

International Humanitarian Law: Alleviating Human Suffering During Armed Conflicts

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Abstract

International Humanitarian Law (IHL) comprises a body of rules designed to reduce the humanitarian impact of armed conflicts. It is also known as the law of armed conflict or the law of war. In situations of armed conflict, the International Committee of the Red Cross (ICRC) serves as the guardian and custodian of IHL. The core legal foundations of IHL are the four Geneva Conventions of 1949 and their Additional Protocols of 1977. The ICRC works in cooperation with sovereign States, United Nations organs, and other relevant institutions to promote compliance with IHL during armed conflicts. For humanitarian purposes, IHL seeks, in times of armed conflict, to protect individuals who are not, or are no longer, directly participating in hostilities, while also limiting the means and methods of warfare. This article aims to identify the major challenges facing IHL and related issues worldwide. It also examines the state of IHL in Nepal and proposes possible measures that may be adopted to strengthen its application. Considerable efforts remain necessary to ensure respect for IHL, particularly through enhanced compliance mechanisms and enforcement. IHL is of particular relevance to Nepal in light of the decade-long insurgency between the state and the former Communist Party of Nepal (Maoist), as the victims of the conflict have been awaiting justice for nearly two decades. There is a significant gap in the implementation of IHL measures, as well as a limited level of treaty participation in the field of IHL. Accordingly, the government needs to address both the strengthening of domestic implementation measures and the expansion of treaty participation.

Keywords: armed conflict, enforcement, Geneva Conventions, International Humanitarian Law, International Committee of the Red Cross, transitional justice, Martens Clause

Introduction

International humanitarian law (IHL) is a component of public international law that regulates the conduct of hostilities during armed conflict, whether such conflict is classified as an international armed conflict (IAC) or a non-international armed conflict

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(NIAC). In 1863, the same year the International Committee of the Red Cross (ICRC) was established, the first voluntary relief organizations, known as National Red Cross and Red Crescent Societies, came into existence. On 22 August 1864, the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted, marking the first formal codification of international humanitarian law through the original 1864 Geneva Convention (ICRC, 2026).

IHL consists of a body of rules intended to mitigate the humanitarian consequences of armed conflict. It is grounded mainly in treaty law, notably the 1949 Geneva Conventions and their Additional Protocols, as well as in numerous other agreements addressing specific matters. Alongside these treaties, customary international law is binding on all states and on every party involved in armed conflict (ICRC, 2026). The Geneva Conventions and their Additional Protocols set out safeguards for persons who do not take part in hostilities, including civilians, medical staff, and humanitarian workers, as well as for those who are hors de combat, such as the wounded, the sick, shipwrecked members of armed forces, and prisoners of war.

Throughout history, while communities have turned to violence as a means of settling disputes, they have simultaneously acknowledged the necessity of restraining the use of force to avoid unrestrained brutality in war. From this enduring understanding emerged rules protecting civilians, detainees, and the wounded, which are now formally enshrined in international humanitarian law. Thus, even during armed conflict, legal and ethical limits continue to apply (Geneva Conventions and the Law, 2026). International humanitarian law operates alongside other branches of public international law, including international human rights law, refugee law, international criminal law, and related frameworks such as the International Criminal Court.

Methodology

Primarily, the study adopts a qualitative research design, supplemented by quantitative and mixed-method approaches. Its data is drawn mainly from digital sources, particularly a range of websites that provide informational, analytical, and critical perspectives. The article relies heavily on the ICRC's website, since both the international humanitarian community and States recognize the ICRC as the custodian and guardian of international humanitarian law.

Also, this article draws on key international humanitarian law publications produced primarily by the ICRC, including the 1949 Geneva Conventions and their 1977 Additional Protocols, the Commentaries on the Geneva Conventions, the Study on Customary IHL, A Comprehensive Introduction to IHL, How Does IHL Protect in War (Volumes I–III), Elements of War Crimes under the Statute of the International Criminal Court, IHL: Answers to Your Questions, A Memory of Solferino, and Discover the ICRC.

Categories of Armed Conflicts

There are two kinds of armed conflicts: international armed conflicts and non-international armed conflicts. An international armed conflict involves hostilities between two or more states, whereas a non-international armed conflict occurs either between a state and one or more non-state armed groups, or solely among non-state armed groups themselves. IHL applies to situations of armed conflict, a de facto state of hostilities dependent on neither a declaration nor recognition of the existence of “war” by its parties. In terms of its material scope, whether an armed conflict is an international armed conflict or a non-international armed conflict will largely determine which rules of IHL apply (Term Armed Conflict, 2026). For IHL to be applicable, a situation of violence must reach the threshold of an armed conflict. Because distinct legal regimes govern international and non-international armed conflicts, determining the classification of the conflict is essential. International armed conflicts are regulated by all four Geneva Conventions together with Additional Protocol I, whereas non-international armed conflicts are governed by common Article 3 of the four Geneva Conventions and Additional Protocol II (Classification of Conflict, 2026).

