

Addressing the accountability void: War crimes against persons with disabilities

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Abstract

Academics rarely raise the need to consider persons with disabilities when preventing, investigating and prosecuting international humanitarian law (IHL) violations. Worse still, no actual attempts have been made to include a disability perspective into practical guidance and monitoring mechanisms. This article addresses that void by laying out how existing yet unutilized IHL obligations can be leveraged to repress and suppress disability-based IHL violations. In doing so, the article will detail how fact-finding approaches, criminal investigative processes and reporting methods for IHL violations can be inclusive of persons with disabilities and thus more appropriately address the endemic under-representation of a disability perspective in the planning and execution of military operations during armed conflict and the specific crimes they thereby suffer. Additionally, this article will articulate concrete changes that should be made to international criminal law procedures for prosecuting war crimes to provide recognition and accountability for disability-based IHL violations, as has been done for violations against women and children. Finally, this article will diagnose the state of the law to address any legal challenges or hurdles that may hamper the inclusion of a disability perspective in fulfilling the IHL obligation to reduce and address violations of humanitarian law.

Keywords: Accountability, Convention on the Rights of Persons with Disabilities, disability, international humanitarian law, persons with disabilities, war crimes.

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Introduction

Atrocities against persons with disabilities during armed conflict remain as much a fixture in today's conflicts as in historical ones. In many cases these heinous acts can and do constitute serious violations of international humanitarian law (IHL) and custom,¹ commonly referred to as war crimes.² The High Contracting Parties to the Geneva Conventions of 1949 (GCs) and Additional Protocol I of 1977 (AP I) are obligated to “repress” and “suppress” acts that are contrary to the provisions of these treaties and customs of war, during both international and non-international armed conflicts.³ This duty is nonetheless overlooked and

The advice, opinions and statements contained in this article are those of the author/s and do not necessarily reflect the views of the ICRC. The ICRC does not necessarily represent or endorse the accuracy or reliability of any advice, opinion, statement or other information provided in this article.

- 1 See William I. Pons, Janet E. Lord and Michael Ashley Stein, “Disability, Human Rights Violations, and Crimes Against Humanity”, *American Journal of International Law*, Vol. 116, No. 1, 2022; Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn, on the Rights of Persons with Disabilities in the Context of Armed Conflict, UN Doc. A/76/146, 19 July 2021, paras 92–4 (SR Report Disability & Armed Conflict).
- 2 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (International Committee of the Red Cross (ICRC) Customary Law Study), Rule 156, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (all internet references were accessed in November 2022).
- 3 See Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art.

unutilized in regard to war crimes perpetrated against and specifically targeting persons with disabilities, despite such acts being included within the IHL obligation to prevent, investigate and prosecute serious violations of humanitarian law.

Addressing this *lacuna* in the application of IHL is crucially important from an accountability perspective, and is also required by the Convention on the Rights of Persons with Disabilities (CRPD)⁴ which requires States to take “all necessary measures to ensure the protection and safety of persons with disabilities in ... situations of armed conflict”.⁵ Article 11 of the CRPD, titled “Situations of Risk and Humanitarian Emergencies”, protects individuals with disabilities during the conduct of hostilities and prohibits the perpetuation of war crimes against them. Likewise, it requires the identification, investigation and prosecution of serious disability-based IHL violations, including via the international criminal law (ICL) process.⁶

The adoption of Article 11 set in motion, albeit belatedly, a process of reconciling IHL with specific CRPD obligations pertaining to the protection of persons with disabilities. Recognition at the United Nations (UN) level of the disproportionate impact of armed conflict on persons with disabilities came a year after the adoption of the CRPD in a report by the Secretary-General to the UN Security Council (UNSC) noting the lack of attention to the specific risks that conflicts posed to individuals with disabilities.⁷ More than a decade later, in 2019, the Secretary-General’s annual report on civilian protection in armed conflict called for the creation of a comprehensive approach to effectively protect and provide assistance to persons with disabilities impacted by conflict.⁸ This in turn led to the unanimous adoption by the UNSC of Resolution 2475 in June

49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Art. 50; Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Art. 129; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 146; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I); see also Rome Statute of the International Criminal Court of 17 July 1998, 2187 UNTS 38544 (entered into force 1 July 2002) (Rome Statute), Art. 8; and ICRC Advisory Service on International Humanitarian Law, “Obligations in Terms of Penal Repression”, March 2014 (ICRC Penal Repression), available at: www.icrc.org/en/download/file/1067/obligations-in-terms-of-penal-repression-icrc-eng.pdf, reflecting that while treaty law contains no specific obligation to repress such violations, the duty to suppress has been interpreted to include their repression, which has been judicially recognized; for customary law, see ICRC Customary Law Study, above note 2, Rule 158.

4 CRPD, UN Doc. A/RES/61/106, 24 January 2007 (entered into force 3 May 2008), Art. 11. For a comprehensive exploration, see Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Oxford University Press, Oxford, 2018.

5 CRPD, above note 4, Art. 11.

6 W. I. Pons, J. E. Lord and M. A. Stein, above note 1, p. 71.

7 UNSC, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc. S/2007/643, 28 October 2007, paras 27–8.

8 UNSC, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc. S/2019/373, 7 May 2019, para. 49.

2019 which makes clear the specific obligations and protections owed to persons with disabilities during armed conflict arising out of Article 11.⁹ The by-product of years of advocacy, Resolution 2475 demonstrates the international community's eventual recognition of the need to harmonize IHL with the CRPD, utilizing Article 11 as the harmonization bridge.

This article discusses the accountability void in identifying, investigating, preventing and prosecuting war crimes for persons with disabilities – a significant oversight in the otherwise progressive movement towards reconciling IHL protections with the CRPD. In the first part of the article, we provide a brief precis of IHL's prime directive to limit the impact of armed conflict and protect individuals who are not (or are no longer) engaged in hostilities. In the second part, we analyse CRPD obligations arising from Article 11 regarding protection during armed conflict and draw the connection between war crimes and disability-related violations. In the final part, we propose recommendations for addressing the gap in accountability mechanisms in relation to crimes perpetrated against individuals with disabilities in armed conflict. We do so at three levels, outlining actions to advance accountability for fact-finding and commissions of inquiry, ICL processes and national criminal jurisdiction over international crimes. We conclude with recommendations for advancing a disability-inclusive approach to identifying, investigating, preventing and prosecuting war crimes that will facilitate the full application of the IHL accountability mechanisms for persons with disabilities impacted by armed conflict.

