



International Humanitarian Law in the Security Council: Switzerland's Lessons learned and How to strengthen IHL while serving on the Council

This paper is directed at Member States, particularly those currently serving on or soon joining the Security Council. It draws from Switzerland's experience as a non-permanent Council member (2023–2024). Actively committed to upholding international humanitarian law (IHL) and the Protection of civilians in armed conflict (PoC) as a foreign policy priority, Switzerland has engaged decisively to strengthen respect for IHL in the Council's work. The successful adoption of United Nations Security Council resolution (UNSCR) 2730 (2024) on the protection of humanitarian and United Nations personnel, as well as the commemoration of the 75th anniversary of the Geneva Conventions with members of the Security Council at the Conventions' birthplace in August 2024 were the most visible results of these efforts. However, during our term, we have observed numerous attempts to undermine IHL in the Council's work. This document, designed as a non-exhaustive overview based on Switzerland's experience on the Council, underscores the successes achieved but also provides concrete tools on how to strengthen IHL in the Council's work and address IHL relativization, both within and beyond the Council.

1. Introduction: The Security Council's role as regards international humanitarian law

Given its **primary responsibility for maintaining international peace and security**¹, the Security Council addresses numerous regions and topics related to armed conflicts. When acting under Chapter VII, the Security Council frequently identifies situations of armed conflict, along with related IHL violations, as threats to international peace and security, as well as regional stability. **Respect for international law, including IHL, is an essential element to the maintenance of peace of security**, as explicitly recognized by the Council.² The Security Council has consistently *condemned* violations of IHL, *calling upon* parties to conflicts to respect IHL, while also *recalling* their related obligations. It has adopted numerous documents referencing IHL, addressing both specific geographic situations and thematic agenda items.

The role of the Security Council in promoting respect for IHL spans the following substantial areas:

Promoting fundamental principles and rules of IHL: This includes principles governing the conduct of hostilities, which are foundational to PoC. These rules extend to specific PoC-related issues, such as peace operations, the protection of children in armed conflict and efforts to account for the missing.

Safeguarding humanitarian access in line with IHL: This involves ensuring that humanitarian actors can operate in accordance with humanitarian principles, including through the protection of humanitarian personnel. Areas of specific concern include complex emergencies, situations of food insecurity (conflict and hunger), counter-terrorism measures and sanctions (implementation of humanitarian exemptions).

Ensuring accountability for IHL violations: The Council promotes international justice as a tool for the peaceful settlement of disputes, aiming to prevent further IHL violations. This includes promoting the use of accountability mechanisms such as referrals to the International Criminal Court (ICC) and support to other existing mechanisms.⁴

1 Art. 24 UN Charter.

2 See for instance S/PRST/2019/8 and S/RES/2730 (2024).

3 Various themes are covered under PoC, such as related to children and armed conflict, conflict and hunger, the missing and peace operations / special political missions.

4 At the strategic level, avenues for engagement include supporting mechanisms that have been established by the Security Council (in terms of prevention, reporting, national implementation, etc.), getting involved in informal groups (groups of friends), taking upon a leading role on a specific topic (focal-point), as well as organizing official meetings (Arria formula meetings, open debates) and side-events on related topics.

2. Upholding the integrity of IHL

Switzerland's experience on the Council has underscored the importance of advocating for the inclusion of **accurate, strong and comprehensive IHL language** and of **condemning IHL** violations. Preserving the integrity of IHL has become increasingly crucial, as attempts to weaken its rules have become frequent. Such relativization of IHL is also a component of "lawfare", where disinformation is used to support the legality of a conflict party's actions.

One of the most concerning trends in terms of IHL relativization is the misuse of IHL to justify violations of its own rules. This often involves an **inaccurate qualification of facts under IHL**, as well as the **permissive or outdated interpretation of IHL rules and concepts**; a dangerous tendency that has recently also been called out by the ICRC.⁵ IHL is further undermined when it is disregarded by parties to a conflict in situation where it is applicable, thereby calling its very effectiveness into question.

Relativization attempts occur at various levels and in different ways. To better understand this phenomenon, the following non-exhaustive typology outlines **instances of relativization**, some of which might overlap. (See also Case study on page 4.)

