Since its establishment in 1993, the ICTY has significantly influenced the landscape of international humanitarian law by allowing victims to testify to the atrocities suffered and to assert their rights. Although most cases brought before the Tribunal concerned crimes committed by Serbs and Bosnian Serbs, it also investigated and prosecuted individuals of all ethnic backgrounds, demonstrating its impartiality and commitment to justice¹⁸.

The International Criminal Tribunal for Rwanda (ICTR) was also created by the United Nations Security Council to *"prosecute persons responsible for genocide or other serious violations of international humanitarian law committed on the territory of Rwanda and*

¹⁴ C. GREENWOOD, The international Court of Justice and the development of international humanitarian law, IRRC No. 920-921, November 2022, available on : <https://international-review.icrc.org/articles/the-international-court-of-justice-and-the-development-of-ihl-920>.

¹⁵ Médecins sans frontières, Dictionnaire pratique du droit humanitaire, available on : <https://dictionnaire-droit-humanitaire.org/content/article/2/cour-internationale-de-justice-cij/>.

¹⁶ *Ibid* ; C. GREENWOOD, *op.cit.*

¹⁷ CICR, Tribunaux ad hoc, n.d., available on : <https://www.icrc.org/fr/guerre-et-droit/juridictions-penales-internationales/tribunaux-ad-hoc>.

¹⁸ MIFRTP, Le Tribunal en bref, n.d., available on : <https://www.icty.org/fr/le-tribunal-en-bref>.

*Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994*¹⁹.

According to M-C. ROBERGE, a member of the ICRC's legal division: "*The jurisdiction of the ICTY extends to the following crimes: 1) serious violations of the Geneva Conventions of 1949; 2) violations of the laws or customs of war; 3) genocide; 4) crimes against humanity*"²⁰ and "*The jurisdiction of the ICTR extends to the following crimes: 1) genocide; 2) crimes against humanity; 3) violations of Article 3 common to the Geneva Conventions of 1949 as well as Protocol II*"²¹.

For each ad hoc tribunal in question, it is necessary to analyze their statutes determining their jurisdiction. For example, according to Article 1 of the ICTY Statute: "*The Tribunal shall have jurisdiction over persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991*"²². The ICTR, on the other hand, has jurisdiction under Article 1 of its statute when: "*The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute*"²³.

These two ad hoc tribunals are no longer in operation, having both closed their doors in 2017 (ICTY)²⁴ and 2015 (ICTR)²⁵.

This highlights the fact that it is necessary for a person who is a victim of an IHL violation to inquire about the existence of an ad hoc tribunal that may be competent in their specific situation. If this is not the case, they have other options to assert their rights.

2. Regional Mechanisms

2.1. European Court of Human Rights (ECHR)

Individuals who are victims of IHL violations can bring an action before the ECHR. Indeed: "*The ECHR has established a control mechanism that allows any individual, after exhausting national remedies, to lodge a complaint with the European Court of Human Rights for a violation of the Convention or its protocols*"²⁶. Since the ECHR guarantees certain fundamental rights such as the prohibition of torture and the right to life, also guaranteed by

¹⁹ United Nations, Le Tribunal en bref, n.d., available on : <https://unictr.irmct.org/fr/tribunal>.

²⁰ M-C Roberge, Compétence des tribunaux ad hoc pour l'ex-Yougoslavie et le Rwanda concernant les crimes contre l'humanité et le crime de génocide, 1997, available on : <https://international-review.icrc.org/sites/default/files/S0035336100057191a.pdf>, p.695.

²¹ *Ibid*, p.695.

²² MIFRTP, Mandat et compétence du TPIY, n.d., available on : <https://www.icty.org/fr/le-tribunal-en-bref/le-tribunal/mandat-et-competece-du-tpiy#:~:text=Conformément%20au%20Statut%2C%20la%20compétence,ou%20toute%20autre%20personne%20morale.>

²³ ICTR, Basic documents : Statute, 31 January 2010, available on : https://unictr.irmct.org/sites/unictr.org/files/legal-library/100131_Statute_en_fr_0.pdf, art.1, p.59.