Accountability for serious violations of IHL

The primary purpose of IHL rules is to limit the impact of armed conflict, by providing protection to individuals who are not (or no longer are) engaged in hostilities and to restrict the means and methods of warfare.¹⁰ Far from mere aspirational goals, IHL requires States to provide a process and mechanisms for accountability for violations of its rules. To ensure necessary accountability, the GCs and AP I obligate States to “repress” those violations which constitute war crimes and “suppress” all other violations of IHL.¹¹

While the primary focus of this article is the duty to repress, the duty to suppress bears mention at the outset. The obligation to suppress all other violations of IHL – those not giving rise to individual responsibility and therefore not grave breaches – requires States to undertake measures to halt current violations, prevent future violations and their reoccurrence, usually through administrative investigations.¹² Given that not every IHL violation targeting or impacting persons with disabilities will rise to the level of a war crime, the

9 UNSC, Resolution 2475 (2019), UN Doc. S/RES/2475 (2019), 20 June 2019.

10 See ICRC Advisory Service on International Humanitarian Law, “What is International Humanitarian Law?”, December 2014, available at: www.icrc.org/en/download/file/4541/what-is-ihl-factsheet.pdf.

11 GC I, above note 3, Art. 146; GC II, above note 3, Art. 50; GC III, above note 3, Art. 129; GC IV, above note 3, Art. 146; and AP I, above note 3, Arts 85(1) and 86(1).

12 See GC I, GC II, GC III, GC IV and AP I, and ICRC Penal Repression, above note 3.

obligation to suppress is an essential aspect of comprehensively addressing the gap in IHL accountability for disability-based violations via harmonization with the CRPD. Accordingly, the suppression of other disability-related IHL violations is crucial.

For a State to fulfill its obligation to repress requires the identification, investigation and prosecution of individuals, regardless of nationality, who have committed or ordered the commission of “grave breaches” during international armed conflicts. Notably, there exists no explicit requirement within the GCs to repress serious violations of IHL occurring during non-international armed conflicts. Nonetheless, such an obligation is found in other international law treaties,¹³ along with judicial recognition of criminal liability for violations of Article 3 common to the four GCs.¹⁴ This establishes a requirement on States to repress war crimes occurring during both international and non-international armed conflicts.¹⁵

Reflecting this recognition, the Statute of the International Criminal Court (Rome Statute) has reaffirmed the requirement to identify, investigate and prosecute serious violations of IHL (meaning, grave breaches of the GCs and serious violations of common Article 3)¹⁶ which it collectively refers to as “war crimes”.¹⁷ The acts that constitute war crimes within Article 8 of the Rome Statute are broader than those initially considered within the “grave breaches” regime. Nonetheless, the wider list of acts in the Rome Statute is generally accepted as being reflective of customary international law.¹⁸

Harmonizing IHL with the CRPD

Article 11 precipitates the CRPD’s transversal application into the realm of IHL. In addition to protecting individuals with disabilities from human rights violations, the

13 See Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, 9 December 1948 (entered into force 12 January 1951), Art. 4; Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 215, 14 May 1954 (entered into force 7 August 1956), Art. 28; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 1986, 10 December 1984 (entry into force 26 June 1987), Art. 7; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, 2048 UNTS 93, 10 October 1980 (entered into force 3 December 1998), Art. 14; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 2056 UNTS 211, 3 December 1997 (entered into force 1 March 1999), Art. 9; and Convention on Cluster Munitions, 2668 UNTS 39, 3 December 2008 (entered into force 1 August 2010), Art. 9.

14 See Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), UNSC Res. 808/1993, 827/1993 and amended by UNSC Res. 116/1998, 1329/2000, 114/2002, 25 May 1993, Art. 3; Statute of the International Criminal Tribunal for Rwanda, UNSC Res. 955, Arts 2–4, Annex, 8 November 1994, Art. 4; and Statute of the Special Court for Sierra Leone, UNSC Res. 1315, 16 January 2002, Art. 3.

15 See ICRC Penal Repression, above note 3, stating that the duty to suppress has been interpreted to include the repression of war crimes occurring during non-international armed conflicts as codified by Article 8 of the Rome Statute.

16 Rome Statute, above note 3, preamble and Art. 8.

17 This article will also refer to grave breaches and other serious violations of the laws and customs of war collectively as war crimes for continuity and constituency.

18 ICRC Customary Law Study, above note 2, Rule 156.

CRPD obligates States to investigate and prosecute perpetrators of disability-related human rights violations. Atrocities perpetrated against persons with disabilities during armed conflict can and do reach the threshold for serious violations of IHL as enumerated in the GCs, AP I and the Rome Statute.

Article 11

Article 11 of the CRPD establishes the co-applicability and complementarity of the treaty with other fields of international law, thereby requiring a reading of disability-based human rights and protections into all international law obligations – including those found in IHL and ICL.¹⁹ Markedly, States are required to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.²⁰ Such explicit recognition to co-applicability and complementarity between human rights law and other distinct areas of international law is rare, and makes Article 11 all the more significant.²¹ Consequently, the provision calls attention to existing legal obligations in IHL and other international law regimes, and reminds States that the CRPD framework is part and parcel of a wider protective framework that must inform international legal protections. Article 11 thus supports the assertion that there must be accountability for perpetrators of violations of international law against persons with disabilities, and in particular within ICL.²²

Some progress is evident within IHL given the recognition by the International Committee of the Red Cross (ICRC) of the complementarity between the two bodies of law during armed conflict taken together with the ICRC’s explicit acknowledgement of the myriad ways that IHL seeks to protect persons with disabilities in accordance with CRPD obligations.²³ The ICL field has also seen some progress through the unanimous adoption of Resolution 2475 calling for an “end to impunity for criminal acts against civilians, including those with disabilities” and to increase “access to justice and effective remedies and, as appropriate, reparations” within the context of armed conflict.²⁴ Similarly, emerging scholarship has advanced arguments for prosecuting disability-based crimes within the framework of ICL as crimes against humanity.²⁵ Further, the UN Special Rapporteur on the Rights of Persons with Disabilities affirmed the

19 See Stephanie Motz, “Article 11: Situations of Risk and Humanitarian Emergencies”, in I. Bantekas, M. A. Stein and D. Anastasiou (eds), above note 4, p. 314.