Common Article 2 of the Geneva Conventions characterizes international armed conflicts as all instances of declared war or any other armed confrontation arising between two or more High Contracting Parties. Accordingly, any conflict fought between states is international in nature. By contrast, under common Article 3, non-international armed conflicts are those that are “not of an international character.” The principal criterion distinguishing the two categories, therefore, lies in the identity of the parties to the conflict. Hostilities involving two or more states qualify as international armed conflicts, while conflicts in which at least one party is a non-state actor are classified as non-international armed conflicts (Classification of Conflict, 2026).

ICRC as the Guardian and Custodian of IHL

The ICRC acts as the guardian of IHL, a complex role that is closely connected with its own foundation and was later formally entrusted to it by the international community (ICRC as Guardian of IHL, 2026). Although the Geneva Conventions enjoy universal acceptance, compliance with even their most basic humanitarian principles remains alarmingly inadequate in contemporary conflict settings. Ongoing wars starkly and tragically illustrate the profound difficulties international humanitarian law faces in delivering real and effective protection to those impacted by armed conflict. This distressing pattern is neither inevitable nor irreversible (Political Commitment to IHL, 2026). Despite the universal acceptance of the 1949 Geneva Conventions, respect for even the most fundamental humanitarian principles remains gravely insufficient in contemporary conflict environments. International humanitarian law consists of rules intended to limit the human cost of war by protecting people who are not, or are no longer, taking part in hostilities and by governing the means and methods of

warfare. This disturbing situation is not irreversible, but addressing it demands firm and sustained political commitment to respect and implement IHL (Political Commitment to IHL, 2026) .

The global initiative seeks to formulate concrete and practical recommendations to strengthen respect for IHL and to ensure its relevance in addressing future challenges by 2026. On 28 January 2025, at a pivotal moment when shared humanity is under severe strain, conflicts from Gaza (Palestine) and Sudan to Myanmar and Ukraine continue to inflict profound suffering on millions. At a major event convened by the President of the United Nations General Assembly, the ICRC underscored the vital importance of respecting IHL. The process will culminate in a high-level meeting in 2026 dedicated to reaffirming humanity in times of armed conflict (Global IHL Initiative, 2026).

Civilians continue to suffer most acutely from armed conflicts, with communities displaced, families separated, and essential infrastructure reduced to ruins. Compounding this suffering are emerging forms of warfare—such as autonomous weapons systems, cyber operations, and artificial intelligence—which risk bypassing the legal frameworks that have traditionally regulated the conduct of hostilities. In remarks delivered in Geneva on 26 February 2025, the ICRC President warned that the increasing normalization of violations of IHL represents an existential danger to the Geneva Conventions and to international law as a whole, and stressed that this deeply concerning trend demands immediate and collective action (IHL as a Political Priority, 2026).

Universality of the Geneva Conventions

The 1949 Geneva Conventions are universally recognized instruments of IHL, having been ratified by 196 States. Breaches of IHL have catastrophic consequences: hospitals are destroyed, civilian neighborhoods are flattened, and countless innocent lives are taken. Worldwide, respect for IHL is under intense pressure, endangering the very sense of humanity these rules exist to protect. This is not an abstract or hypothetical issue; it has immediate, daily impacts on millions of people and requires enormous humanitarian resources to address. The core principles of IHL transcend domestic legal systems, national boundaries, religions, and cultures. Yet the current reality reflects a deeply troubling tolerance for mass death, widespread destruction, and the erosion of human dignity. If this course persists, the implications are profoundly alarming (Specific Protection of Hospitals, 2026).

States parties to the Geneva Conventions are called upon to back this initiative in order to reinforce sustained political commitment to respect, ensure compliance with, and effectively implement IHL. The international community is united by a shared aim to rely on IHL as a central framework for reducing human suffering and contributing to the pursuit of peaceful solutions to armed conflicts (Political Commitment to IHL, 2026).

Challenges of Enforceability and Compliance

Enforceability concerns the extent to which a law, regulation, contract, or agreement can be effectively applied and upheld by a competent legal authority, such as a court. Compliance, by contrast, refers to the observance of prescribed rules, laws, or standards established by an authoritative or regulatory body. It is widely recognized that securing both enforceability and compliance is especially challenging at the international level, where enforcement mechanisms are generally less robust than those operating within domestic legal systems (Ruti, 2026).

We are not only facing a widespread failure to comply with IHL, but also a profound moral crisis. As the ICRC recently emphasized, choosing not to defend IHL today is effectively accepting a future where wars are conducted with escalating cruelty and a disregard for human dignity (United Nations, 2026).

