



International Humanitarian Law and Human Rights Law **A NORDIC TRADEMARK IN MILITARY CAPACITY DEVELOPMENT?**

Integrating International Humanitarian Law (IHL) and Human Rights Law (IHRL) into capacity-building and training is not only a moral obligation, but also a military and political strategy to succeed both on and beyond the battlefield.

When internationally agreed laws of armed conflict are disregarded by non-state armed groups, civilians end up paying the price. Recent terror attacks in Beirut, Paris and Bamako are frightening examples of what warfare looks like when there are no rules to guide the belligerents. Recent events in Iraq, Syria and Yemen demonstrate that conventional armed forces are also entirely capable of ignoring IHL by engaging in

RECOMMENDATIONS

- Pursue early integration of IHL and IHRL in training and capacity-building in all external military engagements and emphasize that IHL and IHRL compliance can enhance mission success
- Ensure a Nordic focus on IHL and IHRL in the context of the Nordic Defence Cooperation (NORDEF)CO
- Training materials and capacity-building strategies should be context-specific
- Enhance documentation of past experiences and lessons learned

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“ Today, no walls can separate humanitarian or human rights crises in one part of the world from national security crises in another.”

Kofi Annan, Nobel Peace Prize speech, 2001.

summary killings of civilians, torture, wrongful detention and violations of other basic rights.

Building security institutions in collapsed states

In recent decades, the Nordic armed forces have been engaged in international missions in the former Yugoslavia, Iraq and Afghanistan, as well as a range of UN peace operations. Many of these interventions have involved the training and capacity development of local and national security forces. In addition, the Nordic countries have been involved in several Nordic or bilateral initiatives focusing on capacity-building, including the Nordic Advisory and Coordination Staffs' assistance to the Eastern African Standby Force and Norway's longstanding training of Indonesian special forces.

In many of these contexts, the local security forces acquired problematic track records in observing the international laws of armed conflict and human rights more broadly. Nordic engagements have often followed regime change, for instance, in Iraq and Afghanistan, and/or state collapse, as in the former Yugoslavia, Iraq and many UN missions. Often, neither the former nor the incoming regimes have considered adherence to IHL and IHRL a priority, particularly in the initial stages of fragile political settlements, which are often accompanied by continued fighting and disputed state authority.

Often Nordic troops have been deployed into realities where the needs are endless and everything is a priority. The main focus in these situations has understandably been to fulfil the stated military

objectives and build the capacity of the local security forces while ensuring force protection. Capacity-building has often focused on basic training, including shooting, patrolling, and command and control. This order of priorities is hardly surprising when ambitious military objectives have to be met under the constraints of tight troop ceilings, often in inhospitable and unsafe areas of operation. This does, however, beg the question of whether we can justify strengthening the military capabilities of the security authorities with flawed IHL and IHRL track records, without also ensuring that these authorities respect basic human rights and observe the laws of armed conflict.

Accountable security institutions: a precondition for a proper exit-strategy

Posed as a moral or legal question, recent work by the International Law Commission suggests that supporting authorities or regimes that violate basic IHL and IHRL might constitute complicity in their subsequent wrongful acts. While the likelihood of international legal action in this regard may be limited, the Commission's work indicates a move towards acknowledging that military capacity-building may indirectly increase the risk of IHL/IHRL violations.

Posed as a military-strategic question, the answer has perhaps been less explored but is intuitively somewhat more straightforward. Recent international missions, including those in Afghanistan and Iraq, have seen unprecedented threats of asymmetrical attacks from non-state armed groups operating among civilians. In response, international forces have sought to *win hearts and minds* by trying to convince

local populations of the benevolence of the international presence while promoting the legitimacy of the elected government and its security institutions. Such efforts are seriously hampered when local, internationally trained security forces repeatedly violate human rights and the laws of armed conflict. Joint patrolling and operations by national and international forces have strengthened the perceptions of local populations that the actions of the national security authorities are inseparable from the policies and principles of the international forces. Groups contesting state authorities obviously seize every opportunity to capitalize on such violations in order to bolster their attempts to undermine the state's legitimacy. By ignoring IHL and IHRL in training and capacity-building, international forces risk undermining the probability of a smooth and legitimate exit. Emphasizing these points to local security forces, and thereby directly tying compliance with IHL and IHRL to a mission's success, may also serve to increase local interest in IHL and IHRL compliance in a way that purely legal and moral arguments may not be able to do.

