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REPORTS AND DOCUMENTS

International humanitarian law and the challenges of contemporary armed conflicts

ICRC report

Executive summary

This is the sixth report on international humanitarian law (IHL) and the challenges of contemporary armed conflicts prepared by the International Committee of the Red Cross (ICRC) for the International Conference of the Red Cross and Red Crescent (International Conference). Similar reports were submitted to the International Conferences held in 2003, 2007, 2011, 2015 and 2019. The aim of all these reports is to provide an overview of some of the challenges posed by contemporary armed conflicts for IHL; generate broader reflection on those challenges; and outline current or prospective ICRC action, positions and areas of interest, and bring them to the attention of members of the International Conference.

Like its predecessors, this report addresses only some of the contemporary challenges to IHL. It outlines a number of issues that are the focus of increased interest among states and other actors, as well as the ICRC: nuclear weapons; protection of people in the hands of parties to armed conflict; conduct of hostilities; new technologies of warfare; impartial humanitarian work; and implementation of IHL. These issues include matters not addressed in previous reports, such as separated family members, missing people and obligations on the handling of the dead, food security, military operations in outer space, and how respect for IHL can contribute, in a modest way, to building steps towards peace. This report also provides an update on some issues of concern that were addressed in previous

reports and that remain high on the international agenda, such as the urbanization of warfare, autonomous weapon systems and other new technologies of warfare, and protection of people deprived of their liberty.

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The introduction to this report provides a brief overview of current armed conflicts and their human cost, and of the operational realities in which challenges to IHL arise. It also raises concern about corrosive tendencies in the interpretation and application of IHL that risk diminishing its ability to save lives. In the more than 75 years that have passed since their adoption, the Geneva Conventions of 1949 – complemented by the entire body of IHL – have saved countless lives, the devastating effects of warfare notwithstanding, and ensured respect and protection for thousands of detainees and medical patients. But parties to armed conflicts have also often failed to uphold IHL. As at every International Conference, the ICRC calls on states and parties to conflicts to do more to protect the victims of war.

The first chapter of this report focuses on nuclear weapons. Recent developments have once again drawn attention to the immense destructive potential of these weapons and the threat they pose to humanity. This chapter recalls the ways in which IHL addresses the issue of nuclear weapons. It highlights the importance of the treaty on the prohibition of nuclear weapons, which leads the way to the only solution for preserving humanity from the threat of nuclear weapons: eliminating them. If nuclear weapons continue to exist, humanity won't.

Chapter II provides a legal analysis of the political and military discourse on 'competition' among states, 'hybrid warfare', 'proxy warfare' and potential legal 'grey zones'.

Chapter III takes up the issue of protecting people in the hands of parties to armed conflict. Inevitably, armed conflicts produce suffering. Even in a conflict in which IHL is well respected, there will be people who are detained and others who are killed. Many of the thousands of people who go missing during hostilities never return, causing anguish and long-lasting hardship for their loved ones. Distress and hardship also follow the separation of children from their families. This chapter sheds light on the vast web of rules protecting people affected by armed conflict. It also emphasizes the need to recognize that people face many different needs and to apply IHL without adverse distinction.

Chapter IV, which is about IHL rules on the conduct of hostilities, calls for a good faith balancing of the principles of humanity and necessity. Today's armed conflicts cause high levels of destruction. Entire cities are flattened. Hospitals are left in ruins. Civilian populations struggle to survive without adequate food, water, electricity, or medical care. Armed conflicts further deepen the rapidly intensifying global environmental and climate crisis. And reversals in the advancements made in banning anti-personnel landmines and cluster munitions

pose a great risk of making holes in treaties that have saved countless lives. Against this background, the ICRC presents some of its legal views on how good faith compliance with IHL rules on the conduct of hostilities may prevent or alleviate some of this harm.

Some years ago the use of digital technologies of warfare, including the use of artificial intelligence in military decision-making, may have seemed a distant prospect, but many such technologies are now a reality. Chapter V therefore presents the ICRC's legal views on the key challenges in applying IHL rules and principles to new technologies of warfare. It focuses first on the growing reliance on weapon systems with varying degrees of autonomy, and on systems that use artificial intelligence to inform decisions on who or what to attack and how. Subsequently, it presents the limits set by IHL on a growing number of cyber operations conducted by state and non-state actors during armed conflict, and recalls IHL rules on information operations. Because essential civilian services are becoming increasingly dependent on systems in outer space, this chapter also emphasizes the potential human cost of military space operations, and the legal rules these operations must comply with.

Staggering numbers of people affected by armed conflict seek assistance and protection. Chapter VI therefore recalls the IHL rules that protect impartial humanitarian work against challenges old and new. This chapter highlights that the complex web of sanctions and counterterrorism measures poses serious obstacles to the work of impartial humanitarian organizations and ultimately for the people who are most in need. It underlines the need for well-framed and standing humanitarian exemptions that exclude humanitarian activities carried out by impartial humanitarian organizations, in accordance with IHL, from the scope of sanctions and counterterrorism measures. In addition, this chapter highlights how IHL safeguards humanitarian organizations against digital threats.

Chapter VII, the last chapter, discusses how to build a culture of compliance with IHL. Lack of respect for IHL continues to be the single most important challenge for protecting people in armed conflicts. Thus, this chapter first recalls the elementary and indispensable steps that states must take to implement IHL and repress violations. Then it draws attention to some of the work done by the ICRC to build bridges between IHL and different cultures, religions and legal systems, highlighting their common aim to place limits on the behaviour of belligerents, and thus reinforcing the understanding that IHL is a common heritage of humanity. Respect for IHL must also be ensured by states that are not parties to armed conflict, for instance by ensuring respect for IHL in the transfer of weapons. This chapter concludes by showing that respect for IHL can be a first step towards peace by building trust among adversaries.

Introduction

The publication of this report coincides with the 75th anniversary of the four Geneva Conventions of 1949. The foundational treaties of international

humanitarian law (IHL) are a remarkable success in many ways: the four Conventions, together with IHL more generally, have proven extraordinarily durable and have enjoyed unwavering universal endorsement by states. Governments frequently reaffirm the importance of IHL, and armed forces the world over consider compliance with it to be among their core values.

Yet, problems persist. Violations of fundamental rules remain a serious concern. And even where parties contend that their actions are compliant, divergent interpretations of both the letter and spirit of IHL pose significant obstacles to the law's ability to fulfil its purpose. Today, with more than 120 armed conflicts ongoing around the world, the challenges confronting IHL are as numerous as they are complex.

While governments and media have kept their focus on the bloodshed and destruction in Ukraine and Gaza, violence in Africa and elsewhere has taken a similarly shocking human toll. Hundreds of thousands have died as a consequence of armed conflict and violence in Ethiopia. In Sudan, at least 10.5 million people are internally displaced, and over 2 million are seeking refuge elsewhere. An escalation of violence in the Democratic Republic of the Congo has displaced 2 million – partly due to shelling in densely populated areas – bringing the total number of displaced people in that country to over 7 million. Meanwhile, protracted conflicts in the Central African Republic (CAR), Colombia, Mozambique, Myanmar, Syria, Yemen, and elsewhere are continuing their grinding human cost.

The likelihood of spillover and escalation of conflict has become a particularly prevalent concern since the publication of the last Challenges Report in 2019. After months of intense hostilities in Gaza, there is a growing threat of further, widespread conflict across the region. Violence in the Sahel is creeping southwards and in the direction of the west coast of Africa. And the conflicts around the Great Lakes have implicated numerous state and non-state actors in the region.

At the same time, more distant global and regional powers continue to pursue their interests in localized conflicts. As they back their partners with weapons, personnel, and operational support, they risk contributing to the further deterioration of the humanitarian situation. Governments maintain that containing these conflicts and preventing escalation is a priority; yet the violence could all-too-easily spread to devastate more countries and communities.

In the background, unremitting tensions among powerful states have triggered a burst of government, military, and media activity around the potential outbreak of international armed conflict. Armed forces are expanding their capabilities and drafting contingency plans for large-scale operations; policymakers are adjusting their national-security priorities and contemplating responses to threats from their rivals; and the media is infusing public discourse with talk of future wars. All these developments are causing a shift in the narrative of international relations: globalization and multilateralism, once dominant themes, are being replaced by a story that emphasizes competition over cooperation and conflict preparedness over peace. Regardless of the facts it might

reflect, this change in discourse risks seeding the dangerous view that war is inevitable.

Even more worrying is the apparent underestimation of the catastrophic destruction and loss of life that would certainly result from a conflict between the most powerful militaries in the world. Global leaders continue to articulate that preventing a nuclear war remains a core concern – even as they modernize their arsenals. And one sees relatively little emphasis on the foreseeable devastation that would come with a merely conventional great power conflict.

In this setting, IHL remains a uniquely powerful tool for mitigating the human cost of armed conflict. Even in the most severe crises, reference to IHL – by states, humanitarian actors, courtroom litigants or the media – puts pressure on parties to conflict to spare civilians and preserve a degree of humanity during their military operations. In addition, as policy debates have surged around the ethics and morality of various state and non-state parties to current conflicts, so has reliance on IHL as the set of rules most capable of determining what is permissible and what is not. There is simply no other impartial and universal set of norms compelling restraint by all sides.

But if the recent past has proven that IHL is essential, it has also revealed the urgent need to reinforce it. In conflicts around the world, hospitals are left in ruins and ambulances are attacked. Medical personnel are killed while performing their duties. Civilians are intentionally targeted or casually disregarded as collateral damage. Fighters intermingle with civilians. Camps for the displaced are hit by air strikes. And journalists are dying in record numbers. The people and places that IHL is meant to protect are too often in the line of fire.

Non-compliance is certainly to blame, in part. Deliberate violations are far too common; and too little is done to prevent their recurrence and hold state and non-state perpetrators to account. States must do more to train and discipline their own personnel, to push others to comply, to empower their judiciary to prosecute and punish those who commit war crimes, and to cooperate with international institutions to prevent impunity. Non-state parties to armed conflict must take similar measures where relevant, and they must reject the notion that asymmetric capabilities or the perceived western origins of IHL are valid excuses for non-compliance. The norms set out in IHL have roots in legal, social, religious and ethical traditions that span the globe, and anchoring the laws of war in these can be an effective way to absorb them. Armed groups must do more to take ownership of the law.

Carelessness is another persistent problem. Targeting mistakes with horrific civilian death tolls occur much too frequently. Apologies and expressions of regret, no matter how sincere, fall well short of what is required by IHL. Parties must work – not only through training their fighting forces and improving targeting practices, but also by exercising all feasible precautions in attack – to eliminate such devastating errors.

There is also a more corrosive tendency at work diminishing IHL's ability to save lives. Over several decades now, expedient interpretations of IHL – often proposed at the height of armed conflict in order to preserve states' leeway to kill

and detain – have compounded to undermine its protective force. In one conflict after another, some states have sought an increasingly expansive vision of what is permissible, and a contracted notion of what is considered prohibited. When faced with pressure to better protect civilians and detainees, these states have tended to argue that IHL allowed them greater latitude than what was being demanded of them. When responding to appreciation for their more protective policies, these states have tended to suggest that their actions were simply voluntary good practices – implying that meeting IHL's standards required much less of them.

IHL's protective power is under threat in other, more insidious ways as well. Chief among them is that the law's permissive exceptions are swallowing its prohibitive rules. IHL owes its credibility to its pragmatism: many of its prohibitions have narrow exceptions that are intended to ensure that the law takes military necessity into account and does not confer humanitarian protections that an adversary can exploit for military advantage. But some interpretations of those exceptions are widening with dangerous consequences: civilians are too easily denied protection against attack on grounds that they are directly participating in hostilities; the sanctity of hospitals is too easily dismissed on grounds that the enemy is taking advantage of their protected status; schools, workplaces, and buildings dedicated to essential services are too easily stripped of their civilian character on grounds that they are of some benefit to the adversary; humanitarian access is too easily impeded on grounds that relief items can be used for non-humanitarian purposes. And so on, until narrow exceptions become wide legal loopholes for circumventing vital protections.

The protective effect of the law is also being undermined by the way some states are interpreting its core concepts and utilizing its more indeterminate provisions. These interpretations broaden the notion of who or what constitutes a lawful target by expanding and narrowing the definitions of 'military objective' and 'civilian', respectively. They make civilian casualties more acceptable through interpretations of the proportionality principle that define 'military advantage' with increasing generosity while simultaneously excluding long-term, reverberating effects from the notion of 'incidental harm'. And they hollow out the precautions principle by either directly challenging the obligation to take 'all feasible' precautions to prevent civilian casualties or by treating it more as a policy option than a legal obligation.

The deployment of new technologies of warfare risks amplifying these dangerous tendencies. 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 where digitalization is under way. 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.

There is another worrying development: some actors have begun to question some of the essential principles and assumptions on which IHL is based. The idea that IHL obligations depend on reciprocity – that compliance by one party is required only if there is compliance by the adverse party – is one such fallacy. IHL could not survive the downward spiral of non-compliant reprisals that such an approach would invite. Likewise, it is impossible to accommodate the suggestion that the *jus ad bellum* – the body of law governing resort to force between two states – has any bearing on the application of IHL. Warring parties are unlikely to ever agree on who the aggressor and victim are in an international armed conflict. Allowing a role for the *jus ad bellum* when determining their IHL obligations will only diminish humanitarian protection on all sides.

Adding to the problem is one of the most pernicious features of recent conflicts: the dehumanization of not only the fighting forces of the enemy, but also the civilian population associated with them. IHL is based on a delicate balance between military necessity and humanity – a realistic compromise between two irreconcilable values. By allowing a degree of violence that is unthinkable in other circumstances – for example, by permitting the targeting of combatants or a limited degree of incidental harm to civilians – the law of armed conflict already assigns an appropriate degree of importance to military necessity. If states look on indifferently while human lives are assigned less and less weight because of nationality, race, religion, or political beliefs, the scale is irreversibly tipped and the foundation of IHL's legitimacy collapses.

The ICRC's views on the legal aspects of some of these developments are set out later in this report, but the broader implications of the trends outlined here will be a serious test for IHL. If parties continue to exert downward pressure on the protective requirements of IHL, and if they are content with simply skirting the limits of compliance, IHL will be turned on its head: it will become a justification for violence rather than a shield for humanity. States will increasingly rely on the fact that they have not broken the law to legitimize their military operations, and IHL will have assumed the function of an affirmative defence against otherwise unethical conduct.

Should this trend continue, IHL's legitimacy will not survive in the eyes of governments, non-state armed groups, and, most importantly, of the people it is meant to protect. States must act to put an end to this downward spiral. No country is immune from attack, and no state's soldiers or civilians are immune to violence, inflicted by enemy forces. The world needs a robust and protective law of armed conflict – one that can be relied upon to save life, rather than explain away death.

I. The prohibition of nuclear weapons: Protecting humanity from unspeakable suffering

Since 1945, the International Red Cross and Red Crescent Movement (Movement) has repeatedly voiced its concern about the devastating humanitarian consequences

of nuclear weapons, and has called on states to prohibit these weapons. The ICRC first called for the abolition of nuclear weapons in the aftermath of the atomic bombing of Hiroshima, where ICRC staff saw the catastrophic consequences of the use of nuclear weapons while working alongside the Japanese Red Cross to care for tens of thousands of wounded and dying civilians. The experience had a profound impact on the ICRC and on the Movement as a whole.

In the decades that followed, the Movement continued to regularly call for the prohibition and elimination of nuclear weapons. Further impetus for this was provided by growing evidence that it would not be possible to provide a meaningful humanitarian response in the event of the use of nuclear weapons.[1] If a nuclear weapon were to be detonated in or near a populated area, it would cause an overwhelming number of casualties, and most local medical facilities having been destroyed, huge numbers of people will be left needing treatment. Assistance providers would face serious risks associated with exposure to radiation.

Because of their immense and horrifying destructive potential, nuclear weapons have been the object of sustained international political and legal attention since their development and first use in 1945.[2] Recent developments have given new urgency to the issue and highlighted the relevance of IHL in addressing it.

The risk of nuclear weapons being used is at its highest since the darkest moments of the Cold War. Growing international and regional tensions have been accompanied by an alarming rise in nuclear rhetoric, and explicit and implicit threats to use nuclear weapons have been made. Theories of nuclear deterrence are regaining vigour and the role of nuclear weapons in military doctrines and security policies is growing rather than diminishing. The modernization of nuclear arsenals continues unabated: smaller nuclear weapons are being developed, and these are claimed to be more "usable" and intended for tactical military use. There are also concerns that artificial intelligence may be introduced into the command-and-control systems of nuclear weapons.

At the same time, the nuclear disarmament and non-proliferation framework is eroding, with several treaties and agreements having been terminated or abandoned, and others under stress. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is still widely regarded as the cornerstone of global nuclear non-proliferation and disarmament efforts, but progress in implementing its disarmament provisions has long been stalled,

1 See, for example, Dominique Loye and Robin Coupland, "International assistance for victims of use of nuclear, radiological, biological and chemical weapons: Time for a reality check?" *International Review of the Red Cross*, Vol. 91, No. 874, June 2009, pp. 329–340; and John Borrie and Tim Caughley, *An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response* (UNIDIR/2014/6), United Nations Institute for Disarmament Research, UNIDIR, Geneva, 2014: https://unidir.org/publication/an-illusion-of-safety-challenges-of-nuclear-weapon-detonations-for-united-nations-humanitarian-coordination-and-response.

2 United Nations General Assembly Resolution 1(I): "Establishment of a commission to deal with the problems raised by the discovery of atomic energy" (24 January 1946), created the United Nations Atomic Energy Commission and mandated it to, *inter alia*, "make specific proposals … for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction": https://undocs.org/A/RES/1(I).

disarmament and risk-reduction measures agreed at review conferences have not been implemented and states parties have been unable to agree on further measures.

In these troubling circumstances, IHL assumes an important role in maintaining and reinforcing the taboo against the use of nuclear weapons and providing the basis for new legal measures to advance their elimination, such as the Treaty on the Prohibition of Nuclear Weapons (TPNW).

1) Nuclear weapons and IHL

Nuclear weapons release immense quantities of heat and kinetic energy, and prolonged radiation. They have massive destructive power that is impossible to contain in space and time. Their use would cause incalculable human suffering, especially in or near populated areas, and there is no adequate humanitarian response capacity. A nuclear conflict would have catastrophic effects on people and societies around the globe, on human health, the environment, the climate, food production and socio-economic development. It would cause irreversible harm to future generations and threaten the very survival of humanity.

The principles and rules of IHL applicable to all means and methods of warfare apply to nuclear weapons, even in situations of national self-defence. In the view of the ICRC, and of the broader Movement,[3] it is extremely doubtful that nuclear weapons could ever be used in accordance with the principles and rules of IHL.

In particular, directing nuclear weapons against civilian populations or civilian objects, such as entire cities or other concentrations of civilians and civilian objects, or otherwise not directing a nuclear weapon against a specific military objective, would violate the principle of distinction. Using nuclear weapons against military objectives located in or near populated areas would violate the prohibitions of indiscriminate and disproportionate attacks. Even if used far away from populated areas, the suffering to combatants caused by radiation exposure, and the radiological contamination of the environment and risk of spread of radiation to populated areas, make it extremely doubtful that nuclear weapons could ever be used in accordance with the prohibition to use weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment and the civilian population.

In the ICRC's view, the use of and threat to use nuclear weapons is abhorrent to the principles of humanity and dictates of public conscience.

In view of the catastrophic humanitarian consequences of any use of nuclear weapons, and of the risk of escalation that any use would involve, it is a humanitarian imperative for states to ensure that they are never again used and to prohibit and eliminate them, regardless of their views on the legality of nuclear weapons under IHL.

3 Council of Delegates 2022, Resolution 7: Working towards the elimination of nuclear weapons: 2022-2027 action plan: https://rcrcconference.org/app/uploads/2022/06/CD22-R07-Nuclear-weapons_22-June-2022_EN_FINAL.pdf.

2) The Treaty on the Prohibition of Nuclear Weapons

In July 2017, 122 states adopted the TPNW, which entered into force on 22 January 2021. As the preamble to the treaty makes clear, the TPNW is explicitly based on the principles and rules of IHL. The preamble states that "any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law".[4]

The TPNW provides a comprehensive prohibition of nuclear weapons, which is an essential step towards their elimination. It also reinforces the stigma against their proliferation and use. The TPNW reaffirms the fundamental link between humanitarian imperatives and security, stating that the risks associated with nuclear weapons "concern the security of all humanity", that preventing any use of nuclear weapons is the responsibility of all states, and that nuclear disarmament serves "both national and collective security interests".[5] By providing pathways for the elimination of nuclear arsenals, the treaty directly supports the implementation of existing nuclear disarmament obligations and commitments, in particular those under Article 6 of the NPT. Together with the Biological Weapons Convention and the Chemical Weapons Convention, the TPNW completes the multilateral legal regime prohibiting weapons of mass destruction. For these reasons, the TPNW constitutes a significant milestone on the path towards a world free from nuclear weapons.

In light of this, and in the context of the challenges described at the beginning of this chapter, the current priorities for the ICRC are to increase membership and support the implementation of the TPNW, promote full implementation of the NPT and commitments made at its review conferences, and urge states to take immediate and concrete steps to reduce the risk of nuclear weapons being used. Such steps include taking nuclear weapons off high alert, committing to no-first-use policies, de-prioritizing nuclear weapons in military doctrines and security policies, refraining from rhetoric that envisages or speculates about the use of nuclear weapons or that ignores or minimizes the humanitarian consequences of their use, and condemning all threats to use nuclear weapons, implicit or explicit, regardless of circumstances.

II. Clarifying the legal framework: 'Grey zones', 'competition', 'hybrid warfare' or 'proxy warfare'

The geopolitical environment today is characterized by tensions among states, instability within countries, projection of power through a range of covert and coercive measures, and an increasing number of armed conflicts. In political and

4 United Nations, *Treaty on the Prohibition of Nuclear Weapons* (2017), preamble (para. 10): https://undocs.org/A/CONF.229/2017/8

5 United Nations, *Treaty on the Prohibition of Nuclear Weapons* (2017), preamble (paras 3 and 5): https://undocs.org/A/CONF.229/2017/8

military discourse, this complex reality is at times described as 'competition' among states, hostile measures depicted as 'hybrid warfare', and the political, financial, or material support by a state to a party to an armed conflict labelled 'proxy warfare'.

The term 'competition' is often used to describe rivalry between states at the political, economic, and military levels.

'Hybrid threats' or 'hybrid warfare' are terms commonly used to describe the employment of a combination of different technologies or other means by a state or non-state actor to project power to destabilize adversaries. Acts described as 'hybrid' include military to non-military as well as operations that are covert or overt, kinetic or non-kinetic (for example disinformation or cyber operations), lethal or non-lethal. The term may refer to operations affecting a state's government, or its civilian population or infrastructure, and is used to describe operations conducted by a combination of state and non-state actors.

'Proxy warfare' is a term used to refer to armed hostilities involving entities (both states and non-state actors) that other states or non-state actors may support directly or indirectly – politically, materially, financially, militarily or otherwise – in line with their own strategic interests against another state or non-state actor.

The term 'grey zone' suggests that the line between war and peace is blurring, or that the law is unclear or non-existent in certain situations. However, while some of these patterns are old and others are new, international law applies to all situations, and for the application or not of IHL, it is a matter of determining whether a specific situation amounts to armed conflict.

The definition of what is an armed conflict to which IHL applies has not changed. States and other actors must assess each situation of armed violence from a legal perspective to determine whether their operations constitute or form part of an armed conflict.

For the purpose of its operations and its humanitarian dialogue with parties to conflict, the ICRC systematically assesses which situations amount to armed conflicts.[6] Relying on widely established legal criteria, the ICRC has assessed that in 2024 there are more than 120 armed conflicts around the world, involving more than 60 different states and 120 non-state armed groups as parties to those conflicts.

Under IHL, armed conflicts are either international or non-international in nature. International armed conflicts are those armed conflicts in which two or more states are opposed. Article 2 common to the four Geneva Conventions of 1949 (common Article 2) states that the Conventions "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".[7] Accordingly, any difference arising between two or more states

6 In 2024, the ICRC published its second opinion paper on the notion of armed conflict. See ICRC, *How is the term 'armed conflict' defined in international humanitarian law?*, ICRC, Geneva, 2024: https://www.icrc.org/en/document/icrc-opinion-paper-how-term-armed-conflict-defined-international-humanitarian-law.

7 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949 (GC I), Art. 2 (cited here in GC I, but common to all four Geneva Conventions).

leading to a resort to armed force is an armed conflict within the meaning of common Article 2. Therefore, when a situation objectively shows that, for example, a state is involved in military operations or any other hostile actions against another state (by attacking or capturing enemy military personnel or assets, hampering its military operations, or using or controlling its territory without its consent), the situation is an international armed conflict. It makes no difference how long the conflict lasts, how much slaughter takes place or how numerous the participating forces are.[8] This means that there is no specific level of intensity of hostilities required for international armed conflicts, in contrast to non-international armed conflicts.[9]

Non-international armed conflicts are armed conflicts between a state and a non-state armed group, or between such groups. They require two conditions to be met for IHL to apply: the non-state party or parties must be organized; and the violence between the parties must be sufficiently intense.

In the classification of armed conflicts, any assessment must be made objectively and exclusively on the basis of the facts on the ground, according to the criteria established under IHL. In that sense, new factual scenarios or narratives do not necessitate devising novel, *ad hoc*, or specific legal criteria to establish whether such situations amount – or not – to armed conflict. Thus, under IHL, notions such as 'competition', 'hybrid threats' or 'hybrid warfare', or 'proxy warfare', must be assessed based on the existing criteria. For instance, a relationship between states that is described as 'competition' may or may not amount to an armed conflict, depending on whether it escalates into a resort to armed force between these states.

Similarly, an act described as a 'hybrid threat' will be governed by IHL only if it either triggers an armed conflict or occurs in the context of (and is associated with) an existing armed conflict. The latter is true even for those acts that would not, on their own, have triggered the applicability of IHL. For example, while cyber operations that are conducted in the context of an armed conflict must comply with IHL and thus, for instance, not be directed against medical facilities, not all cyber operations against a medical facility in times of peace will be the starting point of an armed conflict. Likewise, the prohibition of acts or threats of violence the primary purpose of which is to spread terror among the civilian population applies to information operations if carried out in the context of an armed conflict, even if these information operations in and of themselves would not trigger the applicability of IHL if conducted in times of peace. In situations in which acts described as 'hybrid threats' neither trigger an armed conflict nor

8 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, commentary on Art. 2.

9 This view has been endorsed by international tribunals. See, e.g., International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor* v. *Delalić*, Judgment (Trial Chamber), IT-96-21-T, 16 November 1998, para. 184 (see also para. 208); ICTY, *Prosecutor* v. *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), IT-94-1, 10 August 1995, para. 70; International Criminal Court (ICC), *Prosecutor* v. *Lubanga*, Decision on the Confirmation of Charges (Pre-Trial Chamber I), 29 January 2007, para. 207; Special Court for Sierra Leone (SCSL), *Prosecutor* v. *Taylor,* Judgment (Trial Chamber II), 18 May 2012, paras 563–566.

occur in the context of an armed conflict, these acts are regulated by peacetime rules only and not by IHL.

Uses of proxies by states can and must also be analysed on the basis of existing legal criteria. For example, the classification of an armed conflict between a state A that controls a proxy and a state B fighting against that proxy will depend on the degree of control that state A has over its proxy. In order for the conflict to qualify as an international armed conflict between states A and B, the proxy's acts must be legally attributable to state A. With regard to non-state armed groups acting as proxies, when one state exercises 'overall control' over an armed group fighting against another state, the situation is classified as an international armed conflict between the two states.[10] Regardless of the political characterization of a situation as a 'proxy war', in this case the 'overall control' test (which, strictly speaking, is used to determine whether a non-state armed group is a *de facto* organ of a state) is the legal test to determine whether an international armed conflict exists.

If IHL applies to a given situation, the scope of the applicable IHL rules depends solely on the classification of the situation as an armed conflict and the applicable treaty and customary rules. IHL obligations do not change based on the scale or intensity of hostilities.

The political narratives surrounding 'competition', 'hybrid warfare', 'proxy warfare' or other 'grey zone' terminology must not obfuscate the legal classification of armed conflicts and the application of IHL. The legal classification of such situations requires disentangling the facts on the ground and applying the law to these facts. While this might sometimes be difficult because of the difficulty of obtaining clear information, that is a factual difficulty, not a legal one. Importantly, activities such as imposition of economic measures, information operations, and espionage, by themselves, do not trigger the application of IHL.