20 CRPD, above note 4.

21 For a discussion, see Helen Duffy, “Trials and Tribulations: Co-applicability of IHL and Human Rights in an Age of Adjudication”, in Ziv Bohrer, Janina Dill and Helen Duffy, *Law Applicable to Armed Conflict*, Max Planck Trialogues, Vol. I, Cambridge University Press, Cambridge, 2020.

22 See W. I. Pons, J. E. Lord and M. A. Stein, above note 1.

23 See ICRC, “How Law Protects Persons with Disabilities in Armed Conflict”, 13 December 2017, available at: www.icrc.org/en/download/file/62399/how_law_protects_persons_with_disabilities_in_war.pdf.

24 See UNSC Res. 2475, above note 9.

25 W. I. Pons, J. E. Lord and M. A. Stein, above note 1.

direct application of the CRPD to “all international law, including international criminal law”, while also noting the requirement “to end impunity for criminal acts directed at or having negative impacts on persons with disabilities” during armed conflict.²⁶

Still missing, however, are specific attempts to utilize the IHL obligation to prevent, investigate and prosecute war crimes specifically targeting or impacting persons with disabilities. This is not due to a lack of applicability or instances of such violations. It is instead attributable to the insufficient harmonization of IHL and the ICL framework for accountability of war crimes with the CRPD.

CRPD obligations to protect and prosecute

Among the CRPD’s signal contributions is an affirmation that States are obligated to protect persons with disabilities and bear additional duties to investigate and prosecute perpetrators of human rights violations against them. These obligations are little enforced in practice owing to limited and ableist understandings regarding how ill-treatment manifests against persons with disabilities and how protection, investigation and prosecution must adapt to those circumstances.²⁷ Interrogating these obligations and reading them through a disability-rights lens requires a transversal reading of the CRPD across its framework and in relation to duties arising out of IHL and other international legal regimes.²⁸

The text of the CRPD is relatively sparse when it comes to addressing egregious human rights violations perpetrated against persons with disabilities. Indeed, it does not move beyond other core human rights treaties in its articulation in Article 10 of the right to life or in Article 15’s prohibition against torture. Progressively, Article 15(1) provides for a general proscription of all forms of ill-treatment and specifically prohibits medical experimentation without consent, while Article 15(2) requires States to take effective legislative, administrative, judicial or other measures to protect victims from ill-treatment. Article 17 shores up these protections by underscoring that persons with disabilities are to be accorded physical and mental integrity.

To date, commentators have mainly focused on the substantive interpretation of Articles 15 and 17 in relation to what position the provisions may take on involuntary treatment.²⁹ Nonetheless, as Janos Fiala-Butora’s work

26 SR Report Disability & Armed Conflict, above note 1, para. 66.

27 Janos Fiala-Butora, “Disabling Torture: The Obligation to Investigate Ill-treatment of Persons with Disabilities”, *Columbia Human Rights Law Review*, Vol. 45, No. 1, 2013, pp. 219–40; and Janet E. Lord, “Shared Understanding or Consensus-Masked Disagreement? The Anti-torture Framework in the Convention on the Rights of Persons with Disabilities”, *Loyola of Los Angeles International and Comparative Law Review*, Vol. 33, No. 1, 2010.

28 Janet E. Lord, Elizabeth Heideman and Michael Ashley Stein, “Advancing Disability Rights-Based Asylum Claims”, *Virginia Journal of International Law*, Vol. 62, No. 3, 2022.

29 Michael Ashley Stein, “A Quick Overview of the United Nations Convention on the Rights of Persons with Disabilities and its Implications for Americans with Disabilities”, *Mental and Physical Disability Law Reporter*, Vol. 31, No. 5, 2007.

on the duty to investigate demonstrates, the protection against ill-treatment can only be effective if the substantive provisions are accompanied with an obligation on domestic authorities to effectively investigate torture and other ill-treatment.³⁰ Such a coordinated effort is required to afford victims an effective means by which to secure their access to courts and international bodies where they can make use of substantive provisions. The CRPD through its other provisions amplifies State duties to investigate and prosecute ill-treatment and abuse against persons with disabilities. It also sets out obligations in relation to ensuring that they have access to justice.

Additionally, the CRPD provides that States Parties must ensure that persons with disabilities enjoy the right to liberty and security of person and that they are not deprived of their liberty unlawfully or arbitrarily. Article 14 further requires that “any deprivation of liberty is in conformity with the law and that in no circumstances shall the existence of a disability serve to justify a deprivation of liberty”. Where persons with disabilities are deprived of their liberty, they are entitled to protections guaranteed under the CRPD, inclusive of the provision of reasonable accommodation.

