

LIBRARIAN'S PICK

The protection of persons with disabilities in armed conflict: An empty shelf in an IHL-specialized library?

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Abstract

A window into the history of international humanitarian law scholarship, the ICRC Library's collections capture over 150 years of debates and developments related to the branch of international law that protects those who do not, or no longer, take part in hostilities. Yet, among the 41,000 references in the Library's collections, only a handful of recent publications focus on how this protection applies to persons with disabilities. In this article, two ICRC reference librarians take stock of this gap in their collections and consider its implications.

Keywords: persons with disabilities, international humanitarian law, international disability rights, academic scholarship, library collections.

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ICRC Library

The “Librarian’s Pick” is a regular section of the *Review* in which one of the ICRC librarians picks and writes about their favourite new book of thematic relevance to the edition and relating to international humanitarian law, policy or action, which they recommend to the readers of the journal. In this case, however, the unfortunate reality is that no new book clearly fits the bill. So instead, this “Librarian’s Pick” explores the literature that does exist on disability and IHL and highlights what that literature has achieved – and what is still to be achieved.

The ICRC Library welcomes researchers interested in international humanitarian law (IHL) and the institution’s work throughout the years. Its online catalogue is the gateway to the most recent scholarship on the subject, documents of diplomatic and international conferences, all ICRC publications, rare documents published between the founding of the ICRC and the end of the First World War, and a unique collection of military manuals. The Library Team also publishes research guides in order to help researchers access the full texts of the most relevant and reliable sources in the field of IHL and the ICRC, as well as a comprehensive IHL Bibliography, with three issues every year.

The online catalogue is available at: library.icrc.org. For more information on the research guides, see: blogs.icrc.org/cross-files/category/research-guide. To subscribe to the IHL Bibliography, email library@icrc.org with “IHL Bibliography subscription” in the subject line.

The call for papers for the present issue of the *Review* prompted us, as librarians, to have a closer look at our collections on the protection of persons with disabilities in armed conflicts. To say that the results were meagre would be an understatement: only twelve international humanitarian law (IHL) references, published between 1988 and 2021, half of them in the past three years, are tagged in our library catalogue with the keyword “person with disability”.¹ In fact, this keyword has been used about ten times more often to describe publications related to the International Committee of the Red Cross’s (ICRC) humanitarian operational activities than legal scholarship. This is hardly surprising: the rare authors that have written on the topic systematically mention the lack of pre-existing literature

1 In line with its current acquisition policy, the ICRC Library aims to capture all academic scholarship on IHL published in English and French. It also acquires publications in the other United Nations languages (Arabic, Chinese, Russian and Spanish), and in German and Italian, without striving for exhaustivity, and occasionally in other languages. The remarks made in this contribution are based on the Library’s collections as they stand as of September 2022, and the works discussed herein can be browsed via the Library’s online catalogue at: library.icrc.org (all internet references were accessed in September 2022). Suggestions for any academic publication on the protection of persons with disabilities in armed conflict that the librarians may have missed are most welcome and can be sent to library@icrc.org.

and the pressing need for more research.² This issue’s “Librarian’s Pick” is thus a “Librarian’s Un-Pick” – rather than recommending one of our latest acquisitions to the readers of the *Review*, we’re sharing a “before picture” of our collections on the topic, right as we’re putting up virtual shelves to welcome this issue’s contributions and, hopefully, the growing body of literature that it will inspire.

The adoption of the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 does not seem to have directly led to an uptake in scholarly production on the issue of persons with disabilities in armed conflict, despite the Convention’s explicit mention (Article 11) of its application in armed conflict, which should trigger questions about its co-application alongside IHL rules. While comparisons with other topics may appear misguided, it is still revealing to note that our collections currently include over 220 IHL references on the relatively new subject of autonomous weapons, and a similar amount on the protection of cultural objects in armed conflict.

To date, the most consequential research on the protection of persons with disabilities in armed conflict has been published, in chronological order, in a *Monash University Law Review* article in 2014,³ a chapter by Janet E. Lord in 2016,⁴ a 2018 article by Ivan K. Mugabi,⁵ and last but not least, a comprehensive paper by Alice Priddy in the Academy Briefing series of the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy) in 2019.⁶ These recent publications address the co-application of the CRPD and IHL rules. They often grapple with the language of IHL treaties, as they argue that it reflects a now outdated medicalized approach to disability, in opposition to the current social model centred on disability rights. Finally, they apply a disability-inclusive perspective to selected IHL provisions.

Eight years after the adoption of the CRPD, Naomi Hart, Mary Crock, Ron McCallum and Ben Saul published the first comprehensive analysis of the protection that it grants to persons with disabilities in situations of armed conflict.⁷ The authors summed up the stakes of the co-application of IHL and the CRPD in compelling terms, as the “intersection between one of the oldest fields of human rights law and one of the newest”.⁸ With a “new wine in old bottles” approach, they looked in turn at the potential implications of the CRPD for IHL rules on protections for the “disabled and infirm”, protections for the sick and wounded, fundamental

2 Alice Priddy, *Disability and Armed Conflict*, Academy Briefing No. 14, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), Geneva, 2019, p. 14; Janet E. Lord, “Persons with Disabilities in International Humanitarian Law: Paternalism, Protectionism or Rights?”, in Michael Gill and Cathy J. Schlund-Vials (eds), *Disability, Human Rights and the Limits of Humanitarianism*, Routledge, London and New York, 2016, p. 155.

3 Naomi Hart, Mary Crock, Ron McCallum and Ben Saul, “Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflicts”, *Monash University Law Review*, Vol. 40, No. 1, 2014.