²⁴ MIFRTP, Tribunal pénale international pour l'ex-Yougoslavie, n.d., available on : <https://www.icty.org/fr>.

²⁵ United Nations, The ICTR in Brief, n.d., available on : <https://unictr.irmct.org/en/tribunal>.

²⁶ DFAE, La Convention européenne des droits de l'homme et la Cour européenne des droits de l'homme, n.d., available on : <https://www.eda.admin.ch/eda/fr/dfaef/politique-exterieure/organisations-internationales/conseil-europe/convention-europeenne-droits-homme.html>.

IHL, victims of IHL violations can therefore bring an action before the ECHR in case of violation of one of their fundamental rights, after exhausting internal remedies.

To be able to bring an action before the ECHR, it is also necessary for the victim's country of origin to be a signatory to the European Convention on Human Rights.

2.2. Inter-American Court of Human Rights (IACHR)

The IACHR is a regional international court specialized in human rights²⁷. According to Article 44 of the American Convention on Human Rights: "*Any person or group of persons, any non-governmental entity legally recognized in one or more member states of the Organization may submit to the Commission petitions containing denunciations or complaints of violation of this Convention by a State party*"²⁸. Consequently, individuals who are victims of IHL violations can bring an action before the Inter-American Court of Human Rights if the violation of their rights also constitutes a violation of the Convention. As the convention states, to bring an action before the IACHR, it is necessary for the victim's country of origin to be a signatory to the American Convention on Human Rights. However, not all American states have ratified the American Convention on Human Rights, and some States parties have not recognized the jurisdiction of the IACHR, limiting the effectiveness of the IACHR system, which is considered ineffective by some²⁹.

3. National Jurisdictions and Legislations

The Geneva Conventions and their Additional Protocols as well as the Statute of the International Criminal Court recognize the right to a fair trial as a fundamental guarantee. Moreover, depriving a protected person of a regular and fair trial is a serious violation of the Geneva Conventions and Additional Protocol I. It follows that victims of IHL violations have the right to a trial and therefore have the right to have access to the necessary avenues to do so³⁰.

Indeed, IHL requires that the national criminal law of each State be able to prosecute individuals suspected of IHL violations. States must therefore adopt measures to prevent and punish violations of IHL, for example by prosecuting suspected perpetrators. It is essential that prosecution procedures are able to guarantee access to justice for victims of IHL violations. Because of the obligation of States to implement prosecution procedures to ensure access to justice for victims of IHL violations, most States have integrated IHL standards into their domestic law, as well as into their legislation and have established certain avenues available to victims of IHL violations. These States may judge IHL violations accordingly.

²⁷ Wikipédia, Cour interaméricaine des droits de l'homme, n.d., available on : https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiZ_Je7n_6EAXWF7rsIHUL8CWsQmhN6BAhFEAI&url=https%3A%2F%2Ffr.wikipedia.org%2Fwiki%2FCour_interam%25C3%25A9ricaine_des_droits_de_l%27homme&usq=AOvVaw2z1O1yrM8oj4i36Gif-VQ3&opi=89978449.

²⁸ Convention américaine relative aux droits de l'homme, 1969, available on : <https://www.cidh.oas.org/basicos/french/c.convention.htm>.

²⁹ Humanrights.ch, La Cour interaméricaine des droits de l'homme, 21 April 2022, available on : <https://www.humanrights.ch/fr/pfi/fondamentaux/application/acteurs-regionaux/ameriques/cour-interamericaine-droits-humains/>.

³⁰ CICR, La mise en œuvre nationale du droit international humanitaire : un manuel, 2013, available on : <https://www.icrc.org/fr/doc/assets/files/publications/dvd-40.pdf>.