Article 16 on exploitation, violence and abuse, likewise, is a major contribution to the protective framework of the CRPD and its applied measures unequivocally addressing persons with disabilities. Crucial to that protection, Article 16 sets out State obligations in relation to ensuring that all forms of exploitation, violence and abuse against persons with disabilities are investigated and prosecuted.³¹ Article 16(5) includes a groundbreaking provision that is explicit in its requirement that States put in place legislation and policies “to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted”. Fiala-Butora underscores the point that States carry the duty to investigate both peacetime and wartime violations, such that persons with disabilities are not obliged to put forward high standards of evidence about their own abuse; rather, there is a positive obligation on the part of States to proactively investigate allegations of serious abuses including torture which is crucial in cases where, as is often the case, victims have no access to evidence.³² The issue of effective investigation into credible allegations of war crimes against persons with disabilities calls for specific attention in order to give persons with disabilities an effective and timely remedy.³³

30 J. Fiala-Butora, above note 27, p. 214.

31 CRPD, above note 4, Art. 16.

32 J. Fiala-Butora, above note 27, p. 214. See European Court of Human Rights, *Assenov and Others v. Bulgaria*, Case No. 24760/94, Judgment (Court Chamber), 28 October 1998, § 102, the Court finding that “where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention’, requires by implication that there should be an effective official investigation”.

33 See W. I. Pons, J. E. Lord and M. A. Stein, above note 1.

The CRPD also supports procedural due process for persons with disabilities. This is essential given the multitude of barriers that persons with disabilities so often experience in seeking accountability for human rights violations. Article 13 affirms that measures must be undertaken to ensure procedural due process. This requires, as explicated in Article 9's provisions on accessibility and in Article 5's mandates for equality and non-discrimination, a range of measures that identify and dismantle barriers to accessible justice mechanisms. Moreover, Article 13 affirms substantive rights in relation to accessing justice. When read together with Article 12, Article 13 clarifies that persons with disabilities must be accorded the right to be heard as witnesses and may not be barred from doing so on the basis of their disability through application of retrogressive administrative "standards" such as presumed legal incapacity or conditioning access to justice through capacity assessments. Instead, Article 12 affirms that where needed, support must be provided to facilitate legal capacity, whether in relation to court proceedings or any other decisional process. This, then, serves as a clear indicator for the measurement of accountability mechanisms insofar as they must afford persons with disabilities the procedural accommodations needed in order to be effective witnesses.³⁴

These provisions of the CRPD underscore the myriad types of harm that persons with disabilities commonly suffer and the structural exclusion and discrimination that prevent full access to justice mechanisms that would otherwise ensure accountability and redress for those harms. Through the co-applicability and complementarity of Article 11, these obligations provide clear guidance that can serve as the basis for identifying, investigating and prosecuting war crimes against persons with disabilities.

The connection between war crimes and CRPD obligations

Atrocities perpetrated against persons with disabilities during armed conflict can and do meet the threshold for serious violations of IHL enumerated in the GCs, AP I and the Rome Statute. While rarely given explicit expression in domestic legislation or the policies and practices of international criminal tribunals, it is axiomatic that persons with disabilities are a specifically protected class, like women and children, in IHL.³⁵ As such, mechanisms designed to redress serious violations of IHL, including those perpetrated against specially protected groups, must accommodate violations against persons with disabilities.

Notwithstanding the recognition as to the legal obligation within IHL to provide specific protection to persons with disabilities during armed conflict as an especially at-risk population, there has been little (if any) effort to identify, investigate, prevent and prosecute those committing IHL violations against them. Not unlike the invisibility of crimes against women in armed conflict characterized by Christine Chinkin for their tendency to be cast in minimalist

³⁴ *Ibid.*

³⁵ See ICRC, above note 23, p. 3, footnote 7.

terms and labelled as “abuse” and not breaches of IHL and criminal conduct, the treatment of persons with disabilities is frequently similarly downgraded.³⁶ Relatedly, documentation of war crimes against persons with disabilities is often overlooked or ignored by investigative teams and international mechanisms, save for disability researchers.³⁷

Yet, the reporting that has been undertaken on atrocities perpetrated against disability communities in the context of armed conflict makes obvious that such acts can and do meet the standard for IHL violations, and quite plausibly as war crimes. For example, the targeted killings of individuals with disabilities by the Khmer Rouge in Cambodia, summary execution of persons with disabilities by guerrilla forces in Colombia, and the mass killing of persons with disabilities housed in psychiatrist hospitals and rehabilitation centres during the Rwandan genocide, each stand in sharp relief.³⁸ Contemporary examples include the involuntary use of persons with disabilities as human shields and suicide bombers in the context of the conflicts in Iraq and Afghanistan.³⁹ Further, attacks on and destruction of hospitals, rehabilitation centres, schools, utilities, psychiatric medical facilities and other public institutions have a directly larger effect on persons with disabilities, thereby placing them at higher risk of harm and death.⁴⁰

36 Christine Chinkin, “Gender and Armed Conflict”, in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2014.

37 See, e.g., Janet E. Lord, “Genocide, Crimes against Humanity and Human Rights Abuses against People with Disabilities”, in Dinah L. Shelton (ed.), *Encyclopedia of Genocide and Crimes against Humanity*, Macmillan Library Reference, New York, 2004.

38 Deutsche Presse Agentur, “U.N. Team Arrives in Cambodia to Investigate Khmer Rouge Genocide”, *LexisNexis(r) Academic Universe*, 14 November 1998; Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Colombia, UN Doc. CRPD/C/COL/CO/1, 30 September 2016, para. 24; Art Blaser, “From the Field – People with Disabilities and Genocide: The Case of Rwanda”, *Disability Studies Quarterly*, Vol. 22, No. 53, 2002; Arthur Blaser, “Always the First to Go?: People with Disabilities and Genocide”, in Alexandre Kimenyi and Otis Scott (eds), *Anatomy of Genocide: State-Sponsored Mass-Killings in the Twentieth Century*, 2001, p. 78; and United States Holocaust Memorial Museum, “Nazi Persecution of the Disabled: Murder of the ‘Unfit’”, available at: www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/nazi-persecution-of-the-disabled.

39 Soraya Sarhaddi Nelson, “Disabled Often Carry Out Afghan Suicide Missions”, *NPR*, 15 October 2007, available at: www.npr.org/2007/10/15/15276485/disabled-often-carry-out-afghan-suicide-missions; and Iraqi Observatory for Human Rights, “ISIS Uses Children and People with Disabilities as Human Shields”, *ReliefWeb*, 31 March 2017, available at: <https://reliefweb.int/report/iraq/isis-uses-children-and-people-disabilities-human-shields>.