III. Towards more effective protection for people in the hands of parties to armed conflict

Armed conflicts inevitably produce suffering. Even in a conflict in which IHL is very well respected, there will be people who are detained and others who are killed. Often, people will be separated from their families, or go missing, during hostilities. Many of the thousands of people who go missing never return, causing anguish and long-lasting hardship for their loved ones. Distress and hardship also follow the separation of children from their families.

The vast web of rules protecting people affected by armed conflict was developed precisely to prevent or reduce, as much as possible, such harm caused by conflict. Over time, these rules have proven to be crucial in reducing suffering,

10 ICRC, Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War, 2nd ed., ICRC, Geneva, 2020 (hereafter ICRC, Commentary on the Third Geneva Convention, 2020), paras 298-306.

and protecting people from ill-treatment or disappearance, during conflict. Even so, they continue to be tested and challenged. Some challenges have to do with attempts by parties to conflicts to narrow their protective scope in line with a narrative that seeks to exclude certain groups or people from protection. Sometimes people are detained without justification or for undefined periods of time; in such cases, they are also often at serious risk of ill-treatment and physical hardship. Other challenges arise when the necessary steps are not taken to implement IHL properly and prevent violations when conflicts break out. There is simply not enough effort put in developing the laws, systems and processes essential for making IHL effective in protecting people.

There is an urgent need for more vigorous efforts to interpret IHL obligations in good faith and make implementation and compliance with these obligations a priority in internal policies and processes. These are two of the key requirements for restoring the protective power of IHL.

Finally, two things are required to implement IHL effectively and safeguard people from harm: recognition of the specific risks people face and their distinct needs; and concrete measures to implement IHL without adverse distinction based on gender, disability, race and any other similar criteria.

In this chapter, the ICRC presents its legal views on some of these current challenges in protecting diverse people affected by armed conflict.

1) People deprived of liberty in armed conflict

This section deals with two sets of challenges related to deprivation of liberty in armed conflict: issues related to detention by states (in both international and non-international armed conflict); and issues related to detention by non-state armed groups (in non-international armed conflict). It also notes the risks associated with increased reliance on artificial intelligence and other new technology in the context of detention operations.

A. Detention by states

Detention by states in both international and non-international armed conflict continues to give rise to a range of concerns. Violence against detainees – ranging from murder to torture, sexual violence and other forms of ill-treatment – remains a grave concern. Lack of respect for the procedural safeguards and judicial guarantees necessary to prevent arbitrariness is also a continuing problem – as are disregard for the specific protections owed to prisoners of war and civilian internees and denial of ICRC access despite the legal obligation to facilitate it. As set out earlier in this report, there is an acute need for better implementation and enforcement of IHL by states.

This section, however, focuses on two specific challenges that partly explain the problem of non-compliance: the exclusion of persons or groups from the protective scope of IHL; and underinvestment in preparing to comply with the law governing detention.

i. Exclusion from protection

The exclusion of some detainees from protection is among the most concerning practices today. IHL gives states a great deal of latitude on whom to detain – whether to criminally prosecute past acts or prevent future security threats. IHL rules are aimed mainly at ensuring the humane treatment of detainees and preventing arbitrary detention. Even so, some authorities continue to assert that these basic norms do not apply to certain detainees.

Such claims most frequently arise in situations of non-international armed conflict, where the adversary of the state in conflict is a non-state armed group. States often designate these groups and their members as 'terrorists' – a label that has no legal bearing on the application of IHL – and assert that they are undeserving of the protections that would ordinarily apply. But IHL clearly contradicts this reasoning.

The protections that IHL confers in non-international armed conflicts do not depend on the identity of the detainee or the circumstances surrounding their detention. Article 3 common to the four Geneva Conventions of 1949 (common Article 3) – the main, treaty-based source of IHL applicable in non-international armed conflict – sets out the protections applicable to detainees in such conflicts. It provides that persons who are not, or are no longer, taking active part in the hostilities "shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." Protocol II of 8 June 1977 additional to the Geneva Conventions of 1949 (Additional Protocol II) likewise extends its protection to "to all persons affected by an armed conflict" with a similar prohibition against adverse distinction. The scope of customary IHL's rules similarly includes anyone detained in relation to an armed conflict.

Exclusionary interpretations of IHL are a problem not just in non-international armed conflicts; international armed conflicts can also give rise to similar problems. The fact that the parties to an international armed conflict are states does not necessarily mean that everyone captured on the battlefield will be a member of the regular armed forces. Consequently, arguments persist that certain persons fall outside the scope of treaties that ought to protect them; or worse, that they fall outside the scope of IHL entirely. The reasoning in support of this position varies – from arguments rooted in the history of treaty negotiation to a more intuitive sense that abhorrent actors cannot possibly enjoy protections under the same body of law that applies to states' military personnel. What these arguments fail to appreciate is that the Geneva Conventions and other IHL treaties are highly adapted, even intended, to guide states on how to deal with such actors. In fact, IHL applicable in international armed conflict offers a remarkable degree of certainty and sets common expectations for the handling of detainees, whether they are members of the armed forces, paramilitaries, mercenaries, private military and security companies, or anyone else.

This fine-tuning is best illustrated by the relationship between the treaties. The Third Geneva Convention protects prisoners of war – i.e. *inter alia,* members of

enemy armed forces, members of certain other enemy armed forces, units or groups, and certain civilians who typically accompany the armed forces.[11] At the heart of the prisoner-of-war regime is respect for the honour and dignity of military personnel (and their adjuncts), and the understanding that they are not to be treated as criminals for fulfilling their duties.

For persons deprived of liberty who do not meet the criteria for prisoner-of-war protection, the Fourth Geneva Convention applies. In addition to protecting the general civilian population from the effects of armed conflict, much of the Fourth Geneva Convention regulates the imposition of security measures against individual persons who do not qualify for prisoner-of-war status but are deemed to pose a threat to the state. The Fourth Geneva Convention is not a treaty applicable only to civilians not directly participating in hostilities: its provisions clearly indicate the comprehensiveness of its scope. Article 4 of the Fourth Geneva Convention defines persons protected by the treaty as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals" and who are not protected by any of the other three Geneva Conventions.[12] To lay to rest any doubt as to whether this definition includes persons who have directly participated in hostilities, Article 5 of the Fourth Geneva Convention explicitly addresses persons "engaged in activities hostile to the security of the State"; the treaty also dedicates a significant number of provisions to the internment of such persons for imperative reasons of security and for their prosecution for criminal offences.

Unlike the Third Geneva Convention, the Fourth Geneva Convention contains limitations based on nationality. A person cannot be excluded from the scope of the treaty because of their prior conduct or affiliation with a group deemed to be hostile, but they can if they do not meet the nationality requirements contained in Article 4 of the Convention, most evidently when they are of the same nationality as the detaining power. In addition, Article 4 contains exclusions for nationals of neutral and co-belligerent states when their state has "normal diplomatic representation in the State in whose hands they are." The ICRC considers that for "normal diplomatic representation" to apply, the person must actually enjoy the normal diplomatic protection of their state. Persons not protected by the Fourth Geneva Convention, for reasons related to nationality, fall under the protection of Article 75 of Protocol I of 8 June 1977 additional to the Geneva Conventions of 1949 (Additional Protocol I), which is recognized as amounting to customary IHL.

Any suggestion that a person falls outside the scope of both the Third and Fourth Geneva Conventions must therefore be scrutinized closely; and importantly, the proposition that anyone affected by an armed conflict falls outside the scope of IHL entirely must be categorically rejected. To ensure proper interpretation of IHL

11 Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 (GC III), Art. 4.
12 Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (GC IV), Art. 4.

in this regard, states should work to make sure that the scope of application of IHL is properly understood at all levels of civilian and military leadership, with the necessary emphasis on its character as a body of law designed specifically to deal with security threats of all kinds in armed conflict.

ii. Underinvestment in preparedness for detention

A second challenge is lack of preparedness to comply with IHL. Many of the problems that have vexed states carrying out detention operations during non-international armed conflicts in recent decades have stemmed from their failure to adequately take into account the infrastructure, personnel, oversight, and institutions (such as independent and impartial review bodies) needed to ensure respect for IHL. Underinvestment in preparations to comply makes it very difficult to detain people lawfully when the need arises.

Careful consideration and investment are also necessary for detention in international armed conflict. IHL is highly developed in the area of detention in international armed conflict. The Third and Fourth Geneva Conventions, together with Additional Protocol I, where applicable, and customary IHL, provide a detailed set of rules specifically adapted to deprivation of liberty in international armed conflict. But despite the clarity of the obligations and their increased relevance, if states do not take the necessary steps, well in advance, to implement their obligations, they will not be able to comply with these rules.

The risk of non-compliance arises partly from states party to the Geneva Conventions having undertaken obligations that require more than refraining from misconduct. In addition to the humane-treatment requirements that are at the foundation of IHL's detainee protections, the Third and Fourth Geneva Conventions contain provisions that are fine-tuned to account for the specific risks to life and dignity faced by each category of detainee in the hands of a party to the conflict. Respecting these provisions – and securing the well-being of civilian and military detainees alike – requires dedicated infrastructure, institutions that are prepared and capable, and properly trained forces.

Prisoners of war, for example, benefit from a number of protections aimed at ensuring they are not treated as criminals for having merely participated in hostilities – an essential set of rules designed to prevent everything from summary execution to brutal treatment in captivity. In addition to combatant immunity, the rules governing their treatment and the conditions of their internment are geared towards preventing the detention environment from becoming punitive: prisoners of war cannot be held in close confinement or housed in penitentiaries, and their lives in captivity must in many ways closely resemble life on a military base. Without serious investment and foresight, a state confronted with a heavy influx of prisoners of war may be in violation of IHL. It will also be saddled with the difficult task of quickly designing and establishing the infrastructure necessary to provide prisoners of war with the freedom of movement they are entitled to, along with numerous other benefits under the law, such as detention with their units and access to additional food.

Respecting the Third Geneva Convention will also require adaptation of institutional policies and procedures. States need to ensure the availability of tribunals competent to make determinations concerning prisoner-of-war status under Article 5 of the Third Geneva Convention. They will also have to ensure the capacity of military disciplinary institutions to oversee large numbers of prisoners of war, as required by the Third Geneva Convention. Similar considerations apply to preparing for the internment of persons protected under the Fourth Geneva Convention. Conditions of internment must likewise be non-punitive and some additional requirements – for example, the prohibition against removing protected persons from occupied territory – will necessitate further consideration and planning. Independent and impartial review bodies will also need to be set up to hear challenges to internment decisions and carry out periodic reviews.

Personnel coming into contact with internees held under the Third and Fourth Geneva Conventions will also need to be trained in the special protections that apply. For example, the prohibition in both treaties against coercive interrogation – and the even more stringent constraints associated with the questioning of prisoners of war – may be unknown to interrogators with experience only of working in criminal justice systems or in counterterrorism. There is also, of course, the need to respect the ICRC's mandate and facilitate its fulfilment when the ICRC makes its detention visits.

The standards set out in the Conventions were developed by states themselves, at a time when they had recent experience of detaining extremely high numbers of internees. Besides being necessary to ensure the well-being of detainees, the rules are realistic and the conditions of internment they reinforce are fully achievable. But they must be planned for in advance. If states do not invest in compliance with IHL governing detention in international armed conflict, and make preparations for doing so, they will almost certainly not be able to meet those requirements should a conflict break out. And for those states with extensive experience in detention related to non-international armed conflict, even the most meticulous application of the humane-treatment standards and processes developed for those detainees will likely fall short of what is required in international armed conflicts for persons protected under the Geneva Conventions.

iii. Reliance on artificial intelligence and robotics during detention operations

States are increasingly looking toward artificial intelligence and robotics to take over tasks that were traditionally performed by humans, and detention is no exception. For example, future detention operations will likely include some use of artificial intelligence in supporting decisions on who should be detained[13] and some use of robots to support the management of detention facilities. There is no doubt that

13 For a more in-depth discussion of the use of artificial intelligence in military planning and decision-making, see section V.3 below.

in some circumstances, technology deployed responsibly and with robust human oversight can contribute to IHL compliance. But technology can also suffer from bias, lack of transparency, and faulty programming and analysis, all of which can undermine compliance. In addition, as authorities step away from direct human contact with detainees, they will also give up critical insights required for taking well-informed and timely decisions. Direct contact builds both trust and situational awareness, which in turn can help identify problems early, maintain order without force, and ultimately ensure that the conditions of detention remain well within the limits of IHL. If detaining authorities want to ensure that their use of technology bolsters their ability to comply with the law, they must maintain a substantial degree of direct control over detention operations.

B. Non-state armed groups and the prohibition against arbitrary detention

With regard to detention by non-state armed groups in non-international armed conflicts, the ICRC estimates that about 70 such groups currently have detainees. These detainees include soldiers and fighters; civilians held in relation to armed conflicts or for ordinary criminal offences; people taken hostage for monetary or political reasons; and members of the group who are detained for disciplinary reasons.

i. Legal safeguards to prevent arbitrary detention

Any deprivation of liberty has a significant impact on the detainee and their family. Detainees are at risk of ill-treatment, enforced disappearance, extrajudicial killing and poor conditions of detention, such as insufficient food (leading to malnutrition), and lack of access to health care and other basic services. The ICRC has also observed, with some frequency, that detainees experience additional stress and anxiety if they do not know why and for how long they will be detained, or how to challenge their detention.

No rule of IHL prohibits detention by non-state armed groups as such. In fact, IHL is built on the assumption that all parties to armed conflict will detain, and therefore sets limits to such detention. For instance, under IHL some forms of detention, namely hostage taking, are always unlawful.[14] Other forms of detention – such as detention under criminal law – are regulated in some detail under IHL.[15] IHL prohibits arbitrary detention.[16] This prohibition aims to prevent detention that is outside any regulatory framework and would leave the

14 See common Article 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (AP II), Art. 4(2)(c); ICRC, Customary IHL Study: https://ihl-databases.icrc.org/en/customary-ihl/rules (hereafter ICRC, Customary IHL Study), Rule 96.

15 See common Article 3; AP II, Art. 6; ICRC, Customary IHL Study, Rules 100–102, which apply to non-state armed groups. See ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 725–731.

16 ICRC, Customary IHL Study, Rule 99.

detainee solely in the hands – and subject to the decisions of – their captor. The ICRC takes the view that when non-state armed groups detain people for security reasons and outside criminal procedures, they must, in order to avoid arbitrariness, provide the grounds and procedures for such internment. Grounds and procedures for internment are, however, not defined in IHL applicable to non-international armed conflicts. Since 2005, the ICRC has used institutional guidelines to provide a framework – as a matter of both law and policy – for its operational dialogue on the issue.[17]

With a view to preventing arbitrary detention, the ICRC recommends that when a non-state armed group interns anyone it must establish a framework regulating internment – one that defines the grounds (i.e. the reasons) on which a person may be interned – and a review procedure. To be effective, grounds and procedures for internment must be established in a set of rules that are respected by the detaining party: these rules can take the form of 'law', a code of conduct, general orders or something similar.

Under IHL, internment is considered an exceptional measure, and one that has to be justified for each individual internee. In practice, non-state armed groups have frequently concluded that there are imperative reasons of security to detain 'soldiers' or 'fighters' of an adversary; people taking up arms against the group; 'spies' or 'collaborators' working for or with an adversary; and people planning to commit, or committing, acts of sabotage or other serious harm against the group. In other cases, however, imperative reasons of security that could justify internment do not exist. In the view of the ICRC, people may not be considered to pose an imperative security threat solely because they belong to the same family as the soldiers or fighters of the adversary; work for the adversary in a non-military capacity; support the adversary politically; share the adversary's ideology or religion; live in a territory controlled by the adversary; or provide the adversary with food or medical care.[18] The internment of people on such grounds is unlawful.

When a person is interned, a review procedure is needed to prevent arbitrariness. It should include informing the person of the reasons for their internment, allowing the person to challenge these reasons, and reviewing such challenges and the need for internment regularly in an independent and impartial manner.[19] IHL does not define who should conduct the review, and the ICRC knows of only a few instances in which non-state armed groups have conducted internment reviews. The ICRC has observed that in some instances, non-state

17 ICRC, Annex 1, "Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence", in *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, ICRC, Geneva, 2007. While not all guidelines present legal obligations, and are meant to be implemented in a manner that takes into account the specific circumstances at hand, compliance with these guidelines is one means of avoiding arbitrary detention.

18 See ICRC, *Detention by Non-State Armed Groups: Obligations under International Humanitarian Law and Examples of How to Implement Them*, ICRC, Geneva, 2023 (hereafter ICRC, *Detention by Non-State Armed Groups*, 2023), p. 56.

19 See ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 761–762. For further details, see ICRC, *Detention by Non-State Armed Groups*, pp. 54–57.

armed groups have used a court, commission, board, religious authority or some similar mechanism to conduct reviews. These have involved (military) judges, commanders, civilian members of the armed group, lawyers, or religious leaders.[20] An internee must be released as soon as the reasons for their internment no longer exist.[21]

ii. Review procedures in practice

The ICRC recognizes that implementing procedural safeguards for internees may be particularly demanding for groups with limited non-military capacity and resources. However, such reviews are essential to prevent or limit the suffering caused by arbitrary detention, and to effect the release, as soon as possible, of anyone who may not be detained. In practice, reviews should be conducted first for people with vulnerabilities (wounded or sick people, people with disabilities, children, pregnant women), ordinary civilians, and civilians associated with the adversary but not in a combat capacity. It may often be questionable that these people pose an imperative security threat. Therefore, any decision to intern them must be preceded by a thorough review process in which the internee should, wherever possible, be provided with legal assistance. The security threat posed by a uniformed and armed soldier or fighter may be less controversial, but that may change, for instance, if conflict dynamics shift, the conflict ends or if the interning party receives reliable assurances that the person will no longer participate in the fighting.

Many non-state armed groups receive support from states. States providing support, or states that partner with armed groups in military operations, have both a legal responsibility and often the capacity to help detaining authorities to fulfil their legal obligations and to prevent or end arbitrary detention.[22]

2) Separated family members, missing people and the dead, and their families

In 2023, the ICRC and the International Red Cross and Red Crescent Movement's Family Links Network registered more than 65,000 new missing persons cases across the world, bringing the total number of these cases to 240,000. This is the highest number of cases registered in a single year.

Each individual case tells a story of suffering, uncertainty, and anxious waiting. Being separated from a family member, unable to maintain family contact, not knowing the fate and whereabouts of a loved one or not being able to mourn the dead are some of the deepest, unseen wounds of armed conflict.

20 See ICRC, *Detention by Non-State Armed Groups*, p. 57.
21 ICRC, Customary IHL Study, Rule 128.
22 For a set of practice-based recommendations of measures that supporting states should take to ensure the lawful treatment of detainees, see ICRC, *Allies, Partners and Proxies: Managing Support Relationships in Armed Conflict to Reduce the Human Cost of War*, ICRC, Geneva, 2021, pp. 61–63: https://www.icrc.org/en/publication/4498-allies-partners-and-proxies-managing-support-relationships-armed-conflict-reduce.

Several factors have contributed to the alarming increase in the numbers of people who have gone missing. All too often, the personal information of those captured or killed is not collected by warring parties, or not shared with families and the ICRC's Central Tracing Agency. In some conflicts, the bodies or remains of those who have died are not treated with respect and become the objects of bargaining between warring parties, impeding identification efforts and the return of bodies or human remains to the families concerned. Moreover, if means of communication are disrupted or destroyed during hostilities, it becomes impossible for people to give news to their loved ones. Today, cases that occurred decades ago remain unresolved. In the absence of answers, families live in limbo for years.

IHL sets out obligations for state and non-state parties to armed conflicts, to prevent or address family separation, deaths and people going missing. The law is clear, but there is a need for much better implementation and compliance by warring sides, to prevent suffering among families and the rupturing of the entire social fabric.

A. Respecting family life

Under IHL, provisions aimed at ensuring the protection of family unity can be found in the Geneva Conventions of 1949 and their Additional Protocols.[23] The obligation to respect family life as far as possible is also part of customary IHL.[24] In practice this requires, to the degree possible, maintaining family unity – i.e. by accommodating families together when they are deprived of their liberty or during internal and cross-border displacement; and, when family separation cannot be avoided, by ensuring contact between family members and ensuring also that parties provide information on the fate of family members, including their whereabouts.[25] The ICRC has observed, in many conflicts throughout the world, that when separation occurs, family contact is not always permitted by parties as it should be, leading to an increase in the number of missing persons cases. Finally, the rules protecting family life become even more important when children are separated in the context of an armed conflict.[26]

B. The 'right to know' under IHL

In international armed conflict, the right of families to know the fate of their relatives is set down in Article 32 of Additional Protocol I as a general principle guiding the activities – in relation to the missing and the dead – of states, parties

23 GC III, Arts 70, 71 and 72; GC IV, Arts 25, 26, 27(1), 49(3), 82, 106, 107 and 108; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (AP I), Arts 74, 75(4) and 77(4); AP II, Arts 4(3)(b) and 5(2)(a); ICRC Customary IHL Study, Rules, 105, 117, 119,120, 124, 125 and 131.

24 ICRC, Customary IHL Study, Rule 105.

25 ICRC, Customary IHL Study, explanation to Rule 105.

26 See section III. 3) of this report on the separation of children from their families by parties to armed conflict.

to the conflict, and international humanitarian organizations. The 'right of families to know' pre-existed the adoption of Additional Protocol I.[27] By setting it down as a general principle in Article 32 of Additional Protocol I, IHL acknowledges this principle and incorporates it in the rules related to the protection of the missing and the dead.[28] In this regard, the word 'shall' in Article 32 of Additional Protocol I establishes a legal obligation to consider this 'right to know' when taking any measure to search for the missing and the dead. Similarly, under customary IHL, parties to a conflict must provide the families concerned with any information they have on the fate of those reported missing as a result of armed conflict.[29]

Although this right is codified in Additional Protocol I, the ICRC considers that it is also relevant in the application of various provisions of the Geneva Conventions that set out the regime for accounting for people in armed conflict.[30]

In this connection, IHL contains a number of specific rules, the purpose of which is to ensure that parties to conflict keep track of members of separated families, search for missing people, and do everything feasible to identify the dead and provide answers to families. These rules flow from the duty of parties to take all feasible measures to account for the missing and the dead, and from the right of families to know their fate. In practice, being 'prompted' by the 'right to know' means that different steps must be taken to clarify a person's fate, including their whereabouts. While certain steps are prescribed by law, it is open to states and parties to conflict to design other measures to pursue this aim. In this regard, there are a number of important steps, such as registering detainees and transmitting their personal details and the location of the place of detention to the ICRC's Central Tracing Agency; allowing the ICRC to visit places of detention; providing families with any information on the fate and whereabouts of a relative; and putting in place the operating procedures necessary to search for and identify the dead, using forensic practices and standards.

International human rights law also contains obligations relevant to clarifying the fate and whereabouts of missing and dead people. For example, the International Convention for the Protection of all Persons from Enforced Disappearance explicitly recognizes the right to know the truth in relation to enforced disappearances. This means that the families of victims of enforced disappearance – who are also victims themselves – must be informed of the

27 ICRC, Commentary on AP I, 19 Y. Sandoz, C. Swinarski and B. Zimmermann (eds), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, Geneva/ Martinus Nijhoff, Leiden, 1987 (hereafter ICRC, *Commentary on the Additional Protocols*, 1987), paras 1200–1201. See also ICRC, Customary IHL Study, explanation to Rule 117.

28 ICRC, Customary IHL Study, explanation to Rule 117.

29 ICRC, Customary IHL Study, Rule 117.

30 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., ICRC, Geneva / Cambridge University, Cambridge, 2016 (ICRC, *Commentary on the First Geneva Convention*, 2016), paras 1530, 1599, 1600, 1635, 1663 and 1716; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd ed., ICRC, Geneva / Cambridge University Press, Cambridge, 2017, paras 1706, 1776, 1777, 1811 and 1841; and ICRC, *Commentary on the Third Geneva Convention*, 2020, para. 4721.

circumstances of the disappearance; the progress and results of the investigation and the fate of those disappeared.

C. Recording and providing information on separated family members, missing people, and the dead

IHL foresees a number of different processes to ensure that parties to armed conflicts account for separated family members, missing people and the dead in the most efficient and protective manner. For these obligations to be complied with effectively in the event of a conflict, states need to have systems in place in peacetime that can be activated and made operational rapidly. Here, in other words, the main challenge is ensuring the following: investment, in peacetime, in adapting domestic legal frameworks; coordination between all those who need to be involved in the functioning of these systems; and proper training for all these personnel. As in the case of detention, discussed above, preparedness is vitally important for ensuring that when conflict breaks out, states can comply with their obligations.

In international armed conflicts, the Geneva Conventions aim to prevent those falling into the hands of a warring party from going missing. They do this mainly by ensuring that information on the identity and status of these people is collected and that the powers, countries concerned, and families are properly informed of the identity of those who have fallen into the hands of a party to a conflict and what has happened to them. This must be done through the ICRC's Central Tracing Agency,[31] which acts as a neutral intermediary between the parties to the conflict. Parties must record information on wounded, sick, shipwrecked, and dead enemy military personnel; prisoners of war and persons protected under the Fourth Geneva Convention who are kept in custody for more than two weeks, in assigned residence or interned; and, in occupied territories, children whose identity is in doubt. To this effect, states must establish a national information bureau[32] and official graves registration services.

In non-international armed conflicts, IHL provides fewer details on the processes parties to the conflict should put in place to comply with obligations to record and transmit information on separated family members, missing people and the dead – though the basic rules of IHL and human rights law outlined above apply. To establish practical solutions, parties to conflict should consider concluding special agreements, as foreseen under common Article 3, to record and transmit information on people deprived of their liberty as well as to facilitate the search for missing people and the identification of the dead.

31 Other processes aiming at accounting for people who have fallen in the hands of a party to the conflict include the obligation of the Detaining Power to allow prisoners of war (GC III, Art. 70 and GCIII Annex IV) and internees (GC IV Art. 106, GC IV and Annex III) to fill in and send capture and internment cards to the ICRC's CTA and the families, and the obligation to allow the ICRC to access places of detention (GC III, Arts 125 and 126; GC IV, Arts 142 and 143; ICRC, Customary IHL Study, Rule 124).

32 ICRC, *Overview of the Legal Framework Governing National Information Bureaux*, ICRC, Geneva, 2022: https://www.icrc.org/en/publication/4616-overview-legal-framework-governing-national-information-bureaux.

It should be kept in mind that IHL obligations concerning separated family members, missing people and dead continue to apply after the end of an armed conflict. States should put in place national mechanisms to search for missing people and identify the dead, in order to provide individualized answers and support to families.[33]

D. Respecting the dead

The respectful treatment of the dead transcends cultures and religions and is a fundamental tenet of IHL. Their protection first and foremost seeks to preserve their dignity and prevent them from becoming missing persons. As a body of law applicable in armed conflict, where it can be anticipated that people will die even if the law is fully respected, IHL contains clear rules laying down obligations for parties to armed conflicts regarding the dead and their families. These obligations are particularly elaborate in IHL applicable to international armed conflicts. In any armed conflict, IHL requires parties, as a minimum, to take all feasible measures to search for, collect and evacuate the dead, regardless of the party to which they belong and no matter whether they have taken a direct part in hostilities. Parties must bury the dead in a respectful manner; record all available information and take all possible measures to identify them; and finally, record and mark the location of their graves.

Although there are neither treaty provisions nor a customary IHL rule dealing specifically with the return of the dead to the families concerned in non-international armed conflicts, there is a growing trend towards the recognition that parties must endeavour to facilitate the return of the dead to the families upon their request.[34] This is in line with the obligation to respect family life and with the right of families to know the fate of their relatives. Forensic practice and standards should guide parties in implementing their obligations, particularly in order to return the remains and the belongings of the dead under dignified conditions and in accordance with the wishes of their families.[35]

To effectively protect separated family members, missing people and the dead, as well as their families, states and parties to armed conflict must be aware of and must be prepared to uphold their IHL obligations. This requires taking practical measures even before the outbreak of a conflict.[36] When that is not

33 ICRC, *National Mechanisms for Missing Persons: A Toolbox*, ICRC, Geneva, 2022: https://missingpersons.icrc.org/library/national-mechanisms-missing-persons-toolbox.

