Editorial

As we wrap up this issue, the world is about to enter year three of the COVID-19 pandemic. The virus has already claimed over five million lives, making it one of the deadliest in human history. An untold number of people who have recovered from an acute infection continue to experience longer-term symptoms.¹ It is no exaggeration to say that, for many countries and communities, the pandemic has been a humanitarian catastrophe.

Hope is on the horizon, though, with more than half of the world's population having received at least one dose of a life-saving COVID-19 vaccine by late 2021.² But global inequity is staggering: in low-income countries, less than 5% of people have gotten their first jab.³ The role of international law in contributing to this appalling situation through the protection of intellectual property rights of vaccine developers has certainly not gone unnoticed.⁴ Hopefully, international law will also play a role in mitigating and ultimately ending this 'vaccine apartheid'.⁵

The opening article of this issue of the *Journal of International Humanitarian Legal Studies* tackles the perennial problem of international humanitarian law (IHL) compliance and enforcement. In the article, Roderic Alley suggests that while the non-observance of IHL is often attributed to a lack of political

- 1 See, eg, Melina Michelen et al, 'Characterising Long COVID: A Living Systematic Review' (2021) 6(9) *BMJ Global Health* e005427.
- 2 See Hannah Ritchie et al, 'Coronavirus Pandemic (COVID-19)' (OurWorldInData.org) <<https://ourworldindata.org/coronavirus>> accessed 17 November 2021 (estimating 52.2%).
- 3 *ibid* (placing the figure at 4.6%).
- 4 See, eg, Sharifah Sekalala et al, 'Decolonising Human Rights: How Intellectual Property Laws Result in Unequal Access to the COVID-19 Vaccine' (2021) 6(7) *BMJ Global Health* e006169.
- 5 See, eg, Sarah Joseph and Gregory J Dore, 'Vaccine Apartheid? A Human Rights Analysis of COVID-19 Vaccine Inequity' (30 June 2021) <<http://dx.doi.org/10.2139/ssrn.3876848>>.

will, institutional deficiencies should not be ignored. Drawing on data from the World Justice Project Rule of Law Index 2020, the article focuses on 'disadvantaged States' that for some reason lack judicial or administrative capacity to ensure compliance with IHL and to repress its violations. Alley argues that respect for IHL will remain inadequate if such capacity gaps go unaddressed.

The article by Remzije Istrefi and Arben Hajrullahu focuses on conflict-related sexual violence (CRSV). In particular, the authors examine the challenges in seeking justice for CRSV survivors in Kosovo. Through a careful consideration of specific CRSV cases, the paper seeks to identify lessons to be learned from the shortcomings of UNMIK and EULEX's handling of such cases. The authors make a series of recommendations to prosecutors and judges in Kosovo – recommendations that may well resonate in other post-conflict societies.

Simon McKenzie and Eve Massingham's contribution addresses the obligation of a defending party in an armed conflict to take steps to protect civilians from harm. They focus specifically on the application of this obligation with respect to digital infrastructure, which has ever-increasing significance for the civilian population. The authors argue that, where feasible, the use of civilian digital infrastructure for military purposes should be minimised, and States should find ways to make such infrastructure readily identifiable to the adversary.

In his article, Owiso Owiso considers the prospects of a proposed transitional justice framework in South Sudan. He notes the concerns that, as a country still emerging from a protracted and complex conflict, South Sudan might not appear 'ripe' for transitional justice. But Owiso argues that a failure to take steps towards establishing transitional justice mechanisms would further entrench the positions of the warring parties, and exacerbate the suffering of civilians and the disintegration of society. He suggests that measures to gather and preserve evidence, and consultations on the relevant legislation, should move forward.

Emmanuel Sarpong Owusu takes a critical look at the defence of superior orders in a historical perspective and under the Rome Statute. Relying on insights from psychology and moral philosophy, he argues that it is not always justifiable to hold individuals criminally liable for crimes that they carried out while complying with manifestly unlawful orders. Specifically, Owusu suggests that grave fear may lessen or negate the voluntariness of a person's actions, which is an essential element of criminal liability.

The final article of this issue considers the protection of the environment during and after armed conflict. Alexandra Wormald evaluates the International Law Commission's Draft Principles on the Protection of the Environment in

Relation to Armed Conflicts, focusing on the two draft principles that address corporate accountability. Drawing on the ‘interactional theory of international law’, Wormald emphasises the importance seeking a shared understanding of all the relevant stakeholders, not just States, with respect to the principles developed. She also highlights the ability of ‘soft’ norms, created outside the framework of treaties, to gain the support of experts.

This issue concludes with three reviews. Alonso Gurmendi Dunkelberg’s review essay discusses Samuel Moyn’s *Humane: How the United States Abandoned Peace and Reinvented War* (Farrar, Straus and Giroux 2021). Aurélien Godefroy reviews *Les conflits armés en mutation* by Jérôme de Hemptinne (Pedone 2019), and David Matyas reviews *Lawmaking under Pressure: International Humanitarian Law and Internal Armed Conflict* by Giovanni Mantilla (Cornell University Press 2020).

We have now been at the helm of this *Journal* for three years. This might be an opportune moment to say something about the identity and objectives of the *Journal*, as they have evolved over twelve volumes.

The *Journal of International Humanitarian Legal Studies* seeks explore the application of international law to humanitarian crises and, more specifically, to examine the role that this legal framework plays in protecting human security during times of emergency. This is an intentionally broad mission statement. While the *Journal* has published a large number of papers relating to armed conflict, we also welcome contributions that address other natural or human-made emergencies in the context of international law. Indeed, conflicts often exacerbate other kinds of emergencies – and *vice versa* – making it important to consider crises wholistically to ensure the best possible outcomes for those affected by them.

Relatedly, the words ‘humanitarian legal studies’ in the title of the *Journal* should not be taken to mean IHL. While, again, many contributions to the *Journal* have examined aspects of this branch of international law, we are equally open to papers that focus on, for example, the protection of human rights during times of armed conflict, international refugee law, international disaster law, the law of post-conflict reconstruction, or international criminal law. As we hinted at the beginning of this editorial, even aspects of international law dealing with intellectual property or trade may be relevant in some humanitarian crises. Because the *Journal* does not confine itself to a particular specialist area of international law, papers examining the interplay between different branches of the law would be most welcome.

Furthermore, the *Journal* does not have a particular methodological or theoretical persuasion. We are equally open to contributions that engage in doctrinal legal research and those that take a socio-legal or critical perspective. If anything, we would like to encourage bringing new avenues of enquiry to bear on international law and humanitarianism broadly conceived.

This issue of the *Journal* would not be before the readers without the tireless work of members of our Editorial Board, our assistant editors and peer reviewers. We thank them for their invaluable contributions. As has become a tradition, we have listed the colleagues who reviewed articles for this volume at the end of this issue, lest their work go unacknowledged.

As always, we look forward to hearing from our readers and potential contributors. If you would like to discuss an idea for a symposium or an article, please do not hesitate to drop us a line – either collectively at editors@jihls.net or individually at the addresses below. Our Reviews Editor, Marco Longobardo (m.longobardo1@westminster.ac.uk) is also always on the lookout for insightful reviews of books and other media that fall within the scope of the *Journal*. Thank you for reading, and we hope to hear from you.

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