40 The list of wider acts constituting war crimes is significant given the extensive overlap with those actions found in CRPD articles obligating States to take action to provide protection from, and accountability for, torture, murder, medical experimentation and the equal enjoyment of the right to life. CRPD, above note 4, Arts 10, 14, 15, 16 and 17. This alignment between those acts constituting war crimes and a need for accountability makes the required harmonization of the IHL duty to suppress and repress straightforward in legal theory, but elusive in practice, because of lack of considered attention to the co-applicability of the CRPD to ICL. This present article does not seek to resolve the uncertainty as to the proper source of individual criminal responsibility and confusion over which acts constitute a war crime. Instead, the authors seek to raise awareness to the fact that the IHL obligation to repress war crimes is a tool yet to be employed to provide accountability for the overlooked reality that persons with disabilities are more likely to be targeted and impacted by war crimes. See Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton and Zoe A. Y. Weinber, “What is a War Crime?”, *Yale Journal of*

Where referenced at all in the context of an armed conflict, the experiences of persons with disabilities tend to be recorded as abuse, abandonment or neglect. Even though acknowledging the harm regularly endured by persons with disabilities, such characterizations should be recognized and considered as potentially rising to the level of torture, cruel, inhuman or degrading treatment.⁴¹ Inaccessible evacuation procedures, for example, leave persons with disabilities without the ability to flee impending attacks leading to them experiencing greater physical and mental harm. Lack of reasonable accommodations for detainees with disabilities means that essential facilities and services, such as healthcare, sanitation and rehabilitation, are not accessible on an equal basis. This can result in exacerbating existing impairments and raising the likelihood of developing secondary impairments.

These examples, although poignant, represent a small fraction of the serious violations of IHL committed against persons with disabilities. Unlike the circumstances of war crimes involving women, children and sexual violence, similar acknowledgement is absent regarding persons with disabilities. Even those instances that garner attention lack explicit mention of persons with disabilities within acts constituting war crimes, thereby ensuring that accountability will remain elusive. Addressing this shortcoming requires adjustments at various levels in recognition and specific consideration of violations of IHL targeting or impacting persons with disabilities.

In sum, due to the absence of explicit inclusion of disability in the identification, investigation, prevention and prosecution of war crimes, IHL obligations to suppress and repress cannot be fully realized. This void in accountability for war crimes specifically targeting or impacting persons with disabilities looms large, especially in light of the numerous historical and current examples of IHL violations involving persons with disabilities.

Recommendations for addressing the accountability gap

The accountability gap for war crimes perpetuated against persons with disabilities can be redressed by operating at three levels, respectively, through: (A) fact-finding missions and commissions of inquiry; (B) ICL process; and (C) national criminal jurisdiction to recognize disability-based war crimes.

Ensuring an inclusive mandate for commissions of inquiry and fact-finding bodies

UN fact-finding missions and commissions of inquiry have become the principal mechanisms to establish the evidentiary foundation necessary to seek criminal accountability for violations of human rights and IHL, including war crimes. While the formulation of these missions and commissions is varied in scope and

International Law, Vol. 44, No. 1, 2019, discussing the history, evolution and current state of confusion and uncertainty surrounding the term of war crime.

41 Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, UN Doc. A/63/175, 28 July 2008.

duration, each seeks to establish facts surrounding incidents and allegations of violations, provide assessment of those facts within the applicable legal framework, reach conclusions as to whether violations exist and issue recommendations based on the conclusions.⁴² Such mechanisms have, for instance, been established by the UN Security Council, General Assembly, Human Rights Council, Secretary-General and High Commissioner for Human Rights. Regional organizations, such as the Organization for Security and Cooperation in Europe, have likewise established such bodies.

Fact-finding missions and commissions of inquiry, when given sufficient access, can provide robust investigative capabilities and have the potential – if their mandates are inclusive – to establish good practice and visibility for IHL violations and war crimes against persons with disabilities. Although providing crucial evidence for the prosecution of war crimes and other IHL violations, the missions and commissions lack judicial authority to hold perpetrators to account. Even with such limitations, these mechanisms have a significant role in transitional justice efforts – especially war crimes over which there is universal jurisdiction. They also can play important roles in combatting impunity in their efforts to gather and verify information, create an historical record of events, support adjudication efforts and recommend measures to redress violations.

To be clear though, such mechanisms have not to date yielded an inclusion of disability-based crimes or, when they have, the documentation and investigation have been less than satisfactory. This is so even in cases where egregious violations amounting to crimes against humanity or war crimes committed against persons with disabilities seemed apparent, and, stunningly, the only instance where the UNSC directly requested an investigation into possible violations against persons with disabilities in an armed conflict went unheeded.⁴³ We offer several recent examples that illustrate this omission.

The Commission of Inquiry on Lebanon mandated to investigate the thirty-three-day conflict was tasked:

- (a) to investigate the systematic targeting and killings of civilians by Israel in Lebanon; (b) to examine the types of weapons used by Israel and their conformity with international law; and (c) to assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment.

The Commission determined that the hostilities occurring from 12 July to 14 August 2006 constituted an international armed conflict to which conventional and customary IHL and human rights law are applicable. The report by the Commission made only a passing reference to individuals facing “difficulties related to age or disability”, thereby meaning that they were made more

42 See UN Office of the High Commissioner, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, New York and Geneva, 2015, available at: www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf.