34 See ICRC, Customary IHL Study, explanation to Rule 114 (acknowledging that it is not clear if this arises from a sense of legal obligation).

35 ICRC, Guiding Principles for the Dignified Management of the Dead in Humanitarian Emergencies and to Prevent Them Becoming Missing Persons, ICRC, Geneva, 2021: https://www.icrc.org/en/publication/4586-guiding-principles-dignified-management-dead-humanitarian-emergencies-and-prevent; ICRC, *The Forensic Human Identification Process: An Integrated Approach*, ICRC, Geneva, 2022: https://shop.icrc.org/the-forensic-human-identification-process-an-integrated-approach-pdf-en.html

36 The need for states and parties to armed conflict to take actions such as these was emphasized in Resolution 2474 (2019) of the UN Security Council.

done, wars unnecessarily lead to family separation and to people going missing, leaving families without answers in their wake.

These rules aim to prevent and address one of the most painful consequences of armed conflicts. Even if conflicts are fought in full respect of IHL, people will become separated from their families, detained, or killed. It is precisely to lessen the suffering of their families that IHL contains such elaborate rules.

The ICRC and its Central Tracing Agency work with National Red Cross and Red Crescent Societies, through the global Family Links Network, to keep families together, reunite them and help them stay in touch; prevent people from going missing, search for missing people; and protect the dignity of the dead and support their families. In 2023, members of separated families were put in touch with one another. More than 2,020,000 phone calls between separated families were facilitated and 16,680 missing persons cases were resolved by clarifying their fate or whereabouts.

The ICRC is committed to continuing to provide legal and technical support to states and parties to conflict in connection with separated family members, missing people and the dead.

3) The separation of children from their families

Children become separated from their families quickly and in numerous ways during war. Sometimes they are lost during displacement, in the chaos of shifting front lines, or while sheltering from attack. Separation takes place when an adult or child is detained, recruited, hospitalized, or killed. In some cases, parties to armed conflict deliberately separate children from their families, in a manner that violates IHL and international human rights law.

For children, separation from their families is the beginning of a gauntlet. Their essential needs fall through cracks, and they are less defended from the hazards, violence and exploitation that war ushers in. Amid the deprivation and disarray of armed conflict, the family unit is generally the best protective mechanism for the health, safety and well-being of a child.

Section III. 2) above sets out IHL's protections for separated families. It furthermore recalls that provisions aimed at ensuring the protection of family unity are set out in the Geneva Conventions and their Additional Protocols,[37] and that respect for family life is part of customary IHL.[38] Limits on separating a child from their parents are also set out in Articles 9 and 16 of the Convention on the Rights of the Child (CRC). These rules presuppose that when a family is under the control of a party to armed conflict, keeping children with their families is the default measure. Only under limited and legally prescribed

37 GC III, Arts 70, 71 and 72; GC IV, Arts 25, 26, 27(1), 49(3), 82, 106, 107 and 108; AP I, Arts 74, 75(4) and 77(4); AP II, Arts 4(3)(b) and 5(2)(a); ICRC, Customary IHL Study, Rules 105, 117, 119,120, 124, 125 and 131.

38 ICRC, Customary IHL Study, Rule 105.

conditions can parties to armed conflict lawfully separate a child from their family. Moreover, such measures must comply with IHL's requirements to treat children with special respect and protection.[39] For states party to the CRC, this entails respect for their best interests as a primary consideration in actions that concern them.[40]

Since 1949, IHL has set out rules governing – and limiting – the separation of families during evacuations, transfers and deportations, driven by the harrowing experiences that pulled thousands of families apart during the Second World War. Seventy-five years later, children in contexts including Afghanistan, Gaza, Syria, Sudan, and Ukraine continue to endure a gauntlet of being moved without a loved one's hand to hold.[41]

The rules of IHL governing the evacuation, transfer and deportation of children draw a line that separates lawful, potentially life-saving evacuations from unlawful transfer or deportation. They reflect the recognition that, on the one hand, evacuation can be life-saving and in the best interest of the child when done right. Under certain conditions, the ICRC may play a role in such evacuations.[42] But even then, the ICRC has insisted that evacuation of children cannot be undertaken lightly: the law requires a range of safeguards and measures to prevent irreparable harm.[43] Rushed or badly organized evacuations can expose children to family separation – in some cases unlawfully – and leave them without care in high-risk environments. Particularly for young children, evacuations can result in permanent loss of their identity. At worst, children have died along the way.

The rules also reflect recognition, on the other hand, of the risk that an evacuation conducted by a party to a conflict might be presented as necessary for the health or safety of children in order to cover up the war crime of unlawful transfer or deportation.[44] States drafting the Geneva Conventions of 1949 were mindful of this very risk, and sought to prevent evacuations conducted for ideological reasons.[45] The drafters of Additional Protocols I and II held a similar concern, namely that Occupying Powers might "abuse their discretion" by

39 Including GC IV, Arts 24, 38(5), 50(5) and 76(5); AP I, Art. 77; AP II, Art. 4(3); ICRC, Customary IHL Study, Rule 135.

40 Convention on the Rights of the Child, 20 November 1989, Art. 3.

41 For one example, see ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, ICRC, Geneva, 2019, (hereafter *2019 Challenges Report*), Chapter 5.3 (hereafter 2019 Challenges Report), regarding the international law protecting children associated with 'foreign fighters'.

42 See ICRC, "Sudan: Relief as ICRC evacuated 300 children 'towards safety, away from the sounds of gunfire'", 9 June 2023: www.icrc.org/en/document/sudan-relief-icrc-evacuates-300-children. See also the reference to the ICRC's Central Tracing Agency in AP I, Art. 78(3).

43 See, for example, ICRC, UNICEF, UNHCR and IFRC, Joint statement on the evacuation of unaccompanied children from Rwanda, 1994: www.refworld.org/policy/statements/unhcr/1994/en/29395. See also ICRC, *2019 Challenges Report*, Chapter 2.1.C, regarding the protection of civilians leaving, or being evacuated from, a besieged area.

44 Unlawful deportation or transfer are grave breaches under GC IV, Art. 147 and AP I, Art. 85(4)(a), and can constitute war crimes in both international and non-international armed conflict under Art. 8(2)(a)(vii), 8(2)(b)(viii) and 8(2)(e)(viii) of the Rome Statute of the ICC.

45 See Final Record of the Diplomatic Conference of Geneva of 1949, Federal Political Department, Berne, 1949, Vol. II-A, p. 638.

masking evacuations conducted for political reasons as evacuations carried out for reasons of "safety".[46] Thus under IHL, an evacuation by a party to a conflict is not automatically lawful because the party is evacuating children for reasons of health or safety. An evacuation has to comply with additional rules. These have to do with the preservation of family links, the temporary nature of the evacuation and several other context-specific requirements.

A. Key legal provisions in international and non-international armed conflict

Several IHL provisions deal directly with the evacuation, transfer and deportation of children.

In international armed conflict, Article 24(2) of the Fourth Geneva Convention provides that parties to the conflict must facilitate the reception of certain unaccompanied children in a neutral country and respect a number of safeguards while doing so. For states party to Additional Protocol I, Article 78 of that treaty supplements the Fourth Geneva Convention in the case of evacuations of all children other than own nationals to foreign countries. At the same time, Article 49 of the Fourth Geneva Convention prohibits forcible transfers or deportations of protected persons within or outside occupied territory.[47] In the case that a child is not protected by these IHL provisions because it is being evacuated by its state of nationality, states party to the CRC remain bound to respect the child's best interests, identity and family life.[48]

In non-international armed conflict to which Additional Protocol II applies, Article 4(3)(e) of that treaty stipulates that, pursuant to certain conditions, measures shall be taken to temporarily remove children from the area in which hostilities are taking place. Any evacuation of children is a displacement that must also comply with Article 17 of Additional Protocol II, which prohibits forced movement of civilians unless the security of the civilians involved or imperative military reasons so demand.[49]

In both international and non-international armed conflicts, the provisions mentioned above that specifically address evacuations, transfers and deportations must be interpreted in their context, in light of their purpose, and together with any relevant rules of international law applicable in the relations between the parties. This includes the rules of IHL and human rights law, as applicable, that require that family unity be maintained by default – meaning, unless certain conditions are fulfilled, as outlined below. It also includes IHL's rule that children are entitled to special respect and protection; for states party to the CRC, this entails respect for their best interests as a primary consideration in actions that concern them.

46 ICRC, *Commentary on the Additional Protocols*, 1987, paras 3211 and 3227.
47 See also ICRC, Customary IHL Study, Rule 129.
48 See Arts 3, 7-11, Convention on the Rights of the Child.
49 See also ICRC, Customary IHL Study, Rule 129.B.

B. Legal grounds and safeguards

The IHL provisions identified above – including those on ensuring respect for family life – must be examined closely by any party considering an evacuation involving children. The legal requirements will differ depending on who is conducting the evacuation, whether it is forcible, whether families are being evacuated together, and where they are being evacuated to and from. Each evacuation will thus need to be assessed on a case-by-case basis, in the light of applicable law. Some of the important safeguards contained in the law are highlighted below.

Evacuation of children must not be forcible, except on defined grounds.[50] Regarding voluntary evacuations, the consent or agreement of Protecting Powers, states of nationality, and/or the parents or persons who by law or custom are primarily responsible for the child's care (when they can be found) is required by the relevant rules.[51] This includes the consent required to separate a child from their parents, legal guardians, or persons who by law or custom are primarily responsible for the care of the child;[52] otherwise – that is, without consent – parties to armed conflict must not, during evacuations, separate families who are together.[53] Moreover, even when they are voluntary, evacuations of children to which the Additional Protocols apply must be carried out only if necessary.[54] Evacuations must be temporary,[55] and are subject to certain territorial restrictions.[56] Specific measures must be put in place for the satisfactory care of children during and after the evacuation.[57] Finally, notifying the ICRC or Protecting Powers is legally required in some cases,[58] and in all cases, registering evacuated unaccompanied or separated children is central to respecting their best interests, including to ensure they do not go missing and so that their families are informed of their fate and whereabouts.

Evacuations are only stopgap solutions – displacement must not be permanent. The obligations of parties to armed conflict do not end once people are in a place of care and safety. IHL rules also govern the arrangement of safe and voluntary returns,[59] and the reunification of families who may have become

50 As per GC IV, Art. 49(2); AP II, Art. 17(1); ICRC, Customary IHL Study, Rule 129. See also defined grounds in AP I, Art. 78(1).
51 GC IV, Art. 24(2); AP II, Art. 4(3)(e); AP I, Art. 78; Regarding the views of the child, see Art. 12, Convention on the Rights of the Child.
52 AP II, Art. 4(3)(e); AP I, Art. 78; See also Art. 9, Convention on the Rights of the Child.
53 GC IV, Art. 49(3); ICRC, Customary IHL Study, Rules 105 and 131.
54 AP I, Art. 78(1) defines specific grounds; AP II, Art. 4(3)(e).
55 GC IV, Art. 49(2); AP I, Art. 78(1); A P II, Art. 4(3)(e).
56 GC IV, Arts 24(2) (neutral country) and 49(2) (must not be outside the occupied territory except when for material reasons it is impossible to avoid); A P II, Art. 4(3)(e) (a safer area within the country).
57 GC IV, Arts 24 and 49(3); AP I, Art. 78(2); A P II, Arts 4(3)(e) and 17(1); ICRC, Customary IHL Study, Rule 131.
58 GC IV, Art. 49(4); AP I, Art. 78(3). For children in occupied territory whose identity is in doubt – typically meaning unaccompanied and separated children – GC IV, Art. 50(4) also requires their registration by national information bureaus.
59 GC IV, Art. 49(2); AP I, Art. 78(3); ICRC, Customary IHL Study, Rule 132. See also Art. 12(4) of the International Covenant on Civil and Political Rights (ICCPR), among other international instruments addressing the right to return.

separated in the course of the evacuation.[60] Parties to armed conflict conducting evacuations must plan accordingly.

The purpose of these requirements is not to delay life-saving evacuations, but to address the dangers they entail and ensure that evacuations actually improve children's lives. Short-term safety and long-term protection should not be mutually exclusive objectives. Perhaps most importantly for children, the ICRC urges parties to armed conflict to bear in mind that preserving family unity is usually the best way to ensure their protection from the worst kinds of harm.

4) Protecting diverse people

All populations are comprised of a diverse body of individuals, each of whom are affected in different ways by armed conflict. Greater awareness of how conflict affects different people differently is necessary in order to implement IHL in a manner that provides meaningful protection for people. In recent years, the ICRC has stepped up its efforts to understand this diversity more fully, particularly in relation to age, gender, and disability. Its insights are set out in the pages that follow.

A. Reflecting gendered impacts of armed conflicts in applying IHL

Despite the guarantee of equal rights for women and men in international law, gender inequality persists in every country worldwide. It tends to be particularly pronounced in conflict-affected contexts. For example, the United Nations (UN) reports that in humanitarian settings, the share of households headed by women typically reaches 33 percent and those households report higher risks of malnutrition and food insecurity.[61] More generally, research now suggests that women and children die at higher rates than men from the indirect effects of armed conflicts.[62]

Military operations do not therefore take place on an "equal playing field" for diverse women, men, girls, and boys. The actions of warring parties can cause harm with gendered dimensions, arising both from differences in people's biological sex as well as those related to socially ascribed roles and responsibilities. In other words, systemic gender inequality involves exposure to specific risks, influences access to resources and shapes behaviour in armed conflict. Though these gendered impacts vary with context and intersect with other identity criteria, trends are predictable. Women and girls tend to have fewer financial resources to cope with injury and property damage, and have less access to essential services and representation in decision-making bodies. Gender-based

60 GC IV, Art. 26; AP I, Art. 74; AP II, Art. 4(3)(b); ICRC, Customary IHL Study, Rule 105.

61 UN Secretary-General, *Women and Peace and Security: Report of the Secretary-General*, UN Doc. S/2021/827, 27 September 2021, para. 43.

62 S. Savell, "How death outlives war: The reverberating impact of the post-9/11 wars on human health", Watson Institute for International and Public Affairs, Brown University, 15 May 2023, p. 5: https://watson.brown.edu/costsofwar/files/cow/imce/papers/2023/Indirect%20Deaths.pdf.

discrimination can affect the treatment of detainees, or health-care provision. It drives gendered violations of the law, including sexual violence.[63]

Faced with these gendered impacts, the ICRC has pledged to ensure that its humanitarian operations are more inclusive and to consider the implications for the implementation and application of IHL.[64] Specifically in its legal work, the ICRC has incorporated a gender perspective in its approach to updating its commentaries to the Geneva Conventions.[65] A series of ICRC reports published in 2022 and 2024 encourage parties to armed conflict to integrate a gender perspective into their interpretations of IHL.[66] Reflecting these developments, this section identifies how certain IHL rules can be applied to better take account of and reduce gendered harm in armed conflict. It also sets out corresponding practical recommendations.

i. A gender perspective in service of IHL's obligations regarding non-discrimination and the reduction of civilian harm

IHL contains rules governing the treatment of people in the power of a party to the conflict, including obligations to treat them without adverse distinction. This means without discrimination on the basis of sex, gender or any other similar criteria. What constitutes non-discriminatory treatment varies depending on the individual, and must take into account the distinct risks the individual faces, whether physical or physiological, or stemming from social, economic, cultural and political structures in society. Importantly, seemingly neutral IHL provisions can require gender-distinct applications in order to comply with non-discrimination requirements. For example, Article 27 of the Third Geneva Convention addresses the provision of clothing to prisoners of war without an express reference to gender – but to comply with the concomitant obligation of non-discrimination (as well as humane treatment and respect for their persons), provision of clothing adapted to a prisoner of war's gender is required.[67] Article 79 of the Third Geneva Convention, similarly silent on gender, addresses the election of prisoners' representatives. To apply its provisions in a non-discriminatory manner, the Detaining Power may wish to consider introducing a woman prisoners' representative (if there are women among those detained): "*Either way, the representative must take into account the needs and further the well-being of all prisoners, men and women.*"[68]

63 This gendered violation can affect all persons. See ICRC and Norwegian Red Cross, *"That Never Happens Here": Sexual and Gender-Based Violence against Men, Boys and/Including LGBTIQ+ Persons in Humanitarian Settings*, 2022.

64 The ICRC's Inclusive Programming Policy (2022) sets out its commitment to incorporating an analysis of gender together with other diversity factors in its work; its Gender, Diversity, and Inclusion Policy (2024) clarifies and frames its support for gender equality.

65 ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 24, 1682 and 2680.

66 ICRC, *International Humanitarian Law and a Gender Perspective in the Planning and Conduct of Military Operations*, ICRC, Geneva, 2024; ICRC, *Gendered Impacts of Armed Conflicts and Implications for the Application of International Humanitarian Law*, ICRC, Geneva, 2022.

67 ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 19, 1734, 1761 and 2151.

68 ICRC, *Commentary on the Third Geneva Convention*, 2020, para. 3468.

A number of IHL rules further operationalize the requirement of non-discrimination by requiring specific treatment for women. These include obligations that women combatants be treated "with all consideration" or "with all the regard" due to their sex.[69] Detaining Powers are therefore — to provide one important example — obliged to ensure that medical services are adequately equipped to address women's health needs.[70] Parties to armed conflict, including non-state armed groups, have accordingly put in place a range of measures to take into account the distinct risks faced by women in detention.[71]

Apart from this, IHL requires parties to armed conflict to reduce civilian harm in certain ways during the conduct of military operations. The relevant IHL rules and principles on the conduct of hostilities include those on distinction, proportionality, and precautions.[72] These protect a civilian population made up of women, men, boys and girls, who experience harm from hostilities differently. Parties to armed conflict should therefore incorporate a gender analysis in the planning and conduct of military operations when feasible, in order to reduce expected civilian harm.

ii. A gender perspective in practice

Incorporating a gender perspective in the application of IHL is exceedingly challenging in the highly gendered institutions and conduct associated with armed conflict. Gender remains a side-lined and contentious issue for many militaries. Gender bias and stereotypes are prevalent throughout the world, influencing the decisions that individuals make and contributing to data gaps.[73] The integration of a gender perspective into the application of IHL in military operations is therefore likely to rise or fall depending on a number of cumulative factors.

To begin with, legal, strategic and ethics-based reasoning can be used to establish the importance of a gender perspective among internal stakeholders, and leadership should communicate their commitment to the issue. Internal discipline influences external conduct, so the right codes of conduct and similar internal culture-shaping documents are important foundations. More broadly, conducive law, doctrine, policy and procedure are critical for institutionalizing a gender perspective in the planning, execution, and evaluation of operations.

The integration of a gender perspective into military operations will also entail fixing gender gaps in operational data. Civilian-military cooperation may help if done well: militaries should consult with stakeholders and, where

69 GC I, Art. 12(4); GC II, Art. 12(4); GC III, Art. 14(2).
70 ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 1685, 2230 and 1747 (footnote 13).
71 ICRC, *Detention by Non-State Armed Groups*, 2023, p. 35.
72 Regarding the application of a gender perspective to the IHL principles of distinction, proportionality and precautions, see: ICRC, *Gendered Impacts of Armed Conflict*, 2022, pp. 11–19.
73 The Gender Social Norms Index of the United Nations Development Programme (UNDP) reveals that 91 per cent of men and 86 per cent of women show at least one clear bias against gender equality: UNDP, *Tackling Social Norms: A Game Changer for Gender Inequalities*, UNDP, New York, 2020, p. 8.

appropriate, local women should be at the table if they want to be, for example through women's organizations. Gender advisers or focal points, when properly trained and in positions of influence, can inject the expertise needed to make gender-related information actionable for commanders and planning teams. A number of states have appointed these roles. Finally, taking the implications of force demographics into account, getting logistics right, and procuring and allocating sufficient resources can all aid the effective implementation of a gender perspective.

At the national policy level, the UN Women, Peace and Security Agenda continues to be a vector of progress, calling on states to respect and implement IHL rules that protect women and girls. Intersections between IHL and the Women, Peace and Security agenda exist, but these links can be strengthened.[74] Adapted to national context, resources, and priorities – and in consultation with civil society – in their Women, Peace and Security policies states could commit to, for example: interpreting IHL with a gender perspective; appointing gender advisers in armed forces; incorporating strong non-discrimination provisions in military manuals; and ensuring that domestic laws reflect international obligations regarding sexual violence.[75]

In the 1995 Beijing Platform for Action, 186 states agreed that the mainstreaming of a gender perspective should be promoted in decisions addressing armed conflict.[76] Almost thirty years later, it is still common to hear that gendered impacts are too complex or too cumbersome to take into account in military operations. To this, it is worth recalling that we live in a world of astonishing technological advancement and significant national spending on security. Including a gender perspective in the implementation of IHL is a matter of priority and resource allocation, not capability. Reducing the gendered impact of armed conflict remains under-prioritized. While there are examples of good practice among numerous armed forces and armed groups, wider uptake is a question of political will. The ICRC urges parties to armed conflicts to take seriously the protection of all civilians, equally.

B. Interpreting and implementing IHL in a disability-inclusive manner

The World Health Organization estimated in 2022 that about 1.3 billion people, or about 16 per cent of the world's population, were experiencing significant disability.[77] In areas affected by armed conflict, these numbers might be even higher, perhaps between 18 to 30 per cent. There are lived experiences behind

74 For further details, see ICRC, *IHL and a Gender Perspective in the Planning and Conduct of Military Operations*, 2024.

75 ICRC, *IHL and a Gender Perspective in the Planning and Conduct of Military Operations*, p. 6; See also ICRC, *Checklist: Domestic Implementation of International Humanitarian Law Prohibiting Sexual Violence*, ICRC, Geneva, 2020.

76 UN, Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, 27 October 1995, para. 141.

77 World Health Organization (WHO), *Global Report on Health Equity for Persons with Disabilities*, 2022: https://www.who.int/health-topics/disability#tab=tab_1.

these numbers: of the inaccessibility of advance warnings, shelter or evacuations; of the increased risk of incidental harm; of families who face the impossible dilemma of either leaving all together, slowed down and risking attack because a family member with mobility restrictions cannot take their assistive devices with them – or leaving their loved one with a disability behind in order to save the rest of the family. Organizations of persons with disabilities have also shared other experiences with the ICRC, individually and during regional consultations bringing together persons with disabilities and members of armed forces. In one instance, a father of a child with an intellectual impairment chose to evacuate his cow instead of his child, believing the animal to be more valuable. In other instances, armed forces have attacked or detained persons with psychosocial, intellectual, hearing or visual impairments because they mistakenly believed that these persons posed a military threat: when persons with psychosocial or intellectual impairments ran excitedly towards areas of fighting; when persons with hearing impairments did not react to oral commands from soldiers; and when persons with visual impairments unfolded their white canes, which soldiers mistook for weapons.

These specific risks are not due to a lack of existing IHL rules on the matter. When they are civilians or persons *hors de combat*, persons with disabilities are protected under the general IHL rules on the conduct of hostilities (based on the principles of distinction, proportionality, and precautions). When in the power of a party to an armed conflict, they benefit from fundamental guarantees, especially humane treatment, without any adverse distinction. Moreover, persons with disabilities are entitled to specific respect and protection under IHL. In practice, however, these obligations are not adequately interpreted or fully implemented to be meaningful and effective, because they do not take sufficient account of the specific barriers and risks faced by persons with disabilities.

Promoting disability-inclusive interpretations and implementation of IHL is part of the ICRC's Vision 2030 on Disability. The ICRC is also seeking to become more disability-inclusive in its protection and assistance activities and as an employer.[78] Implementing protection activities for the benefit of persons with disabilities is also emphasized in the ICRC's Institutional Strategy (2024–2027).[79]

The complementarity between IHL and the Convention on the Rights of Persons with Disabilities (CRPD), which is made explicit in Article 11 of the CRPD, may help to promote disability-inclusive interpretations and implementation of IHL.[80] Substantively, the social and human-rights model on disability enshrined in the CRPD may help belligerents to be more inclusive by considering the diverse barriers and risks faced by different persons with

78 See ICRC, Vision 2030 on Disability, ICRC, Geneva: https://shop.icrc.org/the-icrc-s-vision-2030-on-disability-pdf-en.html.

79 See ICRC, Strategy 2024-2027, "Strategic Orientation 1: Upholding the centrality of protection and the role of a neutral intermediary", p. 11: shop.icrc.org/icrc-strategy-2024-2027-en-pdf.html.

80 See further, ICRC, "Towards a disability-inclusive IHL: ICRC views and recommendations", Humanitarian Law and Policy blog, July 2023: https://blogs.icrc.org/law-and-policy/2023/07/06/towards-disability-inclusive-ihl-icrc-views-recommendations/; ICRC, *2019 Challenges Report*, pp. 41–43; ICRC, "How law protects persons with disabilities in armed conflict", ICRC, Geneva, 2017: https://www.icrc.org/en/document/how-law-protects-persons-disabilities-armed-conflict.

disabilities. Procedurally, serious consideration of these barriers and risks requires states and parties to armed conflict to closely consult and actively involve persons with disabilities and their representative organizations in interpreting and implementing IHL (an obligation and principle under the CRPD).

IHL rules on feasible precautions in attack and against the effects of attack are an area in which awareness of the specific barriers and risks referred to above can make a significant difference for civilians with disabilities. A number of examples are given below to illustrate this point.

Awareness among parties to conflicts that persons with sensory, psychosocial, or intellectual disabilities may not be able to understand or react to the hostilities taking place around them as other persons would, may help to avoid erroneous interpretations that such persons have become lawful targets. Such awareness could contribute to better implementation of the obligation to verify that the persons to be attacked are indeed lawful targets.

Consideration of the fact that civilians with disabilities may need more time to leave the vicinity of military objectives may help to adjust the timing of attacks or delay military operations, where feasible. Factoring in this reality contributes to better implementation of the obligation to choose methods of attack to avoid, or minimize, incidental civilian harm.

The effectiveness of advance warnings of attack depends on whether as many civilians as possible can be reached and whether they would have enough time to act on the warnings. To be effective for civilians with disabilities, it is necessary that parties to armed conflicts communicate advance warnings in a variety of accessible formats (such as Braille, sign language, text messages, large print and simplified language). When deciding how much time to allow between warning and attack, attackers should take into account the fact that persons with disabilities will need more time than others to leave, access shelter or take other protective measures.

Temporary evacuations may be another feasible precaution, both in attack and against the effects of attacks.[81] In order for them to benefit fully from such evacuations, it is necessary to identify the persons with disabilities, ensure accessible means of transport, allow for support persons to accompany them and make sure they can take their assistive devices with them.

Interpreting IHL obligations to treat persons with disabilities in detention, or otherwise under the control of a party to a conflict, humanely would mean, for instance, not destroying, damaging or seizing assistive devices or taking feasible measures to ensure accessibility of infrastructure or communication in places of detention.

Persons with disabilities took part in IHL-related discussions at the regional consultations mentioned above, and their views guided these consultations. In 2022,

81 See e.g. AP I, Arts 57(2)(a)(ii) and 58(a) and (c) for relevant precautionary obligations. A specific way to implement precautions both in attack and against the effects of attack in besieged and encircled areas, as well as the specific protections applicable to groups of civilians provided by GC IV, is to draft local agreements between belligerents in order to allow those groups of civilians, including persons with disabilities, to be evacuated, in accordance with GCIV, Art 17.

the UN Special Rapporteur on the rights of persons with disabilities, the ICRC, the International Disability Alliance, the European Disability Forum and the Diakonia International Humanitarian Law Centre jointly organized regional consultations on providing more effective protection, during armed conflict, for persons with disabilities. The consultations resulted in a number of recommendations expertly compiled by the then UN Special Rapporteur and his team.[82] Most notably, in the ICRC's view,[83] states should include persons with disabilities and their representative organizations in IHL training sessions and dissemination activities for armed forces. Disability-inclusive IHL interpretations and implementation should also be placed on the agenda of national IHL committees or similar bodies and should be incorporated in manuals on the law of armed conflict. Ideally, these efforts will eventually lead to the incorporation, in military planning and the conduct of operations, of the specific risks faced by persons with disabilities. Non-state armed groups should also be made aware of disability-inclusive interpretations and implementation of IHL, and these matters should be discussed with them – as has been done successfully on other issues, like detention or the protection of health care.

