

Barriers To The Enforcement Of International Humanitarian Law In Afghanistan: Political, Institutional, And Legal Challenges

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Abstract: *This study examines the political, institutional, and legal challenges connected with the implementation of the enforcement of the International Humanitarian Law (IHL) in Afghanistan, a country that has been in constant war and conflict for the past forty years. Although Afghanistan has ratified key conventions, widespread civilian harm, arbitrary detentions, and inadequate humanitarian aid reveal a sharp gap between legal commitments and realities on the ground. This research is based on Qualitative, Desk-based Research Methods and used secondary sources, such as United Nations Assistance Mission in Afghanistan (UNAMA), International Committee of the Red Cross (ICRC), ICRC documents, Afghan legal texts, Afghan legal literature. The study indicates three interrupted obstacles: political, institutional and legal. The implementation of the International Humanitarian Law (IHL) in Afghanistan faces various obstacles, the most prominent of which are political Challenges. The continued discussion on sovereignty and non-permanent accountability has restricted the performance of companies, especially the International Criminal Court (ICC). Similarly, the deterioration of Institutional Weaknesses, especially Afghanistan's judicial system, promoted a constant culture of impunity. This research contributes to the field of Peace and Conflict Studies by integrating political, institutional, legal perspectives into a comprehensive framework of enforcement challenges. It concludes that in the Afghan context, IHL operates more as an aspirational framework than an enforceable regime. The study recommends strengthening domestic institutions, expanding international accountability mechanisms and updating legal frameworks. for modern warfare, and integrating gender-sensitive approaches to civilian protection.*

Keywords: International Humanitarian Law, Afghanistan, Enforcement Barriers, Civilian Protection, Red Cross, ICC, ICRC, Institutional weaknesses

Background

International humanitarian law (IHL) also called the law of armed conflict is an organization of rules developed to save citizens, manage the treatment of detainees, and keep boundaries on war sources and methods of war (ICRC, 2020). Its modern foundations are located in the Geneva Conventions of 1949 and the additional protocol of 1977, although its evolution can be traced in the first Geneva Convention and Early Hague regulations of 1864.

Afghanistan explains both the need and difficulty to enforce the IHL. For more than four decades, the country has endured a nearly conflict: the Soviet attack in 1979, the civil war of the 1990s, the Taliban's first government (1996-2001), the US-led intervention since 2001, and the return of the Taliban in 2021

(Seystick, 2020). Each phase has repeatedly observed IHL violations, including indiscriminate attacks on civilians, illegal executions, discretionary detention, violence, and humanitarian sanctions (Anima, 2021 Human Human Rights, 2022).

Although Afghanistan has endorsed major IHL contracts such as Geneva Conventions, effective implementation has the effect. Weak judicial institutions, legal traditions, political instability, and dominance of powerful armed groups have created an atmosphere of immunity (legal abundance and militia rules, 2021). This permanent difference between IHL's standard framework and its practical implementation makes Afghanistan a clear example of the boundaries of the law in the long settings of the conflict. Groups like the United Nations Assistance Mission in Afghanistan (UNAMA) and the International Committee of the Red Cross (ICRC) have worked hard to keep track of these violations. UNAMA's yearly reports keep drawing attention to tragedies like civilian deaths, attacks on hospitals, and how women and children are hit hardest (UNAMA, 2022). Besides the political and legal challenges, the way wars are fought keeps changing and brings new problems. The increased use of things like drones, artificial intelligence for targeting, and even cyberattacks has made conflict in Afghanistan look very different, and it's not clear if current IHL rules can keep up (Bellal et al., 2019). Making sure civilians are protected is more important than ever, but it's harder to tell who's a fighter and who isn't, casualty numbers are often underreported, and there aren't enough ways to enforce the rules with gender in mind. All of this makes life even more dangerous for women and children (Raju & Bruun, 2021; UN Women, 2023).

