

# HUMANITARIAN LAW & POLICY



## Championing IHL compliance in contemporary armed conflict: the 2024 ICRC Challenges Report

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**Cordula Droege**

Chief Legal  
Officer/Legal Division  
Head, ICRC



*Since 2003, the ICRC has submitted a report on ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflict’ to the International Conference of the Red Cross and Red Crescent, where the High Contracting Parties to the Geneva Conventions come together with the International Red Cross and Red Crescent Movement to discuss key matters of humanitarian concern and to make joint commitments.*

*In this post and drawing from the 2024 Challenges Report, ICRC Chief Legal Officer Cordula Droege presents the ICRC's analysis of some of the salient legal issues of today's conflicts, animated, first and foremost, by its desire to achieve greater protection of victims of war from the effects of armed conflicts, and informed by its observation of key humanitarian issues on the ground and its dialogue with parties to conflicts in all parts of the world.*

*ICRC Humanitarian Law & Policy Blog · Championing IHL compliance in contemporary armed conflict: the 2024 ICRC Challenges Report*

As we mark the 75th anniversary of the four Geneva Conventions of 1949, international humanitarian law (IHL) faces mounting challenges, despite its universal endorsement and critical role in conflict. Persistent violations remain a grave concern. And while in many cases, parties do not even attempt to justify such violations – and often deny the facts – a particular legal concern arises when violations of IHL are portrayed as compliant behaviour.

While global attention focuses on a few conflicts at any given time, there are over 120 ongoing armed conflicts worldwide, some lasting many decades. The 2024 ICRC Challenges Report reflects the legal challenges that arise across many of these conflicts.

International humanitarian law remains a uniquely powerful tool for mitigating the human cost of armed conflict – if and when it is respected, which hinges on strong political will. In the absence of an international enforcement mechanism for international law, compliance is first and foremost achieved at the domestic level. States must train and discipline their own personnel, empower their judiciary to prosecute and punish those who commit violations, push others to comply, and cooperate with international institutions to ensure respect for IHL and accountability. When conflict occurs, the signal to troops on the ground that respect for IHL *matters* is a crucial ingredient for compliance and must come from the highest level.

## **Upholding the normative framework**

International humanitarian law can only be effective in mitigating the effects of armed conflict if it is understood and interpreted as the restraining framework against which military operations must be measured, and not the other way around.

All law needs interpretation, and IHL is no exception. Discussions and disagreement over how terms must be understood are not, as such, a cause for concern. How international humanitarian law is interpreted, however, can have dramatic consequences. All too often, non-compliant behaviour is presented as compliant through ever more permissive interpretations of international humanitarian law, leaving entire categories of people without protection and large-scale civilian casualties and destruction in its wake. That is what is at stake.

The Challenges Report outlines how this vast web of rules protecting people affected by armed conflict was developed precisely to prevent or reduce, as much as possible, the harms concomitant with war. IHL contains clear rules on the protection of detainees; on separated family members, missing people and the dead; on children. Over time, these rules have proven to be crucial in reducing suffering. Even so, they continue to be tested and challenged. At times, parties to conflicts attempt to narrow their protective scope with a narrative that seeks to exclude certain groups or people. Other challenges arise when the necessary steps are not taken to implement IHL properly and prevent violations.

The Report recalls who is protected by the Geneva Conventions and explains why interpretations that purport to exclude groups or individuals from protection must be rejected. It also highlights that different people are affected differently by armed conflict and that international humanitarian law cannot achieve its protective purpose if its interpretation obscures the needs and risks of entire categories of people.

Similarly, the Report recalls that the IHL principles and rules on the conduct of hostilities aim to protect civilians and civilian objects against the dangers of military operations. To do so, they carefully balance between what is necessary to achieve a legitimate military purpose and the imperative to limit death, suffering, injury, and destruction during armed conflict.

This framework, however, is under strain. Overly permissive interpretations of IHL rules on the conduct of hostilities risk upsetting this delicate balance and thwarting its purpose, which is to save lives and spare civilians and civilian objects. For instance, the Report outlines that interpretations of what constitutes a military objective that purport to loosen the clear parameters of the law by asserting that an entire category of civilian infrastructure may offer a military advantage is not, in the view of the ICRC, compatible with IHL.