IV. Balancing in good faith the principles of humanity and military necessity in the conduct of hostilities

The suffering and devastation caused by contemporary armed conflicts is almost beyond words. It flattens entire cities and leaves hospitals in ruins; civilians struggle to survive without adequate food, water, electricity or medical care, and people are wounded, permanently disabled, severely traumatized, and killed. Armed conflicts also destroy ecosystems and further deepen the rapidly intensifying global environmental and climate crisis.

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, including the natural environment. Hard-fought gains are now being questioned: use of anti-personnel mines and cluster munitions has grown alarmingly, as have the resulting casualties. These weapons maim and kill indiscriminately, and continue to cause widespread human suffering long after conflicts have ended.

82 See UN Special Rapporteur on the rights of persons with disabilities, *Report on the Protection of the Rights of Persons with Disabilities in the Context of Military Operations*, UN Doc. A/77/203, 2022: https://www.ohchr.org/en/documents/thematic-reports/a77203-report-protection-rights-persons-disabilities-context-military.

83 See ICRC, "Towards a disability-inclusive IHL: ICRC views and recommendations".

In this chapter, the ICRC presents some of its legal views on how good faith compliance with IHL rules on the conduct of hostilities may prevent or alleviate civilian harm in urban warfare, protect the life-saving care provided in medical facilities, prevent extreme food crises, and safeguard the natural environment. It also recalls how implementing and upholding weapon-related treaties may prevent destruction of human lives and livelihoods.

1) The urbanization of armed conflict

Urban fighting across the world – for instance, in Mariupol, Gaza and Khartoum – continues to cause immense suffering and devastation for civilians. The consequences of urban warfare are cumulative, immediate and long-term, and widespread. They include staggering numbers of civilian deaths; extensive physical and mental suffering; prolonged disruption of essential services within the urban area itself and beyond; mass displacement; outbreak and spread of infectious disease; reduced livelihoods; environmental damage; and developmental setbacks that last for decades and make many urban areas uninhabitable.[84] In 2022, the Movement adopted the Action Plan to Prevent and Respond to the Humanitarian Impacts of War in Cities.[85] It is working towards issuing *a Solemn Appeal on War in Cities* at the 34th International Conference.[86] The ICRC, the broader Movement and other humanitarian organizations continue to reinforce their capacity to prevent and respond to the devastating consequences of war in cities, but the scale and complexity of humanitarian needs always extend beyond the technical, practical, and financial capacities that can be mustered by a collective humanitarian response.[87]

In its 2019 Challenges Report, the ICRC called for better protection for civilians, and greater respect for IHL, in urban warfare. Since then, we have seen things get far worse for people affected by urban warfare, sieges, and weapons that are indiscriminate when used in populated areas.

Protecting civilians caught in urban combat starts with good faith compliance with IHL, and that begins well before the outbreak of hostilities.

84 See ICRC, War in Cities: Preventing and Addressing the Humanitarian Consequences for Civilians, ICRC, Geneva, 2023: .

85 Council of Delegates of the International Red Cross and Red Crescent Movement, *Resolution 6: War in Cities*, Annex: Movement Action Plan to Prevent and Respond to the Humanitarian Impacts of War in Cities, CD/22/R6, Geneva, June 2022, pp. 6-11: https://rcrcconference.org/app/uploads/2022/06/CD22-R06-War-in-cities_22-June-2022_FINAL_EN.pdf.

86 See Council of Delegates of the International Red Cross and Red Crescent Movement, *War in cities: A Solemn Appeal from the International Red Cross and Red Crescent Movement Draft Zero Resolution,* CD/24/DRX.X, April 2024: https://rcrcconference.org/app/uploads/2024/04/CoD24-Draft-0-War-in-Cities-EN.pdf.

87 See The World Bank, ICRC, & UNICEF, Joining Forces to Combat Protracted Crises: Humanitarian and Development Support for Water and Sanitation Providers in the Middle East and North Africa, Washington, DC, 2021: https://www.icrc.org/sites/default/files/document_new/file_list/joining_forces_to_combat_protracted_crisis.pdf; ICRC, *Towards More Effective Humanitarian Operations in Urban Areas of Protracted Armed Conflicts: Lessons Learned from Applying Operational Resilience and Institutional Learning in Gaza*, ICRC, Geneva, 2022: https://shop.icrc.org/towards-more-effective-humanitarian-operations-in-urban-areas-of-protracted-armed-conflicts-pdf-en.html.

However, the devastating consequences of fighting in cities raise serious questions about how parties to such conflicts interpret and apply the relevant IHL rules.[88] To ensure effective protection for civilians, the rules on the conduct of hostilities enshrine a careful balance between military necessity and humanity, as embodied, for instance, in the principle of proportionality, which requires that the incidental harm to civilians not be excessive in relation to the military advantage of an attack; the principle of precautions, which requires that parties take into account all humanitarian and military considerations when taking all feasible precautions to avoid and in any event minimize civilian harm; the obligation to "endeavour" to reach local agreements for the evacuation of certain categories of civilians from besieged areas. The rules on the conduct of hostilities do not require 'zero civilian casualties'. However, the object and purpose of the basic principles underlying all these rules is to respect the civilian population and civilian objects and effectively protect them from the dangers of military operations.

Yet, the consensus around this careful balance is at risk of being turned on its head because of the way hostilities are being conducted in practice; and because of certain legal interpretations that seek to justify such conduct, leading to manifestly absurd results in view of the rules' object and purpose. As parties to armed conflicts interpret IHL principles and rules with increasing elasticity, they set a dangerous precedent, which will have tragic consequences for everyone.[89] This is particularly the case in the continuing use of heavy explosive weapons in populated areas and in the attacks directed against critical infrastructure that enable the provision of essential services to civilians.

A. Heavy explosive weapons in populated areas: A change in mindset is urgently required

The use of explosive weapons with a wide impact area (also referred to as "heavy" explosive weapons) by warring parties has continued to cause devastation during urban fighting.[90]

In November 2022, states acknowledged the link between these weapons and the increased risk of civilian harm, by adopting the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences

88 See ICRC, *2019 Challenges Report*, pp. 7–18.

89 M. Spoljaric, *Statement for the first international follow-up conference to review implementation of the Political Declaration on explosive weapons in populated areas on Tuesday 23 April 2024 in Oslo (Norway)*, ICRC, April 2024: https://www.icrc.org/en/document/global-and-collective-failure-to-protect-civilians-in-armed-conflict.

90 As explained in ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, ICRC, Geneva, 2022: https://shop.icrc.org/explosive-weapons-with-wide-area-effect-a-deadly-choice-in-populated-areas-pdf-en.html, explosive weapons can have wide area effects because of the large destructive radius of the individual munition used, the inaccuracy of the delivery system, and/or the simultaneous delivery of multiple munitions over a wide area. These weapons include large bombs and missiles, indirect-fire weapon systems, such as most mortars, rockets and artillery, multi-barrel rocket launchers and certain types of improvised explosive device.

arising from the Use of Explosive Weapons in Populated Areas (the Political Declaration). By August 2024 this had been endorsed by 87 states.[91]

The Political Declaration contains a strong reaffirmation of key IHL obligations and their relevance to the use of explosive weapons in populated areas. Beyond this important reaffirmation, the Political Declaration acknowledges that much more is needed to achieve full and universal implementation of IHL and compliance with it.

IHL does not expressly prohibit the use of heavy explosive weapons in populated areas, but the high risk of such weapons having effects that go well beyond the targeted military objective makes it very difficult to use them in compliance with important IHL rules such as the prohibition against indiscriminate and disproportionate attacks and the duty to take all feasible precautions to avoid or at least minimize incidental civilian harm.[92] Because of this risk, and because of their devastating consequences, the Movement has, for over a decade, been calling on states and parties to armed conflicts to avoid the use of heavy explosive weapons in urban and other populated areas. Heavy explosive weapons should not be used in populated areas unless sufficient mitigation measures can be taken to reduce their wide area effects and the consequent risk of civilian harm.

Crucially, the Political Declaration stipulates a core commitment to "adopt and implement a range of policies and practices to help avoid civilian harm, including by restricting or refraining as appropriate from the use of explosive weapons in populated areas, when their use may be expected to cause harm to civilians or civilian objects".[93] The ICRC's 2022 report, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*,[94] provides an in-depth assessment of the use of these weapons from various perspectives: humanitarian, technical, legal, policy and practice. It offers detailed recommendations for political authorities and armed forces of both states and non-state armed groups on measures they can and should take to curb the use of heavy explosive weapons in populated areas and strengthen protection for civilians and civilian objects. It is hoped that states will find these recommendations helpful, including when seeking to operationalize the commitments made in the Political Declaration.[95]

91 Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, 2022: https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/.

92 See for a more detailed discussion ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, ICRC, Geneva, 2011, 2015 and 2019.

93 Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, Part B: Operative Section, Section 3(3.3), 2022: https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/.

94 ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, ICRC, Geneva, 2022: https://shop.icrc.org/explosive-weapons-with-wide-area-effect-a-deadly-choice-in-populated-areas-pdf-en.html.

95 ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, Chapter 5, ICRC, Geneva, 2022: https://shop.icrc.org/explosive-weapons-with-wide-area-effect-a-deadly-choice-in-populated-areas-pdf-en.html; The ICRC also published handbooks for commanders of state armed

In the Political Declaration, states also committed to "take into account the direct and indirect effects on civilians and civilian objects which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas, and conduct damage assessments, to the degree feasible, and identify lessons learned".[96] To help states implement this commitment, in 2023 the ICRC hosted an experts' meeting to exchange views on the action needed to prevent, mitigate and respond to the indirect effects, on essential services, of the use of explosive weapons in populated areas, and developed detailed recommendations in this regard.[97]

In the ICRC's view, the Political Declaration sends a powerful signal that belligerents need to change the way they plan and conduct hostilities in populated areas, in order to protect civilians and civilian objects from harm. Effecting such change in mindset and perspective is crucial.

The ICRC commends the many governments that have already endorsed the Political Declaration and strongly encourages all others to do so without delay. If properly implemented, the Political Declaration has the potential to make a real difference for civilians. The international community – particularly political and military authorities – must now work together to broaden support for the Political Declaration and to implement it effectively. It is time to turn these ambitious commitments into meaningful measures, policies and good practices that will help alleviate human suffering during armed conflicts and in their aftermath.

B. Protection of critical infrastructure enabling essential services to civilians

One of the gravest risks to lives and livelihoods in urban conflict is the disruption of essential services, such as electricity, health care, water and wastewater treatment and solid waste disposal, as well as the market systems that provide food and other household necessities, telecommunications, financial systems, transportation for people and goods, education – in short, all of the interrelated systems that

forces and non-state armed groups in 2021 and 2023, containing guidance and recommendations on reducing civilian harm during urban warfare. See ICRC, *Reducing Civilian Harm in Urban Warfare: A Commander's Handbook*, ICRC, Geneva, 2021: https://shop.icrc.org/reducing-civilian-harm-in-urban-warfare-a-commander-s-handbook.html; and ICRC, *Reducing Civilian Harm in Urban Warfare: A Handbook for Armed Groups*, ICRC, Geneva, 2023: https://shop.icrc.org/reducing-civilian-harm-in-urban-warfare-a-handbook-for-armed-groups-pdf-en.html. See also ICRC, *Childhood in Rubble: The Humanitarian Consequences of Urban Warfare for Children*, ICRC, Geneva, 2023: https://shop.icrc.org/childhood-in-rubble-the-humanitarian-consequences-of-urban-warfare-for-children-pdf-en.html; ICRC, *A Decade of Loss: Syria's Youth after Ten Years of Crisis*, ICRC, Geneva, 2021: https://www.icrc.org/sites/default/files/wysiwyg/Worldwide/Middle-East/syria/icrc-syria-a-decade-of-loss_en.pdf.

96 Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, Part B: Operative Section, Section 3(3.4), November 2022: https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/.

97 ICRC, *Preventing and mitigating the indirect effects on essential services from the use of explosive weapons in populated areas: ICRC recommendations*, ICRC, Geneva, 2024: https://shop.icrc.org/preventing-and-mitigating-the-indirect-effects-on-essential-services-from-the-use-of-explosive-weapons-in-populated-areas-icrc-recommendations-pdf-en.html

people need to live safely in cities and other populated environments.[98] A common cause of such disruption is damage to the critical infrastructure that these services rely on. As just described, this is frequently due to the use of heavy explosive weapons that cause widespread incidental damage to civilian infrastructure.

Sometimes, however, civilian infrastructure is directly and deliberately targeted. Critical infrastructure might also suffer incidental damage, especially when heavy explosive weapons are directed against targets in the vicinity of such infrastructure. This has been a concern of the international community for several years.[99]

i. Limits imposed by the definition of 'military objective'

Cities are, above all, civilian areas: they are full of civilians and civilian objects. Most of what states consider to be 'critical infrastructure' is made up of civilian objects under IHL. As such, they are protected against direct-attack, reprisals, and avoidable or excessive incidental harm. They benefit from a presumption of civilian status.[100] Attacks against these objects for the primary purpose of spreading terror among the civilian population are also prohibited.

One challenge is that infrastructure critical for the delivery of essential services is sometimes used simultaneously by both civilians and the armed forces of the parties to the conflict. This is the case, for instance, for some energy infrastructure, space systems and communication systems; and for logistical "lines of communication" (such as roads, bridges, transportation systems, airports and airfields, and ports).

This means that under certain circumstances such infrastructure may become liable to attack. However, the mere fact that civilian infrastructure, or a part thereof, is used by the armed forces of a party to an armed conflict does not suffice *per se* for it to qualify as a military objective under IHL. It must fulfil the definition of 'military objective'.[101] Concretely, this means that: (1) by its nature, location, purpose (intended future use) or use the infrastructure or parts of it must make an effective contribution to *military* action; and (2) its total or partial destruction, capture or neutralization, *in the circumstances ruling at the time*, must offer a definite military advantage. Both prongs of this definition must be fulfilled.

When assessing whether civilian infrastructure – or more likely a part thereof – has become a military objective, the first prong, i.e. the effective contribution that the object makes to the military action of the adversary, requires a close connection between the use of that part of infrastructure and the

98 ICRC, *Preventing and Mitigating the Indirect Effects on Essential Services from the Use of Explosive Weapons in Populated Areas: ICRC Recommendations*, ICRC, Geneva, 2024: https://shop.icrc.org/preventing-and-mitigating-the-indirect-effects-on-essential-services-from-the-use-of-explosive-weapons-in-populated-areas-icrc-recommendations-pdf-en.html

99 See for example UN Security Council, Resolution 2573, S/RES/2573 (2021), 27 April 2021.

100 AP I, Arts 48 and 52; ICRC, Customary IHL Study, Rules 8 and 147.

101 AP I, Art. 52; ICRC, Customary IHL Study, Rule 8.

fighting itself. This link will typically relate to tactical or operational level activities, such as the provision of electricity by a power station to military headquarters or command, control, and communication systems. In some circumstances, there will be a connection to strategic-level activities aimed at achieving direct military effects – for example, targeting a specific piece of energy infrastructure to deny an adversary's air-defence capabilities – or impacting the production of war matériel.

As for the second prong, there must be a concrete and perceptible advantage to the armed forces seeking to attack that piece of infrastructure in the circumstances ruling at the time, not a hypothetical advantage at some time in the future. In other words, sweeping or anticipatory classification, as a military objective, of the entire transportation system, electricity grid, or communications network under the control of an adversary, is incompatible with IHL. It would be contrary to the legal requirement to take all feasible precautions to verify the nature of a proposed target; and subsequent attacks on the basis of such a broad classification would most likely violate the principle of distinction.

Attacks on civilian infrastructure have taken place repeatedly, not for the purpose of degrading an adversary's military capabilities, but for political or economic reasons. Forcing an adversary to the negotiating table, influencing the will of the population, intimidating political leaders, or degrading an adversary's economic capacity: these are not relevant considerations in assessing whether an object is a military objective under IHL, even for objects that contribute to the war-sustaining capability of an adversary. Unless the operation is against a target that is a military objective in the first place, IHL prohibits attacks based on such considerations.

The importance of the definition of military objective, and the restrictions it imposes, cannot be overstated, for the protection of critical infrastructure and more generally for the protection of the population. Interpretations of this notion beyond its ordinary meaning, and contrary to its object and purpose to protect civilians against the dangers arising from military operations, undermine the entire protective framework established by the rules governing the conduct of hostilities.

ii. Can civilian infrastructure be attacked merely because it qualifies as a military objective? Limits imposed by other rules on the conduct of hostilities

Once critical infrastructure or a part thereof is used in such a way that it fulfils the IHL definition of 'military objective', it becomes a military objective. However, that does not provide an unrestricted licence to attack it.

In fact, all IHL rules protecting the civilian population from the effects of hostilities continue to apply. Importantly, this includes the prohibitions against indiscriminate and disproportionate attacks, and the rules on precautions in attack and against the effects of attack.

In connection with the principles of proportionality and precautions, one important question relates to the type of incidental civilian harm that must be considered when planning and deciding upon an attack against a piece of critical infrastructure that has become a military objective. As explained in the ICRC's

2019 Challenges Report, incidental civilian harm is not limited to immediate damage or destruction of civilian objects or injuries and deaths among civilians. It includes all reasonably foreseeable indirect or 'reverberating' civilian harm resulting from the destruction or damage (including loss of functionality) of the targeted objects. Many of these indirect or reverberating effects are well-documented now and entirely foreseeable.[102]

In addition, IHL affords specific, heightened protection to certain types of critical infrastructure, notably hospitals and other medical facilities and medical transports;[103] objects indispensable to the survival of the civilian population (see section IV. 3) b.);[104] works and installations containing dangerous forces (namely dams, dykes and nuclear power plants);[105] cultural property;[106] and the natural environment (see section IV. 4) d.).[107] Each specific protection regime is different, but it often entails additional prohibitions against attacking such objects – even in situations where they would otherwise fulfil the definition of 'military objective' – the requirement for more demanding precautions before attacking them, and/or specific protection against operations other than attacks.

When planning and deciding attacks against critical infrastructure, or a part thereof, simultaneously used by military forces and civilians, decisions about target selection, proportionality and precautions in attack need to be based on robust multidisciplinary intelligence assessments that, *inter alia*, comprehensively

102 For further discussion on what constitutes relevant incidental civilian harm for the purposes of both proportionality and precautions in attack, and when reverberating effects are reasonably foreseeable, see ICRC, *2019 Challenges Report*, Chapter 2.

ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, ICRC, Geneva, 2022, pp. 96-102: https://shop.icrc.org/explosive-weapons-with-wide-area-effect-a-deadly-choice-in-populated-areas-pdf-en.html.

103 Medical units (GC I, Art. 19; GC II, Art. 22; GC IV, Art. 18; AP I, Art. 12; AP II, Art. 11; ICRC Customary IHL Study, Rule 28); medical transports (GC I, Art. 35; GC II, Arts 38 and 39; AP I, Arts 21 –31; AP II, Art. 11; ICRC Customary IHL Study, Rules 29 and 119); See for more details, ICRC, *The protection of hospitals during armed conflicts: What the law says*, ICRC, November 2023: https://www.icrc.org/en/document/protection-hospitals-during-armed-conflicts-what-law-says#:~:text=According%20to%20international%20humanitarian%20law,staff%20and%20means%20of%20transport; ICRC, *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, ICRC, Geneva, April 2021: https://www.icrc.org/en/document/respecting-and-protecting-health-care-armed-conflicts-and-situations-not-covered; ICRC, *Protecting Health Care: Guidance for the Armed Forces*, ICRC, Geneva, November 2020: https://shop.icrc.org/protecting-healthcare-guidance-for-the-armed-forces-pdf-en.html.

104 AP I, Art. 54; AP II, Art. 14; ICRC, Customary IHL Study, Rule 54; for more details, see ICRC, Starvation, Hunger and Famine in Armed Conflict: An Overview of Relevant Provisions of International Humanitarian Law, ICRC, Geneva, 2022: https://shop.icrc.org/starvation-hunger-and-famine-in-armed-conflict-pdf-en.html.

105 AP I, Art. 56; AP II, Art. 15; ICRC, Customary IHL Study, Rule 42.

106 ICRC, 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and Its Protocols, ICRC, Geneva, 2021: https://www.icrc.org/en/document/1954-convention-protection-cultural-property-event-armed-conflict-and-its-protocols-0.

107 AP I, Arts 35(3) and 55(1); ICRC, Customary IHL Study, Rules 44 and 45; for more details see ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations Relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary*, ICRC, Geneva, 2020 (hereafter ICRC Environmental Guidelines): https://shop.icrc.org/guidelines-on-the-protection-of-the-natural-environment-in-armed-conflict-pdf-en.html.

map not only the anticipated effects of system disruption on the adversary's military capabilities, but also the impact that may be expected on the provision of essential services to the civilian population. This type of information may be difficult to acquire sometimes, but that does not obviate the legal requirement to take all feasible measures to obtain it before an attack.

2) The protection of medical facilities

Hospitals and other medical facilities perform a life-saving function for wounded and sick people, be they friend or foe. They should be sanctuaries from fighting. Therefore, the very first IHL treaty included rules on the specific protection of medical facilities. These have been comprehensively codified under the Geneva Conventions of 1949 and subsequent IHL treaties, and are a part of customary IHL.[108] Medical facilities must be respected and protected at all times. Thus, they are specifically protected against attacks and other military interference with their functioning, such as when conducting search or seizure operations or when misusing a medical facility for military purposes. The specific protection also means that a particular safeguard, namely a warning, must be implemented before any attack or other military operation in response to a loss of that protection can be undertaken.

Under IHL, the specific protection of medical facilities is the general rule; loss of that protection is the exception. This protection can be lost only if certain conditions are fulfilled which must be met cumulatively. First, a medical facility must be used to commit an act harmful to the enemy, outside of its humanitarian function; second, a warning with a reasonable time limit to cease such acts must go unheeded. By ensuring that parties have time to take steps to remedy the situation, the warning is thus an additional safeguard to reduce the likelihood of attacks against, and other military interference with the functioning of, medical facilities. In addition, even in the event of an attack or other military operation after such a warning has gone unheeded, wounded and sick people, and medical personnel who are not involved in the commission of acts harmful to the enemy, remain specifically protected – as do medical objects inside the hospital that are not being used to commit acts harmful to the enemy.

Despite the specific protection, hospitals are, with alarming frequency, subjected to attacks or armed entry accompanied by threats against medical personnel, and misused for military purposes. Such acts not only cause deaths and – sometimes additional – injuries among wounded and sick people or medical personnel and obstruct the treatment of patients inside hospitals, but also result in indirect and cumulative harm: hospitals are no longer functional for entire populations, medical personnel are no longer available, and fragile health systems are further weakened.

108 See, especially, GC I, Arts 19, 21 and 22; GC IV, Arts 18 and 19; AP I, Arts 12 and 13; AP II, Art. 11; ICRC Customary IHL Study, Rule 28.

A. Acts harmful to the enemy, and their consequences

The ICRC has previously addressed the notion of acts harmful to the enemy and the legal consequences that follow such acts.[109] When medical facilities are used to interfere directly or indirectly in military operations, and thereby cause harm to the enemy, the rationale for their specific protection under IHL is removed. Such acts endanger the wounded and sick in the facility, or lead to mistrust. IHL does not contain a general prohibition of using medical facilities for military purposes, but, depending on the circumstances, such acts may amount to specific IHL violations, including violation of the obligation to respect and protect medical facilities; of passive precautions; of the prohibition of using human shields or using medical facilities in an attempt to shield military objectives from attack; of the prohibition of improper use of emblems where medical facilities display a red cross, red crescent or red crystal; and of the prohibition of perfidy.

IHL does not define 'acts harmful to the enemy', or the consequences of such acts. It singles out a few acts that it expressly recognizes as *not* being harmful to the enemy, such as the carrying or using of individual light weapons in self-defence or in defence of the wounded and sick; the use of armed personnel to guard a medical facility; or the presence in a medical facility of sick or wounded combatants no longer taking part in hostilities.[110] Acts that have been recognized by states as harmful to the enemy include use of a hospital as: a base from which to launch an attack; an observation post; a weapons depot; as a command-and-control centre; and as a shelter for able-bodied combatants.

A key question for determining the response to a medical facility's loss of protection is whether acts harmful to the enemy turn a medical facility into a military objective. The ICRC has previously expressed the view that the loss of specific protection of a medical facility in case of acts harmful to the enemy does not necessarily permit an attack against that facility; whether a medical facility may be the object of an attack depends on the fulfilment of both cumulative criteria for classifying it as a military objective.[111] If those criteria are not met, parties would have to adopt measures short of an attack on the facility itself, such as seizure of the facility.

The overall state of affairs creates an environment in which assertions by attackers that such acts have been committed, are easily made and hard to refute, as such claims are rarely accompanied by information about how the existence of an act harmful to the enemy was verified and whether a good faith determination of the facility's status as a military objective has been made. It also underscores

109 See, for example, the *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, ICRC, Geneva, 2015, (hereafter *2015 Challenges Report*) pp. 31–32; ICRC, *Commentary on the First Geneva Convention*, 2016, on Art. 21, paras 1837–1859.

110 GC I, Art. 22; AP I, Art. 13.

111 See ICRC, *2015 Challenges Report*, p. 33; ICRC, *Commentary on the First Geneva Convention*, 2016, para. 1847. For an exploration of the challenges in interpreting the notion of military objective see section IV. 1) b. i. of this report.

the importance of not using medical facilities for military purposes, so as to avoid the possibility of a loss of protection.

B. The warning requirement

Attacks or other military operations against medical facilities that are being used to commit acts harmful to the enemy must be preceded by a warning. The issuing of such warning is distinct from that found in the principle of precautions protecting civilians and civilian objects from attacks: the warning to be given before launching any military operation against hospitals is not subject to the general caveat "unless circumstances do not permit". Where appropriate, the warning needs to be accompanied by a reasonable time limit which must have gone unheeded before any action is taken.

The specific warning requirement for medical facilities provides a safeguard, especially against attacks based on insufficiently substantiated information. The purpose of this warning is not only to allow those committing an act harmful to the enemy to terminate such acts or – if they decide not to – to ultimately allow for safe evacuation of the wounded and sick. An additional purpose is to afford those in charge of a medical facility an opportunity to reply to any unfounded allegations that acts harmful to the enemy are being committed and provide evidence to the contrary, if they can.[112] In some cases, the warning may also serve to empower hospital staff to appeal to military authorities to remove a military objective or cease military use of the medical facility.

The obligation to warn should therefore render attacks against medical facilities even more exceptional. When a warning is heeded, or when it is clarified that the assumptions by an attacker were erroneous, no attack may be launched.

Despite the stringency of this obligation, it is currently unclear whether parties to armed conflict systematically issue such warnings. It is also not clear whether and how they meet the requirements for specificity; nor is there sufficient information on how parties to armed conflict adapt the format of these warnings to ensure their accessibility, or on the parameters guiding the timing and expiry time granted for ceasing acts harmful to the enemy. Further clarity on the practical implementation of this requirement, and on what is necessary to enable such warnings to serve their purpose, is highly desirable.

C. Further constraints on attacks against medical facilities that have lost their protection

Even when the most extreme response, namely an attack against a medical facility that has lost its specific protection, can be justified, it is subject to further

112 ICRC, *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, p.202; and J.S. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, p. 155.

constraints. First, where a hospital compound is composed of several buildings, only the specific building – or the separable parts thereof – from which an act harmful to the enemy is committed can be considered a military objective liable to attack, provided that building also meets the two-pronged IHL definition of a military objective. Second, the effect of any such attack on wounded and sick persons and medical personnel uninvolved in the commission of acts harmful to the enemy must be duly taken into account, in accordance with the obligations to respect and protect the wounded and sick and medical personnel, as well as the principles of proportionality and precautions under the general IHL rules on the conduct of hostilities.[113] Compliance with these rules remains crucial in this context, because even if a warning may have permitted safe evacuation of some wounded and sick persons before an attack, that may not be practicable in all cases, as some of them may not be in a condition to be transported elsewhere. It must be presumed that wounded and sick persons and medical personnel will remain in a hospital that has lost its protection.

Severe consequences of any attack on a hospital are foreseeable: for instance, injuries or deaths among medical personnel or the destruction of vital components of a hospital, such as intensive care units, or of medical equipment inside a hospital, will have a devastating impact on live-saving medical care for wounded and sick people. Indirect and cumulative consequences of such attacks are also well known: hospitals may become inoperable and no longer fulfil their vital function for entire populations; and medical personnel may leave or become unavailable to provide their services. Hence, in applying the principle of proportionality, the concrete and direct military advantage anticipated from an attack on medical facilities that have lost their protection must be carefully weighed against the severe incidental harm that is foreseeable, which must also include the foreseeable reverberating effects.