Introduction

International Humanitarian Law (IHL), also known as the law of armed conflict, is widely recognized as the body of rules designed to regulate the conduct of hostilities and limit the effects of war. For generations, ordinary Afghans have lived through war after war. Each conflict brings a new set of players and a different set of rules. The Soviet invasion in the 1980s, the fierce battles between the Taliban and Northern Alliance in the 1990s, the arrival of international troops after 2001, and the Taliban's dramatic return in 2021, all these moments have shaped daily life in ways that go far beyond legal definitions. For most people, the difference between an "international" or "non-international" conflict is less important than the ongoing uncertainty and loss. The shifting sense of who, if anyone, can be held responsible for violence weighs heavily. These realities have made enforcing International Humanitarian Law (IHL) not just a legal puzzle, but a profoundly human one (Ferraro, 2021; Sevastik, 2020).

On paper, Afghanistan has committed to some of the world's strongest legal protections for civilians, detainees, and displaced people. The country has signed the Geneva Conventions and its protocols. International groups regularly point to these laws as a standard for how war should be waged. But for many Afghans, these promises remain distant. Every year, United Nations reports count thousands of civilian deaths. Organizations like the Afghan Red Crescent and the International Committee of the Red Cross (ICRC) document stories of families torn apart by bombs, detention, and displacement. The gap between legal obligations and the harsh reality on the ground is felt most acutely by those who experience violence firsthand.

The real challenge in Afghanistan is not the absence of laws, but the lack of meaningful enforcement. Organizations like UNAMA, the ICRC, and Afghanistan's domestic courts are tasked with protecting civilians and upholding justice. But they often lack the power or independence to make a difference. Even when the International Criminal Court (ICC) tried to investigate war crimes, political obstacles and the priorities of powerful states slowed progress almost to a halt (Hashimy, 2022; Q. Hashimy, 2021). As scholars have noted, Afghanistan has become a textbook example of what happens when violations are recorded in detail. But perpetrators rarely face consequences (Bellal et al., 2019; Sevastik, 2020). For victims and their families, this gap between documentation and justice is deeply personal and painful.

Literature Review

The International Committee of the Red Cross (ICRC, 2016) defines IHL as “a set of rules which, for humanitarian reasons, seeks to limit the effects of armed conflict. It protects persons who are not or are no longer participating in hostilities and restricts the means and methods of warfare.” Similarly, Jack Donnelly (2003) describes IHL as “universally recognized moral guarantees, embedded in both domestic and international law, designed to safeguard human dignity during armed conflict,” emphasizing its ethical foundation. Marco Sassòli (2019) frames IHL as “the branch of international law that regulates the conduct of parties in armed conflict, balancing military necessity with humanitarian considerations,” underscoring the tension between strategy and humanity. From a legal perspective, Malcolm Shaw (2017) highlights that IHL is “a body of treaty and customary law designed to ameliorate the effects of armed conflict, ensuring that violence remains within the bounds of necessity and proportionality.” Finally, the International Court of Justice (ICJ, 1996) affirmed that many rules of IHL are so fundamental to humanity that they are binding on all states, whether or not they have ratified specific treaties. Collectively, these definitions show that IHL has evolved as both a legal framework and a moral compass, rooted in humanitarian principles, while adapting to new forms of warfare and shifting political realities.

The IHL was launched more significantly than the Geneva Conventions of 1949 and its additional protocols of 1977, which also set up sanctions on weapons and plans for ordinary citizens and war prisoners. However, IHL's roots can be further detected with the first Geneva Convention in the mid 184 of 1964, which is influenced by Henry Dunant's humanitarian advocacy after the Solferino battle. Over time, the IHL was developed in response to the changing nature of the war: from international conflicts to house wars, and recently and recently and non -state actors, proxy war, and technically driven violence forms such as drone strikes and autonomous systems (2019, 2019 SCH 2021).

Despite these progresses, the recent literature highlights the constant gap between the standard IHL's standard theories and its practical implementation. Heathway etc. (2012) Emphasize that when the validation rate is nearing the universal, the implementation of the implementation is chosen and politics. The Kaldor (2022) has criticized NATO's dependence on the remote war because it has damaged accountability, while Moen (2010) describes the law of modern human rights and humanitarianism as historically turning away rather than everlasting moral promises. This scholarship indicates that IHL is the product of political conditions as it is of humanitarian ideology.