43 See UNSC, Resolution 2217 (2015), UN Doc. S/RES/2217 (2015), 28 April 2015.

“vulnerable to the ongoing violence and were further at risk due to limited access to water, electricity, food and medical care, as well as restricted humanitarian access”.⁴⁴ This cursory examination, although underscoring the well-known risks and harm faced by persons with disabilities and their families, provides no recommendations or conclusions on how or whether to account for such realities. By contrast, the report contains extensive substantive recommendations and conclusions, including specific sub-sections related to the disproportionate impact of the armed conflict on women and children, with disability merely an afterthought – mentioned only once (see above quotation) throughout a 153-page report.⁴⁵

The Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea (North Korea Commission) was established to investigate human rights country conditions and to determine whether such circumstances constituted crimes against humanity.⁴⁶ While not a war crimes investigation, the North Korea Commission’s report bears scrutiny for its coverage of country conditions, some of which were both glaring and egregious. The report, while paying some attention to discrimination on the basis of disability and referencing potential grave human rights violations, also noted that some of the allegations could not be verified by eyewitnesses.⁴⁷ Ample evidence of forced sterilization and disability-based persecution serving eugenic State policies in North Korea akin to those well documented in Nazi Germany were simply not explored by the North Korea Commission.⁴⁸ Further, and disturbingly, it pointed to the adoption of national disability legislation in 2003 as evidence of a possible improvement in status of persons with disabilities, even though testimony on disability discrimination strongly suggested otherwise. Indeed, the North Korea Commission’s sparse coverage on the situation of persons with disabilities did not account for evidence of crimes approximating Nazi-era persecution published by the Korean Institute for National Unification.⁴⁹ Hence, although technically including disability, the North Korea Commission’s minimalistic and methodologically flawed

44 Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, UN Doc. A/HRC/3/2, 23 November 2006, p. 50, para. 204.

45 While the CRPD did not enter into force until 2009, disability as an issue and the disproportionate harm faced by persons with disabilities in armed conflict did not simply surface with the establishment of the treaty.

46 See generally, Jae-Chun Won, Janet E. Lord, Michael Ashley Stein and Yosung Song, “Disability, Repressive Regimes, and Health Disparity: Assessing Country Conditions in North Korea”, in Ruth Bonnevalle-Kok and Jure Vidmar (eds), *Hague Yearbook of International Law*, Vol. 27, Brill Nijhoff, Leiden, 2014.

47 Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, UN Doc. A/HRC/25/63, 7 February 2014.

48 See, e.g., Korean Institute for National Unification, *White Paper on Human Rights in North Korea*, 2007.

49 Korean Institute for National Unification, *White Paper on Human Rights in North Korea*, 2012, p. 482, noting that forced sterilization was often coupled with other abuses; thus, in 2011, 80% of refugee respondents indicated that North Korea segregated and relocated little people, and 67% indicated that the State forced those individuals to undergo sterilization. See also Damien McElroy, “North Korea Locks up Disabled in ‘Subhuman’ Gulags, Says UN”, *The Telegraph*, 21 October 2006, available at: www.telegraph.co.uk/news/worldnews/1532036/North-Korea-locks-up-disabled-in-subhuman-gulags-says-UN.html.

investigation and ultimate report affirms the need for more focused attention on the human rights status of persons with disabilities in the investigative process of such commissions, as well as explicit reference to disability-based crimes in the formulation of fact-finding missions and commissions of inquiry. There is a broader need to ensure that international inquiries take into account the experience of the populations of persons with disabilities facing armed conflict and/or living in repressive regimes.

The Commission on Human Rights in South Sudan (South Sudan Commission) was initially established in 2016 and reports on the situation in South Sudan with the remit to prevent further deterioration of the situation and achieve meaningful transitional justice.⁵⁰ It focuses on the collection and preservation of evidence of gross violations of human rights and conflict-related crimes – and in particular sexual and gender-based violence and ethnic violence – in order to end impunity and provide accountability. Throughout the process, the South Sudan Commission has met with a range of victims, witnesses, government officials, members of civil society and other key stakeholders. Having produced a number of reports over the years, the South Sudan Commission has made suggestive reference to the connection between the violence of armed conflict and physical and mental impairments.⁵¹ Notwithstanding its broad mandate and suggestive reference, the South Sudan Commission has paid no explicit attention to the situation of persons with disabilities, or specifically to women and children with disabilities, who are at heightened risk of sexual and gender-based violence in armed conflict. Thus, significant attention has been given to the impact on women and children generally without cognizance of the intersectional relationship between the identities of disability, gender and age and the compounding impact those intersections portend on the likelihood of victimization.⁵²

More recently, the Independent International Commission of Inquiry on Ukraine (Ukraine Commission) was created to investigate all alleged violations and abuses of human rights and violations of IHL related to the armed conflict between Ukraine and the Russian Federation.⁵³ Provided with both a broad and focused mandate, the Ukraine Commission will report and make recommendations on responsibility of individuals and entities for violations of human rights and IHL within Ukraine, as well as on the events in the areas of Kyiv, Chernikhiv, Kharkiv, Mariupol and Sumy regions with the goal of ensuring accountability. Neither of the resolutions establishing the Ukraine Commission

50 Resolution adopted by the Human Rights Council on the Situation of Human Rights in South Sudan, UN Doc. A/HRC/RES/31/20, 27 April 2016.

51 Report of the Commission of Human Rights in South Sudan, UN Doc. A/HRC/49/78, 15 February 2022, para. 41.

52 CRPD Committee, General Comment No. 3 (2016) on Women and Girls with Disabilities, UN Doc. CRPD/C/GC/3, 25 November 2016.

53 Resolution adopted by the Human Rights Council on the Situation of Human Rights in Ukraine Stemming from the Russian Aggression, UN Doc. A/HRC/RES/49/1, 7 March 2022; and Resolution adopted by the Human Rights Council on the Deteriorating Human Rights Situation in Ukraine Stemming from the Russian Aggression, UN Doc. A/HRC/RES/S-34/1, 16 May 2022.