An attacking party also remains bound by the obligation to take precautions in attack. In particular, it must do everything feasible to avoid or at least minimize harm to patients and medical personnel, and to medical equipment. Following consultations with a number of different armed forces, the ICRC has recommended a series of measures that should inform precautions to minimize the direct and indirect impact of an attack on the provision of health services. These include: preparation of a contingency plan to address the anticipated disruption of health services and to re-establish full service delivery as soon as possible; measures to facilitate the evacuation of patients and medical personnel in order to preserve the continuity of care; stopping the attack if the facility no longer meets the criteria for the loss of protection (e.g. combatants have fled the medical facility); or, after the attack, facilitation or implementation

113 This applies to wounded and sick people and medical personnel, whether civilian or military. For more details on the scope of specific protection in relation to medical personnel, as well as the question of the scope of the notions of acts harmful to the enemy compared with that of direct participation in hostilities, see, for example ICRC, *2015 Challenges Report*, pp. 30–33.

of measures for the rapid restoration of health services (e.g. provision of military medical support for a civilian medical facility).[114]

It is unclear whether and how parties to armed conflict are currently taking into account the devasting consequences of attacks against hospitals. Much more must be done to bridge the gap between the law and the declared good intentions of states – including at the highest level as parties to the Geneva Conventions of 1949 and by adopting UN Security Council Resolution 2286 of 2016 – and the grim reality of an alarming scale of death among wounded and sick people and medical personnel, and the destruction and disruption of medical facilities. States and non-state parties to armed conflict must do more to uphold the letter and spirit of the specific protection of medical facilities against attack, armed entry, and misuse for military purposes.

3) Food security

Acute food insecurity affected some 282 million people throughout the world in 2023, owing to the mutually reinforcing impact of conflict, extreme weather, economic shocks and trade disruptions. Conflict and insecurity were the primary driver of hunger for 135 million people and a contributing factor for millions more.[115]

All too often, states react to the impact of conflict on food security only after a situation has already developed into an acute food crisis, narrowing the focus to the issue of access for humanitarian relief. Respect, from the onset of the conflict, for the full range of IHL rules described below can help prevent situations from developing into extreme food crises in the first place.[116]

A. The prohibition against using starvation of civilians as a method of warfare

IHL prohibits starvation of civilians as a method of warfare. *Starvation* means deprivation of food, water or other things necessary for survival. The deprivation need not be so severe as to cause death; it is enough that it would cause suffering.

To use starvation as a *method of warfare* means to provoke it deliberately. A prominent example is deprivation of food and water during sieges.[117] Another is destroying foodstuffs and water supplies, and the means to produce and distribute them, to deprive an adversary of their sustenance value. To conclude that a party is deploying starvation as a method of warfare, one need not wait until civilians are actually starving.

114 See ICRC, *Protecting Health Care: Guidance for the Armed Forces,* ICRC, Geneva, 2020, pp. 41 and 48.
115 Food Security Information Network and Global Network against Food Crises, *2024 Global Report on Food Crises*, GNAFC/FSIN, Rome, 2024, pp. 11–13: www.fsinplatform.org/grfc2024.
116 See also UNSC Resolutions 2417 (2018) and 2573 (2021).
117 For a more detailed discussion of the protection of the civilian population during sieges, see ICRC, *2019 Challenges Report*, pp. 22–25.

The prohibition applies to starvation *of civilians*. It does not address starvation of *armed forces*. However, this does not mean that the prohibition applies only to acts taken with the *specific purpose* of starving civilians. At minimum, *indiscriminate* use of starvation as a method of warfare is also prohibited, i.e. where the deprivation of food and water or other things necessary for survival cannot be or is not directed *exclusively* at armed forces. For example, a besieging party could not justify deliberate mass starvation of civilians by claiming that its specific purpose was only to starve enemy fighters who were also in the area. Furthermore, both the besieging and the besieged party must allow civilians to leave and must continue to comply with IHL rules on humanitarian relief and conduct of hostilities, including in relation to any civilians who remain.[118]

Nothing in the ordinary meaning of the wording of the prohibition indicates that it was meant to allow for indiscriminate use of starvation as a method of warfare.[119] Furthermore, such an interpretation would be inconsistent with the intentions reflected in the corollary rule on "objects indispensable" in Article 54(2) and (3) of Additional Protocol I, discussed below. First, Article 54(2) explicitly refers to "the specific purpose of denying them for their sustenance value to the civilian population *or to the adverse Party*" [emphasis added]. Second, the exception in Article 54(3)(b), where an object is being used in direct support of military action, is subject to the overriding provision that "in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement."

The reference to starvation *as a method* of warfare does not cover all starvation caused by warfare. For instance, starvation caused by a general disruption of transportation systems as an incidental result of the armed conflict would not necessarily be covered by the prohibition, unless a party was seeking thereby to provoke starvation. However, acts that could cause starvation but cannot be described as the use of starvation as a 'method of warfare' may still be prohibited by other rules of IHL.

B. Objects indispensable to the survival of the civilian population

IHL gives special protection to "objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works".[120] The types of objects covered by the rule are not limited to these examples. For instance, depending on the circumstances, housing, clothing or fuel could also be included, as well as certain types of energy or communications

118 See ICRC, *2019 Challenges Report*, pp. 22–25; ICRC, Customary IHL Study, commentary on Rule 53, p. 188. In addition to civilians, the parties also have obligations to the wounded and sick and other persons *hors de combat*.
119 See AP I, Art. 54(1); AP II, Art. 14; ICRC, Customary IHL Study, Rule 53.
120 See AP I, Art. 54(2); AP II, Art. 14; ICRC, Customary IHL Study, Rule 54.

infrastructure on which objects indispensable to the survival of the civilian population depend.[121]

Attacking, destroying, removing, or rendering useless such objects is prohibited. These terms were meant to cover all possible means, including the use of chemicals to contaminate water reservoirs or defoliate crops.[122] Cyber operations are also covered by this prohibition. The possibility that damage or a disabling effect might eventually be repaired or reversed does not remove it from the scope of the prohibition.

Exceptions to the prohibition exist where the objects are used as sustenance solely for the members of armed forces, or in direct support of military action (such as providing cover).[123] However, even in these circumstances, "in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement".[124]

Some states insist that this prohibition applies only to acts carried out for specific purposes. However, even on such a narrow reading, as was noted above, Article 54(2) of Additional Protocol I explicitly includes the purpose of denying the objects' sustenance value "to the adverse Party", not only to the civilian population.[125] In any event, the ICRC's study on customary IHL did not formulate the relevant rule to include a purpose requirement, commenting that with regard to international armed conflict, most military manuals "do not indicate such a requirement and prohibit attacks against objects indispensable to the survival of the civilian population as such".[126] In the view of the ICRC, at a minimum, to ensure that the rule is fully complied with and realizes its intended protective effect, it is essential that no action, whatever its purpose, be taken against "objects indispensable" wherever the action "may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement".[127]

C. Other pertinent rules

Other IHL obligations are also pertinent to food security.[128] For instance, parties have obligations to ensure the provision of supplies essential to the survival of the

121 See, for example, Rule 141, paras 5–6 in Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, Cambridge, 2017.
122 ICRC, *Commentary on the Additional Protocols*, 1987, paras 2101 and 4801.
123 See AP I, Art. 54(3); ICRC, Customary IHL Study, explanation on Rule 54.
124 See AP I, Art. 54(3)(b); See ICRC, Customary IHL Study, explanation on Rule 54.
125 AP I, Art. 54(2) refers to "the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive". AP II, Art. 14 includes the phrase "for that purpose", in reference to the mention of "starvation of civilians as a method of combat" in the previous sentence.
126 ICRC, Customary IHL Study, explanation on Rule 54. The commentary makes no reference to a requirement of purpose in the application of the rule in non-international armed conflict.
127 See AP I, Art. 54(3)(b). See also ICRC, Customary IHL Study, explanation on Rule 54.
128 For more details, see ICRC, *Starvation, Hunger and Famine in Armed Conflict*, ICRC, Geneva, 2022: https://shop.icrc.org/starvation-hunger-and-famine-in-armed-conflict-pdf-en.html.

civilian population under their control, including food and water.[129] Parties, and other states, also have obligations to allow and facilitate humanitarian relief, subject to their right of control.[130]

In addition, IHL rules on distinction, proportionality and precautions in attack provide general protection to civilian objects, including civilian transport infrastructure, marketplaces and other civilian objects that contribute indirectly to civilian food supply, even when they do not necessarily constitute objects indispensable to the survival of the civilian population.

IHL also prohibits or regulates the use of certain weapons with a widespread and long-lasting adverse impact on food security, such as landmines and cluster munitions. It provides for protection of the natural environment. Works and installations containing dangerous forces, such as dykes, dams and nuclear power plants, also receive special protection. Rules on naval blockade, and on pillage and other acts in relation to public and private property, are also relevant.

Hostilities conducted intensely and on a continuous basis could make it effectively impossible, for prolonged periods, to deliver adequate humanitarian assistance. Parties must ensure that the manner in which they conduct hostilities is compatible with their obligations to ensure supply of food, water and other essential items to populations under their control and to allow and facilitate humanitarian relief. In situations of occupation, for instance, the Occupying Power must ensure, to the fullest extent of the means available to it, the food and medical supplies of the population, including by bringing in the necessary foodstuffs, medical stores and other items if the resources of the occupied territory are inadequate.[131] If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power must agree to relief schemes and must "facilitate them by all the means at its disposal",[132] which in some circumstances could involve adjustments to its military operations. A similar obligation applies in situations other than occupation.[133] Preventing interference with an ongoing or imminent military operation could in exceptional circumstances justify regulating – but not prohibiting – humanitarian access; however, any legal or practical restrictions on the freedom of movement of

129 See, for example, GC IV, Arts. 39(2), 55(1) and 89; AP I, Art. 69(1). IHL rules addressing specific situations and populations in this respect are reinforced by broader obligations, including under other bodies of international law: see ICRC, *Starvation, Hunger and Famine in Armed Conflict*, ICRC, Geneva, 2022, p.4: https://shop.icrc.org/starvation-hunger-and-famine-in-armed-conflict-pdf-en.html.

130 See, for example, ICRC, *2015 Challenges Report*, pp. 26–30; ICRC, Customary IHL Study, Rule 55; ICRC, *Commentary on the Third Geneva Convention*, 2020, commentaries on common Articles 3(2) and 9/9/9/10, paras 866–879 and 1348–1363; GC IV, Arts 23 and 59; AP I, Arts 69 and 70; AP II, Art. 18. On the link between the obligation to allow and facilitate relief, and the prohibition against starvation of civilians as a method of warfare, see ICRC, ICRC, *Commentary on the Additional Protocols*, 1987, para 2805 and para. 4885; and the Rome Statute of the ICC, Art. 8(2)(b)(xxv), referring to the war crime of "[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, *including wilfully impeding relief supplies as provided for under the Geneva Conventions*" (emphasis added).

131 See GC IV, Art. 55(1); See also AP I, Art. 69(1); ICRC, Customary IHL Study, Rule 55 and explanation.

132 See GC IV, Art. 59(1); See also AP I, Art. 69(2); ICRC, Customary IHL Study, Rule 55 and explanation.

133 See, for example, AP I, Art. 70; ICRC, Customary IHL Study, Rule 55 and explanation.

humanitarian personnel must be temporary and geographically restricted so as not to unduly delay relief operations or make their implementation impossible.[134] 'Humanitarian corridors' (agreements between parties to permit safe passage for a limited time in a specific geographic area) or 'humanitarian pauses' (temporary suspension of hostilities) sometimes enable delivery of humanitarian relief and assistance that hostilities might otherwise have made impossible. In the view of the ICRC, however, such mitigatory measures do not necessarily fulfil the ongoing legal obligations of the parties and cannot be used to justify limiting or refusing to implement IHL rules on humanitarian access and activities at other times or places.[135]

D. Challenges to effective protection in practice

In addition to unduly narrow interpretations of IHL as described earlier, an overarching challenge to preventing food insecurity is simple non-compliance with IHL. Later sections of this report on the implementation of IHL and repression of violations are pertinent and should be acted upon with urgency in this context. Ratification of the Rome Statute amendment bringing the war crime of starvation of civilians in non-international armed conflicts within the jurisdiction of the International Criminal Court could further contribute to increasing respect for the relevant IHL rules.[136]

Beyond their immediate impact, armed conflicts do lasting damage to food systems – for instance, in connection with seed production, irrigation and trade networks – undermining long-term food security. Concerted action is needed before, during, and after conflicts to address points of disruption, and other drivers of food insecurity at all levels of the food system, to reduce risks and strengthen resilience.

Food insecurity magnifies protection concerns, prompting harmful coping strategies and heightening risks of exploitation and marginalization. Support adapted to the needs of individuals or groups who are more vulnerable to food insecurity and malnutrition, owing to societal and situational barriers, must therefore remain a priority: it should take into account factors such as gender, age, disability and sexual orientation.[137]

When global supply chains for food and fertilizer are disrupted by armed conflicts, that can also impact populations far from the actual hostilities. Respect for the relevant IHL rules could indirectly help mitigate the impact of conflict on the international trade in food and fertilizer. However, IHL focuses mainly on the populations in the countries in conflict or directly affected in other ways by attacks and military operations. At minimum, where such external impact is likely, the

134 See, for example, ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 878 and 1362.

135 See ICRC, "How humanitarian corridors work to help people in conflict zones", 3 June 2022: https://www.icrc.org/en/document/how-humanitarian-corridors-work.

136 Amendment to Art. 8 of the Rome Statute of the ICC (intentionally using starvation of civilians), Resolution ICC-ASP/18/Res.5, 6 December 2019. The war crime had already been included for international armed conflicts: see Art. 8(2)(b)(xxv).

137 See ICRC, *Food security and armed conflict*, ICRC, Geneva, 2022.

parties to a conflict and other states should take urgent action to limit the consequences for food security beyond their borders. IHL encourages parties to adopt special agreements or other, similar means to address such practical challenges.[138]

4) Protection of the natural environment

Countries affected by armed conflicts are also coping with the rapidly intensifying global environmental and climate crisis. Armed conflicts themselves deepen the crisis by damaging the environment and reducing people's resilience to erratic weather and climate shocks.[139] For example, over the past fifty years, natural ecosystems have declined by almost 50% on average relative to their earliest estimates, and around 25% of animal and plant species are close to extinction, with conflict being an indirect driver of the loss.[140] This is dangerous, among other reasons, because ecosystems and biodiversity are crucial for sustaining human life and supporting people's adaptation to climate change.[141] As ecosystems are damaged, climate adaptation becomes more difficult, causing further distress to conflict-affected communities that are already among the most exposed. Faced with this reality, international legal frameworks have been developed and clarified to better protect the environment during war. The completion of the UN International Law Commission's Principles on Protection of the Environment in Relation to Armed Conflicts (PERAC Principles) in 2022 was a milestone in these efforts.[142]

A. Implementing IHL to protect the natural environment during armed conflict

To safeguard the environment of conflict-affected communities – and future generations – from the immediate and long-term impact of warfare, states and non-state armed groups should be accelerating the implementation of IHL rules

138 See ICRC, *Commentary on the Third Geneva Convention*, 2020, commentaries on common Articles 3(3) and 6/6/6/7, paras 880–899 and 1132–1168.

139 See ICRC, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People's Lives*, ICRC, Geneva, 2020: https://www.icrc.org/en/publication/4487-when-rain-turns-dust.

140 Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *The Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers*, IPBES Secretariat, Bonn, 2019, pp. 14–15, and 25. See also Thor Hanson *et al*., "Warfare in Biodiversity Hotspots", *Conservation Biology*, Vol. 23, No. 3, 2009.

141 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*: *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*: *Summary for Policymakers*, Cambridge University Press, Cambridge, 2022, pp. 12 and 32.

142 UNGA Res. 77/104, "Protection of the Environment in Relation to Armed Conflicts", 7 December 2022, Annex (PERAC Principles): https://digitallibrary.un.org/record/3998322. For the ICRC's views on the PERAC Principles, see Statement by the International Committee of the Red Cross at the UN General Assembly, 77th Session, Sixth Committee, in ILC, *Report of the International Law Commission on the Work of its Seventy-Third Session*, UN Doc. A 77/10, 26 October 2022: https://www.un.org/en/ga/sixth/77/pdfs/statements/ilc/25mtg_icrc_1.pdf.

protecting the natural environment. To assist them in this task, the ICRC's updated *Guidelines on the Protection of the Natural Environment in Armed Conflict* set out 32 existing IHL rules and recommendations relevant to reducing wartime environmental damage, together with a commentary to aid understanding and clarify the sources and the applicability of the rules.[143] The aim is to facilitate the adoption of concrete implementation measures. To advance this objective further, in 2023, Switzerland and the ICRC hosted a state expert meeting on international humanitarian law: *Protecting the Environment in Armed Conflicts*. Government experts from over 120 countries shared challenges and good practices in IHL implementation and wartime environmental protection.[144] The meeting demonstrated that militaries are making progress in grasping the issue – but whether their progress is enough to stave off widespread climate and environmental catastrophe in the wars of today and tomorrow remains unclear.

The updated *Guidelines* and the meeting of government experts are part of the ICRC's commitment to mobilizing concerted climate action and environmental protection in conflict-affected contexts, and its commitment to helping communities cope with mounting climate and environmental risks.[145] To this end, in 2021, the ICRC and the International Federation of Red Cross and Red Crescent Societies jointly led the development of the Climate and Environment Charter for Humanitarian Organizations, which has been widely endorsed by the humanitarian sector.[146]

But humanitarian action alone is no salve for the scale of the risks at hand. The following sections turn to three legal issues of particular relevance for environmental protection in contemporary armed conflicts, regarding which the ICRC urges states and parties to armed conflict to accelerate or update their approaches.

B. Protection of the natural environment by the general rules on the conduct of hostilities

IHL's rules on the conduct of hostilities are of great relevance for protecting the natural environment.[147] Unlike the prohibition against widespread, long-term and

143 ICRC, *Environmental Guidelines*.

144 ICRC and Switzerland, *State Expert meeting on International Humanitarian Law: Protecting the Environment in Armed Conflicts: Chair's Summary*, 2023 (Chair's Summary): https://www.icrc.org/en/document/chairs-summary-report-state-expert-meeting-ihl-protecting-natural-environment-armed.

145 These commitments are reaffirmed in ICRC, *ICRC Strategy 2024–2027*, ICRC, Geneva, November 2023, p. 31: https://www.icrc.org/en/publication/4745-icrc-strategy-2024-2027. For the ICRC's analysis of the humanitarian consequences of these converging risks, and avenues to address them, see, most recently, ICRC, *Weathering the Storm: Reducing the Impact of Climate Risks and Environmental Degradation on People Enduring Armed Conflicts*, ICRC, Geneva, 2023: https://www.icrc.org/en/publication/4742-weathering-storm-reducing-impact-climate-risks-and-environmental-degradation-people.

146 Climate and Environment Charter for Humanitarian Organizations, 2021, in particular the guidance on Commitment 6, which includes examples of IHL-related goals: https://www.climate-charter.org/guidance/?commitment=6; and ICRC, *Implementing the Climate and Environment Charter For Humanitarian Organizations: The ICRC's Plan of Action 2021–24+*, ICRC, Geneva, 2022: https://www.icrc.org/en/publication/4604-implementing-climate-and-environment-charter-humanitarian-organizations-icrcs-plan.

147 For some of the questions that arise in applying these rules, see also ICRC Environmental Guidelines, commentary on Rules 5–9.

severe damage discussed below, these rules may, depending on the circumstances, render unlawful an attack that would cause damage to the natural environment of lesser gravity or magnitude.

States generally recognize today that, by default, the natural environment is civilian in character. This follows from the fact that under IHL, any object that can be the subject of an attack is either a civilian object or a military objective. As a result, all parts of the natural environment are civilian objects and protected by the principles of distinction, proportionality and precautions, unless they become military objectives as defined in IHL. Recognition of the natural environment's civilian character is reflected in state practice and *opinio juris*, the jurisprudence of the International Court of Justice and others, and PERAC Principles 13(3) and 14.

This means that IHL protects all parts of the natural environment *per se*, even if damaging them would not necessarily have an effect on civilians, their health or survival in a manner that is reasonably foreseeable for IHL purposes.[148] This approach recognizes the intrinsic dependence of humans on the natural environment and the relatively limited knowledge of war's effects on this complex relationship. But today, in light of scientific evidence of the links between planetary and human health, it is also doubtful that environmental damage during hostilities would have no reasonably foreseeable impact on civilian populations. Parties to armed conflict should act accordingly: it is simply untenable in the modern scientific age to destroy forests, pollute groundwater systems, contaminate agricultural lands, or kill ecosystems based on the presumption that damage to these parts of the natural environment has no reasonably foreseeable impact on civilians.

While practice varies significantly, many militaries are taking the environmental impact of their actions seriously. At the 2023 meeting of government experts, states shared good practices in assessing environmental factors and incorporating them in the planning of military operations. For instance, to inject environmental expertise into military planning, some militaries have staff or units with specific environmental expertise and responsibilities, and some seek advice from environmental agencies when feasible. Remote and open-source data could supplement this. During planning, some military commanders and their teams consult maps of areas of particular environmental importance or fragility in combat areas. A state in the Sahel region of Africa uses data sheets to record the impact of munitions in environmentally fragile zones, with a view to choosing munitions that would reduce the risk of bush fires. Finally, some states consider environmental impact when they review the lawfulness of new weapons, means and methods of warfare. Military practices like these are crucial for putting IHL into practice – and wider uptake is urgently needed.

148 There is a minority counter view. For a discussion of this, see ICRC Environmental Guidelines, paras 19–21.

C. Clarifying the "widespread, long-term and severe" threshold of prohibited damage to the natural environment

It is generally well-known that IHL prohibits the use of means or methods of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment.[149] This prohibition is also the subject of PERAC Principle 13(2). What is less generally understood is that, importantly, this rule sets a *maximum* of permissible environmental damage, regardless of military necessity or proportionality considerations. That is why it imposes a high – cumulative – threshold.

Moreover, while this prohibition is well-known, it is too frequently set aside or dismissed as being either vague or permissive to the point of meaninglessness. Indeed, the meaning of the terms 'widespread', 'long-term' and 'severe' have long been debated. But plenty of sources of interpretation are available; the law is there to be interpreted, and debated meanings should no longer be a barrier to its application. Based on the drafting history, state practice and other sources, the commentary in the ICRC's *Guidelines* presents a number of considerations that should inform contemporary understanding of the "widespread, long-term and severe" threshold. The ICRC now urges states to interpret these terms in the following ways.

In a nutshell, 'widespread' should be understood as denoting damage extending to several hundred square kilometres; 'long-term', as covering damage that is not short-term or temporary but lasts in the range of several years; and 'severe', as amounting to the disruption of an ecosystem or damage to it, or harm to the health or survival of the population, on a large scale.[150] To further clarify whether damage is "widespread, long-term and severe", current knowledge, including on ecological processes and climate risks and shocks, must be considered. As the ramifications of conflict-related environmental harm become more fully understood, the use of a given method or means of warfare is more likely to be found to meet the prohibited threshold than when these ramifications were less well understood. Warring parties must inform themselves of potential detrimental effects, and refrain from actions intended or expected to cause widespread, long-term and severe damage.

D. Protected environmental zones in armed conflict

Finally, in the ICRC's view it is time that parties to armed conflict paid greater attention to avoiding damage to areas of particular environmental importance or fragility. The ICRC's *Guidelines* recommend that states and parties to armed conflicts identify and designate such areas – for example, national parks or endangered species' habitats – as demilitarized zones, thus preventing these from

149 The ICRC Environmental Guidelines' commentary on Rule 2 provides further details on this prohibition, including on applicability, customary status and persistent objectors.

150 For the sources of these standards, including the drafting history of AP I and state practice, see paras 56-72 of the ICRC Environmental Guidelines.

becoming military objectives and reducing the risk of incidental damage to them.[151] The PERAC Principles put forward a similar recommendation to grant additional place-based protection to areas of particular environmental importance and fragility.[152] Such area-based demarcation could provide commanders with the clarity needed to avoid conducting military operations within the protected zones when feasible, or to take the zones into account when applying the IHL principles of proportionality and precautions.

As biodiversity plummets and climate resilience ebbs with it, the rationale for clearer, place-based environmental protections during armed conflict is becoming more evident. Delegations at the 2023 meeting of government experts highlighted the value, for present and future generations, of areas of particular environmental importance or fragility, and the often-irreversible impact that wars have on these areas. They stressed that a narrow focus on protecting civilians – without consideration of the environment – is incomplete, because civilians depend on their environment. States also gave examples of how they identify and designate various categories of protected environmental areas under domestic frameworks, often by reference to multilateral environmental agreements. But the implications of such designations for planning or conducting military operations generally still needs clarification. Some states are leading the way – by guiding their armed forces in identifying protected environmental areas on their own territory, for example by issuing maps to troops that are marked with special symbols to indicate protected environmental areas.

Given the number and variety of protected environmental areas under domestic frameworks, prioritization is going to be important to ensure the practicality of any future measures to enhance protection in armed conflict. The success or failure of such measures will be determined, in the end, by the degree to which they are accepted by armed forces. To start with, states could refine a priority list by choosing from the protected areas already established in their existing frameworks. For instance, during the 2023 meeting of government experts, natural sites under the World Heritage Convention were identified as being particularly relevant, partly because that Convention refers expressly to armed conflict and partly because these sites are vetted by the UNESCO World Heritage Committee, thus giving the designations a degree of objectivity. States could also consider measures beyond full demilitarization to enhance protection for such areas during armed conflict, including a policy to *avoid* placing military objectives in such zones when feasible. They could also coordinate with environmental agencies to better communicate, prevent and remediate damage from operations in these areas. Yet, for now, the main impediment to wider establishment of protected environmental zones in armed conflict is securing agreement between warring parties to respect the designated areas. Some form of multilateral effort is likely the best way to achieve this systematically. There is

151 ICRC Environmental Guidelines, para. 14 and Recommendation 17.
152 PERAC Principles, Principle 14; Principle 18 protects such areas from attack in addition to any additional agreed protections.

some good practice from which to draw inspiration, but political will remains an open question.

As our environment is increasingly threatened, its protection in armed conflict can no longer be an afterthought. States and non-state armed groups must act urgently, including by integrating legal protections for the environment into military manuals, policies and practices.[153] Good practices exist, but more should be done to make them understood and implemented by all states, and to harness scientific and technological advances.[154] The ICRC encourages states and non-state armed groups to promote and draw on good practices – including those identified in the chair's summary of the 2023 state expert meeting – to better implement the relevant IHL obligations domestically. The time is past when the environment was a silent casualty of war.

5) Reinforcing the stigma associated with anti-personnel mines and cluster munitions

Since the adoption of the Anti-Personnel Mine Ban Convention (APMBC) in 1997 and the Convention on Cluster Munitions (CCM) in 2008, remarkable progress has been made in protecting lives and livelihoods from the devastating effects of anti-personnel mines and cluster munitions. Many millions of stockpiled anti-personnel mines and cluster submunitions have been destroyed by states party to these treaties. Vast areas of land have been returned to productive uses, and states have made significant efforts to assist survivors and affected communities. In partnership with states and other stakeholders, the ICRC and the broader Movement have contributed to these advances.[155]

Today, these hard-won achievements risk being undone by the resurgent use of anti-personnel mines – manufactured and improvised – and cluster munitions, compounding the harm caused by mines, cluster munition remnants and other explosive remnants of war left uncleared after past conflicts.[156] The use of cluster munitions in armed conflicts, most recently in Syria and Ukraine, takes a terrible toll on human lives and livelihoods. New use of anti-personnel mines by states and non-state armed groups has also been reported in recent years, including in Colombia, India, Myanmar, Ukraine, and the Sahel. As a result, casualties have spiked alarmingly. Reportedly, in 2022, at least 4,710 persons were killed or injured by mines and explosive remnants of war: civilians made up

153 For the ICRC's key recommendations to advance implementation of IHL rules protecting the natural environment, see ICRC Environmental Guidelines, para. 14.

154 See, for example, the pledges submitted at the 33rd International Conference, jointly by the governments and National Societies of Denmark, Finland, Iceland, Norway and Sweden: https://rcrcconference.org/pledge/protection-of-the-natural-environment-in-armed-conflict-2/.