Afghanistan represents an important case study within this debate. Its recent history has identified numerous stages of conflict: the Soviet-Afghan war of the 1980s, the 1990s intra-mausoleum civil war, US-led intervention in 2001, in the 2010s to protect the NATO counter-insurgency and its strategy for its protection. Drone war and migration crisis. Implementation in Afghanistan is particularly complex that a wide range of actors: regular state forces, rebel groups, foreign alliances and private military contractors.

Although Afghanistan is formally a party of Geneva Conventions and the largest IHL agreements, studies show a permanent difference between commitment and process. UNAMA and ICRC reports documented widespread damage, illegal detention, and forced migration to citizens, but accountability has been rare. The national courts fought with corruption and political pressure (Seystick, 2020), while international mechanisms like the ICC faced geographical political resistance and jurisdiction limits (Wilke, 2021). This institution of literature gives Afghanistan a clear example of the dual role of the IHL: a powerful principle framework that shapes global expectations, but one whose implementation is limited by political, institutional and legal obstacles.

Beyond the issue of accountability, Afghanistan faces additional barriers to upholding IHL. Detention practices have repeatedly drawn criticism for alleged torture, inhumane conditions, and the precarious situation of vulnerable groups, especially women and children. The introduction of modern technologies

such as drones, artificial intelligence, and cyber capabilities has rendered traditional legal models less effective, as the lines between combatant and civilian become blurred. Gender-based harms further complicate enforcement, with Afghan women and girls experiencing unique and often overlooked violations. At the domestic level, weak legal institutions and the coexistence of tribal, religious, and customary norms impede cohesive justice. International organizations, including the UN and the ICRC, play essential roles in observation and advocacy, but their influence is limited by their lack of enforcement power and dependence on government cooperation. Taken together, these dynamics prompt a reexamination of IHL's reach and relevance in highly complex conflict environments.

Ultimately, Afghanistan stands as a telling example of the formidable challenges that confront international humanitarian law in the twenty-first century. The country's experience illustrates the friction between international legal norms and local dynamics, as well as the profound impact of shifting politics and technologies on humanitarian protections. This analysis draws on research and reports to explore critical topics: accountability for war crimes, detention practices, the influence of new technologies, civilian protection, gender-based impacts, institutional mechanisms, and the function of international organizations. The aim is to highlight both the extensive record of documented violations and the enduring obstacles that prevent IHL from achieving its humanitarian objectives.

Research Questions

1. What political, institutional, and legal barriers hinder IHL enforcement in Afghanistan?

Research Objectives

1. To investigate political, institutional, and legal barriers hindering IHL enforcement in Afghanistan.

Methodology

This study is based on a Qualitative Desk-Based Research Design to examine the obstacles to the implementation of International Humanitarian Law (IHL) in Afghanistan. Rather than collecting of data directly from the field, it relies on reports, contracts and academic tasks such as research and reliable secondary sources. Rather than collecting data directly from the field, it relies on reports, treaties, and academic works, as well as other reliable secondary sources. This approach is particularly effective in the context of a conflict-affected country like Afghanistan, where access to primary data is limited but substantial secondary material is available. The collected data analysed through Thematic Analysis. For the perfect reflection the data has been categorized into different themes such as weak institutions, political interference, humanitarian limitations, and legal challenges.

Findings and Analysis

Accountability and War Crimes Documentation

One of the biggest enforcement issues is the lack of accountability for war crimes committed by both international and local actors in Afghanistan. Hashimy (2022) claims that the United States' involvement in the country caused many civilian deaths and abuses of detainees. However, accountability mechanisms are hard to find because of political protection and the clever use of immunity agreements. His analysis reflects wider concerns in the International Criminal Court's (ICC) Afghanistan situation. That situation has faced repeated challenges due to questions about admissibility, jurisdiction, and the decision-making power of prosecutors (Dannenbaum, 2021; ICC, 2023). Although the ICC started an investigation into crimes committed by the Taliban, Afghan government forces, and U.S. personnel, it has faced political pushback from powerful states. This raises doubts about its ability to ensure fair accountability.