mentions or addresses the disability dimension of the armed conflict and possible crimes committed against persons with disabilities.⁵⁴ Yet again, the mandate explicitly calls upon the Ukraine Commission to collect and analyse the gender dimension in regard to IHL violations and human rights abuses without mentioning its intersection with disability. Nonetheless, the Ukraine Commission, via the establishing resolution, has been specifically tasked with complementing, consolidating and building on the work of the UN Human Rights Monitoring Mission in Ukraine (HRMMU), lending potential for the investigation of crimes directly or indirectly impacting persons with disabilities. The HRMMU was created in 2014 to monitor, report and advocate for accountability in the conflict area of eastern Ukraine and the Autonomous Republic of Crimea. Unlike other missions, the HRMMU lists persons with disabilities as a spotlighted population for reporting and monitoring, placing them alongside women and children.⁵⁵ The wide remit of the Ukraine Commission, therefore, has the potential to address the specific disability dimension of alleged human rights and IHL violations, and is indeed required to do so in light of Resolution 2475. Practically, the Ukraine Commission could take the following actions to ensure inclusion of a disability perspective: engage one or more disability advisers to provide counsel on disability-inclusive investigation practices; help build the capacity of commissioners and investigative teams on disability issues, as has been the practice with gender advisers; link investigators to local organizations of persons with disabilities (OPDs) and familiarize OPDs with the scope and methods of work of the Commission to encourage them to make submissions; and engage with the UN Special Rapporteur on the rights of persons with disabilities and the UN CRPD Committee to ensure a disability perspective. Whether this potential comes to fruition remains to be seen; however, the poor track record of previous missions suggests that much work remains to be done to sensitize fact-finders to the disability dimension of their work.

Directing attention to violations carried out against groups specifically recognized under IHL as being at particular risk during armed conflict would seem to be a *sine qua non* of mandated investigations into war crimes. It certainly is mandated by Article 11. In any case, proposing a disability-inclusive approach is a modest ask and mirrors those made in relation to other specifically protected groups under IHL, namely women and children. While the efforts to better account for fact-finding, investigation and reporting for war crimes perpetrated against women and children in armed conflict are by no means fulfilled, much progress has been made to better equip such bodies to account for these crimes. Elevating the situation of persons with disabilities through similar policy pronouncements is appropriate given the explicit direction to States Parties in the

54 *Ibid.*

55 Persons with disabilities are highlighted on the HRMMU's website. See Office of the High Commissioner for Human Rights (OHCHR), "UN Human Rights in Ukraine", available at: www.ohchr.org/en/countries/ukraine/our-presence#:~:text=The%20UN%20Human%20Rights%20Monitoring,occupied%20by%20the%20Russian%20Federation.

CRPD regarding the protection of persons with disabilities in situations of risk, inclusive of IHL and, more pointedly, the adoption of Resolution 2475.

Inclusive reform in ICL processes

Recognition of the need to take specific measures for historically disadvantaged and highly at-risk minority groups in the identification, investigation and prosecution of war crimes under ICL is not a novel concept. Indeed, the Office of the Prosecutor of the International Criminal Court (OTP) has developed specific policy papers for children and sexual and gender-based crimes.⁵⁶ In both instances, the OTP established standards and methods to investigate, charge and prosecute crimes – including war crimes – impacting and involving children and victims of sexual and gender-based crimes, with the stated goal of “closing the impunity gap”.⁵⁷ In so doing, the OTP signalled the importance of crimes perpetrated against at-risk groups, acknowledged the barriers encountered in ensuring the successful prosecution of such crimes, and set forth guidance that could help operationalize international legal commitments. Notably, the OTP’s legal rationale for the development of such policy papers relies on Article 21(3) of the Rome Statute, finding that both age and gender are covered in the designation of “other status”.⁵⁸ Further, the OTP also affirms that Article 21(3) requires “the application and interpretation of the [Rome] Statute be consistent with internationally recognized human rights” and that any evolution relating to human rights would be taken into account in the development and execution of the mandate of the OTP.⁵⁹ As a core and nearly universally ratified human rights treaty,⁶⁰ the CRPD surely ought to be harnessed to provide context and guidance for how justice is to be made accessible to persons with disabilities.

Given the lack of any meaningful progress within ICL to provide access to the legal system and gap in accountability for disability-based crimes generally – but also specifically to war crimes targeting or impacting persons with disabilities – development of an OTP policy paper on disability-based crime is necessary and warranted. Such a policy could also serve to provide guidance on how States might seek to adjust domestic legislation and policy to ensure appropriate identification, investigation, prevention and prosecution of war crimes against persons with disabilities.

56 See OTP, *Policy Paper on Children*, November 2016 (International Criminal Court Child Policy Paper); OTP, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014 (International Criminal Court Sexual and Gender-Based Crimes).

57 International Criminal Court Child Policy Paper, *ibid.*, p. 4; International Criminal Court Sexual and Gender-Based Crimes, *ibid.*, p. 5.

58 International Criminal Court Child Policy Paper, *ibid.*, para. 51; International Criminal Court Sexual and Gender-Based Crimes, *ibid.*, para. 26.

59 *Ibid.*

60 See generally, Committee on the Rights of Persons with Disabilities, *Concluding Observations*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5.

Following the format of the policy papers on children and sexual and gender-based crimes, any OTP policy paper on disability must establish a meaningful framework for ensuring not only the inclusion of a disability perspective in preliminary examinations, investigations and prosecutions but also meaningful participation of persons with disabilities. First, this requires any OTP policy paper to affirmatively recognize the legal capacity of persons with disabilities and the environmental, attitudinal and policy barriers preventing them from full and equal participation in justice mechanisms. This will require an adjustment to OTP policy, procedure and training of justice personnel on what inherent barriers exist and then what individualized measures are necessary to overcome them to ensure inclusion of persons with disabilities. Second, the diversity of disability and the intersection that it has with other identities held by an individual to create complex and overlapping forms of discrimination must be noted. This will necessitate the OTP acknowledging that a nuanced approach is required when assessing alleged war crimes and IHL violations to underscore the fact that disability is in many cases the primary motivation for the perpetrator in targeting a certain individual or group of individuals.⁶¹ Third, accessibility must be provided to all judicial procedures and processes through the provision of reasonable accommodations – and especially for those with psychosocial or intellectual disabilities. More than simply making the physical space accessible, the OTP will need to have all information and communication provided in accessible formats considering the diversity of disability, as well as gender- and age-appropriate accommodations. Lastly, and most importantly, any OTP policy paper must make every effort to avoid substituted decision-making and encourage empowerment through accessibility and reasonable accommodation.