This means that procedures may vary from country to country. Before initiating proceedings, authorities must assess the quality of the available evidence, as well as determine which court is competent and/or best placed to adjudicate the case in question.

Regarding the jurisdiction of courts, it can be based in several ways³¹ :

- A State will have jurisdiction for acts committed by individuals who have the nationality of the forum State (nationality of the perpetrator – principle of active nationality).
- A State will have jurisdiction for acts committed against citizens of the forum State (nationality of the victim – principle of passive nationality).
- A State will have jurisdiction for acts committed that involve the security of the forum State.
- Some courts may have jurisdiction under universal jurisdiction.

Indeed, universal jurisdiction allows courts exercising it to judge offenses regardless of their place or the nationality of the perpetrator or victim. In IHL, universal jurisdiction for war crimes is recognized as a rule. Furthermore, some treaties oblige States to provide for universal jurisdiction for certain serious crimes. In principle, victims can bring a lawsuit in their home country, since each State is supposed to have established avenues of recourse available to victims, under international law. However, this can prove difficult, if not impossible, in certain situations, for example in case of specific national laws or in case of lack of implementation by the State. This may also be the case when victims cannot use the internal avenues of their own country to seek justice because their own government is the perpetrator of the violations.

In such situations, victims of these countries can notably seek justice by bringing their action before the national courts of third countries exercising universal jurisdiction. Therefore, there is the possibility for national courts to judge international crimes, regardless of where they were committed or the nationality of the perpetrators. Indeed, in cases of necessity, for example, in situations where the perpetrator responsible for violations of IHL against its population is the government, the State itself, victims can bring an action in the national courts of third countries that exercise universal jurisdiction to prosecute international crimes, even if they have no direct connection to the country where the crimes were committed.

This situation occurred in Sudan. Indeed, the government of Sudan has committed and continues to commit atrocities against its population, with most of the perpetrators of

³¹ *Ibid*, p.39.

these crimes remaining largely unprosecuted before the courts³². In cases where the government violates IHL, particularly by committing atrocities against its population, it will be nearly impossible for victims to use domestic avenues to bring an action. Indeed, domestic avenues will prove inaccessible or ineffective. In these cases, victims may seek justice by bringing their action in the courts of other countries exercising universal jurisdiction (national jurisdiction of third countries). They may also pursue legal action through international judicial avenues, which may include the ICC, ad hoc tribunals, etc.

- If a State is competent, it can exercise its jurisdiction on its territory, including legislation, interpretation, application of the law, and enforcement of the law.

Regarding the applicable law to the authors of these crimes before national courts, some countries choose to apply their existing national criminal law, while others prefer to define specific crimes corresponding to those defined in international treaties³³.

4. Civil Actions

Civil actions also represent a potentially effective avenue, as some victims have pursued and obtained reparations through national civil and/or criminal procedures against former government officials and agents, members of armed groups, as well as corporations³⁴. Therefore, victims may potentially consider seeking justice and reparations for the damages suffered due to violations of IHL through civil actions. The available actions will depend on the domestic law of the respective state. For example, in Switzerland, possible civil actions depend on the nature of the harm suffered and the applicable legal provisions. Possible actions could include actions for damages or non-contractual liability under Article 41 CO or actions for moral injury compensation (Article 49 CO), for instance.

5. Non-Judicial Mechanisms

In cases of IHL violations, certain non-judicial mechanisms could provide solutions to disputes and obtaining reparations for victims of IHL violations, without having to resort directly to courts. They can be used in addition to judicial mechanisms or as an alternative. These mechanisms include:

- Mediation

A neutral third party can assist conflicting parties in reaching a settlement. For example, the practical guide for mediators on the protection of children in armed conflict aims to provide mediators and stakeholders with specific tools to address the protection of children in negotiations and peace agreements. It notably proposes concrete measures to ensure the

³² Human Rights Watch, South Sudan, n.d., available on : <https://www.hrw.org/africa/south-sudan>.