Domestic jurisprudence sometimes fills this gap. The Dutch judgment on IHL compliance in the Chora District (Lieber Institute, 2021) shows that national courts can evaluate the legality of foreign military

actions in Afghanistan, recognizing civilian harm as a justiciable matter under IHL. Yet such rulings remain the exception. Wilke (2021), for example, shows how U.S. military reporting downplays civilian casualties from airstrikes, creating what he calls “legal tragedies” that obscure responsibility and prevent redress for victims. UNAMA’s annual Protection of Civilians reports reinforce this pattern, documenting consistent underreporting of harm and lack of transparent investigations by both international forces and Afghan authorities (UNAMA, 2019; 2020; 2025).

In the wake of the Taliban's 2021 return to power, recent academic and human rights investigations have painted a vivid picture of Afghanistan’s legal landscape. Sultani (2023) observes that the current authorities perceive transitional justice as a threat to their political stability, placing power above the need for accountability. Support for this view emerges from reports by Human Rights Watch and UN special rapporteurs, both of which document how the Taliban leadership has been more focused on consolidating control than on upholding International Humanitarian Law (IHL) (UNAMA, 2022). Sevastik (2020) further argues that a culture of impunity is deeply woven into Afghanistan’s governance, where decisions are often driven by immediate political needs rather than legal principles. Importantly, comparative research (Bellal, Giacca & Casey-Maslen, 2019) suggests that this struggle with accountability is not exclusive to Afghanistan. Instead, it is intensified by stark imbalances of power between Afghan victims and influential international actors, especially troop-contributing countries that benefit from immunities and exert strong political sway in global forums.

Institutional and Legal Enforcement Frameworks

Afghanistan’s system for enforcing International Humanitarian Law (IHL) is incredibly fragile. Sevastik (2020) puts it plainly, years of letting war crimes go unpunished have worn down the rule of law, so now both government officials and armed groups often act without fear of real consequences. The problem only gets worse because Afghanistan has many different legal systems working at the same time. According to the report *Legal Pluralism and Militia Regulation* (2021), state courts, tribal councils, and community mediators all try to handle justice, but this patchwork approach leaves people confused and justice inconsistent. Sometimes, these local systems can help settle disputes, but more often, they make things harder for victims, who are left trying to navigate a maze with no clear path to justice.

Anglo-Afghan treaties set Afghanistan up for today’s weak legal and political systems. Chitrali and Anwar (2011) go even further, focusing on the survivors themselves real people whose pain and trauma are often ignored. Their stories remind us that for many, justice is still out of reach, and healing is a long way off. What’s powerful about their work is how it connects Afghanistan’s struggles with those in the wider region: broken systems, overwhelmed support networks, and people just trying to move forward despite it all. These authors put faces to the statistics and show us the real human cost behind the headlines.

Looking at things from the international side, the situation gets even more complicated. The International Committee of the Red Cross (ICRC, 2020, 2023) points out that rules made by foreign partners, especially laws that make it risky to talk to groups outside the government, have made it much harder for humanitarian workers to do their jobs. In Afghanistan, this means that people trying to protect detainees, help civilians move to safety, or talk with fighters to reduce harm often run into a wall of rules and restrictions set by donors or international laws. Ironically, while these measures are supposed to keep people safe, they sometimes make things worse by tying the hands of those who want to help. It’s a tough balancing act, and ordinary Afghans are the ones caught in the middle.

Bellal, Giacca, and Casey-Maslen (2019) remind us that modern wars demand new ways of thinking and acting, especially when it comes to making sure justice is served. In Afghanistan, though, things have only gotten tougher. Ever since the Taliban returned to power in 2021, almost all the fragile channels for justice that once existed have disappeared. Sultani (2023) notes that the Taliban don’t seem

interested in helping victims heal or find justice; their focus is on holding onto power. This leaves survivors of war crimes with almost nowhere to turn state courts and international bodies like the ICC are either blocked by politics or simply out of reach. For many Afghans, it means their stories of pain and loss go unheard and unaddressed.

When you put all these studies together, a clear and deeply human story emerges. Afghanistan's struggles to enforce IHL aren't just about broken institutions or complicated laws; they're about real people facing impossible choices in a system that keeps letting them down. The tangle of overlapping legal systems leads to confusion, the collapse of government leaves survivors stranded, and strict international rules tie the hands of those who want to help. In the end, whether or not war crimes are addressed often comes down to who has the power and willingness to act not what the laws say should happen. It's a sobering reminder of how much work remains if justice and dignity are ever to become a reality for Afghan people.