The above are merely the main pillars of a suggested OTP policy paper, but significant and comprehensive detail will be necessary to ensure that a disability perspective exists when conducting preliminary examinations, investigations, prosecutions and ensuring the physical and psychological well-being of victims and witnesses with disabilities. This can only be ensured through consultation with persons with disabilities, their representative organizations, and experts in the development and implementation of an OTP policy on disability.

The exercise of national criminal jurisdiction to address war crimes against persons with disabilities

States retain prosecutorial and punitive powers in respect of individuals who engage in war crimes, crimes against humanity and other atrocities. Indeed, IHL requires domestic action to make perpetrators for IHL violations accountable under national law.⁶² The exercise of national criminal jurisdiction in this context

61 See W. I. Pons, J. E. Lord and M. A. Stein, above note 1, pp. 62–70.

62 The High Contracting Parties to the Geneva Conventions and Additional Protocol I are obliged to enact legislation needed to provide effective penal sanctions for those committing (or ordering to be committed) any grave breaches of the Geneva Conventions and Additional Protocol I; to take measures for the suppression of other acts contrary to those treaties or to other IHL obligations; and to repress serious

exposes an additional level at which to press for an inclusive accounting for violations committed against persons with disabilities. Here, too, the CRPD offers some useful guidance to inform domestic processes addressing international crimes.

The process of investigating alleged war crimes at the domestic level has given rise to varied domestic frameworks and divergent practices. Efforts to bring some uniformity to national criminal jurisdiction for such crimes include the formulation of *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice* published by the Geneva Academy of International Humanitarian Law and Human Rights together with the ICRC.⁶³ These *Guidelines* are useful in terms of encouraging more standardized processes, specifically ones that rely on laws, policies and best practices on the triggering of investigations, different types of investigations, and effective standards and principles used in the investigations. Nevertheless, these *Guidelines* lack the kind of guidance needed to ensure that national-level bodies properly account for and effectively accommodate instances of violations against highly at-risk groups, including persons with disabilities. Although the *Guidelines* mention the need for expertise in investigating instances of violations against groups known to be at high risk – for instance, sexual violence, torture, or incidents where children might be victims, witnesses, or suspects – it falls short of providing sufficient direction to ensure consideration of persons with disabilities and other at-risk groups.⁶⁴

The omission of disability as an explicit case requiring special expertise is telling and highlights the pervasive invisibility of persons with disabilities within domestic policies, laws and practice relating to the administration of justice for war crimes by States. In accordance with the CRPD, States are required to abolish or change existing laws, policies and practices that discriminate against persons with disabilities to allow access to justice mechanisms. Insofar as States are beginning to reform their criminal justice system generally to better accommodate persons with disabilities,⁶⁵ they must also undertake measures to ensure a disability-inclusive approach to the identification, investigation, prevention and prosecution of war crimes. These adjustments should in the first instance include procedural accommodations to ensure the accessibility of legal process and acknowledgement of the right of persons with disabilities to serve as witnesses. In the second instance, substantive adjustments should be undertaken

violations of IHL. They are also obliged to search for persons alleged to have committed (or have ordered to be committed) such grave breaches, and to bring these persons before their own domestic courts; or to hand them over for trial, in accordance with their national legislation, to another High Contracting Party concerned, provided that this High Contracting Party has made out a *prima facie* case. See GC I, above note 3, Art. 49; GC II, above note 3, Art. 50; GC III, above note 3, Art. 129; GC VI, above note 3, Art. 146; and AP I, above note 3, Art. 85.

63 See Noam Lubell, Jelena Pejic and Claire Simmons, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice*, Geneva Academy of International Humanitarian Law and Human Rights and ICRC, September 2019, available at: www.icrc.org/en/download/file/123868/guidelines_on_investigating_violations_of_ihl_final.pdf.

64 *Ibid.*, paras 126, 131 and 142.

65 See Report of the Office of the United Nations High Commissioner for Human Rights on the Right to Access to Justice under Article 13 of the Convention on the Rights of Persons with Disabilities, UN Doc. A/HRC/37/25, 27 December 2017, paras 22 and 30.

to permit war crimes directly targeting or impacting persons with disabilities to be prosecuted or alternatively to have such disability-based impact of the crime as an aggravated offence, as has been done for crimes against women and children.⁶⁶

Conclusion

The integration of a disability human rights perspective into the process of identifying, investigating and prosecuting war crimes is a requirement of both the CRPD and IHL. Far more work towards implementation of this requirement is needed for the promise of Article 11 to be realized. That said, the adoption of Resolution 2475 is serving as a much-needed impetus for greater action towards achieving a disability sensibility in accountability for violations of IHL and the impact of such violations on persons with disabilities. Both mainstream and disability-specific organizations are working to amplify the documentation of atrocities perpetrated during armed conflict against persons with disabilities.

And yet, much as these examples provide evidence of progress in line with the CRPD drafters' intent, significant obstacles remain in achieving the aims of Article 11 in the context of armed conflict. The mandate of fact-finding missions and international commissions of inquiry investigating war crimes and crimes against humanity remain limited and have not been expanded to allow for a remit that covers crimes committed against persons with disabilities, a group subject to specific protection under IHL. Processes to further develop international law to strengthen accountability for atrocities likewise miss the mark on evoking any sort of disability sensibility, seemingly incognizant of the specific protection accorded to persons with disabilities in IHL. Regrettably, some of the more apparent yet most easily remedied barriers are within the system of ICL and process where understanding of disability law is low among scholars and practitioners and the implications of the lived experience of disability for protection is not appreciated. The exercise of national criminal jurisdiction to address the *lacunae* in accounting for war crimes targeting or directly impacting persons with disabilities could be aided by specific guidance on disability accountability. That said, the CRPD, together with Resolution 2475, provide the point of departure for redressing the accountability void at the three levels outlined in the present article, offering a realistic, if modest, proposal.

66 See W. I. Pons, J. E. Lord and M. A. Stein, above note 1, pp. 82–3.