Preventing an assessment under IHL

Denying the existence of an armed conflict → interpreting facts in a way that denies the presence of an armed conflict with the aim of circumventing the application of IHL.

Overlooking the applicability of IHL in a specific conflict → invoking other legal frameworks (e.g. UN Charter law or *jus ad bellum*, international human rights law), including for the purpose of PoC, without referencing IHL in situations where IHL is applicable, including as *lex specialis*.

Challenging the facts → disputing the accuracy of established factual information (incl. data and figures), and questioning the credibility of sources with the aim of avoiding the stage of legal assessment.

Failure to condemn violations due to prior acts by the adversary

Blurring the lines between jus ad bellum and jus in bello → invoking the adversary's aggression (notion of an "unjust" war) as a justification to avoid condemning IHL violations, with an aim of conflating the legality of resorting to war with the legality of conduct in war.

Ignoring the principle of non-reciprocity → justifying violations of IHL by invoking prior violations by the adversary, thereby undermining the applicability of IHL regardless of its respect by the adversary.

Inaccurate reference to IHL rules

Failing to frame rules as binding obligations → presenting respect for IHL as optional by using terms like "need" or "shall" rather than affirming the binding nature of IHL obligations.

Citing incomplete rules → omitting critical elements of obligations, thereby diluting their content (e.g., referencing the protection of civilians without including the protection afforded to persons *hors de combat*).

Adding unwarranted conditions to obligations → introducing additional, unjustified conditions or nuances for the recognition of violations (including as to redefining thresholds of war crimes), thus raising the bar for their legal recognition.

Misinterpretation of IHL rules

Outdated interpretation of rules → overlooking the customary evolution of IHL by adhering to the original language of the 1949 Geneva Conventions or the 1977 Additional Protocols.⁶

Permissive interpretation of rules → qualifying facts as being in line with IHL while using an overly permissive interpretation of related concepts and rules.

Minimizing accountability for violations

Absence of or incomplete reference to obligations related to accountability → omitting references to the primary obligation of States to investigate violations and prosecute crimes, or failing to emphasize the need to ensure accountability in general.

No reference to relevant accountability mechanisms → omitting to include references to international mechanisms such as the ICC, seized with specific situations and relying on support from or cooperation with Member States.

⁵ See ICRC's 2024 Challenges Report: "Championing IHL Compliance in contemporary armed conflict: the 2024 ICRC Challenges Report".

⁶ Such outdated interpretation pertains, amongst other examples, to Art. 1 common to the Geneva Conventions and Art. 54 [2] Additional Protocol I.

On the permissive interpretation of IHL rules

As most of the examples below illustrate, permissive interpretation of IHL affect the most fundamental rules governing the conduct of hostilities, such as the principles of distinction, proportionality and precaution in attack.

- **Civilians:** the category of individuals considered as civilians is being unduly narrowed by adopting a broad definition of the term “combatant”.
- **Loss of protection from attack:** civilians are increasingly excluded from protection due to an overly expansive interpretation of “direct participation in hostilities”, or the introduction of new categories of persons (e.g., “unlawful combatant”, “terrorist”, etc.) that do not benefit from the protection afforded by IHL.⁷
- **Military objective:** civilian objects are being denied their protected status through an overly broad interpretation of what constitutes a military objective,⁸ including the “effective contribution to military action” and “definite military advantage”.
- **Proportionality in attack:** an attack is being assessed as proportionate based on an overly broad interpretation of “military advantage”, or an overly narrow interpretation of “incidental harm”.
- **Precaution in attack:** precautions taken are being deemed sufficient under an overly narrow interpretation of the requirement to take “all feasible precautions”.
- **Military necessity:** specific acts, such as the destruction of private property or the transfer of persons, are being considered lawful based on an overly broad interpretation of “imperative military necessity” or “imperative military reasons”.
- **Other rules referring to terms that are inherently subject to interpretation** (such as “to the degree possible”) are also being loosely interpreted, undermining their protective scope.