³³ *Ibid.*

³⁴ E. SALMON, J-P PEREZ-LÉON-ACEVEDO, *op.cit.*

protection of children and respect for their rights in armed conflict contexts, affirming that mediation strategies aimed at preventing and ending serious violations against children, along with other child rights protection measures, are essential for achieving lasting peace³⁵.

- Arbitration

In arbitration, disputing parties submit their dispute to a neutral third party, who acts as the arbitrator or arbitral tribunal. The arbitrator renders a binding decision (arbitral award) for the parties. In an arbitration process, parties must agree to resort to this mechanism to resolve their dispute, which implies mutual agreement between the involved parties³⁶.

For example, the peace agreement between Eritrea and Ethiopia established in 2000 provided for "*deciding, through binding arbitration, all claims for compensation for losses, damages, or injury presented by a government against the other, and by nationals (including individuals and entities) of one party against the government of the other party or entities owned or controlled by the other party that are (a) related to the conflict (...), and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law*"³⁷.

These parties specifically provided for this non-judicial mechanism of arbitration for the resolution of disputes concerning violations of IHL.

- Investigative Commissions

An independent commission can be established to investigate IHL violations and make recommendations. For example, the International Humanitarian Fact-Finding Commission (IHFFC) it "*is the body of experts established by Additional Protocol I to the Geneva Conventions to respond to incidents related to international humanitarian law. It is available to parties to an armed conflict to conduct investigations into allegations of violations and to facilitate, through its good offices, a return to an attitude of respect for this body of law*"³⁸.

- Administrative Redress

A state can establish procedures to compensate victims of IHL violations. Generally, victims of serious violations of international humanitarian law have traditionally sought and obtained redress at the national level. National redress mechanisms largely focus on administrative reparations programs³⁹.

³⁵ Bureau du Représentant Spécial du Secrétaire Général pour les enfants et les conflits armés, Guide pratique à l'intention des médiateurs pour la protection des enfants dans les situations de conflit armé, February 2020, available on : <https://childrenandarmedconflict.un.org/wp-content/uploads/2020/11/OSRSG-Practical-Guidance-for-Mediators-to-Protect-Children-in-Situations-of-Armed-Conflict-French-final.pdf>.

³⁶ Thomson Reuters Practical Law, Glossary : Arbitration, n.d., available on : [https://uk.practicallaw.thomsonreuters.com/4-107-6426?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/4-107-6426?transitionType=Default&contextData=(sc.Default)&firstPage=true) ; WIPO, What is Arbitration ? n.d., available on : <https://www.wipo.int/amc/en/arbitration/what-is-arb.html>.

³⁷ L. ZEGVELD, Remedies for victims of violations of international humanitarian law, IRRIC, Vol. 85, N° 851, September 2003, available on: https://www.icrc.org/en/doc/assets/files/other/irrc_851_zegveld.pdf, p.497-526.

³⁸ Commission internationale humanitaire d'établissement des faits, Bienvenue, n.d., available on : <https://www.ihffc.org/index.asp?Language=FR&page=home#:~:text=The%20Commission's%20essential%20purpose%20is,fulfills%20its%20mandate%20notably%20by%3A&text=Enquiring%20into%20any%20facts%20alleged,or%20serious%20violations%20of%20IHL>.

³⁹ E. SALMON, J-P PEREZ-LÉON-ACEVEDO, *op.cit.*

There are, of course, other non-judicial mechanisms. These can be used individually or in combination with each other, depending on the nature and complexity of IHL violations and the needs of the parties involved. They can also be combined with international or non-international judicial mechanisms.

6. Other Means to Obtain Justice

In addition to the aforementioned judicial and non-judicial avenues, there are other means to obtain justice in cases of IHL violations. Here are some examples:

6.1. Human Rights Monitoring Bodies

International monitoring mechanisms exist, such as the United Nations human rights monitoring system. The UN Human Rights Committee or the Committee against Torture, as human rights monitoring bodies, can investigate IHL violations and make recommendations. For instance, *"the Committee against Torture ensures that States are held accountable for human rights violations by systematically investigating reported cases of torture in order to stop and prevent this crime"*⁴⁰. Such mechanisms can thus provide another means for victims to assert their rights under IHL.

