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The Scope of International Humanitarian Law

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Abstract

International Humanitarian Law (IHL), often referred to as the law of armed conflict, is a fundamental branch of public international law that regulates the conduct of hostilities and mitigates the humanitarian consequences of war. Rooted in principles of humanity, necessity, proportionality, and distinction, IHL seeks to strike a delicate balance between military objectives and the protection of individuals who are not, or are no longer, participating in hostilities. The contemporary relevance of IHL has increased significantly due to the evolving nature of armed conflicts, which non-state actors, technological advancements, and complex geopolitical dynamics increasingly characterise.

The historical evolution of IHL reflects a gradual transition from customary humanitarian practices to codified legal norms. Early manifestations of humanitarian restraint can be traced to ancient civilizations, including Indian, Islamic, and European traditions, which imposed ethical limitations on warfare. However, the modern legal framework of IHL began with the adoption of the Geneva Convention of 1864, inspired by the humanitarian efforts of Henry Dunant following the Battle of Solferino. This marked the beginning of treaty-based regulation of armed conflict, focusing initially on the protection of wounded soldiers and medical personnel.

Subsequent developments, particularly the Hague Conventions of 1899 and 1907, complemented the Geneva framework by regulating the means and methods of warfare. Together, these legal traditions formed the dual pillars of IHL—protection of victims and regulation of hostilities. The atrocities of the Second World War exposed significant gaps in existing legal protections, leading to the adoption of the four Geneva Conventions of 1949, which expanded the scope of protection to include civilians and prisoners of war. The Additional Protocols of 1977 further strengthened these protections and extended the applicability of IHL to non-international armed conflicts, reflecting the changing nature of warfare.

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INTRODUCTION

International Humanitarian Law (IHL), commonly referred to as the law of armed conflict, constitutes a vital branch of public international law that seeks to regulate the conduct of hostilities and limit the humanitarian consequences of war. Its primary objective is to strike a balance between military necessity and humanitarian considerations by protecting individuals who are not, or are no longer, participating in hostilities, while also restricting the means and methods of warfare. Rooted in fundamental principles such as humanity, distinction, proportionality, and necessity, IHL aims to preserve a minimum standard of human dignity even in the most extreme circumstances of armed conflict.

The modern framework of IHL has evolved through a combination of treaty law and customary international law. The adoption of the Geneva Conventions of 1949 and their Additional Protocols of 1977 marked a significant milestone in the codification and expansion of humanitarian protections. These instruments provide comprehensive rules governing the protection of civilians, prisoners of war, and the wounded and sick, and establish obligations binding on both state and non-state actors. Over time, customary international law has further reinforced these principles, ensuring their universal applicability even in the absence of treaty ratification.

The scope of IHL is multifaceted, encompassing material, temporal, and personal dimensions. It applies to both international and non-international armed conflicts, reflecting the changing nature of warfare in the contemporary world. Modern conflicts are increasingly characterized by the involvement of non-state armed groups, asymmetric warfare, and technological advancements, which pose significant challenges to the effective implementation of existing legal norms.

Another important aspect of IHL is its interaction with International Human Rights Law (IHRL). While IHRL applies at all times, IHL operates as a specialized legal regime during armed conflict. The relationship between the two has been the subject of extensive judicial and academic debate, particularly with regard to the principle of *lex specialis* and the continued applicability of human rights obligations during hostilities.

In light of these developments, this study seeks to examine the scope of International Humanitarian Law by analysing its historical evolution, sources, applicability, and contemporary challenges. It aims to provide a comprehensive understanding of how IHL functions in practice and to evaluate its effectiveness in addressing the complexities of modern warfare.

1. Historical Evolution and Sources of IHL

1.1 Early Humanitarian Traditions

Although the formal codification of IHL began in the nineteenth century, rudimentary humanitarian restraints on warfare existed in various civilisations¹. Ancient Indian texts such as the Mahabharata and Arthashastra contained ethical

guidelines on warfare, including prohibitions against attacking unarmed opponents. Similarly, Islamic law and medieval European chivalric codes imposed certain restraints on conduct in battle. However, these norms lacked universality and enforceability.² The evolution of IHL continued with the Hague Conventions of 1899 and 1907, which focused on regulating the means and methods of warfare. These conventions complemented the Geneva framework, together forming the foundational pillars of modern humanitarian law.

