



Cost-effectiveness in humanitarian work: the promotion of international humanitarian law

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Question

What evidence is there on the cost-effectiveness of initiatives to promote compliance with international humanitarian law?

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The K4D helpdesk service provides brief summaries of current research, evidence, and lessons learned. Helpdesk reports are not rigorous or systematic reviews; they are intended to provide an introduction to the most important evidence related to a research question. They draw on a rapid desk-based review of published literature and consultation with subject specialists.

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1. Overview

Lack of compliance with international humanitarian law (IHL), which can result in unlawful deaths, destruction and impediments to humanitarian relief operations, is a tremendous humanitarian challenge (Akande and Gillard, 2017; Kremte, 2017; Pejic, 2016). In order to achieve the main goal of IHL - to protect persons affected by violence and minimise human suffering – the mere existence of law is not sufficient. It must be coupled with a strong compliance system (Kremte, 2017). Compliance requires a multifaceted effort involving a range of activities by a diverse group of actors. They include prevention activities, such as the adoption of domestic legislation implementing IHL treaty obligations, training of armed forces and appointment of legal advisers to the armed forces, and teaching and dissemination of IHL to the general public (Kremte, 2017). They also include ‘naming and shaming’ violators; and mechanisms and procedures for determining individual criminal responsibility for alleged violations of IHL, such as the creation of international or hybrid courts and tribunals or proceedings before domestic courts (Pejic, 2016).

This rapid literature review reveals a significant gap in evidence on the cost-efficiency of efforts to promote compliance with international humanitarian law. This has yet to be an area of research. The only relevant studies that could be found focus on the cost-efficiency of international criminal justice, comparing the costs of international courts, hybrid courts, and domestic courts. While international criminal tribunals are considered to be more costly overall, this is due to their greater complexity. They are not more costly than the most similar domestic trials or hybrid trials when evaluated on a per-day basis. This is considered to be a better way to measure cost-effectiveness. The effectiveness of international criminal law (ICL) also depends on whether it fulfils the various aims of ICL (e.g. justice for victims, accountability, deterrence, reconciliation).

Given the lack of research on cost-effectiveness of other initiatives related to IHL compliance, their general effectiveness is explored in this helpdesk report. Research on dissemination of IHL, such as educational programmes and training for the military and civilians reveal an overall increase in scholarship on IHL, in terms of educational tools, research, publications and outreach. This has the potential to impact on compliance should those receiving education and training end up in positions of authority and decision-making. Research in this area does not examine issues of cost-effectiveness, however. It is also challenging to determine general effectiveness, due to difficulties with attribution (e.g. whether a course on IHL in peace-time prevents violations of IHL during war-time). Research on monitoring and exposure of IHL violations also have the potential to contribute to the promotion of compliance with IHL. Deeds of Commitment, a monitoring and verification mechanism directed at armed non-state actors, for example, can be effective in ensuring improved compliance with IHL. Advancements in social media can allow for more widespread and rapid monitoring and exposure of violations and abuses. In addition, national IHL committees can help in promoting dissemination of IHL and monitoring of violations of and compliance with IHL. The integration of these committees in high levels of government can contribute to greater promotion of and compliance with IHL. Studies on ‘naming and shaming’ violators of IHL find that in some cases, this strategy can be linked to improvements in compliance with IHL and human rights practice. Sanctions may be implemented alongside ‘naming and shaming’, however the need to monitor sanctions can make it a costly IHL initiative.

2. Methodology

This rapid literature review is based on 5 days of desk research on cost-effectiveness of efforts to promote international humanitarian law. The ALNAP Humanitarian Evaluation, Learning and

Performance (HELP) database and Google Scholar were used as primary sources for material to review. The review aims to examine efficiency and effectiveness of the promotion of international humanitarian law, and materials that discuss either or both of these aspects have been included.