Contexts of Armed Conflicts

There are over 120 armed conflicts around the world, involving over 60 states and 120 non-state armed groups. The majority of these armed conflicts are of a non-international character, the number of which has tripled since the turn of the millennium (Humanitarian: Law and Policy, 2026). The widespread breaches of IHL across more than 120 ongoing armed conflicts do not reflect deficiencies in the law itself; rather, many of these conflicts are protracted and highly complex.

While the ICRC acts as the guardian of the Geneva Conventions, responsibility for enforcement rests with States. Political and military leaders bear ultimate accountability for protecting populations affected by conflict, as their decisions determine how hostilities are conducted. States must give practical meaning to IHL through effective interpretation and implementation to strengthen civilian protection in practice, with members of the United Nations Security Council bearing a particular responsibility in this regard. For people living amid conflict, tangible measures are required - statements alone are insufficient (International Review, 2026).

Protecting Civilians

The protection of civilians in armed conflict remains one of the most pressing challenges of contemporary warfare. The ICRC consistently documents serious violations, including the injury and killing of civilians, arbitrary detention, torture, sexual violence, starvation, and forced displacement. A world in which the laws of war are applied selectively - imposed on adversaries but ignored by oneself or one's allies - is neither just nor sustainable. When all parties to a conflict respect fundamental humanitarian principle, civilian suffering can be significantly reduced; conversely, their disregard leads to moral erosion, widespread disorder, and profound human suffering. Universally ratified, the Geneva Conventions serve as a shared moral framework, embodying values

that rise above nationality, politics, and religion. Since their adoption in 1949, they have helped protect the lives and dignity of millions, yet the scale of harm endured by civilians today clearly shows that their essential principles are too often being violated (Swiss Federal Authority, 2026).

Noncompliance and Impunity

Noncompliance and impunity are among the most evident problems. The wide disconnect between agreed legal norms and conditions on the ground has long posed a major challenge to the law of armed conflict. Violations frequently occur, fostering understandable frustration, disillusionment, and even cynicism. States, international organizations, and non-State armed groups, including those benefiting from governmental backing, must take far stronger measures to end impunity. But noncompliance is only part of the challenge. There are more subtle, yet equally pernicious forces at work. The Geneva Conventions were designed to prevent the recurrence of horror attacks inflicted on soldiers and civilians during the two World Wars. More recently, though, parties to armed conflicts have used IHL to justify their actions when they depart from the expectations that would ordinarily apply in peacetime, especially those concerning human rights (Law and Policy, 2026).

Transitional Justice and IHL in Nepal's Case

Nepal experienced a decade-long armed conflict between 1996 and 2006, which led to significant human and material losses. The country has yet to deliver justice to the victims through the completion of the transitional justice process. Additionally, Nepal could strengthen efforts to promote and uphold the principles of IHL by revitalizing its existing National IHL Committee, an interministerial body. This is an opportunity to solidify sustained political will to ensure respect for, compliance with, and implementation of IHL.

Although the Ministry of Law, Justice and Parliamentary Affairs, represented by the National IHL Committee, has made certain efforts, the drafting and adoption of national legislation to implement the 1949 Geneva Conventions remains outstanding. This legislative void has limited Nepal's capacity to enforce IHL at the domestic level. Furthermore, Nepal has yet to accede to several key IHL instruments, including the 1977 Additional Protocols to the Geneva Conventions (Chalisey, 2026). International humanitarian law is regarded as *lex specialis* in situations of armed conflict.

Two decades have elapsed in the effort to enact legislation acceptable to both victims of the armed conflict and the international community - legislation intended to respond to victims' concerns and rights through an effective transitional justice mechanism. On 29 August 2024, the Government of Nepal authenticated the bill to amend the Enforced Disappearances, Enquiry, Truth and Reconciliation Commission Act. The international

community welcomed Nepal's efforts to take the peace process to a logical conclusion. The Government of Nepal must give due consideration to the legitimate concerns of victims—particularly regarding the composition, transparency, independence, and credibility of the commissions—if the transitional justice process is to gain the trust of stakeholders and fulfill its mandate to deliver truth, justice, and reparations (Transitional Justice Bill, 2026).

Nepal and IHL Obligations

The Four Geneva Conventions of 1949 protect the following categories of people:

- I. The wounded and sick in armed forces on the battlefield.
- II. The wounded, sick, and shipwrecked members of armed forces at sea.
- III. Prisoners of war.
- IV. Civilians during times of war.

Additional Protocol I enhances the protection of victims in IACs (IHL Databases, 2026), while Additional Protocol II extends protection to victims of NIACs (IHL Databases, 2026). Common Article 3 of the four Geneva Conventions, a minimum standard for the protection of civilians and hors de combat, is considered a treaty in miniature (IHL Databases, 2026).