155 Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War: Reducing the Effects of Weapons on Civilians, Resolution 6, Council of Delegates of the International Red Cross and Red Crescent Movement, Nairobi, Kenya, 23–25 November 2009.

156 ICRC, *Preventing and Eradicating the Deadly Legacy of Explosive Remnants of War*, ICRC, Geneva, 2023.

roughly 85% of all recorded casualties, and children accounted for almost half of all civilian casualties.[157]

A. Faithfully implementing the APMBC and the CCM

In spite of long-standing and novel challenges to achieving the objectives of the APMBC and the CCM, these Conventions continue to provide strong international legal frameworks, rooted in IHL.

To fully realize their humanitarian objectives, state parties must honour their life-saving obligations under these treaties. Every state party must prevent and suppress the use of anti-personnel mines and cluster munitions, and other activities prohibited under these treaties, by its nationals and persons operating in the territory within its jurisdiction or under its control.[158] This may involve the adoption of criminal legislation. It may also require issuing administrative instructions to the armed forces and changing military doctrine. States parties must thoroughly investigate allegations of use and prosecute and punish those responsible.

Ultimately, total elimination of anti-personnel mines and cluster munitions is the only guarantee that these weapons will not continue to maim and kill civilians. State parties must honour their undertakings to destroy or ensure the destruction of stockpiles,[159] and clear contaminated areas within their jurisdiction or under their control "as soon as possible".[160] This can be challenging in a situation where, for example, a state party has lost control over a portion of its territory owing to an ongoing armed conflict. However, a state party's failure to fulfil these time-bound obligations in good faith is justifiable only so long as doing so is materially impossible in the circumstances. Even in such a situation, the state party must facilitate mine action and must not impede it.

Use of anti-personnel mines and cluster munitions by states or non-state armed groups not bound by the APMBC or the CCM must, at a minimum, comply with the rules of IHL governing the conduct of hostilities, including the principles of distinction, proportionality and precautions in attack,[161] and the specific requirements on the use of landmines under customary IHL.[162] Other instruments, where applicable, impose additional restrictions.[163] Given the indiscriminate effects of these weapons and the well-documented patterns of

157 Landmine Monitor 2023: https://backend.icblcmc.org/assets/reports/Landmine-Monitors/LMM2023/Downloads/Landmine-Monitor-2023_web.pdf, p. 2.
158 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (hereafter APMBC), 18 September 1997, Art. 9; Convention on Cluster Munitions (hereafter CCM), 30 May 2008, Art. 9.
159 APMBC, Art. 4; CCM, Art. 3.
160 APMBC, Art. 5; CCM, Art. 4.
161 ICRC, Customary IHL Study, Rules 1 to 24.
162 Parties to armed conflict must take particular care to minimize the indiscriminate effects of landmines (ICRC, Customary IHL Study, Rule 81), record their placement, as far as possible (ICRC, Customary IHL Study, Rule 82) and remove or otherwise render them harmless to civilians or facilitate their removal at the end of active hostilities (ICRC, Customary IHL Study, Rule 83).
163 Notably, amended Protocol II to the Convention on Certain Conventional Weapons (1996).

harm they cause to civilians, the ICRC urges all those who continue to use anti-personnel mines or cluster munitions to cease such use immediately.

B. Reinforcing the humanitarian norms underpinning the APMBC and the CCM

The APMBC and the CCM were instrumental in drawing attention to the fact that anti-personnel mines and cluster munitions were repugnant and should be rejected and stigmatized. Without these treaties, many more people would have been maimed and killed. Both Conventions have, demonstrably, contributed to curtailing the production and use of anti-personnel mines and cluster munitions beyond the states parties. This is testament to the strength of the humanitarian norms enshrined in these instruments against weapons that are victim-activated, have indiscriminate effects, and continue to maim and kill long after hostilities have ended.

Unfortunately, recent developments indicate that some states parties regard these treaties as instruments to be adopted in times of peace and stability but abandoned when confronted with an elevated security threat or during an armed conflict. This notion is fundamentally at odds with the entire concept of IHL and must be rejected.

More generally, anti-personnel mines and cluster munitions continue to be viewed by some as legitimate means of warfare. Proponents attribute security benefits or military value to these weapons. The persistence and possible recrudescence of such perspectives underscore the continuous need to recall that these weapons are still maiming and killing people indiscriminately, and to reaffirm and reinforce the humanitarian norms to which the APMBC and the CCM give formal expression.

Making progress in addressing the devastating effects of anti-personnel mines and cluster munitions is the most tangible means of demonstrating state parties' commitment to freeing the world from these abhorrent weapons. There is, notably, a pressing need to increase the pace of surveying and clearance activities. Extensions of clearance deadlines, originally intended for states that are massively weapon-contaminated, have unfortunately become routine. Such extensions come at a heavy human cost.

Reinforcing the stigma associated with anti-personnel mines and cluster munitions also necessitates denunciation by states parties of conduct that departs from the humanitarian norms of the APMBC and the CCM. It is important that *any* use of anti-personnel mines or cluster munitions by *anyone*, under *any* circumstances, be unequivocally condemned. Silence and inaction exact a heavy price and compromise humanitarian norms; and state parties have, after all, committed themselves to promoting universal observance of these norms.[164]

The APMBC remains one of the most successful humanitarian instruments of disarmament, but reinvigorated efforts are needed to make further progress

164 Action 12, Oslo Action Plan; Action 11, Lausanne Action Plan.

towards the universalization of the APMBC, the CCM and the Convention on Certain Conventional Weapons' Protocol V on Explosive Remnants of War. The ICRC calls on all states that have not yet done so to join these humanitarian instruments without further delay. In the interim, they should work with states parties to effectively address the harm caused by anti-personnel mines and cluster munitions.

Anti-personnel mines of an improvised nature – a type of 'improvised explosive device' or 'IED' – pose a particular risk to civilians in certain regions, such as the Middle East, West Africa and the Sahel. It is therefore important that states party to the APMBC address weapon contamination of this kind within the framework of the Convention.[165] Use of improvised anti-personnel mines tends to be associated with non-state armed groups, which amplifies the importance of promoting compliance with IHL against these victim-activated weapons among non-state actors. Tools, such as unilateral declarations or Geneva Call's Deed of Commitment,[166] are a means for armed groups to formally express their commitment to the humanitarian norms enshrined in the APMBC.

V. Applying IHL to new technologies of warfare

Today, civilians around the world rely on digital technologies in their daily lives: computers and smartphones, but also artificial intelligence, robotics, and outer space infrastructure. At the same time, parties to armed conflicts are making use of such technologies for military purposes. Some years ago, the use of digital technologies of warfare, including the use of artificial intelligence in military decision-making, may have seemed a distant prospect, but this is no longer the case.

The ICRC is concerned by the growing reliance on weapon systems with varying degrees of autonomy, and on systems that use artificial intelligence to inform decisions on who or what to attack and how. There are also worrying trends in contemporary armed conflicts in relation to the use of cyber operations by state and non-state actors to disrupt digital governance infrastructure, essential services, and economies; and in relation to the use of digital communication tools to extend the reach, accelerate, and expand the scale of information operations that fuel violence in violation of IHL. As essential civilian services become more and more dependent on space systems, attention must be paid to the potential human cost of military space operations, and to the legal limits they must respect.

165 Action 21, Oslo Action Plan. See also: "Views and recommendations on improvised explosive devices falling within the scope of the anti-personnel mine ban convention", working paper submitted by the ICRC to the Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo, 25–29 November 2019.

166 See Geneva Call: https://www.genevacall.org/areas-of-intervention: "54 [armed groups and *de facto* authorities] so far have signed a *Deed of Commitment* to ban AP mines and advanced other preventive measures, such as destroying mine stockpiles".

In this chapter, the ICRC presents its legal views on some of these current challenges in applying IHL rules and principles to new technologies of warfare.

1) Cyber operations, information operations and other digital threats

Societies are becoming increasingly digitalized and interconnected, and many aspects of people's daily lives today are defined or influenced by information and communication technology (ICT). In times of armed conflict, this has an impact on people's needs, and on the risks and threats they might face. For instance, essential services for civilian populations depend on ICT, and civilians rely on digital communication services to contact family members and obtain information about where to shelter or take refuge or obtain the goods and services essential to their survival and well-being. At the same time, state and non-state actors use cyber operations to disable civilian government services or disrupt the provision of essential services, such as electricity, water or medical care. Belligerents have used social media platforms and messaging services to incite violence against civilian populations and military personnel *hors de combat*, and more generally to dehumanize their adversaries. The digitalization of armed conflicts is also increasingly drawing civilians – individuals, hacker groups and tech companies – closer to hostilities, which exposes them as well as other civilians, to the risk of harm.

A. IHL limits on cyber operations

All states agree that international law applies to the use of ICT. States have also explicitly noted in the ICT context that "international humanitarian law applies only in situations of armed conflict", underscoring that IHL principles "by no means legitimize or encourage conflict".[167] This agreement affirms the consensus among legal experts, including the ICRC.[168]

Existing principles and rules of IHL do restrict cyber operations during armed conflicts, but the ICRC is concerned that technological developments and the use of such cyber operations are outpacing normative discussions and developments. In particular, interpretations of IHL that focus on the protection of civilian objects only against physical damage are, in the ICRC's view, inadequate.

Cyber operations can disrupt, disable, or physically damage essential civilian services and infrastructure, industrial facilities, communication networks, civilian databases and other civilian sectors of society. They risk injuring or killing people, and jeopardizing assistance to those who need it. As most cyber operations conducted in contemporary armed conflicts disrupt services, disable

167 United Nations General Assembly, *Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security* (14 July 2021), para. 71(f); United Nations General Assembly, Resolution adopted on 8 December 2021 (*A/RES/76/19*), para. 2.

168 For further discussion, see ICRC, "International humanitarian law and cyber operations during armed conflicts": Position paper, ICRC, Geneva, 2019, p. 4: https://www.icrc.org/en/document/international-humanitarian-law-and-cyber-operations-during-armed-conflicts.

computers and networks or damage or delete data without causing physical damage, interpreting IHL in light of this reality is critical. Today, many states, whose legal positions on this issue are publicly available, take the view that cyber operations that disable objects, including IT systems or infrastructure, amount to 'attacks' under IHL. Others understand the notion of 'attack' under IHL more narrowly or leave the question open.[169] If the notion of 'attack' under IHL is interpreted as covering only cyber operations that cause physical damage, or effects akin to those caused by kinetic warfare, then most cyber operations against civilian infrastructure would not be constrained by the most detailed IHL rules that originate in the principles of distinction, proportionality and precautions in attack and protect the civilian population and civilian objects.[170] Equally, if data are not regarded as an 'object' within the IHL sense of the term, most cyber operations that damage or delete civilian data would not be prohibited – which would be a reason for serious concern.

Such operations would still be subject to certain limitations under IHL. In particular, military cyber operations must not be directed against specifically protected objects such as medical facilities; and when conducting any military cyber operation, constant care must be taken to spare the civilian population and civilian objects. Directing disruptive cyber operations against civilian objects, including civilian data, or ignoring their incidental effects on civilian populations, would be incompatible with this rule.

Still, if existing rules of IHL are interpreted in ways that undermine the protective function of IHL in the ICT environment, by leaving unaddressed the new kinds of harm resulting from the use of ICTs during armed conflict, additional rules will have to be developed to strengthen the existing legal framework and ensure that it remains adequate for the purpose of setting limits on cyber and other digital operations during of armed conflicts.

B. IHL limits on information operations

Information operations have long been conducted in the context of armed conflicts.[171] In recent years, technological developments that allow the instantaneous transmission of information from any distance through digital means, including via social media platforms and messaging apps, have changed the scale, speed, and reach of misleading, inaccurate, hateful or otherwise harmful information. While causal relationships are inherently difficult to demonstrate in this context, information operations are recognized as, among others, having the

169 For an overview of positions taken by states, see Cyber Law Toolkit, 'Attack (International Humanitarian Law): https://cyberlaw.ccdcoe.org/wiki/Attack_(international_humanitarian_law).

170 For further discussion of the ICRC's views on the notion of 'attack' under IHL and the protection of data under IHL, see ICRC, "International humanitarian law and cyber operations during armed conflicts": Position paper, 2019, pp. 7–8.

171 The ICRC understands 'information operation' to mean the use or manipulation of information to influence or mislead the perceptions, motives, attitudes and behaviour of individuals and groups, in order to achieve political and military objectives.

potential to contribute to or incite violence against people, cause lasting psychological harm, undermine access to essential services, and disrupt the operations of humanitarian actors.[172]

While harmful information is often spread through information operations during armed conflicts, IHL contains several specific rules that impose limits on information-sharing more broadly. For example, civilian and military leadership of a party to an armed conflict must not encourage IHL violations, including through digital platforms.

The ubiquity of smartphone cameras and the widespread practice of publishing photos online have also put renewed strain on detaining authorities in armed conflict to fulfil their obligation to protect all detainees against humiliating and degrading treatment. In particular, prisoners of war and civilian internees must be protected against public curiosity.[173] The public sharing of data, images and videos of persons deprived of liberty will in most cases violate these rules.

During armed conflict, the information space may also become fertile ground for the use of false information created through tools powered by artificial intelligence. For instance, deepfake technology can create or modify information, images, audios and videos in ways that make it difficult for people to distinguish them from authentic, original content. IHL rules set limits on certain uses of 'deepfakes'. For example, it is a violation of IHL "to kill, injure or capture an adversary by resort to perfidy", the latter being understood as "inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence".[174] Resorting to perfidy by harnessing deepfake technology is a violation of IHL. In addition, acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited under IHL,[175] including when using deepfakes.

The ICRC also recalls that in the conduct of military operations, including in information operations that make use of deepfakes, warring parties must take constant care to spare the civilian population, civilians and civilian objects.

C. Risks and legal limits when civilians are drawn closer to hostilities through the use of digital technology

Civilians have long been used to perform tasks supporting the military during armed conflicts. With the digitalization of societies, fundamental shifts have taken place in the types of operations civilians conduct, and the number of

172 *See generally*, ICRC, *Harmful Information: Misinformation, Disinformation and Hate Speech in Armed Conflict and other Situations of Violence*, ICRC, Geneva, 2021: https://www.icrc.org/en/publication/4556-harmful-information-misinformation-disinformation-and-hate-speech-armed-conflict.

173 See GC III, Art. 13; GC IV, Art. 27.

174 AP I, Art. 37; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (Hague Regulations), 23(B); ICRC, Customary IHL Study, Rule 65.

175 AP I, Art. 51(2); ICRC, Customary IHL Study, Rule 2.

civilian actors that take part in such operations. Three trends, in particular, pose risks for civilians. First, an unprecedented number of civilian hackers are conducting cyber operations in the context of armed conflicts, often directing their operations against civilian objects. Second, ICT presents belligerents with new possibilities to encourage civilians to support military operations, for instance by collecting militarily relevant information through their smartphones, thereby exposing civilians to attacks. Third, when civilian tech companies are hired to provide cyber security and other ICT services for the armed forces of parties to armed conflicts – such as connectivity, communication, cloud-computing, or remote sensing – there is a real risk that the assets, infrastructure, and employees of such companies – which are in principle civilian – lose their legal protection against attack.

If individuals and groups, including the employees of tech companies, conduct cyber operations in the context of armed conflicts, they must comply with the limits that IHL sets for such operations. Specifically with regard to civilian hackers operating in the context of armed conflicts, these limits have been summarized into "8 Rules For Civilian Hackers During War", together with four obligations for states to ensure respect for these rules.[176]

IHL is built on the cardinal principle of distinction between who or what is civilian, and who or what is military. Growing civilian involvement in cyber and information operations and the use of civilian ICT infrastructure for military purposes risk undermining this fundamental premise and the protection that it is meant to provide to civilians.

Collecting militarily relevant information through smartphones or other connected devices and providing it to armed forces may, in exceptional cases, amount to "direct participation in hostilities", meaning that a civilian loses their protection against attack if and for such time as this is the case. In the ICRC's view, however, this cannot mean that any civilian using their phone close to military positions or hostilities constitutes a lawful target. For the attacker, it is in most cases impossible to know whether a phone is being used for conduct that may qualify as direct participation in hostilities, or whether a civilian is doing something else, such as warning a friend or contacting a family member. IHL requires that, in case of doubt, a person must be considered civilian and protected as such.[177] Nonetheless, encouraging civilians to collect militarily relevant information risks putting the civilian population at risk.

If civilian ICT infrastructure – including infrastructure provided by civilian companies – is used for military purposes, it risks becoming a military objective under IHL and losing its protection against attack. In that case, civilians and civilian objects that are in physical proximity or digitally connected to such targets, or that depend on them, risk being incidentally harmed. To protect civilians and civilian objects from attack or incidental harm, states should,

176 ICRC, "8 rules for "civilian hackers" during war, and 4 obligations for states to restrain them": https://www.icrc.org/en/article/8-rules-civilian-hackers-during-war-and-4-obligations-states-restrain-them.
177 AP I, Art. 50(1).

whenever feasible, attempt to segment – that is physically or technically separate – ICT infrastructure (or parts thereof) that are used for military purposes from civilian ones. For example, when deciding whether to store military data on a non-segmented commercial cloud, a segment of a commercial cloud or dedicated military digital infrastructure, military planners and operators should not use the non-segmented commercial cloud.

Even if a belligerent concludes that a civilian or civilian object has lost legal protection against attack because of their involvement in cyber or information operations, the ICRC calls on belligerents to consider carefully whether responding to such threats by kinetic force is actually necessary to achieve a legitimate military purpose or whether other, less destructive (for example, cyber or electro-magnetic) means can be used to achieve their objective.[178]

Long-standing rules of IHL only serve their purpose if applied in ways that ensure adequate protection for civilians, civilian infrastructure, and civilian data in our increasingly digitalized societies. The evolving legal views and practice of states will indicate whether existing law is adequate and sufficient to address the challenges posed by the digitalization of armed conflicts, or whether it needs strengthening to address new dangers posed by this evolution. If new rules are to be developed, they must build on and strengthen the existing legal framework – including IHL.

2) Autonomous weapon systems

The deployment of weapon systems with increasingly autonomous modes or functions, particularly small armed drones and loitering munitions,[179] is a fact of contemporary conflicts. The ICRC's assessment is that, generally, these kinds of weapon systems are still remotely piloted or guided. However, with just a software update or a change in military doctrine, they could easily become tomorrow's autonomous weapon systems (AWS), namely weapon systems that select and apply force to targets without human intervention. 'Without human intervention' means that after initial activation by a human, the application of force is triggered in response to information from the environment received through sensors (that measure, for instance, heat, light, movement, shape, velocity, weight or acoustic or electromagnetic signals), and on the basis of a generalized 'target profile' (based on such features as shape, infrared or radar 'signature', or speed and direction of a particular type of military vehicle).[180]

At the same time, there seems to be military interest in loosening the constraints on where, or against what, to use such weapons. This is a trend that may deepen a major concern for the ICRC: potential loss of human control over the use of force in armed conflict. Driven by the need to uphold and strengthen protections for people affected by armed conflict, the ICRC has called on states to

178 ICRC, *The Principles of Humanity and Necessity*, ICRC, Geneva, 2023: https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf.

179 A kind of aerial weapon that can hover over, detect and dive onto targets, and detonates on impact.

180 ICRC, Position on autonomous weapon systems, ICRC, Geneva, 2021, p 2: https://www.icrc.org/en/document/icrc-position-autonomous-weapon-systems.

urgently establish new international prohibitions and restrictions on AWS that are clear and binding.[181]

A. Humans must determine the lawfulness of attacks

Despite the growing development of AWS and associated sensor, software and robotics technologies, it is worth recalling that IHL obligations regarding the conduct of hostilities must be fulfilled by human commanders and combatants. These humans must determine the lawfulness of the attacks that they plan, decide upon or execute, and they remain accountable for these assessments. While some proponents of AWS describe the systems as making a 'decision', the decision to launch the weapon, and to carry out the attack, is always made by a human.[182] Accordingly, while certain technical tasks are carried out by machine processes, the determination of the lawfulness of an attack – including whether an object is a military objective – and whether these machine processes will be sufficient for the attack to comply with IHL, is made by a human. It is an exercise in false equivalence to compare a human decision to launch an attack with a machine process that triggers the application of force. A more accurate comparison would be between a human launching an attack using a weapon system that is not autonomous and a human launching an attack using an AWS.

When discussing AWS and compliance with IHL, it is therefore important to emphasize that it is not the weapon system that must comply with IHL, but the humans using it.

Additionally, from an ethical perspective, upholding human agency in critical decisions leading to the use of force is necessary for upholding considerations of humanity, human dignity and moral responsibility.

B. Challenges in assessing the lawfulness of attacks carried out using AWS

Commanders and other users of AWS must make an *ex-ante* assessment of the lawfulness of an attack, and ensure that the weapon system can and will operate only within the confines of what they have assessed as lawful. However, their ability to do so can be limited by the particular way in which AWS function.

The key difficulty is that the user or commander will likely not know important specifics of the attack. That is because, after initial activation or launch by a person, an AWS self-initiates or triggers a strike in response to information from the environment received through sensors and on the basis of a

181 ICRC, "Position on autonomous weapon systems", ICRC, Geneva, 2021: https://www.icrc.org/en/document/icrc-position-autonomous-weapon-systems. See also, Joint call by the United Nations Secretary-General and the President of the ICRC, ICRC, Geneva, 2023: https://www.icrc.org/en/document/joint-call-un-and-icrc-establish-prohibitions-and-restrictions-autonomous-weapons-systems.

182 ICRC, "Commentary on the 'Guiding Principles' of the CCW GGE on 'Lethal Autonomous Weapons [*sic*] Systems'", ICRC, Geneva, 2020, p. 3: https://documents.unoda.org/wp-content/uploads/2020/07/20200716-ICRC.pdf; see also ICRC, *2019 Challenges Report*, p. 30.

generalized "target profile". The user does not choose, or even know, the specific person or object that will trigger the AWS to strike, or precisely when and/or where the strike will occur. These details will depend on the machine processes (sensors, software, actuators) of the AWS, and the sensory input from the operational environment. This can impede the user's ability to anticipate, and take steps to limit, the effects of an attack – to ensure, for example, that the attack is not indiscriminate.[183]

Commanders and other users thus need to anticipate and assess in advance the lawfulness of all *possible* strikes by the AWS. When doing so, they need to account for all reasonably foreseeable and relevant changes in circumstances, for the entire duration of the weapon system's autonomous operation and the entire area over which this will take place. Such an exercise is likely to be possible only if strict constraints are imposed on the variables applying to the AWS and its operating environment in order to limit the number of potential outcomes.

For instance, in light of the IHL obligation to direct attacks only against military objectives, users must ensure that anything that might trigger an AWS to strike, throughout its area and duration of operation, will satisfy the two-pronged definition of a 'military objective' "in the circumstances ruling at the time" of that specific strike.[184] This will be simplest when considering the potential targeting of objects whose legal classification as military objectives is relatively stable, namely military objectives by nature (the enemy's weapons, vehicles for transporting military equipment, barracks, etc). It will be extremely challenging, however, in the case of civilian objects that could be military objectives by location, purpose or use (e.g. a hill, a hotel temporarily used to accommodate troops, or a bridge about to be crossed by enemy forces). This is because the effectiveness of the contribution that such objects make to the adversary's military action, and the definite military advantage offered by their destruction, capture or neutralization, may vary significantly and rapidly. For example, a civilian taxi that is temporarily requisitioned to transport soldiers to the front line makes an effective contribution to the enemy's military action – and thus could be characterized as a military objective by use – only for the duration of this use. Its destruction at any other time is unlikely to offer any military advantage.

Furthermore, characterizing an object as a military objective by purpose requires ascertaining the enemy's intentions, the cues for which are nuanced, context-dependent and non-exhaustive, making them ill-suited to standardization in the kind of generalized target profile used by AWS.

Ensuring compliance with IHL would be especially difficult in the case of an attack directed against one or more persons. While the user or commander may have made a general assessment that one or more people in the area constitute a

183 ICRC, Customary IHL Study, Rule 12; AP I, Art. 51(4)(c).

184 ICRC, Customary IHL Study, Rule 8; AP I, Art. 52(2): "[M]ilitary objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

lawful target at the time of launching the AWS,[185] those people's actions and intentions – and hence their classification as a lawful target – can change rapidly and before the AWS strikes. Civilians may lose protection against direct attack only "for such time" as they directly participate in hostilities; determining the beginning and end of specific acts must therefore be done with the utmost care.[186] Similarly, combatants can be wounded or otherwise rendered *hors de combat* at any time – at which point they must not be directly attacked.

Moreover, anyone using an AWS against an enemy fighter in armed conflict would need to preserve a reasonable possibility for that person to surrender. Employing an AWS that prevents the user from recognizing an adversary's clear communication of intent to surrender – however that is expressed – and ceasing an attack, would violate the prohibition against conducting hostilities on the basis of leaving no survivors (denial of quarter).[187]

In short, it is hard to envisage realistic combat situations where the use of autonomous weapons against humans would not pose a significant risk of IHL violations. Therefore, if there is no clear prohibition against anti-personnel AWS, it will create an unacceptably high risk of such AWS being deployed without sufficient safeguards to respect IHL.

In addition to the legal challenges, the ethical concerns raised by AWS have been emphasized by many states, the UN Secretary-General, civil society and leading figures in the technology industry and scientific community. These concerns are centered on the interrelated loss of human agency, moral responsibility and human dignity in life-and-death decisions.

Humans have moral agency and responsibilities that guide their decisions and actions whereas inanimate objects (e.g. weapons, machines and software) do not. When human agency and human determination are absent, it can be said that there has been neither morally responsible decision-making nor recognition of the human dignity of those targeted or affected. Removing human agency in decisions about life and death also removes the possibility for restraint, a human quality that might guide people not to use force even if it would be lawful.

These concerns are most acute with AWS designed or used to target persons directly (as opposed to AWS that target objects). They reduce life-and-death determinations to sensor data and machine processing based on generalized target profiles, the consequence of which is that people are treated as mere targets instead of human beings. It would effectively amount to "death by algorithm" – the final frontier in the automation of killing.[188]

185 Whether as a combatant, fighter or civilian directly participating in hostilities, and not *hors de combat*.
186 *Interpretive Guidance*, 2009, p. 65.
187 AP I, Art. 40; ICRC, Customary IHL Study, Rule 46.
188 ICRC, "Position on autonomous weapon systems", ICRC, Geneva, 2021: https://www.icrc.org/en/document/icrc-position-autonomous-weapon-systems (p. 8). See also ICRC, "Ethics and autonomous weapon systems: An ethical basis for human control?", ICRC, Geneva, 2018: https://www.icrc.org/en/document/ethics-and-autonomous-weapon-systems-ethical-basis-human-control.

C. The need for new international law rules on AWS

In light of the serious risks of harm to those affected by armed conflict, challenges for compliance with IHL and ethical concerns raised by them, the ICRC has, since 2021, been calling for new, binding international law rules on the development and use of AWS.[189] These rules should clarify and formalize specific prohibitions and restrictions concerning the design and use of AWS. Any such limits would be additional and complementary to existing IHL rules, including weapons treaties, and would not displace them. They would strengthen and build on existing legal protections in order to respond to the specific risks and ethical concerns raised by AWS.

In particular, new rules must:

- prohibit unpredictable autonomous weapons that do not allow a human user to understand, explain and predict the system's functioning and effects. Users of AWS must be able, with a reasonable degree of certainty, to predict the effects of the weapon, in order to determine whether it can be directed at a specific military objective and take steps to limit those predicted effects, as required by IHL. This entails the ability to understand the functioning of the AWS: the nature and functioning of its sensors, the definition of its target profile and the potential effects in the circumstances of use, including any risk of error or malfunction. Autonomous weapons that are likely to produce effects that are unpredictable include those controlled by machine-learning software, along with certain swarm technologies;
- prohibit autonomous weapons designed or used to target humans directly. This is required because of the significant risk of IHL violations and the unacceptability of anti-personnel autonomous weapons from an ethical perspective, as outlined above.