IHL is fundamentally a protective, not a permissive body of law. IHL safeguards those who are not or no longer participating in hostilities, namely civilians and persons hors de combat (including the wounded, sick, prisoners of war and other persons deprived of their liberty), as well as civilian objects. It also specifically protects the medical mission, objects indispensable to the survival of the population, cultural heritage, as well as the environment. By establishing clear rules and obligations, IHL aims at limiting the effects of armed conflict. While IHL does not challenge the existence of war, its spirit lies in mitigating the human cost of war, not in permitting hostilities with an acceptance of the human cost.

3. Conclusion: Engaging for our common humanity

This year marks the **75th anniversary of the universal adoption of the Geneva Conventions**. These landmark treaties, designed to protect humanity from the devastating impacts of war, carry a clear and enduring message: **war has limits**. By committing to these Conventions, all States have pledged to respect these Conventions, reflecting our shared commitment to humanity. In the spirit of the interstate cooperation that brought the Conventions to life in 1949, we must elevate respect for IHL as a political priority, and collectively work towards its full realization.

While IHL shall be promoted in all Security Council agenda items, particularly geographic ones⁹, several thematic areas stand out as crucial opportunities to strengthen the Security Council’s role in upholding IHL. Foremost among these is the agenda item “Protection of civilians in armed conflict”, under which the Secretary-General presents an annual report. UNSCR 2730 (2024), adopted under this agenda item, builds on a legacy of PoC-related resolutions, beginning

with UNSCR 1265 (1999), which laid the foundation 25 years ago.¹⁰ Another significant area of progress is the consideration of IHL in sanction regimes, as notably put forward by the adoption of UNSCR 2664 (2022), which established a standing humanitarian exemption for all UN sanctions regimes. Beyond these key items, consistent and proactive engagement across all Security Council agenda items, as well as in broader international fora, is vital to uphold IHL and prevent its relativization.

Despite its foundational role in mitigating the effects of war, IHL is too often ignored, relativized, or even instrumentalized, and its violations frequently go unpunished. Within the framework of the Security Council’s mandate to maintain international peace and security, advocating for the respect of IHL is not only necessary but essential. Security Council resolutions and other products serve as crucial political tools to reaffirm IHL obligations of all States and conflict parties. Given their significance, any attempt to undermine an accurate and complete reiteration of the law must be challenged. This is particularly critical due to the universal applicability of the Geneva Conventions, as completed by the Additional Protocols and numerous subsequent IHL treaties, as well as customary law. Precise IHL language is not just a

7 This includes resolutions related to the establishment or renewal of peace keeping operations and special political missions, where IHL and PoC are usually particularly relevant.

8 See also for instance UNSCR 2286 (2016) on medical personnel; UNSCR 2222 (2015) on the protection of journalists, UNSCR 2417 (2018) on conflict and hunger, which also provides for an early-warning mechanism as regards food insecurity in conflict situation, and as completed by UNSCR 2573 (2021) on essential goods and services; UNSCR 2474 (2019) on the missing; and UNSCR 2474 (2019) on the protection of persons with disabilities.

9 This includes resolutions related to the establishment or renewal of peace keeping operations and special political missions, where IHL and PoC are usually particularly relevant.

10 See also for instance UNSCR 2286 (2016) on medical personnel; UNSCR 2222 (2015) on the protection of journalists, UNSCR 2417 (2018) on conflict and hunger, which also provides for an early-warning mechanism as regards food insecurity in conflict situation, and as completed by UNSCR 2573 (2021) on essential goods and services; UNSCR 2474 (2019) on the missing; and UNSCR 2474 (2019) on the protection of persons with disabilities.

legal necessity but also has political implications with tangible effects on the ground. **Let's champion the good faith interpretation of IHL rules, in line with the very spirit**

of IHL: to protect the victims of war and uphold the dignity of humanity, even in the darkest times.

Case study: Negotiating UNSCR 2730 (2024) in keeping IHL's integrity

During negotiations for UNSCR 2730 on the protection of humanitarian and United Nations personnel, their premises and assets, Switzerland prioritized preserving the integrity of IHL. This required ensuring legally sound and complete language. Despite significant progress and achievements, some compromises resulted in less-than-ideal wording.