This also goes for the application and interpretation of IHL to new technologies of warfare. If algorithms are trained in overly permissive targeting rules, the result will be death and destruction among civilians at greater speed and on a larger scale. In extreme cases, and unless new legal limits are agreed, autonomous weapon systems will use force with little restraint, taking life-and-death decisions without human control. Moreover, digital means can be used to cause large-scale damage and disruption of civilian life and essential services in societies. Asserting that these means are unregulated, or interpreting applicable IHL rules in a way that undermines IHL's protective function in a digitalizing world, will bring into existence a new dimension of chaos and harm.

## Building a culture of compliance with IHL

Since its *first Report* on IHL and the challenges of contemporary armed conflict in 2003, the ICRC has consistently emphasized that the single most important challenge to IHL is the lack of respect for it. The result is suffering, destruction, cruelty, and staggering needs among civilians.

If there is political will to respect IHL, there is a way.

States are the authors and stewards of IHL. They can negotiate additional limits and accede to existing ones. Good practices are plentiful – and we must build on them. Every day, states take concrete steps to incorporate IHL rules and other norms in domestic laws, policies and practices. They train their armed forces on IHL and establish strong disciplinary systems. They prosecute those who commit serious violations of the law. States also take measures to ensure that their allies and partners respect IHL. They have made important commitments, including in relation to arms-transfer decisions, and respecting them is crucial to building a culture of compliance with IHL.

Non-state armed groups, too, seek to understand IHL, implement it in their internal rules and disciplinary systems, and respect it. To guide and reinforce such measures, dialogue with armed groups is indispensable. Anchoring the protection IHL provides for people affected by armed conflict in norms, ethics, and standards from cultural traditions and practices, as well as in other legal frameworks, can have significant impact.

In some instances, states have also come together to reinforce IHL and the protection of civilians and protect humanitarian action over the last years. Since the last Challenges Report in 2019, the Political Declaration on the Use of Explosive Weapons in Populated Areas has sent a clear signal that a change in mindset in how belligerents plan and conduct hostilities in populated areas *is urgently needed*. Building on this declaration, states are now encouraged to exchange on better practices to protect civilians against the effects of *urban warfare*.

The entry into force of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2021 was a *milestone* and an essential step towards the elimination of nuclear weapons and the existential threat that they pose to all of humanity.



The Red Cross and Red Crescent Movement will continue to work to increase membership of the TPNW, alongside the promotion of full implementation of the Treaty on the Non-Proliferation of Nuclear Weapons.

Legal developments have also taken place to uphold the legal framework that allows for humanitarian space in the midst of conflict. In 2022, there was *a significant shift* in the way states and international organizations made space for humanitarian action in the design of international and autonomous sanctions. *UN Security Council Resolution 2664*, which excludes humanitarian action from current and future financial sanctions adopted by the UNSC, marks a shift towards well-framed and standing humanitarian exemptions as the *new standard* in the design of such sanctions.

## Interpreting the rules of war in good faith

Challenges to international humanitarian law are manifold and deep. But they are not insurmountable.

Building political will for better respect of IHL must become a priority for states and other parties to armed conflict, first and foremost to protect the lives and dignity of millions of people affected by armed conflict. Respect for IHL can contribute to the goal of building sustainable peace by removing at least some obstacles to peace-making. When parties have treated their adversaries humanely, when families are not suffering the void left by missing persons, the path back to peace may be easier to find.

Every day, IHL is applied and vital in today's armed conflicts. At the ICRC, we see many *instances of respect for IHL*, making a significant difference for people affected by armed conflict. Every time parties to a conflict agree on a medical evacuation, every time we can deliver vital humanitarian assistance, every time parties refrain from an attack to spare civilian populations, and every time we visit detainees who are treated with dignity – we see the positive impact and glimpse the true potential of IHL.

We need to work toward a world where instances of respect far outnumber and outweigh times when the law is not respected. This means, first and foremost, states taking their responsibility to uphold the laws of war seriously – not just the rules, but the spirit of the law, in good faith.

### See also

- Cordula Droege, *War and what we make of the law*, July 18, 2024
- Cordula Droege and Elizabeth Rushing, *Israel and the occupied territories: how international humanitarian law applies*, December 19, 2023
- Cordula Droege, Eirini Giorgou and Elizabeth Rushing, *How does international humanitarian law develop?*, April 13, 2023

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