Barriers in Enforcement of IHL

The main barriers to enforcement IHL in Afghanistan. Political challenges are the most significant. Issues like sovereignty, protection of powerful states such as the United States, and limits of the International Criminal Court have often blocked accountability for war crimes. In practice, political will, not legal rules, usually determines if violations are investigated or prosecuted.

Institutional weakness is another barrier to enforcement. The Afghan judiciary has collapsed after years of impunity and a mix of legal systems, making credible investigations or prosecutions rare. Even when courts or international partners tried to hold people accountable, unclear authority and militia influence made enforcement even more difficult.

International humanitarian law (IHL) in addition, the law of armed conflict is also a combination of international rules that aims to protect citizens, manage the treatment of prisoners, and limit the means and methods of war. Although its legal framework, connected with the Geneva Conventions (1949) and the Additional Protocol (1977), is well -developed, Afghanistan practically highlights the difference between law and law. Information implementation differences mean a constant failure to translate IHL's principles into accountability on earth. Despite being a party to key agreements, Afghanistan has repeatedly seen violations - without unprecedented attacks, violence, forced displacement, meaningful legal action.

Political Obstacles

The implementation of International Humanitarian Law (IHL) in Afghanistan has been deepened by political factors both nationally and internationally. These political obstacles often decide whether to investigate and prosecute violations.

Sovereignty and State Resistance

The Afghan conflict has revealed how claims of **sovereignty** can be used to block accountability. Even before the Taliban's takeover in 2021, Afghan authorities frequently resisted external investigations into alleged violations by Afghan security forces or their international partners (Sevastik, 2020). After August 2021, the Taliban regime further restricted UNAMA, the ICRC, and NGOs from monitoring detention sites or documenting civilian casualties, citing "national sovereignty" (UNAMA, 2025). This has left serious violations—such as extrajudicial killings and arbitrary detentions largely uninvestigated.

International Criminal Court (ICC) Constraints

The ICC's involvement in Afghanistan demonstrates the political vulnerability of international justice. While the Court authorized investigations into alleged war crimes by the Taliban, Afghan government forces, and U.S. personnel, progress was stalled for years due to political pushback (Hashimy, 2022). The U.S. applied considerable pressure, even imposing sanctions on ICC officials in 2020, framing the

investigation as a threat to national sovereignty (The Question of Interest of Justice and of Global Battlefield in the Afghanistan Situation at the ICC, 2021). These interventions illustrate how powerful states can weaken enforcement mechanisms, leaving accountability selective and inconsistent.

Counterterrorism vs. Humanitarian Law

The framing of the Afghan conflict through a counterterrorism lens also undermined IHL. Since 2001, operations were often justified under the “War on Terror,” which blurred distinctions between combatants and civilians (Ferraro, 2021). Counterterrorism frameworks allowed detention without trial, targeted killings, and the use of “enemy combatant” categories not recognized in IHL (The Concept of Enemy Combatant, 2020). This discourse weakened the protective power of humanitarian law by subordinating it to security imperatives.

Selective Accountability and Global Power Politics

Accountability for IHL violations in Afghanistan has been uneven and selective. For instance, while the Dutch judgment on the Chora District marked a rare case of a Western state being held accountable for civilian harm (Lieber Institute, 2021), similar incidents involving U.S. and NATO forces rarely reached judicial review (Wilke, 2021). As Hashimy (2022) notes, this reflects the hierarchy of accountability in international law: weaker actors such as insurgents are prosecuted, while powerful states enjoy political immunity.

Institutional Weaknesses

One of the most serious obstacles to the implementation of International Humanitarian Law (IHL) in Afghanistan is the one that is linked to the fall or inadequacy of domestic and international institutions that ensure accountability. Although IHL depends largely on state structures, courts and international tribunals, the Afghan context has been the implication of weak governance, infinite judiciary and changing political authority, which severely affected and weakened the systematic compliance.