6.2. Special Rapporteurs:

There are also independent experts tasked with monitoring and reporting specific IHL violations in different countries, as well as issuing recommendations.

For example, United Nations treaty bodies such as the *"CERD, CMW, CESCR, CEDAW, and CRPD24 appoint a country rapporteur for each state report. The CRC appoints up to two rapporteurs per report, the CAT appoints two, and the CED appoints two or more. The HRC and CRC appoint a 'special country team' (...). The role of the rapporteur or special country team is to conduct a comprehensive review of the state report and then draft the list of issues to be addressed and questions (see page 19) to be submitted to the state party"*⁴¹.

These treaty bodies *"are international committees composed of independent experts who monitor the implementation by States parties of each of the nine core human rights treaties and their optional protocols"*⁴².

Such mechanisms can contribute to the proper implementation of the means available to victims to assert their rights from the perspective of international humanitarian law.

6.3. International Committee of the Red Cross (ICRC)

The ICRC is not a court. However, it can play an important role in facilitating access to justice mechanisms and providing assistance to victims. Indeed, the general rule establishes that the ICRC has an obligation to act upon becoming aware of a potential violation of IHL or

⁴⁰ United Nations, Comité contre la torture, n.d., available on : <https://www.ohchr.org/fr/treaty-bodies/cat>.

⁴¹ International service for Human Rights (ISHR), Guide simple sur les organes de traités des Nations Unies, 2015, available on : https://ishr.ch/wp-content/uploads/2021/07/ishr_simpleguide_fr_final_web.pdf, p.20.

⁴² *Ibid*, p.5.

other fundamental rules: "*the ICRC will take appropriate action to stop violations of IHL or other fundamental rules protecting the human person in situations of violence, or to prevent such violations from occurring*"⁴³.

6.4. Sanctions

Member states of the international community may exert political pressure on perpetrators of violations to hold them accountable or to attempt to cease their acts. Such pressures can be exerted through various sanctions, such as economic or diplomatic sanctions.

Indeed, sanctions constitute measures permitted by international law to resolve disputes between states, without being perceived as acts of war. They can be applied against a state or a non-state actor in case of non-compliance with its international commitments or when its behavior compromises or threatens international public order. These sanctions can be unilateral or collective. Sanctions represent a form of non-military pressure. They can be implemented through decisions of financial restrictions (e.g., asset freezes), trade restrictions, or interruption of diplomatic relations⁴⁴.

For example, unilateral sanctions include the freezing of Russian bank accounts in several states. This constitutes an economic sanction and represents one of the means aimed at countering violations of international law perpetrated by Russia⁴⁵. It is thus a means of pressure for Russia to cease these violations, as well as a sanction⁴⁶.

Sanctions could represent an indirect means aimed at obtaining justice, or at least, at ceasing violations and respecting international obligations.

⁴³ CICR, *Revue internationale*, Volume 87, Sélection française 2005, available on : https://www.icrc.org/fr/doc/assets/files/other/icrc_001_0893.pdf, p.352-353.

⁴⁴ Médecins sans frontières, *The Practical Guide to Humanitarian Law : Sanctions (Diplomatic, Economic or Military)*, n.d., available on : <https://guide-humanitarian-law.org/content/article/3/sanctions-diplomatic-economic-or-military/>.

⁴⁵ A. MOISEIENKO, *Sanctions, Confiscation, and the Rule of Law*, Groupe d'études géopolitiques, n.d., available on : <https://geopolitique.eu/en/articles/sanctions-confiscation-and-the-rule-of-law/>.

