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## Canada's first voluntary IHL report: a step forward with opportunities for improvement

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*Canada recently published its first voluntary report on the implementation of international humanitarian law (IHL), highlighting its efforts to comply with IHL rules. However, the report overlooks key challenges and critical issues, leaving gaps that future reports should address.*

*In this post, Professor Tiwa Fomekong examines the achievements described in Canada's report alongside its omissions, arguing that for such reports to reach their full potential as tools for enhancing respect for IHL and accountability, future efforts must be more comprehensive and transparent in addressing shortcomings, detailing corrective actions, and tackling emerging issues.*

*ICRC Humanitarian Law & Policy Blog · Canada's first voluntary IHL report: a step forward with opportunities for improvement*

On September 20, 2024, Canada took a significant step in advancing the implementation of international humanitarian law (IHL) by publishing its first *voluntary report* on the measures it has adopted to fulfill its IHL obligations. This initiative reflects Canada's commitment to IHL standards and aligns with the global trend toward greater transparency and accountability in their application. However, while the report outlines many of Canada's measures to protect persons and mitigate human suffering in situations of armed conflicts, it leaves critical gaps unaddressed, raising questions about its comprehensiveness and future directions.

Voluntary IHL reports, although not legally required, serve as valuable tools for states to document how they fulfill their IHL obligations at the national level. Originating from initiatives like *Resolution 1 of the 33rd International Conference of the Red Cross and Red Crescent* (2019), these reports encourage states to share their experiences in implementing IHL at the domestic level, exchange best practices, and highlight areas for improvement. Canada's participation signals alignment with these goals, but the omissions in its report highlight the need for a more comprehensive approach to IHL reporting – one that not only showcases achievements but also addresses challenges and identifies actionable solutions.

## **The importance of voluntary reports on IHL implementation**

Voluntary reports on the implementation of IHL are important in several respects. They are a lever for strengthening the transparency and accountability of states in respecting and applying their international obligations under this legal regime. By drafting and publishing such reports, states publicly affirm their commitment to respecting and promoting IHL norms, even without a binding obligation to do so. This voluntary approach demonstrates a willingness to be transparent about compliance efforts and acknowledges the importance of IHL in protecting victims of armed conflict. Furthermore, these reports can create a positive ripple effect, inspiring other states to follow suit and contribute to a culture of openness and accountability.

In addition to promoting transparency, voluntary reports facilitate the sharing of good practices and encourage constructive exchanges between states. They provide an opportunity for states to identify gaps in their national implementation of IHL and determine the legislative, institutional, or operational adjustments needed to strengthen compliance. This review process encourages states to improve their implementation mechanisms, while offering concrete examples of successful initiatives that can inspire other countries. Indeed, when these reports are made public, their impact extends beyond national borders, allowing the international community to learn useful lessons from them. They could thus serve as catalysts for sharing good practices and proposing solutions to common challenges, strengthening international cooperation in the implementation of IHL. Ultimately, this would foster continuous improvement of national systems and operational practices.

In a context where IHL faces frequent violations that undermine its *perceived effectiveness*, voluntary reports play a vital role in demonstrating its continued relevance. Despite transgressions, IHL is respected and applied by many states. Public perception, however, is often shaped by images of armed conflicts highlighting violations, suffering, and destruction, fueling skepticism among the general public and even IHL practitioners. Transparent and well-developed reports can counter this narrative by documenting compliance efforts and providing a balanced perspective that

challenges the overly negative view of IHL. These initiatives can also encourage other actors to strengthen their own commitments, while restoring confidence in IHL's ability to protect victims. Ultimately, these reports have the potential to foster a *global culture of respect* for and implementation of IHL.

Finally, voluntary reports provide states with a strategic advantage by allowing them to address potential criticisms proactively. By documenting efforts and explaining any shortcomings alongside corrective measures, states can minimize the risk of public scrutiny and enhance their credibility. This proactive stance demonstrates a genuine commitment to improving compliance with IHL and contributes to the broader effort to strengthen the protection of victims of armed conflict.

## What the Canadian report reveals

Drafted by the *Canadian National Committee on Humanitarian Law* (CNCHL), whose mandate is to *promote the application of IHL in Canada*, the Canadian report on IHL implementation provides a laudatory overview of the measures taken by the country to implement this legal framework. It draws on the guidance provided by the *Toolkit for Preparing a Report on the Implementation of International Humanitarian Law at the Domestic Level* published by the United Kingdom and the British Red Cross, and is structured around five main parts: General domestic implementation (Part I); Dissemination, training and legal advice (Part II); domestic jurisdiction over violations (Part III); Protections (Part IV); Means and methods of warfare (Part V).

In substance, it emerges that Canada is party to most IHL treaties, including the Geneva Conventions, their Additional Protocols, and instruments prohibiting or restricting the use of certain specific weapons. Canada has also transposed the obligations arising from these legal instruments into its domestic legal framework, notably through laws such as the *Geneva Conventions Act*, the *Crimes Against Humanity and War Crimes Act* (CAHWCA), and the *Anti-Personnel Mines Convention Implementation Act*.

The dissemination and promotion of IHL in Canada is ensured by key institutions such as the *Canadian Red Cross* (CRC) and the CNCHL. The CRC plays a central role in raising awareness, offering training to various audiences, notably the Canadian Armed Forces (CAF), policy makers, and educators. For its part, the CNCHL acts as a coordination platform, formulating strategic recommendations to improve IHL compliance. These efforts include ongoing IHL training provided by the CAF to its own members, as well as ad hoc training for members of foreign armed forces. This training addresses key contemporary themes, such as the prevention of sexual violence and the protection of children in armed conflict.