Following the devastation of the Second World War, the international community adopted the four Geneva Conventions of 1949, significantly expanding protections to include civilians and prisoners of war. These conventions achieved near-universal ratification and remain the cornerstone of contemporary IHL.

The adoption of the Additional Protocols of 1977 further strengthened humanitarian protections by addressing issues such as civilian protection and non-international armed conflicts.⁴ These developments reflected the changing nature of warfare and the need for more comprehensive legal frameworks.

Judicial interpretation has also played a crucial role in shaping IHL. The International Court of Justice, in its advisory opinion on the legality of nuclear weapons, affirmed the customary nature of fundamental humanitarian principles.

The modern development of IHL is generally traced to the humanitarian movement initiated by Henry Dunant following the Battle of Solferino in 1859. His advocacy led to the establishment of the International Committee of the Red Cross (ICRC) and the adoption of the first Geneva Convention in 1864.

1.2 The Geneva Law and Hague Law

The Geneva Convention of 1864 laid the foundation for the protection of wounded and sick soldiers in the field. It introduced key innovations, including:

neutrality of medical personnel,
protection of the wounded irrespective of nationality.

Parallel to the Geneva tradition, the Hague Conventions of 1899 and 1907 focused on regulating the means and methods of warfare.

These conventions addressed issues such as:

permissible weapons,
bombardment rules, and
rights and duties of neutral powers.

Together, Geneva law (protection of victims) and Hague law (regulation of hostilities) formed the twin pillars of modern IHL.

¹ Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Aug. 22, 1864.

² Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907.

1.3 Post-World War³ II Consolidation

The devastation of the Second World War exposed the inadequacy of existing humanitarian protections. In response, the international community⁴ adopted the four Geneva Conventions of 1949, which significantly expanded the scope of protection to include civilians and prisoners of war. These Conventions achieved near-universal ratification, making them the cornerstone of contemporary IHL.⁵

1.4 Additional Protocols of 1977

The Additional Protocols modernised IHL in several important respects. Additional Protocol I strengthened rules on: civilian protection, indiscriminate attacks, and wars of national liberation. Additional Protocol II, for the first time, provided a treaty framework specifically addressing non-international armed conflicts, thereby acknowledging the changing nature of warfare.

1.5 Customary International Law

Customary IHL plays a crucial role in filling gaps left by treaty law. Many humanitarian rules have attained customary status, making them binding on all states regardless of treaty ratification. The ICRC's study on customary IHL has been particularly influential in identifying such norms.

1.6 Judicial and Institutional Development

International courts have significantly contributed to the interpretation and expansion of IHL. The International Court of Justice affirmed the customary status of fundamental humanitarian principles in the nuclear weapons Advisory Opinion (1996). The ICTY, particularly in *Prosecutor v. Tadić*, clarified the threshold and legal regime applicable to non-international armed conflicts.

The Rome Statute of the International Criminal Court further strengthened the enforcement architecture by codifying war crimes and establishing individual criminal responsibility at the international level.

2. Material, Temporal, and Personal Scope of Application

2.1 Material Scope

The application of IHL is triggered by the existence of an armed conflict, irrespective of formal declarations of war. This functional approach prevents states⁶ from evading humanitarian obligations through political characterisation of conflicts. The application of International Humanitarian Law is triggered by the existence of an armed conflict, irrespective of formal declarations of war. Common Article 2 of the Geneva Conventions establishes that IHL applies to all cases of declared war or any other armed conflict between states.

In contrast, Common Article 3 provides minimum humanitarian standards applicable in non-international armed conflicts, prohibiting violence, torture, and degrading treatment. This provision has been widely recognized as reflecting customary international law.

The International Criminal Tribunal for the Former Yugoslavia, in the *Tadić* case, clarified the threshold for non-international armed conflicts, emphasizing the criteria of intensity and organization. This judgment remains a key reference point in determining the applicability of IHL.

The principles of distinction and proportionality, as elaborated in Additional Protocol I, require parties to distinguish between civilians and combatants and to avoid excessive harm to civilian populations. These principles form the core of the material scope of IHL.

Furthermore, the concept of direct participation in hostilities has been elaborated by the International Committee of the Red Cross, providing guidance on when civilians lose protection from attack.