The ALNAP database was searched with the keyword “cost-effectiveness” and tag “international law”, and the search returned 156 results. A scan of the titles and a survey of potentially relevant documents, conducting a find of all “cost” and “effective” words, separately, did not yield any relevant documents. In these documents, “cost” often referred to the human cost of war, to hypothetical costs, or other aspects not related to cost-efficiency of IHL initiatives. “Effective” often referred to the effectiveness of IHL in general or other legal frameworks, “effective control” in war, or effectiveness of other humanitarian work, rather than effectiveness of initiatives designed to promote compliance with international humanitarian law. Another search of the ALNAP database was conducted with the keywords “cost-effectiveness” and “international humanitarian law”, without the tag “international law”. This yielded 385 results, but, similarly, did not produce any relevant documents. Subsequent scans of the database entailed searching for the words “cost-effectiveness” along with specific initiatives, e.g.: “international criminal law” (18 results); “criminal trials” (7 results); education promoting IHL (152 results); and “naming and shaming” (26 results). This also did not produce any relevant documents.

A further search was conducted within Google Scholar using the keywords “cost-effectiveness” and “international humanitarian law” with a start date of 01/01/2011. This produced 458 results. A review of the first 100 results revealed that this search criteria is broad, producing documents with information too general to be of use to this specific query. Subsequent searches included: “cost-effectiveness” “international humanitarian law” promotion compliance; along with searches involving the specific initiatives: ICL, “criminal trials”, “education”, “naming and shaming”. These searches uncovered some relevant documents, relating specifically to the cost effectiveness of international criminal justice (4 studies). Where documents appeared relevant, ‘related articles’ and ‘cited by’ articles were also examined.

Given the dearth of studies on costs and cost-effectiveness of initiatives designed to promote international humanitarian law, literature on the general effectiveness of such initiatives on the humanitarian impact of conflict have been included.

3. International criminal law

There are currently no dedicated judicial or quasi-judicial bodies to address violations of international humanitarian law (Pejic, 2016). International criminal tribunals are, however, considered by some to be an important mechanism in promoting compliance with international humanitarian law (see Jenks and Acquaviva, 2014). The expectation is that the enforcement of international criminal justice can deter crime, with the threat of punishment, and strengthen future compliance with IHL (Brammertz, 2015). Some argue that this deterrent effect is questionable as the behaviour of military commanders and soldiers are unlikely to be influenced by complicated and often prolonged judicial proceedings (see Jenks in Jenks and Acquaviva, 2014). This is due to them not reading judgments, not understanding them if they have read it, or not recognising how to translate it into meaningful decisions. Judgments are generally not tailored to address military advisors as audience members (see Jenks in Jenks and Acquaviva, 2014). Acquaviva (in Jenks and Acquaviva, 2014) argues that general deterrence may not be the best lens through which to consider the role of international criminal justice in affecting IHL compliance. Rather, the development of a comprehensive system of accountability, through a growing number of

international criminal judgements, is considered by military commanders. It is reported, for example, that ICC investigations into possible crimes in Afghanistan made US military lawyers attempt to match up incidents of interest to the Court with various investigations conducted internally by the US military (Acquaviva in Jenks and Acquaviva, 2014).

Cost-effectiveness

Alongside measuring an organisation's effectiveness in achieving particular goals, such as justice for victims, accountability, deterrence and societal reconciliation, attempts have also been made to determine the cost-effectiveness of international criminal trials (Shany, 2012). Analysis of efficiency and cost-effectiveness of international criminal justice can facilitate not only discussion of judicial performance and outcomes, but also justifications for the very existence of international courts (Shany, 2012). An organisation may be effective in terms of fulfilling particular goals but still be inefficient in terms of generating considerable costs (Shany, 2012).

The completion strategy leading to the closure of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) appears to have been motivated in part by a perception that the Tribunals' continued operation had become too expensive to be justified by their diminishing returns (Shany, 2012). Questions are raised as to whether the resources invested in establishing and maintaining an international court are providing value for money or whether they could have been directed toward alternative projects (e.g. non-judicial mechanisms) (Shany, 2012).