Nepal acceded to the four Geneva Conventions in 1964, the key instruments of IHL. Other IHL treaties to which Nepal is a party are: (IHL and other related treaties, 2026)

- 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
- 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
- 1989 Child Rights Convention
- 1993 Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
- 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Nepal may consider acceding to several key IHL instruments, including the 1980 Convention on Certain Conventional Weapons, the 1998 Rome Statute of the International Criminal Court, the 1977 Additional Protocols to the 1949 Geneva Conventions, the 1997 Anti-Personnel Mine Ban Treaty, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, the 2013 Arms Trade Treaty, and the 2017 Treaty on the Prohibition of Nuclear Weapons (Treaties and State Parties, 2026).

The Government of Nepal is encouraged to assess the relevance and advantages of ratifying these instruments and to take steps toward their eventual adoption. Furthermore, despite being a party to the Geneva Conventions, Nepal has yet to enact comprehensive domestic legislation to implement its provisions, notwithstanding the obligation of state parties to do so.

Martens Clause – Advocating Principles of Humanity

The Martens Clause, which advocates humanity, has been an integral element of the law of armed conflict since it was first articulated in the preamble to the 1899 Hague Convention (II) concerning the laws and customs of war on land. The preamble states that, pending the adoption of a more comprehensive codification of the laws of war, the High Contracting Parties affirm that in situations not expressly regulated by the adopted provisions, civilians and combatants remain subject to the protection and authority of the principles of international law, as derived from established customs among civilized nations, the dictates of humanity, and the demands of public conscience (The Hague, 2026).

The Clause derives its origin and name from a statement delivered by Professor Friedrich von Martens, the Russian delegate to the 1899 Hague Peace Conference. In essence, the Martens Clause is understood to mean that conduct not expressly forbidden by international humanitarian law is not thereby automatically lawful. Parties to a conflict are required at all times to ensure that their actions comply with the principles of humanity and the dictates of public conscience.

The Martens Clause has evolved into a foundational principle of modern international military and humanitarian law and remains instrumental in promoting the continued humanization of armed conflict. Its humanitarian character lies in its capacity to govern situations arising during hostilities between opposing parties that are not addressed by existing international or domestic legal frameworks. This enduring function further underscores Martens' distinctive contribution to the development of international humanitarian law (Ivanenko, 2026).

International Conference of the Red Cross - a Platform to Promote IHL

The International Conference of the Red Cross and Red Crescent serves as the highest decision-making forum of the International Red Cross and Red Crescent Movement, bringing together the High Contracting Parties to the Geneva Conventions and the Movement's components to deliberate on major humanitarian issues and to undertake collective commitments (34th International Red Cross Conference, 2026).

It is a distinctive, non-political platform where the components of the Movement participate on an equal footing with States.

The objectives of the International Conference are to:

- promote respect for and the advancement of international humanitarian law;
- enhance the safety, protection, and dignity of individuals through stronger legal frameworks and policies;
- influence and define the global humanitarian agenda.

The International Conference adopts its decisions in the form of resolutions and strives to reach them by consensus. The 34th International Conference was held in Geneva from 28 to 31 October 2024.

Conclusion

International humanitarian law (IHL) is intended to alleviate human suffering during armed conflicts. Both state and non-state actors engaged in hostilities are obliged to respect IHL rules to protect individuals affected by conflict. To this end, the international community and sovereign States have developed binding norms and legal frameworks. Despite the growth of treaty law and the adoption of national implementing legislation, compliance with the rules of war remains weak. The enforcement of both national and international legal obligations continues to pose significant challenges. Effective IHL compliance mechanisms must be properly formulated and implemented by parties to a conflict, including the establishment of punitive measures for violations. The ICRC, as a recognized authority on IHL, works closely with United Nations bodies and humanitarian organizations. It offers its good offices as the guardian of IHL to States, parties to conflicts, and the wider international community. The Martens Clause, a foundational principle of the law of armed conflict, was first articulated in the preamble to the 1899 Hague Convention (II). It requires that, at all times, parties to a conflict ensure their conduct conforms to the principles of humanity and the dictates of public conscience.

In Nepal, the needs of conflict victims remain largely unaddressed even two decades after the conclusion of the Comprehensive Peace Agreement in 2006. Existing transitional justice mechanisms have yet to gain the full confidence and support of victims. There has also been limited engagement by key stakeholders in IHL, including the Ministry of Law, the National IHL Committee, academic institutions, security forces, judicial and legal bodies, and the National Human Rights Commission. As part of peacetime preparations, greater efforts are required to disseminate knowledge of IHL. At the same time, the National IHL Committee must place stronger emphasis on the development, enforcement, and monitoring of effective compliance measures.

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