International Armed Conflicts (IACs) These occur whenever there is resort to armed force between two or more states. Even minor border skirmishes may qualify if they involve armed force.

Non-International Armed Conflicts (NIACs)

NIACs involve protracted armed violence between governmental authorities and organised⁷ armed groups or between such groups.

2.2 Temporal Scope

IHL applies from the initiation of armed conflict until the general cessation of military operations. However, certain obligations continue beyond active hostilities. For example:

Prisoners of war remain protected until repatriation, Occupation law continues as long as effective control exists, and obligations regarding missing persons and the dead persist post-conflict.

The temporal scope is particularly complex in situations of prolonged occupation and counterterrorism operations.

2.3 Personal Scope

IHL classifies individuals into different legal categories, each with distinct rights and obligations.

Combatants

Combatants are lawful participants in hostilities and may be targeted at any time during armed⁸ conflict. Upon capture, they are entitled to prisoner-of-war status and combatant immunity for lawful acts of war.

Civilians

Civilians enjoy protection against direct attack unless and for such time as they take direct part in hostilities. The principle of

³ Geneva Convention I-IV, Aug. 12, 1949, 75 U.N.T.S. 31.

⁴ Protocol Additional to the Geneva Conventions (Protocol I), June 8, 1977.

⁵ Legality of the Threat or Use of nuclear weapons, Advisory Opinion, 1996 I.C.J. 226.

⁶ Common Article 2, Geneva Conventions, Aug. 12, 1949.

⁷ Common Article 3, Geneva Conventions, Aug. 12, 1949.

⁸ *Prosecutor v. Tadić*, Case No. IT-94-I-AR72, Decision on Jurisdiction (Oct. 2, 1995).

distinction requires parties to always differentiate between civilians' population⁹ and combatants.

The concept of "direct participation in hostilities" remains one of the most congested areas in IHL, particularly in asymmetric conflicts.

Specially Protected Persons

IHL provides enhanced protection to certain categories, including:

medical personnel and units, humanitarian relief workers, the wounded and sick, and prisoners of war. Attacks against these protected persons constitute serious violations of IHL.

2.4 Common Article 3

Common Article 3 of the Geneva Conventions establishes minimum humanitarian standards applicable in non-international armed conflicts. Often described as a "convention within a convention," it prohibits violence to life and person, torture, cruel treatment, and humiliating or degrading treatment.¹⁰

The provision has attained customary status and is widely regarded as reflecting fundamental humanitarian principles applicable in all conflicts.

3. Interaction between IHL and International Human Rights Law

International Human Rights Law (IHRL) applies at all times, including during armed conflict, while International Humanitarian Law operates as a specialised legal regime in situations of war. The International Covenant on Civil and Political Rights establishes fundamental human rights obligations that continue to apply during hostilities.

The International Court of Justice has affirmed the concurrent applicability of IHL and IHRL, particularly in its advisory opinion on nuclear weapons. This position was further reinforced in the Wall Advisory Opinion, which emphasized that human rights obligations do not cease in times of armed conflict.

The principle of *lex specialis* governs the relationship between the two regimes, with IHL prevailing in situations where it provides more specific rules. However, this does not entirely displace human rights law, which continues to inform the interpretation of humanitarian norms.

The Human Rights Committee, through General Comment No. 31, has clarified that states must ensure the protection of human rights even during emergencies.⁴ Similarly, judicial decisions such as *Al-Skeini v. United Kingdom* have expanded the extraterritorial application of human rights obligations.

3.1 Concurrent Application

International Human Rights Law applies at all times, whereas IHL applies specifically during armed conflict. The

International Court of Justice has repeatedly confirmed that the two regimes are complementary and may apply simultaneously.¹¹

3.2 Lex Specialis Doctrine

During armed conflict, IHL often operates as the *lex specialis* governing specific conduct. For example, the use of lethal force against combatants is assessed under IHL targeting rules rather than ordinary human rights standards on use of force.¹²

However, the *lex specialis* principle does not entirely displace human rights law. Instead, courts increasingly favour a harmonised interpretation.