4 J. E. Lord, above note 2.

5 Ivan K. Mugabi, “An Analysis of the Adequacy of Protection Afforded by the Convention on the Rights of Persons with Disabilities (CRPD) in Situations of Armed Conflict”, *Societies*, Vol. 8, No. 2, 2018.

6 A. Priddy, above note 2.

7 N. Hart *et al.*, above note 3.

8 *Ibid.*, p. 150.

guarantees of humane treatment, restrictions on the use of weapons during armed conflict, and the prohibition on discrimination. In 2016, the volume *Disability, Human Rights and the Limits of Humanitarianism* featured a chapter by Janet E. Lord, currently serving as senior research fellow at the Harvard Law School Project on Disability and adviser to the Special Rapporteur on the Rights of Persons with Disabilities. Her contribution, titled “Persons with Disabilities in International Humanitarian Law: Paternalism, Protectionism or Rights?”,⁹ contrasted the characterization of persons with disabilities in IHL treaties with current rights-based approaches. The author looked at how IHL terminology could be reinterpreted in an inclusive manner, to cover persons with disabilities’ assistance or protection needs beyond medical care. The contrast between the characterization of disability in IHL instruments and in the CRPD also drove Ivan K. Mugabi’s analysis in his 2018 article on the adequacy of the protection afforded by the CRPD in situations of armed conflict.¹⁰ Does the age gap between the two treaty regimes lead to irreconcilable differences, as each was shaped by contemporaneous understandings of disability, or is there a way forward for their union (or rather, co-application)?

In 2019, Alice Priddy concluded a two-year project on disability and armed conflict with a 98-page publication in the Academy Briefing series of the Geneva Academy. Based on field research in five contexts (the Democratic Republic of the Congo, Colombia, Palestine, Ukraine and Vietnam), the briefing opens with a damning but unsurprising observation: States and armed non-State actors are not meeting their obligations under IHL and international human rights law to protect persons with disabilities. Among the root causes of the problem, the author identifies a lack of awareness both of the law and of the disproportionate impact of armed conflict on persons with disabilities. The briefing walks the reader through the application of selected IHL provisions (humane treatment and adverse distinction) in a disability-inclusive manner. It concludes by presenting eight key findings and recommendations, including the need for better data, more attention on the issue, and increased training among IHL practitioners.¹¹

This short overview of the literature available in our library collections makes it clear that interest has remained sporadic, is very much recent, and is spurred by international legal developments outside the realm of – but with implications for – IHL. Prior publications on disability in conflict settings largely focused on the prevention of primary impairment and sidelined the protection of persons with existing impairments. Traditionally, such persons have been “looped in” with other vulnerable groups in the literature. In our library collections, this partly explains why our specific keyword has been little used; rarely are persons with disabilities enough of a focus in a publication to justify it. This lack of specific attention contributes to their invisibility, with important consequences

9 J. E. Lord, above note 2.

10 I. K. Mugabi, above note 5.

11 In 2021, the same author published a shorter “military briefing” on persons with disabilities and armed conflict, to be used as a training tool for armed forces. Alice Priddy, *Military Briefing: Persons with Disabilities and Armed Conflict*, Geneva Academy, Geneva, 2021.

when it comes to texts guiding the interpretation and implementation of the law, such as military manuals.

In line with the ICRC's dual mandate, our library collections cover both IHL and our organization's operational activities. If persons with disabilities have remained largely invisible in IHL scholarship until very recently, what about their inclusion and representation in publications related to the ICRC's humanitarian action? They appear mostly in sources related to the ICRC's rehabilitation activities for persons with physical impairments, a long-standing part of the organization's humanitarian action.¹² Though undeniably of crucial importance, medical assistance only addresses part of the needs of persons with disabilities in armed conflict. The shift away from a medical model to a more inclusive, comprehensive and rights-based approach to disability is apparent in the evolution through time of the ICRC's publications on its rehabilitation services, and has also driven the adoption of a series of institutional or Movement-wide frameworks on disability inclusion in the last decade.¹³ Finally, disability inclusion has implications for the way IHL research is produced and made available. How can barriers to the full participation of persons with disabilities in such research, including the accessibility of the literature itself, be identified and removed?¹⁴

Of course, our collections spanning more than 150 years of humanitarian law and action reflect evolving conceptions of many issues, whether race, gender or disability. That said, the fact that most of the available literature concerned with persons with disabilities focuses on physical rehabilitation and prevention of primary impairment adds to the evidence that important theoretical and legal advancements in international disability rights have yet to fully permeate scholarship in international humanitarian law and action. This is thus a promising area of research, and we look forward to adding to our collections all future publications bridging the gap between IHL and international disability rights.

12 This can be traced back to the end of the Second World War, when the ICRC's medical department cared for former combatants who had become disabled and supported their reintegration into civilian life. See ICRC, *Report on Assistance to War-Disabled: Replies to an Enquiry Opened by the International Committee of the Red Cross*, Geneva, 1949; ICRC, *The Return of the War-Disabled to Normal Life*, Geneva, 1949.

13 The current text of reference is ICRC, *The ICRC's Vision 2030 on Disability*, June 2020, available at: <https://library.icrc.org/library/search/notice?noticeNr=50161>. This text addresses the inclusion of persons with disabilities at all levels in the organization's humanitarian programming.

14 An initiative worth noting in this regard is the Braille transcription of an article in the *Review* by Professor Don Winiecki. See Peter Asaro, "On Banning Autonomous Lethal Systems: Human Rights, Automation and the Dehumanizing of Lethal Decision-Making", *International Review of the Red Cross*, Vol. 94, No. 886, 2012, Braille translation by Don Winiecki available at: [https://peterasaro.org/writing/Asaro-2012-On-banning LAWS-braille.brf](https://peterasaro.org/writing/Asaro-2012-On-banning-LAWS-braille.brf).