Examples of language that preserve IHL's integrity:

- **Reference to all parties to the conflict** → UNSCR 2730 reiterates that all parties to armed conflict must comply with IHL (PP11 and PP12; OP3).
- **Reference to the applicability of IHL in all circumstances** → UNSCR 2730 affirms the obligation to respect and to ensure respect for IHL in all circumstances (PP4 and OP2).
- **Complete description of specific IHL rules** → UNSCR 2730 reflects IHL obligations in a comprehensive manner, for instance as regards humanitarian access (PP15; OP9), whereby it also correctly refers to the humanitarian principles (PP14; OP15); it also specifies the exact scope of obligations, such as including "national and locally recruited personnel" and "premises and assets" throughout the resolution.
- **Adequate reflection of IHL obligations** → UNSCR 2730 explicitly refers to several IHL rules (PP11, 12 and 19; OP1, 2 and 3) and condemns relevant violations (OP6). Specific violations addressed include sexual and gender-based violence, intimidation and harassment (PP18; OP6), and violations involving new technologies, including the issue of disinformation (PP20 and 21; OP11 and 12).
- **Qualification of a specific conduct as a war crime** → UNSCR 2730 unequivocally recalls that attacks against humanitarian personnel constitute war crimes (PP11).
- **Accountability obligations** → UNSCR 2730 emphasizes the responsibility of States to investigate and prosecute serious IHL violations and other international crimes (PP19). It also urges States to investigate and take action, as appropriate, against those responsible for violations of IHL and IHRL and to cooperate with domestic, regional and international courts and tribunals (OP13), though, it stops short of naming the ICC.

Examples of compromise language that weaken IHL:

- **Nuances on the applicability of IHL and other bodies of law** → UNSCR 2730 uses terms such as "applicable" (OP2) and "as applicable" (OP3) when referring to IHL and IHRL in situations where these bodies of law do apply.
- **Absence of explicit reference to non-reciprocity** → UNSCR 2730 does not explicitly state that the obligation to respect and ensure respect for IHL does not depend on reciprocity. This absence is nevertheless mitigated by the phrase "in all circumstances".
- **Undue caveats** → UNSCR 2730 features some undue caveats such as "deliberate" as pertains to the targeting of humanitarian personnel (PP19) and of "may" when referring to clear violations of international law (OP8).
- **Inadequate language on obligations** → UNSCR 2730 urges parties to "refrain from" certain acts (e.g., attacking objects indispensable to the survival of the civilian population) rather than calling for an outright cessation of such acts (OP6).

Preserving IHL's integrity during negotiations in the Security Council requires constant vigilance. Security Council resolutions must accurately reflect the current state of IHL and avoid weakening its rules. Key considerations include:

- **Balancing political dynamics and legal clarity:** Agreed language, even if imperfect, is often preferable to introducing new imperfect language. However, in some cases, omitting language altogether is better than endorsing unfavorable precedents
- **Documenting challenges:** Recording discussions and interpretations can help address future attempts to weaken IHL.
- **Long-term engagement:** Maintaining continuous advocacy and resilience is essential to uphold IHL's protective spirit and ensure its respect over time.

While UNSCR 2730 achieved notable successes in safeguarding IHL's integrity, the compromises highlight the importance of remaining steadfast in negotiations to prevent the erosion of IHL.

Annexes: Reference documents

Public references

- [ICRC IHL Toolkit](#): compilation of relevant IHL resources by the ICRC, including major [IHL Treaties](#) and the [Customary IHL Database](#)
- [Protection of Civilians Aide Memoire](#), OCHA: reference tool on the Security Council's practice on PoC
- [Rule of Law in Armed Conflicts \(RULAC\)](#) online portal: qualification of situations of armed conflict and identification of parties
- [UN Documents for Protection of Civilians](#), Security Council Report: list of Security Council documents (resolutions, PRST, Press statements, etc.) and Secretary-General reports on PoC, and other selected documents on the topic

Swiss working documents

- Messages on the occasion of the 75 th anniversary of the Geneva Conventions
- Various internal documents
- Outcome document of the IHL Discussion Series in Geneva (publication pending)