3.3 Derogation and Non-Derogable Rights

Human rights treaties permit derogation during public emergencies, but certain rights remain non-derogable. These include:

prohibition of torture, prohibition of slavery, and core protections of the right to life.¹³

IHL reinforces many of these protections through parallel prohibitions.¹⁴

3.4 Areas of Tension

Despite their complementary nature, tensions arise in areas such as:

targeted killings, extraterritorial detention, and occupation governance.

International jurisprudence increasingly seeks to reconcile these tensions through context-specific interpretation.¹⁵

4. Challenges in Contemporary Conflicts

The nature of armed conflict has undergone significant transformation in recent decades, presenting new challenges for the application and enforcement of International Humanitarian Law. One of the most prominent developments is the increasing involvement of non-state armed groups, which often operate outside traditional legal frameworks. Their decentralized structures and lack of accountability mechanisms make it difficult to ensure compliance with IHL.

Technological advancements have further complicated the legal landscape. Cyber warfare, for instance, raises questions regarding the definition of an "attack" and the applicability of principles such as proportionality and distinction.² The anonymity and speed of cyber operations make attribution particularly challenging, thereby complicating enforcement efforts.

¹¹ International Covenant on Civil and Political Rights, Dec. 16, 1966.

¹² Legality of the Threat or Use of nuclear weapons, Advisory Opinion, 1996 I.C.J. 226.

¹³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136.

¹⁴ Human Rights Comm., General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

¹⁵ *Al-Skeini v. United Kingdom*, App. No. 55721/07, Eur. Ct. H.R. (2011).

⁹ Protocol Additional to the Geneva Conventions (Protocol I), arts. 48–51, June 8, 1977.

¹⁰ Int'l Comm. of the Red Cross, Interpretive Guidance on Direct Participation in Hostilities (2009).

The development of autonomous weapons systems introduces additional concerns. These systems have the potential to operate without direct human intervention, raising ethical and legal questions regarding accountability and control. The requirement of meaningful human control has become a central issue in debates surrounding the legality of such weapons.

Urbanization of warfare has also emerged as a significant challenge. Conflicts are increasingly taking place in densely populated areas, where the distinction between civilian and military targets is difficult to maintain. This has resulted in higher civilian casualties and extensive damage to infrastructure, highlighting the limitations of existing legal frameworks.

Enforcement remains the most critical challenge facing IHL. While institutions such as the International Criminal Court provide mechanisms for accountability, their effectiveness is often limited by political considerations and lack of cooperation from states. The absence of a centralized enforcement authority undermines the implementation of humanitarian norms.

Furthermore, the evolving nature of warfare requires continuous adaptation of legal frameworks. Customary international law plays a crucial role in addressing emerging challenges, but its development depends on state practice and *opinio juris*. This process can be slow and inconsistent, leaving gaps in regulation.

In conclusion, addressing contemporary challenges in armed conflict requires not only legal innovation but also greater political commitment and international cooperation. Strengthening enforcement mechanisms and adapting legal norms to new realities are essential for ensuring the continued relevance of IHL.

4.1 Non-State Armed Groups

Modern conflicts frequently involve non-state actors who may lack capacity or willingness to comply with IHL. Their decentralised structure complicates accountability and compliance monitoring.¹⁶

4.2 Cyber Warfare

Cyber operations challenge traditional IHL concepts such as attack, proportionality, and attribution. Determining when a cyber operation amounts to an armed attack remains contentious.¹⁷

4.3 Autonomous Weapons

The development of lethal autonomous weapons systems raises ethical and legal concerns regarding:

meaningful human control, accountability gaps, and proportionality assessments.

Debate continues over whether existing IHL rules are sufficient.¹⁸

4.4 Urbanisation of Warfare

Contemporary conflicts increasingly occur in densely populated cities. Urban warfare heightens risks to civilians and complicates the application of distinction and proportionality.¹⁹

4.5 Enforcement and Compliance

Weak enforcement remains the Achilles' heel of IHL. Although the International Criminal Court provides a permanent forum for war crimes prosecution, political constraints and jurisdictional limits undermine effectiveness.²⁰

CONCLUSION

International Humanitarian Law remains one of the most sophisticated and morally significant branches of international law. Its scope has expanded considerably from its nineteenth-century origins to encompass a wide range of modern conflict scenarios. By regulating the material, temporal, and personal dimensions of armed conflict, IHL seeks to preserve a minimum standard of humanity even in the midst of war.