⁴⁶ Human Rights Watch, *World Report 2024 : Events of 2023*, 2023, available on : https://www.hrw.org/sites/default/files/media_2024/01/World%20Report%202024%20LOWRES%20WEBSPREADS_0.pdf.

III. Other Important Considerations

In addition to the previous elements, it is important to take into account certain additional aspects:

1. Statute of Limitations

In many national legal systems, statutes of limitations exist, during which victims must initiate proceedings or seek redress for violations of IHL⁴⁷ :

- It is important to note that statutes of limitations vary depending on the legal systems. Time limits are often longer for serious crimes. Common law systems often do not provide for limitations for war crimes.
- Statutes of limitations may also differ depending on the international treaties in question. For example, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity applies to the prosecution and execution of sentences for war crimes and crimes against humanity, without any statute of limitations.
- Statutes of limitations may also vary as international customary law evolves. For example, the recent trend is to prosecute alleged war criminals more vigorously and without any statute of limitations, before national and international courts. This practice strengthens conventional provisions prohibiting prescription for war crimes, thereby becoming a customary norm of international humanitarian law.

If there is a time limit, it is therefore necessary to take it into account and take action within the prescribed deadlines.

2. Evidence

Collecting evidence is essential to support allegations of IHL violations. This can include documents, testimonies, photographs, or videos, as well as other evidence. In some cases, collecting evidence can be more complicated, such as for crimes committed abroad, which can pose additional challenges. It is essential to demonstrate that the alleged acts were committed during an armed conflict or in connection with one, in order to establish the guilt of a potential perpetrator in war crimes cases⁴⁸.

Indeed, the investigation must establish the guilt of one or more persons for judicial proceedings and liability to be upheld⁴⁹.

⁴⁷ CICR, La mise en œuvre nationale du droit international humanitaire : un manuel, *op.cit.*, p.34

⁴⁸ *Ibid.*

⁴⁹ CICR, Article 121 – Prisonniers tués ou blessés dans des circonstances spéciales n.d., available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/gciii-1949/article-121>.

If the investigation establishes the guilt of one or more persons, the state will take all measures for the judicial prosecution of the responsible party or parties.

3. Limits and Accessibility of Judicial Recourse

It is essential that avenues of recourse be accessible to victims, which means they must be informed of their rights and have practical opportunities to exercise them. However, it is important to recognize that judicial avenues may be limited by several obstacles, which can be political, legal, practical, social, and economic.

For example, despite significant progress made in recent years in combating impunity for serious international crimes within the EU, considerable obstacles remain in the judicial avenues available to victims. These obstacles hinder access to justice for victims, compromising their ability to exercise their rights and obtain redress⁵⁰.

Several obstacles have been identified, including victims' lack of awareness of the possibility of reporting these crimes to national authorities, the complexity of the legal framework often requiring the assistance of specialized lawyers, and victims' reluctance to cooperate with investigations due to the risks of retaliation or secondary victimization. Additionally, gaps in the implementation of the obligations of member states under international law and restrictive political decisions further limit victims' access to justice⁵¹.

These obstacles highlight the urgent need to overcome barriers to ensure that victims of serious international crimes can exercise their rights and obtain the justice they are entitled to⁵².

Moreover, it is important to note that there are concerns about the effectiveness of recourse available to victims of IHL violations in many current contexts⁵³. This is particularly the case in countries where the rule of law is contested or deficient, and where authorities seek to maintain strict control over their population.

Therefore, it is important to be aware of the existence of these limits when seeking justice and redress.

4. Procedures and Conditions

Considering the different procedures and conditions is important when examining the avenues of recourse available for IHL violations, as procedures determine the process by which victims can access justice and obtain redress for the harm suffered, and conditions establish the criteria and prerequisites that victims must meet to initiate legal actions. Since these

⁵⁰ S. FINNIN, *Surmonter les obstacles : l'accès à la justice en Europe pour les victimes de crimes internationaux*, FIDH, septembre 2020, https://redress.org/wp-content/uploads/2020/10/Surmonter_Les_Obstacles_FR.pdf, p.108ss.