Even in the case of an AWS that is sufficiently predictable, and designed and used only against objects, the user's reduced ability to know all the specifics of an attack, including the ultimate target and any incidental harm, will still create residual challenges for their context-specific application of IHL's rules on the conduct of hostilities. To reduce the risk of violations, new rules must also strictly constrain the design and use of AWS, including through a combination of:

- restricting targets of the AWS to only those that are military objectives by nature;
- limiting the duration and geographic scope of the AWS' operation;
- limiting the scale of use, including the number of engagements that the AWS can undertake;
- limiting the situations of use, namely constraining them to situations where civilians or civilian objects are not present;

189 ICRC, "Position on autonomous weapon systems", ICRC, Geneva, 2021: https://www.icrc.org/en/document/icrc-position-autonomous-weapon-systems.

- ensuring, to the maximum extent feasible, the ability for a human user:
  - to effectively supervise; and
  - in a timely manner, to intervene and, where appropriate, deactivate operation of the AWS.

Where this is not feasible, the AWS must be equipped with an effective mechanism for self-destruction or self-neutralization. Against the backdrop of rapid and expanding development and use of AWS, the establishment of these prohibitions and restrictions on AWS, in clear and binding international law, is an urgent humanitarian priority. The ICRC, together with the UN Secretary-General, calls on states to take bold and principled political action to conclude negotiations of such rules by 2026.[190] The ICRC has submitted its views, for consideration by states and the UN Secretary-General, on how these rules could be drafted in a legally binding instrument.[191]

3) Artificial intelligence in military planning and decision-making

Armed forces are investing heavily in artificial intelligence (AI). While AI technology can be incorporated in AWS (see section V. 2)), one of the most widespread, and increasingly prominent, military applications of AI is in 'decision-support systems' (AI-decision-support systems). These are computerized tools that bring together data sources – such as satellite imagery, sensor data, social media feeds or mobile phone signals – and present analyses, recommendations or predictions based on them to decision makers.

In contemporary conflicts, one AI-decision-support system might analyse drone footage and apply image-classification technology to identify and classify potential targets. Its output might feed another system running simulations to recommend the 'optimal' weapon available to attack the target. These could also link to a system using predictive analytics to forecast how the adversary might respond to the attack. Such AI-decision-support systems can have a significant impact on human decisions about who or what to attack and where, when and how.[192]

Increased situational awareness and faster decision-making cycles are often cited as the advantages to be had potentially from the use of AI-decision-support

190 Joint call by the United Nations Secretary-General and the President of the ICRC, 2023: https://www.icrc.org/en/document/joint-call-un-and-icrc-establish-prohibitions-and-restrictions-autonomous-weapons-systems.

191 ICRC submission on AWS to the UN secretary-general, 2024: https://www.icrc.org/en/document/autonomous-weapons-icrc-submits-recommendations-un-secretary-general.

192 ICRC and Geneva Academy, *Expert Consultation Report: Artificial Intelligence and Related Technologies in Military Decision-Making on the Use of Force in Armed Conflicts: Current Developments and Potential Implications*, ICRC, Geneva, 2024, pp 8–9: https://shop.icrc.org/expert-consultation-report-artificial-intelligence-and-related-technologies-in-military-decision-making-on-the-use-of-force-in-armed-conflicts-current-developments-and-potential-implications-pdf-en.html; See also, ICRC, *Decisions, Decisions, Decisions: Computation and Artificial Intelligence in Military Decision-Making*, ICRC, Geneva, 2024, p. 20: https://shop.icrc.org/decisions-decisions-decisions-computation-and-artificial-intelligence-in-military-decision-making-pdf-en.html.

systems. However, the ICRC has previously cautioned that the human cost of these technologies will depend on the way they are designed and used.[193] Importantly, the use of AI-decision-support systems can never ameliorate targeting methodologies and other policies that do not otherwise comply with IHL; applying AI-decision-support systems within such frameworks will serve only to replicate and likely exacerbate unlawful or otherwise harmful effects faster and on a larger scale.

A. Under IHL, humans must make legal determinations

As outlined in the previous section, the ICRC takes the view that IHL requires individuals to make legal determinations, such as whether the expected incidental harm from an attack will be excessive in relation to the concrete and direct military advantage anticipated.

This is not to say that, in making these legal assessments, commanders and combatants cannot, or even that they should not, use tools – including AI-decision-support systems. In fact states have already adopted a broad range of military decision-making tools, at all levels, to assist members of their armed forces during the planning, ordering and conduct of attacks. In some states, for instance, the operational process of conducting an estimation of incidental civilian casualties is computerized, for feeding into an assessment of whether an attack will be proportionate under IHL. The important point is that these computer outputs can inform, but must not displace the need for legal determinations. In the ICRC's view, this means that in designing and using any AI-decision-support systems, militaries and other armed actors must account for the ways in which these AI tools function and the tendencies of human users interacting with them.

Integrating AI into decision-support systems can increase the rate of unforeseen errors, and perpetuate and propagate problematic biases, particularly against individuals or groups of a certain age, gender or ethnicity, or persons with disabilities. Trends indicate that these challenges will increase with more complex forms of AI, such as machine learning, which can make it more difficult, even impossible, for the user to understand *how* and *why* the system generates its output from a given input.[194] Moreover, when a number of different decision-support systems build on and contribute to decisions in a single process, an error in one can become compounding or cascade across a planning and decision-making process.

193 ICRC, "Position paper: Artificial intelligence and machine learning in armed conflict: A human-centred approach", *IRRC*, Vol. 102, No. 913, April 2020: https://international-review.icrc.org/articles/ai-and-machine-learning-in-armed-conflict-a-human-centred-approach-913.

194 ICRC, "Position paper: Artificial intelligence and machine learning in armed conflict: A human-centred approach", *IRRC*, Vol. 102, No. 913, April 2020: https://international-review.icrc.org/articles/ai-and-machine-learning-in-armed-conflict-a-human-centred-approach-913; See also, *Decisions, Decisions, Decisions: Computation and Artificial Intelligence in Military Decision-Making*, ICRC, Geneva, 2024, p. 31, 54: https://shop.icrc.org/decisions-decisions-decisions-computation-and-artificial-intelligence-in-military-decision-making-pdf-en.html.

When humans interact with machine systems, they exhibit 'automation bias', meaning a propensity to trust machine outputs over other sources of information. This is most particularly the case in situations of stress or pressure, such as in armed conflicts.[195]

Taken together, these factors can hamper a user's ability to scrutinize the information available. The practical consequence might be that someone may plan, decide upon or launch an attack based on an AI-decision-support system's output, rather than actually assess the attack's lawfulness – thereby effectively serving as a human rubber stamp.

B. AI is not suited to all tasks

Applying AI – particularly machine learning – to problems for which it is not well-suited can negatively impact human decision-making.

Generally, AI will perform better when given clear, well-defined goals and access to data of good quality. The contextual, qualitative assessments required by IHL are unlikely to produce clear goals for an AI-decision-support system; they are notoriously difficult and generally cannot be reduced to mathematical formulae or numerical values. Furthermore, armed conflicts are characterized by uncertainty and volatility, compounded by adversaries seeking to deceive one another, all of which makes it hard to source representative, transferable data.

An AI-decision-support system would be ill-suited to inferring something open-ended, such as the purpose behind a person's action (e.g. determining the 'belligerent nexus' in the context of direct participation in hostilities),[196] or an enemy's intention (e.g. assessing whether an object constitutes a military objective by purpose).[197] Similarly, predictions about enemy behaviour are likely to be unreliable. Application of AI-decision-support systems would be more appropriate when the possible outcomes are finite, and for which there are more and better test and simulation data. These AI-decision-support systems can be used, for instance to optimize own-force logistics or in transportation planning or choosing between available weapons.

In short, to ensure that an AI-decision-support system supports rather than hinders decision-making in armed conflict – and assists in ensuring respect for IHL – parties to conflict must carefully assess its suitability for the specific task and context. AI-decision-support systems may have to be ruled out altogether in some areas. One clear example would be that such tools must never be incorporated in nuclear-weapon command-and-control systems.[198]

195 ICRC and Geneva Academy, *Expert Consultation Report: Artificial Intelligence and Related Technologies in Military Decision-Making on the Use of Force in Armed Conflicts: Current Developments and Potential Implications*, ICRC, Geneva, 2024, p.17: https://shop.icrc.org/expert-consultation-report-artificial-intelligence-and-related-technologies-in-military-decision-making-on-the-use-of-force-in-armed-conflicts-current-developments-and-potential-implications-pdf-en.html.

196 *Interpretive Guidance*, 2009, p. 59.

197 ICRC, *Commentary on the Additional Protocols*, 1987, para. 2022.

198 ICRC, Statement to the 78th session of the UN General Assembly, First Committee General Debate, 11 October 2023.

C. Potential for AI-decision-support systems to support compliance with IHL and mitigation of civilian harm

At the same time, careful use of AI-based systems may facilitate quicker and more comprehensive information analysis, which can support decisions in a way that enhances IHL compliance and minimizes risks for civilians. In the context of urban warfare in particular, the ICRC has recommended that open-source repositories online should be used to gather information about the presence of civilians and civilian objects.[199] AI tools can likely assist in collecting and synthesizing such sources. The use of AI-decision-support systems to support weaponeering may also inform the choice of means and methods of attack that can best avoid, or at least minimize, incidental civilian harm.[200]

Importantly, IHL imposes obligations to take constant care to spare the civilian population and to take all feasible precautions in attack. Therefore, in developing and using AI-decision-support systems, armed forces should be considering not only how such tools can assist them to achieve military objectives with less civilian harm, but also how they might be designed and used specifically to protect civilians. This could include tools to recognize and track civilian populations and alert forces to their presence, or to recognize distinctive emblems or signals that indicate protected status.

As stated above, the efficacy of any such tools will depend on access to data of good quality. It appears that militaries are increasingly building and maintaining datasets to support target identification, but it is not clear whether they are making a corresponding investment in gathering data to support the identification of people and objects that are *not* lawful targets. States and other actors developing and deploying AI-decision-support systems must address this gap. The ICRC recommends prioritizing research and investment in tools and data that can facilitate better compliance with IHL and increase protection for civilians.

When drawing on an AI-decision-support system's output for targeting decisions, combatants and commanders must assess information from all sources reasonably available. Relying solely on the output of one AI-decision-support system is unlikely to meet this standard, especially during pre-planned targeting processes when more time is available to assess different sources of information. Commanders and users of AI-decision-support systems should therefore cross-check the outputs of these tools against all other available intelligence.

D. Preserving time and space for human deliberation

One of the main military benefits of AI-decision-support systems that is touted, and is behind their development and use, is their ability to accelerate planning and

199 ICRC, *Reducing Civilian Harm in Urban Warfare: A Handbook for Armed Groups*, ICRC, Geneva, 2023, p.15: https://shop.icrc.org/reducing-civilian-harm-in-urban-warfare-a-handbook-for-armed-groups-pdf-en.html.

200 As per obligation in AP I, Art. 57(2)(a)(ii).

decision-making processes, giving an advantage over the adversary. Increasing the speed of military operations can, however, create additional risks, for both civilians and combatants, including by increasing risks of miscalculation and escalation.

To alleviate these risks, planners and commanders have long employed practices such as 'tactical patience': deliberately pausing to allow a situation to unfold in order to increase situational awareness and develop more options. Parties to an armed conflict should consider how to maintain such practices even while employing AI-decision-support systems. This will likely require slowing down points of the planning and decision-making processes on purpose, in order to preserve time for deliberating about decisions on the conduct of hostilities.[201]

AI tools are having a significant influence on military planning and decision-making processes. They have the potential to facilitate decisions that minimize risks for people affected by armed conflict. States and non-state actors should consider how to develop and use such systems to support compliance with IHL. That being said, technical limitations, lack of good quality data and human behavioural tendencies when interacting with machines mean that AI-decision-support systems will not be suitable for all tasks and contexts. Their use can also create additional risks for civilians and other protected persons, especially in connection with decisions on targeting. These risks must be carefully considered and addressed when developing, reviewing the legality of, and using these tools.

4) Reducing the human cost of military operations in outer space

The military application of technology enabled by space systems is an integral part of modern military operations. Outer space is becoming increasingly contested as a number of states view space as an operational domain, put in place dedicated space-defence strategies and commands, and are engaged in developing, testing and deploying kinetic or non-kinetic 'counterspace' capabilities.

At the same time, essential civilian services are coming to depend more and more on space systems. Today, space systems – particularly navigation, communications and remote-sensing satellites – play an indispensable role in the functioning of critical civilian infrastructure, especially in the energy and communications sectors. These sectors enable the provision of the essential services on which civilians depend, such as food production and supply, water, electricity, health care, sanitation and waste management, and humanitarian operations.[202]

The expanding role of space systems in military operations during armed conflicts increases the likelihood of their being targeted, putting the functioning of essential civilian services on earth, which rely on such systems, at risk.

201 ICRC, *2019 Challenges Report*, p. 32.

202 See further, Gilles Doucet and Stuart Eves, *Protecting Essential Civilian Services on Earth from Disruption by Military Space Operations*, ICRC, Geneva, 2024, pp. 39–56: https://shop.icrc.org/protecting-essential-civilian-services-on-earth-from-disruption-by-military-space-operations-pdf-en.html.

A. Existing limits under international law on military operations in, or in relation to, outer space

Military operations in, or in relation to, outer space[203] – whether through kinetic or non-kinetic means – do not occur in a legal vacuum. They are constrained by existing international law. Relevant international law includes, in particular, the Charter of the United Nations, space law treaties, the law of neutrality and IHL.[204]

First and foremost, treaty and customary rules prohibit or restrict the choice of weapons, means and methods of warfare that could be placed and/or used in, or in relation to, outer space. The placement in orbit of objects carrying nuclear weapons or other weapons of mass destruction, the installation of such weapons on celestial bodies, or the stationing of such weapons in outer space in any other manner is prohibited. The testing of weapons of any kind and the conduct of military manoeuvres on celestial bodies are forbidden. In addition, the prohibition against indiscriminate weapons, weapons of a nature to cause superfluous injury or unnecessary suffering,[205] and against a number of other specific types of weapons[206] apply to outer space. And the prohibition against military or other hostile use of environmental modification techniques contrary to the Environmental Modification Convention apply equally on Earth and in outer space.[207] These rules become particularly relevant when states decide to study, develop, acquire or adopt any new weapon, or means or method of warfare, that could be used in, or in relation to, space.[208]

Beyond the prohibitions against specific types of weapons, or limitations on them, IHL imposes more general constraints on military operations conducted in the context of an armed conflict, including those that are carried out in outer space or the effects of which extend to outer space. These rules include, notably, the principle of distinction, the prohibition against indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack.[209]

Furthermore, international law, IHL in particular, also affords specific protection to certain persons and objects in armed conflict, including objects

203 For the purpose of this chapter, military operations in, or in relation to, outer space include military operations in, to, from and through outer space and those against space systems, whether they are space components or ground components or any communication link between them.

204 For a detailed discussion on existing limits under international law, including IHL, on military operations in or in relation to outer space during armed conflicts, see ICRC, "Constraints under international law on military operations in outer space during armed conflicts": https://www.icrc.org/en/document/constraints-under-international-law-military-space-operations.

205 ICRC, Customary IHL Study, Rules 70 and 71.

206 ICRC, Customary IHL Study, Rules 72–84; see also all the treaties regulating specific means and methods of warfare, as listed in the ICRC's IHL treaties database: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByTopics.xsp#view:_id1:_id2:_id260:repeat1:1:labelAnchor.

207 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1976, Arts I and II.

208 Notably, states party to AP I are required to review the legality of such a new weapon, means or method of warfare, in order to ensure that its employment would comply with IHL and other relevant rules of international law; see AP I, Art. 36.

209 ICRC, Customary IHL Study, Rules 1, 7, 11–14 and 15–21; AP I, Arts 48, 51 and 57.

indispensable to the survival of the civilian population,[210] medical personnel, units and transports,[211] humanitarian relief personnel and objects,[212] cultural property,[213] the natural environment,[214] works and installations containing dangerous forces such as dams, dykes and nuclear power plants,[215] and astronauts.[216] These enhanced protections must be upheld at all times, including when carrying out military operations that may be expected to affect space systems critical to the protection, safety or functioning of these persons and objects.

Finally, belligerents must take all feasible precautions to protect civilians and civilian objects against the effects of military operations in, or in relation to, outer space, which is an obligation that states must already have fulfilled in peacetime.[217] Measures that could be considered include physically or technically segmenting space systems (or parts thereof) used for military purposes from those put to civilian use, and working towards identifying space systems serving specifically protected objects, such as hospitals and objects indispensable to the survival of the civilian population. If a space object is put exclusively to civilian use, the state of registry should register it as such, clearly indicating its protected status under IHL.[218]

B. Working together to prevent and address the risk of civilian harm due to military space operations

In line with its humanitarian mandate and mission, the ICRC is concerned primarily with the potential human cost on Earth of the use of weapons and other military operations in, or in relation to, outer space. Given the indispensable role of space systems in the provision of essential civilian services, humanitarian considerations should be a cornerstone of any multilateral discussion or normative development with regard to space security.

To this end, the ICRC has made preliminary recommendations to the international community on the possible further development of legally binding and/or non-binding instruments, focusing on measures to minimize the risk of civilian harm posed by threats to space systems. These recommendations aim at, first, ensuring protection for space systems necessary for the provision of essential civilian services and for specifically protected persons and objects under international law; second, mitigating the risk of space debris by refraining from developing, testing and using kinetic counterspace capabilities and other harmful

210 ICRC, Customary IHL Study, Rule 54; AP I, Art. 54; AP II, Art. 14.
211 See, for example, GC I, Art. 19; GC II, Art. 12; GC IV, Art. 18; AP I, Art. 12; AP II, Art. 11; ICRC, Customary IHL Study, Rules 25, 28 and 29.
212 AP I, Arts 70(4) and 71(2); AP II, Art. 18(2); ICRC, Customary IHL Study, Rules 31 and 32.
213 See, for instance, AP I, Art. 53; AP II, Art. 16; ICRC, Customary IHL Study, Rules 38 and 39.
214 AP I, Art. 35(3); ICRC, Customary IHL Study, Rules 43–45.
215 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1996, Art. V.
216 AP I, Art. 56; AP II, Art. 15; ICRC, Customary IHL Study, Rule 42.
217 AP I, Art. 58; ICRC, Customary IHL Study, Rules 22–24.
218 Convention on Registration of Objects Launched into Outer Space, 1974, Art. IV(1)(e).

operations with similar effects; and third, enhancing international cooperation to increase the resilience of space-based services that humanitarian relief and emergency response rely on and ensuring uninterrupted access to them.[219]

More broadly, the ICRC urges states to carefully consider the human and societal cost if they decide to develop military space capabilities or use them during armed conflicts. In light of the risks of significant civilian harm, states may decide to set general prohibitions or specific limits with regard to weapons, hostilities or other military operations in, or in relation to, outer space for a range of reasons; one of these reasons must be the humanitarian impact of such operations. If new legally binding rules or voluntary norms in this regard are developed, they must be consistent with, build on and strengthen the existing legal framework, including IHL.

VI. Protecting and facilitating impartial humanitarian work in evolving conflicts

The UN estimates that in 2024, 300 million people need humanitarian assistance and protection, which is more than double the 130 million in 2019.[220] These staggering numbers, however, only tell half the story. They do not include humanitarian activities that address other needs. For instance, persons deprived of liberty were able to contact family members only through an impartial humanitarian organization that could work across front lines, and families were able to find relatives who had gone missing because of the efforts of humanitarian volunteers. Moreover, humanitarian organizations, such as the ICRC, play an important role in disseminating IHL to belligerents and reminding them of their obligations.

Humanitarian operations, however, face numerous challenges. All too often, access to populations is blocked, barriers set up, security guarantees denied, and the lives and safety of humanitarian personnel threatened. In a more subtle way, the complex web of sanctions and counter-terrorism measures is making the work of impartial humanitarian organizations difficult and undermines the IHL rules governing humanitarian access and activities.

Furthermore, all humanitarian organizations now use digital technologies to make their work for people affected by armed conflict more efficient and effective, and they face digital threats. When computer systems of humanitarian organizations are blocked, humanitarian data is stolen, or online campaigns are designed to question the impartial humanitarian nature of their work, it becomes difficult for these organizations to assist and protect people in need and to operate in safety.

219 A detailed elaboration of these recommended measures can be found in ICRC, "Preliminary recommendations on possible norms, rules and principles of responsible behaviours relating to threats by States to space systems", 27 January 2023: https://www.icrc.org/en/document/preliminary-recommendations-on-reducing-space-threats, and in the statement made by the ICRC at the open-ended intersessional informal consultative meeting on further practical measures for the prevention of an arms race in outer space on 29 February 2024: https://www.icrc.org/en/un-outer-space-ihl-statement.

220 See United Nations Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2019 and 2024*, available at www.unocha.org.

In this chapter, the ICRC presents its legal views on maintaining space for humanitarian action in sanctions and counter-terrorism measures, and on the IHL rules that protect humanitarian organizations against digital threats.

1) Maintaining space for humanitarian action in sanctions and counter-terrorism measures

Over the past two decades, states and international organizations have increasingly resorted to sanctions and counter-terrorism (CT) measures to attempt to change the behaviour of designated individuals and entities. Many of these measures aim at denying these individuals and entities the means to support or conduct any action considered to amount to terrorism or to a threat to international peace and security. In many cases, these measures take effect in contexts where impartial humanitarian organizations such as the ICRC operate.

The ICRC does not take a position on the legitimacy or necessity of sanctions and CT measures. However, these sanctions and CT measures – whether adopted at the UN, or at regional or domestic levels – have caused concern in the humanitarian community. This concern originates mainly in the complex legal, logistical and financial challenges posed by sanctions and CT measures, the cumulative effects of which have adversely affected the scope and quality of humanitarian activities conducted for people affected by armed conflict.

A. Considering IHL in sanctions and counter-terrorism measures

In contexts where they apply, it is crucial that sanctions and/or CT measures include robust safeguards to ensure that they are in conformity with IHL and do not impede principled humanitarian action. Such safeguards can take the form of well-framed and standing humanitarian exemptions that exclude exclusively humanitarian activities carried out by impartial humanitarian organizations in accordance with IHL from the scope of sanctions and CT measures. In the ICRC's view, this is the only way to ensure that humanitarian activities foreseen, authorized and protected under IHL are not criminalized under sanctions and CT frameworks. Furthermore, it helps ensure that the measures themselves comply with IHL rules governing humanitarian access and activities, as required by various UN Security Council (UNSC) resolutions adopted since 2004.

There have been a number of significant legal developments in this area in recent years.

Between 2022 and 2023 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. Mounting evidence of the need for sanctions to include robust humanitarian safeguards, and advocacy in this regard, culminated in the adoption of UNSC Resolution 2664 in 2022.[221] The resolution explicitly excludes from the scope of all current and future financial sanctions

221 UNSC Resolution 2664 of December 2022 was inspired to a significant degree by UNSC Resolution 2615.

adopted by the UNSC "the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs"[222] by a variety of humanitarian actors. This resolution clearly marks a shift towards well-framed and standing humanitarian exemptions as the new standard in the design of such sanctions.

UNSC Resolution 2664 applies only to UN financial sanctions, but its adoption has set in motion significant changes in the approach of some states and international organizations. These changes are often replicated in the sanctions – distinct from UN sanctions – that are established by those states and international organizations on their own. This shift shows an increasing acceptance of humanitarian exemptions. It also reflects the need to ensure uniformity in the various sanctions frameworks and avoid contradictions between UN and other sanctions. An absence of uniformity would lead to contradictory results: in the same crisis, some humanitarian activities involving listed entities or persons would be authorized under UN financial sanctions but prohibited under certain autonomous sanctions. In this regard, states should maintain their efforts to create a clear and predictable legal framework that allows humanitarian organizations and their private-sector partners to work without also having to navigate contradictory sanctions applicable in the same context.

This change in sanctions regimes has several practical benefits for impartial humanitarian organizations. Notably, it allows and facilitates the involvement of the private sector (banks, suppliers, transporters) in humanitarian activities without being at risk of breaching sanctions and thereby helping to avoid overcompliance and de-risking policies. It should also ease the funding of humanitarian operations in contexts affected by sanctions, by reassuring donors that their humanitarian funding does not breach sanctions regimes. Finally, as required by IHL, it offers critical legal protection for humanitarian personnel in contexts where they have to engage with various listed individuals and entities on sanctions lists to carry out their humanitarian activities.

B. Remaining challenges in sanctions frameworks

Despite this progress, several challenges remain to be addressed in sanctions frameworks.

First, there are still autonomous sanctions regimes applicable to contexts where impartial humanitarian organizations operate that do not contain any humanitarian exemptions, or only temporary exemptions that are not adequate

222 Ibid, para. 1. This must be read in light of preambular paragraphs 3 and 6 of the Resolution, which reaffirm that sanctions must comply with IHL. In this regard, the ICRC takes the view that the notion of activities exempted under UNSC Resolution 2664 encompasses all humanitarian activities as understood under IHL, and therefore encompasses assistance and protection activities undertaken by impartial humanitarian organizations.

for protracted conflict situations. The inclusion of a standing and well-framed humanitarian exemption in these sanction regimes remains a necessity.

Second, making sure that the interpretation and implementation of humanitarian exemptions is consistent will be key to ensuring that they are helpful and effective. Humanitarian carve-outs will have little impact on de-risking and overcompliance policies without proper communication and guidance. The private sector, donors and other stakeholders must feel confident in the ability of states enforcing sanctions to understand and apply humanitarian exemptions. This requires states to draft clear guidelines concerning humanitarian exemptions and also promote these exemptions.

Third, financial sanctions are not the only sanctions that can impede principled humanitarian action. Other sanctions, such as export restrictions, can create logistical, financial, and legal obstacles to humanitarian activities. Advocacy for humanitarian exemptions to be included in these types of sectoral sanction might also be necessary, in order to ensure that progress made in the area of financial sanctions is not undermined by a lack of carve-outs in other restrictions.

C. IHL compliance when implementing counter-terrorism measures

UN resolutions concerning counter-terrorism measures have, since 2004, sometimes referred (mostly in preambular or non-binding operative paragraphs) to the need for states to comply with international law, including IHL, when adopting or implementing CT measures. In 2019, UNSC Resolution 2462 – using mandatory language in a resolution adopted under Chapter VII of the UN Charter – imposed on UN member states, for the first time, a requirement that all CT measures, including those taken to counter the financing of terrorism, comply with IHL, thereby recognizing the primacy of IHL in the event of friction between IHL and CT frameworks. Therefore, the combined effects of operative paragraphs 5, 6 and 24 of UNSC Resolution 2462 make it possible to interpret the extensive CT obligations laid down in Resolution 2462 as excluding from their scope exclusively humanitarian activities carried out by impartial humanitarian organizations regulated by IHL.

While this resolution does not explicitly require states to adopt humanitarian exemptions in their domestic CT laws, it gives them the leeway to do so without falling afoul of their obligations under the UN's CT framework. Several states have adopted humanitarian exemptions in their domestic laws, but, unfortunately, a majority have not yet done so. Efforts must be made to improve implementation of UNSC Resolution 2462, with a view to ensuring that states "take into account the potential effect [of measures to counter the financing of terrorism] on exclusively humanitarian activities". This is best done by adopting well-framed and standing humanitarian exemptions in their domestic CT laws.

States must avoid inconsistencies between CT measures and sanctions. In order not to render void the humanitarian exemptions recently included in

sanctions regimes, it is crucial that states harmonize their approaches in sanctions and CT frameworks. Otherwise, there is a real risk that activities exempted under sanctions regimes would still be prohibited and criminalized under CT penal laws.

2) Protecting humanitarian organizations against digital threats

Humanitarian organizations increasingly rely on digital technologies to fulfil their mandate, operate in the context of digitalizing armed conflicts, and face rapidly evolving digital threats. The threats include cyber operations that disrupt their digital infrastructure and communication systems or access or exfiltrate data, and information operations aimed at undermining their reputation. In recent years, the ICRC and several other humanitarian organizations have been targets of such operations. When these organizations' systems are disrupted, much-needed assistance and protection programmes are slowed down or come to a halt, with adverse consequences for vulnerable populations. If humanitarian data fall into the wrong hands, they may be misused to target or persecute people who are already at risk or in a situation of vulnerability. And if trust in humanitarian organizations is undermined, their access to people in need becomes even more difficult and their staff are exposed to additional risks. In a global context characterized by staggering needs and insufficient humanitarian capacity, digital threats risk exacerbating the suffering of people affected by armed conflict.