The growing convergence between IHL and International Human Rights Law has strengthened the protective framework available to individuals. Nevertheless, contemporary warfare—characterised by technological innovation, non-state actors, and urban battlefields—poses serious challenges to the traditional legal architecture.

To maintain its relevance, IHL must continue to evolve through progressive interpretation, stronger compliance mechanisms, and broader international cooperation. The future effectiveness of humanitarian law ultimately depends not only on legal development but also on the political will of the international community to uphold its fundamental purpose: the protection of human dignity during armed conflict.

The analysis of the material, temporal, and personal scope of IHL highlights its adaptability and relevance in regulating modern armed conflicts. By applying to both international and non-international armed conflicts, IHL acknowledges the realities of contemporary warfare, where internal conflicts and the involvement of non-state actors are increasingly prevalent.

¹⁶ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

¹⁷ Tallinn Manual on the International Law Applicable to Cyber Warfare (Michael N. Schmitt ed., 2013).

¹⁸ Int'l Comm. of the Red Cross, Urban Warfare: An ICRC Q&A (2017).

¹⁹ Jean-Marie Henckaerts & Louise Doswald-Beck, Customary International Humanitarian Law (2005).

²⁰ William A. Schabas, An Introduction to the International Criminal Court (5th ed. 2017).

The temporal dimension ensures that humanitarian protections extend beyond active hostilities, while the personal scope provides a structured framework for distinguishing between combatants, civilians, and other protected persons. Nevertheless, challenges remain in applying these categories in complex conflict situations, particularly where traditional distinctions are blurred.

The interaction between IHL and IHRL reflects an evolving legal landscape characterized by increasing convergence and complementarity. While IHL operates as the *lex specialis* during armed conflict, human rights law continues to provide a broader framework for the protection of individuals. Judicial interpretations have emphasized the concurrent application of these regimes, promoting a harmonized approach that enhances the overall protective framework. However, tensions persist in areas such as targeted killings, detention practices, and extraterritorial application, indicating the need for further clarification and doctrinal development.

Contemporary challenges pose significant threats to the effectiveness of IHL. The rise of non-state armed groups has complicated traditional enforcement mechanisms, as such actors often operate outside formal legal structures and may lack the capacity or willingness to comply with humanitarian norms. Technological advancements, including cyber warfare and autonomous weapons systems, have introduced new dimensions that existing legal frameworks struggle to address. These developments challenge fundamental principles such as distinction, proportionality, and accountability, raising critical questions about the adequacy of current legal norms.

The increasing urbanization of warfare has further intensified humanitarian concerns. Conflicts in densely populated areas result in higher civilian casualties and extensive damage to infrastructure, making it difficult to ensure compliance with IHL principles. This highlights the need for more context-specific approaches and stronger operational guidelines to protect civilian populations in urban environments.

Perhaps the most significant challenge facing IHL is the issue of enforcement and compliance. While mechanisms such as the International Criminal Court provide avenues for accountability, their effectiveness is often limited by political constraints, jurisdictional issues, and lack of cooperation from states. The absence of a centralized enforcement authority means that compliance largely depends on the willingness of parties to adhere to legal norms. This underscores the importance of strengthening both international and domestic mechanisms for monitoring and enforcing IHL.

In light of these challenges, the future of IHL depends on its ability to adapt to changing realities while preserving its core principles. This requires not only legal innovation but also

greater political commitment and international cooperation. Efforts should focus on clarifying the application of IHL in emerging domains such as cyber warfare, strengthening accountability mechanisms, and enhancing the capacity of institutions responsible for enforcing humanitarian norms.

Furthermore, there is a need for greater integration between IHL and other areas of international law, particularly human rights law and international criminal law. Such integration would create a more cohesive and effective legal framework for addressing the complexities of modern warfare. Education and training of armed forces, as well as increased awareness among non-state actors, are also essential for improving compliance with IHL.

In conclusion, International Humanitarian Law remains a vital and dynamic field of international law, dedicated to the protection of human dignity in the most challenging circumstances. While significant progress has been made in developing a comprehensive legal framework, much work remains to be done to ensure its effective implementation. The continued relevance of IHL depends on the collective efforts of the international community to uphold its principles, adapt to new challenges, and reaffirm the fundamental commitment to humanity in times of armed conflict.

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