The report also informs that Canada has a legal and institutional framework to sanction serious violations of IHL. This framework is based mainly on three pillars: the Geneva Conventions Act, the CAHWCA, and the *Criminal Code*. The *Extradition Act* reinforces these mechanisms by allowing the transfer of persons accused of international crimes to other states or jurisdictions, such as the International Criminal Court.

The protection of civilians, cultural property, and persons deprived of liberty is a central aspect of Canadian efforts in IHL. Regarding detainees, the *CAF Code of Conduct* incorporates the standards of the *Third Geneva Convention*, guaranteeing humane treatment of captives, with specific protections for women against sexual violence and other abuse. These commitments are supported by operational manuals and regular training, before and during military deployments.

With respect to cultural property, Canada has incorporated the obligations of the Convention for the Protection of Cultural Property in the Event of Armed Conflict into its national legislation, including sanctions for the destruction or

illegal appropriation of such property. This legislation also applies extraterritorially, allowing for the prosecution of perpetrators of such offenses when they are on Canadian territory.

Finally, the report addresses the means and methods of warfare, highlighting the prohibition of certain weapons, such as anti-personnel mines and chemical weapons. Under *Article 36 of Additional Protocol I*, Canada conducts reviews of new weapons to ensure their compliance with IHL. As a party to the *Arms Trade Treaty*, it imposes restrictions on the export of arms to prevent their use to commit serious violations of IHL.

Despite the laudable efforts described in the report, an in-depth examination reveals shortcomings and gray areas.

## Omissions and gray areas of the Canadian report

The Canadian report has the undeniable merit of centralizing in a single document often scattered and difficult to access information concerning the implementation of IHL by Canada, thus making it a valuable reference resource. However, critically, it is regrettable that the report presents very little, if any, quantitative and, *a fortiori*, qualitative data that would allow to appreciate the scope and impact of the measures described. For example, it remains silent on essential elements, such as the number of prosecutions initiated for war crimes, extraditions carried out, or the challenges encountered in these processes. Similarly, with regard to arms transfer controls, no information is provided on possible permits refused, thus limiting transparency. In the future, the inclusion of figures or statistics, as well as, to the extent possible, qualitative elements concerning operational activities and practices undertaken, would strengthen the substance, credibility, and relevance of this reporting exercise while providing a more complete picture of Canadian efforts.

One of the fundamental objectives of a voluntary report on the implementation of IHL is not only to paint a picture of the positive points, but also to highlight the challenges encountered and the measures envisaged to overcome them. However, the Canadian report lacks transparency in this regard, painting an overall positive picture of Canada's efforts without sufficiently acknowledging the obstacles or shortcomings it would face. For example, although the roles and responsibilities of the actors involved in promoting respect for IHL are stated, the report remains vague on the concrete challenges related to integrating IHL standards into military operations, particularly in partnerships with states that do not always share the same IHL commitments. Shedding light on challenges and ways to overcome them is essential, as the implementation of international treaties is an ongoing and perfectible process. It would be illusory to believe that no state encounters difficulties in this exercise. Identifying specific challenges would demonstrate a real willingness for transparency and progress.

The Canadian report does not address the revision of military manuals, despite recommendations in the Toolkit for Preparing a Report on the Implementation of International Humanitarian Law at the Domestic Level to specify the existence and updating frequency of such manuals. This omission is notable, as the manuals referenced in the report, which incorporate IHL rules and principles, are over 20 years old. Significant developments in IHL have occurred since then, including new instruments like the *Convention on Cluster Munitions* and *Protocol V on Explosive Remnants of War*, to which Canada is a party. These require national implementation, including updates to military manuals. Additionally, evolving interpretations of IHL, informed by decisions of international criminal courts and the ICRC's *updated commentaries on the Geneva Conventions*, further underscore the need for revisions. Military manuals are critical for implementing IHL, reflecting a state's interpretation of its rules and positions on emerging issues while guiding the armed forces in their practical application. To promote transparency, as voluntary reports aim to do, the Canadian report should address the status of its manuals, including plans for their revision and expected publication dates.

The report overlooks key contemporary IHL issues relevant to Canada, including the regulation of Canadian companies operating in conflict zones. Some of these companies *have been accused of serious human rights and IHL violations*

abroad, yet Canada lacks a comprehensive, binding policy to prevent such abuses, hold perpetrators accountable, and provide reparation to victims. While the Office of the *Canadian Ombudsperson for Responsible Enterprise* exists, its *non-coercive mandate* limits its effectiveness. Future reports should address measures to promote IHL among these actors and detail mechanisms ensuring accountability.

Additionally, the report is silent on mechanisms to investigate allegations of abuse by the CAF abroad. Although it affirms Canada's jurisdiction to prosecute IHL violations and outlines relevant legal bases, it provides no data on past investigations, outcomes, or identified gaps. Legal rules alone are insufficient to ensure effective enforcement.

Finally, the report superficially addresses issues related to new military technologies, such as drones and cyber operations, which pose increasing challenges to the IHL regime. It does not clearly explain how Canada regulates these tools to prevent IHL violations or what its position is on the application of this legal framework to cyber operations. This lack of transparency on a constantly evolving domain deprives the report of its essential function as a tool of accountability.

Despite these shortcomings, this first report on the implementation of IHL represents an important step forward. While IHL violations continue to occur in many ongoing armed conflicts, this report is a reminder that this law is also respected and promoted, not only flouted. Sustaining this voluntary reporting initiative is essential to ensure constant monitoring of progress and identify necessary improvements. Moreover, by sharing its good practices and being transparent about its challenges, Canada can encourage other countries to do the same. However, to be truly exemplary, future reports will need to be more comprehensive and transparent, including on the most sensitive issues.

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