In summary, ensuring that the national security authorities adhere to IHL and IHRL principles is a precondition for shifting the loyalty and trust of local populations from competing centres of authority towards the elected government and its formal security institutions. Every legitimate exit strategy depends on our ability to ensure that societies are left with accountable and trustworthy security institutions. This supports the argument that IHL and IHRL must be integrated from the outset into training and capacity-building efforts in all international military engagements. This requires a sustained focus from the capital level to the issuing of directives and requirements for reporting on progress. This requires resources to be made available to ensure the integration of IHL and IHRL elements in training and capacity development activities and the designation of specific focal points to accompany and monitor this work.


ABOUT THIS BRIEF

On 17 November 2015, a seminar on "*Integrating International Humanitarian Law and Human Rights Law in capacity building*" brought together Nordic practitioners, academics and decision-makers in Copenhagen.

The seminar provided a platform for discussing Nordic lessons learned from domestic and externally focussed IHL and IHRL training and capacity development, and for discussing how this agenda most effectively could be moved forward in a Nordic context. This brief draws on discussions at this seminar as well as analysis conducted in preparation for it.

A Nordic way forward?

While taking on diverse roles in international security architectures, the Nordic countries would probably benefit significantly from continued collaboration on how to improve the incorporation of IHL and IHRL elements into integrated strategic interventions alongside other military training and capacity development efforts. This would span the entirety of political and military-strategic planning, including directing, budgeting and resourcing missions, as well as defining end-state scenarios and reporting requirements, including baselines and indicators. In essence, this involves making sure that building the capacity of national security authorities does not result in increased IHL/IHRL violations. However, the collaboration should also cover the more operational aspects of such interventions, ideally developing useful tools and resources for the practitioners tasked with undertaking the actual training and capacity development activities.



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Could the lack of a focus on IHL/IHRL be considered illegal, or is it just poor strategy?

The context-specificity of each intervention probably makes it impossible to produce generic training materials or develop a curriculum that could be rolled out across different missions. However, guidance on assessing training and capacity development needs, descriptions of general approaches to training (including, for example, the use of visuals), documentation of lessons learned from past experiences and the establishment of a community of practice are among the low-hanging fruits which enhanced cooperation at the working level could focus on. The recent seminar in Copenhagen (see text box) demonstrated that experiences and lessons learned from IHL/IHRL training and capacity-building are poorly documented in all the Nordic countries. Nonetheless there seems to be a genuine interest across these countries in recording and learning from past experiences. This will entail additional analytical work focused on identifying and reaching the broad range of officers and military and civilian legal advisors who have been involved in IHL/IHRL training and capacity development across missions and in a variety of functions. Such analyses will establish a better knowledge base to inform Nordic collaborative efforts going forward.

There would thus seem to be ample arguments to move forward on the political-strategic as well as the operational levels in the Nordic context. As argued in this brief, the proper integration of IHL and IHRL into training and capacity-building is not only a moral obligation, but also a critical precondition for achieving military-strategic objectives and ensuring a successful eventual exit from international engagements. The Nordic countries are uniquely positioned to take the global lead in ensuring that building military capacity is always accompanied by efforts to respect the laws of armed conflict and human rights. This will benefit the Nordic armed forces, their host-nation counterparts and the populations they are intended to assist and protect.

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Coverphoto:

ANA - Afghanistan National Army. 2009. Camp Shorabak, Helmand. Education of Afghan soldiers with help from Danish mentors.

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