Ford (2011, 960-961) reports that hybrid tribunals cost significantly less than ad-hoc and permanent international courts. Up until 2015, spending was expected to be dominated by the ICTY, ICTR and ICC, with the two hybrid tribunals – the SCSL and the Extraordinary Chambers in the Courts of Cambodia (ECCC) – collectively costing less than 10 per cent of the total. Studies below find, however, that cost-efficiency can be better measured through per-day assessments.

Wippman (2006): In order to assess the cost-effectiveness of international criminal trials, Wippman compares the cost of such trials to the cost of criminal trials in an effective national legal system. His statistical analysis finds that per-trial day costs of the ICTY do not differ dramatically from those of national legal systems. Rather, the high costs of the ICTY proceedings stem primarily from the greater length and complexity of international criminal trials and the need for international cooperation. Whether international criminal trials are providing value for money depends on the extent to which one believes that the trials are achieving its goals.

Ford (2014): This study surveys publicly reported data on the budgets of the courts (from annual reports, completion strategies, General Assembly resolutions, reports from the Secretary-General, decisions of budgeting committees) in order to determine the amount of money spent on international criminal courts. It can be challenging, however, as documents are often hard to find. In addition, documents can be difficult to interpret and compare across courts as they do not all report the same information in the same way or for the same periods. In order to determine the cost-effectiveness of the ICTY, Ford develops a quantitative measure of complexity, which can apply across international and domestic court systems, and measures efficiency based on the ratio of trial complexity to cost. He finds that the ICTY's trials have been efficient given their complexity. He also finds that the court is more efficient than the Special Court for Sierra Leone (SCSL). This is despite the fact that the SCSL was specifically designed to be more efficient than the ICTY. The SCSL was cheaper overall than the ICTY, only because the court tried fewer cases, not due to

greater efficiency. Ford also finds that the ICTY is more efficient than its closest domestic comparator – mass atrocity trials.

Jalloh and Morgan (2015): This study seeks to assess the role of the ICTR and the SCSL and their normative impact on local communities. In terms of cost-effectiveness, it finds that the ICTR did not cost substantially more on a per-day basis than federal criminal trials in the United States. However, as international criminal trials last considerably longer than the average criminal trial, their cost per trial is far greater than the average domestic proceeding. The study also finds that the lower overall costs of the SCSL are not due to its efficiency, as the per-defendant costs are substantially the same for either court.

4. Dissemination: education and training

The obligation to disseminate international humanitarian law and to integrate it into military instruction and training is based on the assumption that spreading awareness of IHL among all citizens can prevent unlawful conduct by soldiers (Bates, 2014). Fleck (2006) asserts that education and training in IHL should not be limited to the armed forces and the personnel of organisations providing humanitarian assistance. Rather, civil society as a whole should be engaged, with IHL education available in schools and universities. IHL knowledge should also be imparted to decision-makers in order to help ensure that IHL considerations are taken into account (Rosenzweig, 2014).

The effects of dissemination – education and training - can be difficult to prove, to quantify or measure (Brissal, 2015; see Lamp, 2011 and Ratner, 2011 in Krieger, 2013). It is difficult, for example, to determine how a lecture to a group of students on IHL, during peacetime, can help prevent violations of the laws of war (Brissal, 2015).

Education

Jastram and Quintin (2014): This study, based on a lengthy online survey completed by eighty-seven law school professors in the United States, follow-up interviews, and data collection of law school courses and legal resources (books, articles, working papers), provides a comprehensive review on the state of IHL teaching and scholarship in US legal academia. It finds a high level of growth in IHL scholarship and increased opportunities for student engagement and professional development.

McCormarck (2014): This paper assesses the Australian Red Cross IHL programme, which involved the establishment of a Chair of IHL at the Melbourne Law School. Based on the author's personal experience, the paper finds that the collaboration between the Red Cross and the university has contributed to a greater emphasis on IHL education in Australia. There are more schools teaching IHL, higher levels of research in IHL, and more outreach to militaries of the South-East Asia and South Pacific region.