⁵¹ *Ibid*, p.108ss.

⁵² *Ibid*, p.108ss.

⁵³ P. TAVERNIER, *Réflexions sur les mécanismes assurant le respect du droit international humanitaire, conformément aux Conventions de Genève et aux Protocoles additionnels*, *Revue d'analyse juridique de l'actualité internationale*, n.d., available on : [http://www.ridi.org/adi/200004a1.htm#:~:text=1.,Le%20point%20faible%20du%20Droit%20international%20humanitaire%20dans%20l'opinion,resurgissent%20\(en%201999%20%3A%20Kosovo%2C](http://www.ridi.org/adi/200004a1.htm#:~:text=1.,Le%20point%20faible%20du%20Droit%20international%20humanitaire%20dans%20l'opinion,resurgissent%20(en%201999%20%3A%20Kosovo%2C).

conditions may vary depending on the competent jurisdiction, applicable national laws, and international conventions ratified by states, it is crucial to consider these different elements to determine if a recourse is available in a specific case and to guide victims in the process of seeking justice.

For example, according to Article 5 of the ICC, the Court's jurisdiction is limited to the most serious IHL crimes, namely, crimes against humanity, war crimes, and aggression⁵⁴. In contrast, according to Article 36 of the ICJ, the court's jurisdiction extends "*to all cases which the parties refer to it and to all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force*". The Court is competent for any point of international law, for example, any point of IHL, submitted by the parties⁵⁵.

It is evident, therefore, that it is imperative to understand and consider these different additional aspects to improve the chances of obtaining justice and redress for victims of IHL violations.

⁵⁴ CPI, *op.cit.*

⁵⁵ Statut de la Cour Internationale de Justice, 1945, available on : https://legal.un.org/avl/pdf/ha/sicj/icj_statute_f.pdf.

IV. Conclusion

In a context where numerous violations of IHL persist worldwide, inflicting significant harm on affected populations, it is imperative that victims have effective avenues of recourse to assert their rights and obtain redress for IHL violations. Indeed, access to justice constitutes an essential pillar in the fight against impunity and the promotion of sustainable peace.

As analyzed, victims of IHL violations have several mechanisms to assert their rights, including:

- Bringing cases before international courts such as the International Criminal Court (ICC), the International Court of Justice (ICJ), or ad hoc tribunals.
- Initiating actions before national courts.
- Resorting to regional mechanisms such as the European Court of Human Rights (ECHR) or the Inter-American Court of Human Rights (IACHR).
- Utilizing non-judicial mechanisms such as mediation, arbitration, inquiry commissions, or administrative redress.
- Initiating civil actions.
- Using other means such as human rights monitoring bodies or the International Committee of the Red Cross (ICRC).

As we have seen, it is also important to consider certain additional aspects such as statutes of limitations, evidence collection, obstacles to access to justice, and the specific procedures and conditions of each recourse avenue. By understanding and taking these elements into account, victims of IHL violations can improve their chances of obtaining justice and the best possible redress.

This range of judicial and non-judicial avenues available to facilitate justice for victims in cases of IHL violation is extremely important. It is also necessary to continuously strengthen these mechanisms to ensure accountability for perpetrators of these violations, as well as to protect and effectively deliver justice to victims. These various avenues offer victims different options for seeking justice and redress in cases of IHL violations, although challenges persist, particularly in terms of access to justice, jurisdiction of courts, impunity of perpetrators, etc.

Ultimately, the establishment of effective recourse mechanisms is essential for IHL to fulfill its objective of protecting victims of armed conflicts and contributing to the promotion of justice and peace worldwide. Indeed, respect for IHL is fundamental for the protection of vulnerable populations and the prevention of armed conflicts. By strengthening recourse mechanisms for victims, we contribute to upholding the fundamental principles of international humanitarian law.

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