Collapse of the Afghan Judiciary

The demolition of Afghanistan's judiciary - especially after the Taliban's re-emergence in August 2021 caused a major gap in the implementation of IHL. Even before this political change, Afghan courts were lacking in corruption, limited sovereignty, and the ability to prosecute violations by state and non state parties (Sevastik, 2020). Reports from the United Nations documented widespread impunity for war crimes and human rights abuses even during the Afghan Republic era, as political elites often shielded military and security officials from prosecution (UNAMA, 2022). The Taliban's judicial structures, rooted in their interpretation of Sharia, lack recognition under international law and do not integrate IHL standards. As a result, violations such as extrajudicial executions, collective punishments, and restrictions on women's rights continue largely unchecked (UNAMA, 2025).

Institutional Weakness within International Mechanisms

At the international level, enforcement mechanisms have faced similar barriers. The International Criminal Court (ICC), despite opening an investigation into war crimes in Afghanistan, has faced political resistance and jurisdictional challenges. The United States, which is not a party to the Rome Statute, rejected ICC scrutiny of alleged war crimes committed by U.S. forces, framing it as an infringement on sovereignty (Hashimy, 2022). This tension between international justice and state sovereignty has severely limited the deterrent effect of the ICC in Afghanistan (The Question of Interest of Justice and of Global Battlefield in the Afghanistan Situation at the ICC, 2021).

Other institutional avenues, such as ad hoc commissions of inquiry or hybrid tribunals, were never effectively established in Afghanistan. Unlike in the former Yugoslavia or Rwanda, there was no international consensus to create a tribunal tailored to Afghan violations. This absence reflects not only political reluctance but also the marginalization of Afghan victims in global justice discourses.

Weaknesses of UN and Humanitarian Monitoring

UN agencies such as UNAMA and humanitarian organizations like the ICRC have played a vital role in documenting violations. UNAMA's annual *Protection of Civilians in Armed Conflict* reports and detention monitoring studies (2019; 2021) remain key sources of evidence. However, these bodies lack enforcement authority, operating instead through "naming and shaming" strategies, which depend on international pressure for impact (ICRC, 2024). In Afghanistan, where geopolitical rivalries overshadow humanitarian concerns, these reports often failed to translate into prosecutions or accountability measures.

The Role of Non-State Armed Groups

Institutional enforcement has also been hampered by the role of non-state armed groups, including the Taliban (prior to 2021), ISIS-K, and various militias. IHL binds all parties to conflict, but enforcement is particularly difficult when actors reject international law or lack the institutional structures to hold their members accountable (Ferraro, 2021). While the ICRC has engaged in dialogue with such groups to promote compliance (ICRC, 2023), enforcement remains voluntary, with little capacity to punish systematic violations.

Impunity and the Cycle of Violence

The absence of functioning institutions has reinforced a cycle of impunity in Afghanistan. Sevastik (2020) argues that the erosion of the rule of law created a context where repeated violations such as indiscriminate attacks, torture in detention, and targeting of civilians became normalized. The lack of credible judicial recourse has undermined the legitimacy of IHL, reducing it to a symbolic rather than operative framework.

Conclusion

Afghanistan's experience puts a human face on the ongoing struggle to turn the promise of International Humanitarian Law (IHL) into real protection. For families living through conflict, it quickly becomes clear that having rules isn't enough what matters is whether those rules are respected and enforced. Despite clear laws meant to shield civilians, enforcement is often fragmented and weak, tangled in politics, technological change, and the messiness of real life. Afghanistan is not alone in this. Its story mirrors a wider global problem: when the world fails to bridge the gap between written rules and daily realities, it's ordinary people who pay the price and lose faith that IHL can truly keep them safe.

In Afghanistan, the enforcement of IHL hinges less on the strength of legal frameworks and more on the presence of genuine political will. Imbalanced power dynamics shield international actors from scrutiny, while the International Criminal Court (ICC) struggles with insufficient reach and resources. This often results in selective justice: less powerful groups, such as the Taliban or local militias, become the main targets of legal action, while more influential actors evade accountability. Such double standards erode trust in IHL, as state immunity and diplomatic protections often prevent survivors from accessing justice. The persistence of these obstacles perpetuates impunity, diminishes deterrence, and undermines the broader credibility of international law.

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