Law competition

The Association for the Promotion of International Humanitarian Law (ALMA) engages in various initiatives to promote compliance in IHL, including a national IHL competition involving students from nine major Israeli academic institutions. While it is difficult to analyse direct and indirect impacts of this initiative over time, Rosenzweig (2014) finds in an unofficial check with alumni that among graduates who took part in the competition, at least five work for the government Ministry

of Affairs, six are involved with IHL and human rights NGOs, and several others are serving as officers in the IDF Military. The paper also finds that the main tool for limiting costs is relying on cooperation with different institutions.

Training

Parties to the Geneva Conventions are obligated to provide training in IHL, in order to foster lawful and effective military operations and to protect civilians and all persons in zones of conflict (Blank and Kaye, 2014). Regular armed forces and armed opposition groups need to include international humanitarian law in their operational training (Fleck, 2006). Greater respect for IHL is possible only with such training and with strict orders as to appropriate conduct and the application of effective sanctions in the event of non-compliance (Rojas and Frésard, 2004).

IHL training does not, however, necessarily lead to compliance with IHL (Bates, 2014). There is a gap between the knowledge combatants have of humanitarian norms and their inclination to respect them during hostilities (Rojas and Frésard, 2004). While some argue that training seminars provided by the International Committee of the Red Cross (ICRC) and others do not have the desired effect, in terms of changes in behaviour, others emphasise that improvement in compliance due to the ICRC's involvement may be indirect and belated (see Krieger, 2013).

The ICRC has moved beyond solely training in legal norms to an 'integration' approach. It involves a continuous process in which IHL becomes relevant to 'doctrine, training, education, equipment and sanctions'. Such an ongoing process would allow, for example, for IHL training to be conducted with an understanding of military discipline; and for soldiers and officers to learn about new weapons system in the context of IHL norms and rules (Bates, 2014). This could in turn improve IHL compliance among service personnel (Bates, 2014).

5. Monitoring and exposure

Social media can serve as a useful conduit for tracking potential violations of IHL. The ability to receive information rapidly can lead to faster action to improve protection of civilians in armed conflict. Transmission of social media reports on IHL violations can also generate public mobilisation in support of intervention (Herzberg and Steinberg, 2012). Social media brought much attention to the 2011 violations of IHL in Libya, for example. This resulted in rapid response by the international community in the form of a UN Security Council Resolution 1970 condemning serious violations of IHL, an ICC investigation, and sanctions against the Gaddafi regime (Herzberg and Steinberg, 2012).

Deeds of Commitment, an innovative instrument developed by the NGO Geneva Call, is a monitoring and verification mechanism that addresses the conduct of armed non-state actors (ANSAs) (Bongard and Somer, 2011). A study on the strength of mechanisms to address the conduct of ANSAs finds that the Deed of Commitment on the prohibition of anti-personnel mines can be effective in ensuring improved compliance with at least some humanitarian norms (Bongard and Somer, 2011). The Deed comprises self-reporting, third party monitoring and field missions for verification of IHL violations. There are limitations, however, primarily a lack of sufficient resources to ensure systematic and prompt follow-up in monitoring and deployment of verification missions (Bongard and Somer, 2011).

Social media has allowed for much swifter exposure of IHL violations to a large number of followers. NGOs, such as Amnesty International, Human Rights Watch, Médecins Sans Frontières

and Oxfam, are able to use their social media platforms to publicise their reports and campaigns, highlight violations, name and shame violators of IHL, generate activism and raise funds (Herzberg and Steinberg, 2012). Amnesty International, for example, often tweets to its more than 400,000 followers about IHL, ranging from accounts of potential violations to efforts at international criminal prosecutions (Herzberg and Steinberg, 2012). While the ICRC also has a social media presence, it has not invested as much resources into the technology as other entities, and its use of social media in non-English formats is particularly limited (Herzberg and Steinberg, 2012).

Mobile technology has also allowed for widespread and rapid reporting of violations by the general public. The UN Mission for Côte d'Ivoire, for example, established an SMS hotline for reporting violations and other abuses. Material gathered was incorporated into reports that were used by the ICC Prosecutor to issue indictments (Herzberg and Steinberg, 2012).