There has been a global consensus, for decades, that in times of armed conflict humanitarian operations must be allowed and facilitated by parties to armed conflict and third states, subject to their right of control, and that humanitarian relief operations and personnel must be respected and protected. Directing attacks against them is a war crime.[223] In the ICRC's view, these rules also protect humanitarian organizations against harmful cyber and information operations.

A. Cyber operations that breach and disrupt the IT systems of humanitarian organizations

Cyber operations that can reasonably be expected to damage or destroy the operational assets of humanitarian organizations, or injure or kill their staff or the people they serve, are prohibited – just as any other attack against civilians is. In addition, cyber operations that unduly interfere with their operations are also prohibited. This is either because such operations would be regarded as an 'attack' against a civilian object, or because they would violate the obligations to allow and facilitate humanitarian activities and to respect and protect humanitarian operations. IHL also requires parties to armed conflict to protect humanitarian organizations and their staff against harm by private actors.[224]

223 See Rome Statute of the ICC, Art. 8(2)(b)(iii), 8(2)(b)(xxiv) and 8(2)(e)(iii).
224 AP I, Art. 71; ICRC, Customary IHL Study, Rules 31 and 32.

Cyber operations that breach humanitarian data even without manipulating, encrypting, or deleting them raise distinct legal issues. While IHL does not generally prohibit warring parties from collecting information related to the armed conflict (including covertly, i.e. espionage), parties that contemplate accessing humanitarian data without authorization must take into account the specific protection of humanitarian operations. Spying on humanitarian organizations compromises the confidentiality of the information in their possession. In the case of the ICRC, confidentiality is one of its key working procedures, and one that is explicitly recognized in international law, for instance with regard to detention visits.[225] Moreover, if states mandate an impartial humanitarian organization like the ICRC to perform services such as tracing missing people, these services must be facilitated and not undermined.[226] Parties accessing humanitarian data should also remember that their conduct risks jeopardizing trust in the humanitarian organizations, particularly if humanitarian data is extracted with a view to targeting adversaries or civilians.

There are a number of possibilities for operationalizing the protection afforded by IHL to certain medical and humanitarian entities, including against cyber operations. The ICRC has proposed the idea of a new digital marker, another means of identification for the digital assets of specifically protected entities: a 'digital emblem'. Obviating the need for new protection under IHL, a digital emblem would act as a digital analogue to the physical emblem, identifying assets that benefit from specific protection under IHL. The digital emblem would do what the physical emblem does in the real world during armed conflict: it would be used by medical facilities, including those of the armed forces, to signal their specific protection under IHL and identify – and signal the protection of – the Movement's humanitarian operations. A global group of experts consulted by the ICRC concluded that the benefits of clearly signalling legal protection outweigh the risks associated with the use of a digital emblem.[227]

B. Disinformation that undermines the reputation and operations of humanitarian organizations

The increasing number of information operations, online and offline, is also of particular concern, including from a legal perspective. Humanitarian organizations are not protected against, and should not be immune to, criticism or expressions of frustration; however, information operations that unduly interfere with their work, or expose their operations and personnel to risk, are prohibited. First, it is unlawful to incite people to commit violations of IHL, such

225 GC III, Art. 126; GC IV, Art. 143. The confidential nature of information and documents in the possession of the ICRC is, for example, also recognized in Rule 73(4) of the Rules of Procedure and Evidence of the ICC.

226 AP I, Art. 81.

227 ICRC, *Digitalizing the Red Cross, Red Crescent and Red Crystal Emblems*, ICRC, Geneva, 2022: https://www.icrc.org/en/document/icrc-digital-emblems-report.

as violence against civilians or humanitarian personnel, including through online messengers or platforms.[228] More specifically, spreading disinformation aimed at obstructing or frustrating humanitarian operations unduly interferes with them; it certainly does not facilitate them. It also risks violating the obligation not to harm them (i.e. the obligation to respect humanitarian organizations), or – by creating false perceptions and stirring up violence against humanitarian actors – fails to comply with the obligation to protect such organizations against harm.

The continuing digitalization of societies and warfare is likely to increase the frequency, scope and impact of digital threats in armed conflicts – against civilians, but also against humanitarian organizations. Humanitarians, states and other actors must work together to ensure that the long-standing consensus on the protection of impartial humanitarian activities prevails, in law and in practice, in the digital age. For as long as people affected by armed conflict need impartial and independent humanitarian relief, those who provide it must be safeguarded, including against digital threats.

VII. Building a culture of compliance with IHL

Since its first report on IHL and the challenges of contemporary armed conflicts, the ICRC has consistently emphasized that the single most important challenge to IHL is the lack of respect for it. Every day, ICRC staff witness indescribable suffering, destruction and cruelty, and are confronted by staggering needs among civilians that are not met. Every war results in loss of lives, separation of families and destruction of livelihoods. But some of the most extreme consequences can be averted if IHL is respected. Addressing this challenge is – first and foremost – in the hands of parties to armed conflicts.

States play a key role. They negotiate instruments that place limits on warfare and agree to be legally bound by these instruments, by ratifying or acceding to them. They incorporate IHL rules and other norms in domestic laws, policies and practices. They ensure that their armed forces know the law, are trained in it, and are subject to a strong disciplinary system. They put in place penal legislation and a judicial system that prosecutes those who commit serious violations of the law. Through bilateral, regional and multilateral collaboration, states are also able to ensure that others, including their allies and partners, respect their IHL obligations. Specific legal obligations attach to the transfer of arms.

States use various domestic processes to implement their IHL obligations. Legal review of new weapons, means and methods of warfare is one such process mandated by IHL. Carrying out a legal review of any new weapon, means or method of warfare they develop or acquire is a necessary step for states to ensure

228 ICJ, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*), Judgment, *I.C.J Reports 1986*, p. 14, para. 220; ICRC, *Commentary on the Third Geneva Convention*, 2020, para. 191.

their armed forces' ability to comply with their IHL obligations. In order to assist states in establishing or improving review procedures, the ICRC published its *Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977* (*Guide*) in 2006. The *Guide* is being updated now, including to reflect challenges in the legal review of new weapons, means or methods of warfare relying on new and emerging technologies.

Non-state armed groups, too, must have an understanding of IHL, implement it in their internal rules and disciplinary systems, and respect it. IHL is the legal framework binding all parties to armed conflicts. That being so, to effectively communicate and anchor the protection owed to people affected by armed conflict during their dialogue with armed forces and non-state armed groups, humanitarian organizations can also draw on norms, ethics, and standards from cultural traditions and practices, as well as other legal frameworks such as Islamic law, when there are points of correspondence with IHL.

Even so, knowledge and implementation of the law in domestic frameworks cannot in themselves ensure IHL is fully respected without political will and a compliance mindset. Building this political will must become a priority for states, in order to protect the lives and dignity of millions of people affected by armed conflict. Finally, respect for IHL can contribute to the goal of building sustainable peace by removing at least some obstacles to peace-making.

1) Bringing IHL home: States' implementation of IHL and the repression of violations

States are primarily responsible for ensuring full compliance with IHL, and they do so by adopting strong measures domestically.[229] Good practices exist throughout the world.[230] Many of these, and more, are captured as recommendations in the ICRC's 2021 *Guidelines on the National Implementation of International Humanitarian Law*.[231] The reality, however, is that implementation of IHL and compliance with it are still insufficient; and even when IHL is implemented, its protective purpose is all too often ignored.

The ICRC recognizes the efforts already made in this respect, but it also calls on all states to redouble their efforts and make long-term commitments to implementing IHL effectively at the domestic level.

229 This was recalled in Resolution 1, "Bringing IHL home: A road map for better national implementation of international humanitarian law", of the 33rd International Conference, Geneva, 9–12 December 2019 (hereafter Resolution 1).

230 Some of these examples can be found in the report of the Fifth Universal Meeting of National Committees and Similar Entities on International Humanitarian Law. See ICRC, *Bringing IHL Home through Domestic Law and Policy*, ICRC, Geneva, 2022: https://www.icrc.org/en/document/bringing-ihl-home-through-domestic-law-and-policy-report.

231 ICRC, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*, ICRC, Geneva, 2021: https://www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law.

A. Ratifying core IHL treaties

A strong commitment to IHL begins with joining the main IHL treaties. These treaties exist to prevent or alleviate human suffering in armed conflict. They set out practical rules to ensure protection in the worst of times. Ratifying or acceding to an IHL treaty is not an aspirational goal for peacetime. It is a strong commitment that protective rules will be respected in the event of an armed conflict. The four Geneva Conventions of 1949 have been universally ratified, but that is not yet the case for their Additional Protocols or for any other IHL treaty. As a consequence, the ICRC continues to call upon "all States to consider ratifying or acceding to IHL treaties to which they are not yet party".[232] This includes in particular Additional Protocols I and II; treaties that provide protection for specific groups of people during armed conflict (such as children, internally displaced persons or persons with disabilities); and treaties that contain specific restrictions or prohibitions on weapons.[233] The importance of states joining existing treaties cannot be overstated: while customary IHL fills important gaps in regulating conflicts involving states not party to widely ratified IHL treaties, each new ratification strengthens the protection afforded during times of conflict and contributes to achieving the universality of IHL.

B. Adopting national implementation measures

During armed conflict, conduct that complies with IHL can save lives and prevent physical and mental trauma. If existing cycles of devastation are to be broken, it is imperative to act ahead of time, to persuade all parties that IHL can and must be complied with, in the spirit of humanity. For every new treaty it has ratified, but also for every treaty that a state has joined in the past and for which the necessary implementation work has not been completed, state authorities must adopt implementing legislation. This is of course necessary in dualist constitutional systems. But in monist systems too, state authorities must adopt legislation to facilitate the direct application of IHL at the domestic level, for instance to clarify the roles, rights and obligations of national actors in relation to specific provisions. All states may also consider adopting domestic laws that go beyond their treaty obligations and create additional protection in line with the treaties' object and purpose. In doing so, states must ensure that they interpret every rule of IHL in good faith, upholding its inherently protective purpose. Domestic legislation, policies or practices that follow overly permissive interpretations of IHL are as dangerous on the ground as the absence of domestic implementation.

232 This call was joined by all states and the Movement in Resolution 1, operative paragraph 4.

233 A list of IHL treaties can be found on the ICRC's treaties, States Parties and commentaries database: https://ihl-databases.icrc.org/en/ihl-treaties.

The adoption of legislative measures has to be followed by administrative and practical measures to give them effect.[234] This includes making legal instruments publicly accessible; marking objects protected by IHL with the appropriate emblems; creating specific institutions such as national committees or similar entities on IHL; and providing the necessary financial and human resources for institutions charged with implementing, interpreting, applying or monitoring respect for IHL. In order to achieve all this, all states must ensure that implementation of IHL is made a political priority domestically.

C. Investigating and suppressing IHL violations

Criminal sanctions for violations of IHL have long been regarded as essential for ensuring compliance with the law.[235] Investigating infractions, and prosecuting those who commit them, can deter the commission of violations in the first place, and provide justice for victims when violations nevertheless occur. These are the key reasons why states have clearly defined legal obligations to end IHL violations and prevent their recurrence. It is thus essential that adequate criminal laws exist – meaning that all war crimes under treaty and customary international law are incorporated in domestic law – and that perpetrators are prosecuted and punished. In addition, legal and judicial sectors must have the capacity to respond effectively to violations of the law, which can be acquired or developed, for instance through adequate training in IHL.

In many cases, justice will be best served geographically close to the site of the alleged violation, but there will be instances where this is not appropriate or feasible. In order to end impunity in such cases, states should assert their support for the principle of international justice, for instance by using their right to assert universal jurisdiction over war crimes, and joining the Rome Statute of the International Criminal Court. The extent to which it acts in this regard is an unambiguous indication of a state's commitment to ending impunity for violations of IHL.

D. Investing in IHL education

Unwavering commitment to IHL education is another key to fostering a culture of compliance. While progress has been made in disseminating IHL through programmes of military and civil instruction in recent decades,[236] effective IHL education can never be taken for granted. A particular challenge for IHL education today is the skepticism about IHL and the criticism directed towards it. This is

234 See "Checklist 3: Administrative and Practical Measures" in ICRC, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*, ICRC, Geneva, 2021, pp. 15–24: https://www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law.

235 ICRC, *Commentary on the First Geneva Convention, 2016*, para 2823; ICRC, *The Roots of Restraint in War*, ICRC, Geneva, 2018, p. 29: https://www.icrc.org/en/publication/4352-roots-restraint-war.

236 See "Generating respect for the law", *IRRC*, Vol. 96, No. 895/6, Autumn/Winter 2014: https://international-review.icrc.org/reviews/irrc-no-895896-generating-respect-law.

found in various parts of the world, and is fuelled by widely broadcast images of death and destruction during armed conflicts. Such disenchantment not only affects the general public but also those who teach IHL, such as academics. The yawning gap between what they see – horrific images of widespread suffering – and the idea they are responsible for disseminating – that IHL can save lives – has led to understandable discomfort and frustration for many academics. But their contribution to the law, in particular by striving for a world in which international law is complied with, has never been more important than now.

A starting point for creating a culture of compliance with IHL is ensuring that it is disseminated throughout society, using formal and informal avenues. Formal IHL education should be provided in schools and universities. Pedagogical tools exist for both, and have been translated into many languages.[237] To educate the public informally, journalists and media professionals should be given support for reporting on IHL-related issues accurately.[238] Regular contact between media representatives and IHL lecturers in universities can contribute to a fuller understanding of IHL among members of the public. Such contact can be facilitated by the Movement.

E. Sharing good practices

Since the 33rd International Conference, states have taken the opportunity, on many occasions, to voluntarily report on their domestic implementation of IHL. Several states have published voluntary reports to that effect;[239] a small but growing number of states are submitting contributions to the UN Secretary-General's report on the status of the Additional Protocols;[240] and many states present their achievements at regional meetings on IHL organized with the ICRC.[241] The ICRC hopes that by sharing good practices concerning their respect for their IHL obligations, states can create a circle of virtue in which each state learns from its peers and strives to strengthen its own efforts.

It is, however, important to keep in mind that work on the implementation of IHL is only the beginning of the process towards building a culture of respect for IHL. Adopting implementation measures, and reporting on these measures, cannot

237 For university teachers, see, for instance, M. Sassòli, A. Bouvier, A. Quintin, J. Grignon, "How does law protect in war?", ICRC, Geneva, 2014: https://casebook.icrc.org/; For high school teachers, see: "Young people and IHL: Exploring international humanitarian law", ICRC, Geneva, 2009: https://www.icrc.org/en/document/exploring-humanitarian-law.

238 See ICRC, "IHL resources for media professionals", ICRC, Geneva, 2017: https://www.icrc.org/en/document/ihl-resources-media-professionals.

239 See ICRC, "Voluntary reports on the domestic implementation of international humanitarian law (IHL)", ICRC, Geneva, 2022: https://www.icrc.org/en/document/voluntary-reports-domestic-implementation-ihl.

240 See United Nations General Assembly, Sixth Committee (Legal) — 77th session: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (Agenda item 81), 2022: https://www.un.org/en/ga/sixth/77/protocols.shtml.

241 See, for instance, the ECOWAS-ICRC Annual Review Meetings on the Implementation of IHL in West Africa, the Annual Regional IHL Seminars for Southern Africa, and the Regional Meetings of National Committees and Similar Entities on IHL organized in the Americas, in Asia and the Pacific, and with Arab States.

by themselves lead to protection on the ground. Such protection will be achieved only if these measures are respected in practice; if all violations are suppressed and all those who commit serious violations prosecuted; and if all parties to armed conflict, at all levels, make a deliberate choice to respect IHL and uphold its protective aim in all circumstances.

In the absence of international enforcement mechanisms, respect for IHL depends on the political will of parties to armed conflict to comply with it.

2) Building bridges for IHL through dialogue with cultural and legal frameworks

To prevent violations of IHL and protect human dignity, the ICRC engages in dialogue with all parties to armed conflict and with all relevant sources of influence that might help to alleviate human suffering. The need for this approach is confirmed by research showing that focusing only on the law is not as effective in influencing behaviour as focusing on a combination of the law and the values underpinning it. In other words, linking the limits set out in IHL to local norms and values can give them greater traction and facilitate restraint.[242] Over time, the ICRC has studied the interplay between IHL and other cultures, religions and legal systems, including traditional Somali conduct in war; wars of dignity in the Pacific; indigenous norms in Colombia; and African traditions. In Asia, particular attention has been given to studying how Buddhist and Hindu ethics of war might help to reduce suffering during armed conflict.[243] And engagement with Islamic law, across continents, has been a particular focus of the ICRC's attention for many years.

Islamic law is one of the three major legal systems in the world. There are 29 Muslim-majority states that include compulsory implementation of Islamic law – family, civil, commercial, or criminal – in their legal systems. Given this, understanding the Islamic law of war is of particular importance, and falls within the ICRC's work to create and maintain a dialogue with weapon bearers from different cultural and legal frameworks or local traditions across the globe. Several large-scale ICRC operations are taking place in Muslim-majority countries, such as Afghanistan, Syria, Yemen, Somalia, Iraq and Nigeria, in which Islamic law carries particular weight. Moreover, in these and other contexts, many non-state parties to armed conflict are Islamic groups, and some of them use only Islam or Islamic law as their source of reference.

To achieve restraint in armed conflict in accordance with IHL, the ICRC has engaged with Islamic institutions, scholars and experts in Islamic law and jurisprudence, and with weapon bearers who use Islam or Islamic law as their source of reference. This dialogue is particularly important to improve humanitarian access and acceptance for the ICRC's neutral, independent and

242 ICRC, *The Roots of Restraint in War*, ICRC, Geneva, 2018.
243 For selected reports on this work, see: https://blogs.icrc.org/religion-humanitarianprinciples/.

impartial work; preventing or mitigating security risks; addressing legal and operational challenges; and encouraging research into IHL and Islamic law.

The ICRC's efforts to build bridges between IHL and Islamic law take place at global, regional and local levels, and involve renowned international scholars as well as regional and local religious authorities.[244] Reflecting operational priorities, the focus of this dialogue has been on the concept in Islamic law of *amān* (protection, safe conduct, quarter) and its application to the protection of humanitarian personnel and organizations; Islamic rules on the management of dead bodies; protection of detainees under Islamic law; protection of civilian populations during armed conflict with a focus on questions related to sieges, reprisals against the population, displacement of civilians, protection of the environment, the prohibition of sexual violence, and the use of mines and improvised explosive devices.

For a humanitarian organization that works throughout the world, in many different cultural and religious contexts, this dialogue is essential for preventing or clearing up misunderstandings about the ICRC; anchoring its work on strengthening respect for IHL effectively in different cultural and social settings; and preventing or alleviating suffering. The ICRC is conscious that full convergence between IHL and other religious frameworks or local customs is unlikely, and upholds the same legal obligations and protection standards globally; but it is equally aware that the values underpinning IHL are derived from many different cultures and religions, and that these values may be leveraged to alleviate suffering in armed conflict. For instance, exactly 1400 years ago, the Prophet Muhammad instructed his forces to "observe good treatment towards (…) prisoners"; today, this is the leitmotif of the protection provided by IHL for detainees.

3) Ensuring respect for IHL in the transfer of weapons

Vast amounts of conventional arms and ammunition – from pistols, machine guns, bombs, and artillery shells and other explosive weapons to fighter jets and tanks – continue to flow, overtly and covertly, into some of the most brutal armed conflicts today. In many places – such as Israel and the occupied territories, Mali, Sudan, Syria, Ukraine and Yemen, to mention but a few – this influx of weapons fuels war, violence, including sexual and gender-based violence, and humanitarian crises. It exacts an unacceptable human toll: lives are lost or permanently altered by injury or trauma, and livelihoods destroyed. Widespread availability of arms also hinders post-conflict reconstruction, recovery and reconciliation, as well as human and socio-economic development in the long term.

With arms sales on the rise throughout the world – driven by growing international tensions, resurgent arms-race dynamics and commercial

244 ICRC, *IHL and Islamic Law in Contemporary Armed Conflicts*, ICRC, Geneva, 2019: shop.icrc.org/ihl-and-islamic-law-in-contemporary-armed-conflicts-experts-workshop-geneva-29-30-october-2018-pdf-en.html; Academic papers presented during a conference and a certificate course in IHL and Islam for imams and military imams, held in Sarajevo in September 2018, are available at: https://www.icrc.org/en/document/islamic-law-international-humanitarian-law.

incentives – the promotion of responsible action and restraint in international arms trade remains a pressing humanitarian imperative.

A. The international legal obligation to respect IHL in arms-transfer decisions

At the 31st International Conference in 2011, states committed themselves to making respect for IHL one of the most important criteria in decisions about arms transfers, so that arms and ammunition do not end up in the hands of those who may be expected to use them in violation of IHL.[245]

The ICRC has recalled in detail that applying the obligation to respect and ensure respect for IHL to arms transfers means that states transferring arms must assess whether the weapons to be transferred are likely to be used in violation of IHL.[246] To prevent the possibility of contributing to such violations, states must, in the ICRC's view, refrain from transferring weapons if there is a substantial or clear risk of this happening.[247] In addition, states must condition or limit the transfer and use of arms, or take other timely, robust and practical measures that can realistically offset the risk of violations, both before and after delivery. The ICRC has also reiterated emphatically that states that supply arms to a party to an ongoing armed conflict have a special responsibility to use their influence to prevent violations of IHL and limit harm to civilians and others affected by war.[248]

Respect for IHL is one of the core criteria against which any proposed transfer of arms must be assessed under the 2013 Arms Trade Treaty (ATT).[249] The ATT and regional instruments governing arms transfers hold out the promise of saved lives and greater respect for IHL and human rights. But if these hard-won standards are to make a tangible difference in the lives of people affected by war and violence, governments must give far greater weight in their arms-transfer decisions to preventing harm, and reducing related risks, effectively.

B. Closing the gap between commitment and practice: Ensuring respect for IHL in arms-transfer decisions

The ICRC is deeply concerned about the gap that seems to exist between the commitments expressed by states to respect and ensure respect for IHL, and the faithful implementation of instruments such as the ATT, and the arms transfer practices of too many of them. Of particular concern are exemptions from IHL risk

245 Resolution 2: 4-year action plan for the implementation of international humanitarian law, Annex 1: "Plan of Action", Objective 5: "Arms transfers", 31st International Conference, Geneva, 28 November–1 December 2011.

246 ICRC, *2015 Challenges Report*, "Responsible Arms Transfers", pp. 53–56.

247 ICRC, *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, Geneva, 2016, p. 12. See also ICRC, *Commentary on the Third Geneva Convention*, 2020, paras 187 and 195; ICRC, *2015 Challenges Report*, p. 55; ICRC, *2019 Challenges Report*, p. 76.

248 ICRC, *Commentary on the Third Geneva Convention*, 2020, para. 200; ICRC, *2015 Challenges Report*, p. 55; ICRC, *2019 Challenges Report*, p. 75.

249 Arms Trade Treaty, Preamble ('Principles'), Arts 6.3 and 7.1.b.i.

assessments given to certain transfers or recipients; export licenses valid for many years without a requirement for periodic review; and certain measures aimed at facilitating export of arms produced jointly by several states, which limit contributing states' ability to challenge the export of the final product on humanitarian grounds.[250]

In the area of arms transfers, building a culture of compliance with IHL requires states to fully incorporate IHL requirements in domestic arms-transfer laws and regulations, distinct from considerations of human rights. These requirements have to be applied systematically, on a case-by-case basis, to all recipients, including military allies and privileged trade partners. They have to be applied to all international transfers, including government-to-government transfers and provision of military assistance, and to all relevant items, including ammunition and parts and components of weapons.

Greater awareness is also needed among business entities of the requirements under IHL and the Arms Trade Treaty, and greater recognition of businesses' roles and responsibilities in upholding IHL rules. The ICRC recalls in this respect that conducting business activities in accordance only with domestic laws – such as operating under a valid export licence – does not shield company employees from prosecution for aiding and abetting the commission of a war crime or other international crime.

To effectively prevent serious violations of IHL and avoid complicity in their commission, governments must keep issued licences under review, notably, in light of new information about how the arms supplied are being used. Post-shipment measures can be an important safeguard, not only against diversion of arms to unauthorized end-users, but also to prevent and address misuse. Even after an authorization has been granted, therefore, a state must deny a transfer if new information indicates a clear or substantial risk.

Against the backdrop of deteriorating international security, it also bears recalling that security, foreign policy, economic and similar considerations may never override the legal obligation to ensure respect for IHL, including at the highest political level. It is difficult to see how exported weapons could ever contribute to peace and security where there is a clear risk that they could be used to commit or facilitate serious IHL violations.

4) Respect for IHL and easing the path to peace

For over 160 years, the ICRC has provided humanitarian services, throughout the world, to people affected by armed conflict. Many of these conflicts have been going on for years or decades. Every day, ICRC staff witness their horrific toll on combatants and civilians. Renewed efforts are urgently needed to prevent and end armed conflicts and to build peace.

Respect for IHL can be a first step towards building trust and facilitating the path to peace when the parties decide to pursue it.

250 ICRC, "Arms transfers to parties to armed conflict: What the law says", ICRC, Geneva, 2024: https://www.icrc.org/en/document/arms-transfers-parties-armed-conflict-what-law-says.

Respect for IHL may reduce barriers to peace negotiations by preventing wanton cruelty and atrocities. By ensuring humane treatment of detainees, proper handling of the dead, and medical care for civilians and combatants alike, IHL lays a foundation of respect for human dignity without discrimination that can ease tensions and foster conditions conducive to peace talks. Moreover, respect for IHL will mean preventing war crimes, thereby reducing the complexity of post-conflict justice and reconciliation processes. Respect for IHL is also crucial in preventing cycles of violence and retaliation resulting in unresolved grievances that may hinder peace negotiations or the implementation of peace accords.

IHL also offers mechanisms that can be used to facilitate peace negotiations, such as the conclusion of 'special agreements', which can include ceasefires, detainee releases and amnesties. These humanitarian mechanisms allow parties to conflict to engage in dialogue, and take concrete steps towards peace, without prejudice to their legal status or claims.

Respect for IHL also mitigates the destruction and horrors of war in ways that can facilitate post-conflict recovery. For example, respect for IHL can help to preserve essential infrastructure and minimize civilian suffering. By setting down rules protecting hospitals, schools and water facilities from being targeted, IHL helps maintain and protect the infrastructure on which civilians rely; reduce the long-term impact of armed conflicts; and facilitate quicker and less expensive post-conflict recovery. The preservation of critical civilian infrastructure is crucial for the resumption of civilian life after conflicts. It also provides support for economic stability, which is essential for peacebuilding efforts. Moreover, respect for IHL during conflict can contribute to the transition to peace, by removing at least some hindrances to peace-making: fewer displaced or missing people, refugees and destroyed homes may mean negotiating return or resettlement is less fraught in many respects.

IHL provides the legal framework that enables, facilitates, and protects humanitarian activities, which can be a bridge to peace. In this respect, IHL is a crucial enabler for the ICRC's role as a neutral intermediary between parties to conflict. If agreed by all parties, the ICRC may: provide safe passage to participate in peace talks; bring detainees home; accompany members of separated families across front lines and reunite them with their relatives; escort demining missions through combat zones and enable their work; convey messages to organize ceasefires, simultaneous releases of detainees and evacuations from fought-over or besieged areas; and share information about missing people.

Dialogue and cooperation on humanitarian issues can be the first step towards broader peace efforts, helping to build trust and mutual understanding.

Conclusion

The four Geneva Conventions of 1949, foundational treaties of IHL, were adopted 75 years ago. They have proven to be remarkably successful. Together with IHL more generally, they have demonstrated extraordinary durability and enjoy the

unwavering endorsement of all states. At a time when more than 120 armed conflicts are ongoing throughout the world, they save lives and protect human dignity – every day.

But numerous challenges persist. The ICRC has been emphasizing for decades that the single most important challenge to IHL is the lack of respect for it. Deliberate violations of IHL remain a major source of concern. Deficiencies in implementing IHL weaken compliance in practice. In addition, various expedient interpretations of IHL – often put forward at the height of armed conflict, to assert states' leeway to kill and detain – have compounded to undermine its protective force.

These corrosive tendencies must stop. States must act collectively to make respect for IHL a priority. The world needs a robust, protective law of armed conflict – one that can be relied upon to save lives. The ICRC hopes that this report can contribute to shedding light on some of the salient challenges to IHL; garnering political will to address them; and ultimately, building a culture of compliance with IHL, in order to protect humanity during conflicts, now and in the future.