There are various limitations of using social media to conduct IHL compliance monitoring, such as: low internet penetration rates in many countries facing serious armed conflicts; and challenges with reliability and verification given the large volume of information (Herzberg and Steinberg, 2012).

6. National committees

The ICRC assists states wishing to set up a national IHL committee and maintains regular contacts with existing committees. Descriptive studies on national IHL committees of Belgium, Peru and Mexico find that these committees have a role to play in creating an environment that favours the implementation of IHL and to help their respective states implement their IHL-related commitments (Pellandini, 2014). They have had a positive impact on the domestic implementation of IHL, its integration in domestic law and procedure, and promotion of IHL (Pellandini, 2014).

The committees have also gained recognition for their IHL-related dissemination and training activities targeting key governmental sectors and groups within their respective societies; and for acquiring a recognised advisory function for their government. Success factors include: strong committee membership; incorporation of the committee into an important branch of government; and the establishment of working procedures, work plan and concrete activities (Pellandini, 2014). In Mexico, the dissemination activities and preparation of teaching materials of the Comisión Intersecretarial de Derecho Internacional Humanitario de México, Mexico's Interministerial Committee on International Humanitarian Law (CONADIH) has made it a reference organisation on IHL-related issues. It has also sensitised some decision-makers to take IHL into consideration when designing and promoting public policy. A key outcome of the strengthened relationship between CONADIH, other national authorities and IHL is the approval of the National Plan for Education in Fundamental Rights and Duties in 2014, which obliges different sectors to carry out training and education in IHL (Villon, 2014).

7. Naming and shaming

Nyamutata (2013): As part of the protective framework to address the impact of armed conflict on children, the UN adopted a strategy of 'naming and shaming' government forces and rebel groups that violate IHL in relation to children. The assumption is that such public exposure will have a deterrent effect on named and shamed offenders. There is little analysis, however, into the impact of this policy. This study attempts to address this gap and assesses the UN's naming and shaming practice since its inception in 2002, relying on UN annual statistics. It finds that there is not sufficient

evidence to demonstrate a causal link between naming and shaming and adherence to international humanitarian law and international human rights law, particularly among armed non-state actors.

Murdie and Davis (2012): This study also seeks to assess the relationship between naming and shaming and compliance with IHL and international human rights law, relying on a data set of shaming events of more than 400 human rights organisations (HROs) toward governments. It finds that while states targeted by human rights organisations often improve their human rights practices, mere shaming is not sufficient. Improvements stem from a combination of shaming by human rights organisations, a domestic presence of such organisations in the states in question and/or pressure by third-party states, individuals and governments. Thus, HROs can play an important role not only in pressuring the targeted state but also in encouraging third-party actors to pressure the states.

Krain (2012): This study examines naming and shaming data in countries in which genocide or politicide is ongoing, adopting an ordered logit method for statistical analysis. It shows that the severity of ongoing genocide or politicide declines significantly after naming and shaming by NGOs, the media and international organisations. At a minimum, it takes away the excuse of policymakers that they did not know that atrocities and violations were occurring.

Hafner-Burton (2008): This study, which examines the effects of campaigns on human rights practices of 145 countries between 1975-2000, finds that states' political rights generally improve after being publicly shamed. In some cases, however, the statistics demonstrate that governments placed in the spotlight for abuses continue or even ramp up some violations subsequently.

Sanctions

Naming and shaming may at times be combined with particular sanctions. Krieger (2013) reports that although UN individually targeted sanctions appear not to be as efficient as anticipated, they can still generate a change in behaviour under certain conditions. These include, for example, cases in which they pursue a narrowly defined goal, such as turning over suspects; if they are immediately imposed as a consequence of violating an IHL rule; and if they are part of concerted actions involving different actors. In order to be effective, sanctions also require targeting of decision-makers and monitoring. The need for monitoring makes it relatively costly to rely exclusively on sanctions as a means of improving compliance with IHL (see Krieger, 2013).

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