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International humanitarian law and peace: A brief overview

Cordula Droege
Chief Legal Officer and Head of Legal Division, International Committee of the Red Cross, Geneva, Switzerland
Email: cdroege@icrc.org

Abstract

*International humanitarian law (IHL), also known as the law of armed conflict, seeks to limit the humanitarian impact of war by regulating the conduct of hostilities and protecting those not or no longer participating in combat. IHL does not prevent war, nor is that its role. IHL is only one part of the fabric of international law, other parts of which (*jus ad bellum*) govern the legality of war itself. However, IHL plays an essential role in mitigating suffering and fostering conditions that may facilitate a return to peace. This article examines the long-standing debate over whether IHL inadvertently legitimizes war or whether it can actually contribute, indirectly, to peace by imposing humanitarian constraints on conflict. It explores how adherence to IHL can preserve human dignity and support post-conflict reconciliation. Ultimately, while IHL does not prevent war, its strict application helps to reduce war's brutality and create pathways for sustainable peace.*

Keywords: international humanitarian law, law of armed conflict, law of war, Geneva Conventions, peace, sustainable peace.

International humanitarian law (IHL), also known as the law of armed conflict, the law of war or *jus in bello*, is a set of rules that seek, for humanitarian reasons, to limit the effects of armed conflicts. IHL regulates the conduct of belligerent parties by imposing restrictions on the means and methods of warfare that may be employed and by ensuring the protection and humane treatment of persons who are not or are no longer taking a direct part in the hostilities.

IHL comprises those rules of international law – found mainly in the four Geneva Conventions of 1949 and their Additional Protocols, in weapons treaties, and in customary law – which establish minimum standards of humanity that must be respected in any situation of armed conflict. Since IHL is specifically designed to resolve humanitarian issues arising from armed conflict, it neither governs the legitimacy or legality of going to war, nor does it shed light on how peace can be restored. Still, IHL is inextricably linked to the return to sustainable peace, and some IHL obligations explicitly extend beyond the temporal limits of armed conflict and into the peacebuilding process.

This overview aims to address the ways in which IHL intersects with the pursuit of peace. Even before the codification of the very first Geneva Convention in 1864, there was debate on whether imposing limits on the conduct of parties in war actually constitutes an obstacle to peace by legitimizing war, or whether it can make a contribution in the pursuit of peace. These questions have been the subject of debate over many decades, and this piece can only touch briefly upon IHL's role among the wider body of international law, the distinction between *jus in bello* and *jus ad bellum*, and some of the ways in which IHL may contribute to pathways to peace.

The latter issue, in particular, merits further research and inquiry. In a Global Initiative to Galvanize Political Commitment to International Humanitarian Law launched in September 2024 by six States and the International Committee of the Red Cross (ICRC),[1] the link between IHL and peace will be one focus issue for the ICRC's work over the next two years.

Undermining peace or facilitating it?

Historically, there have been apprehensions that IHL, as a body of law which regulates the conduct of all belligerent parties, without judgement as to their justification for resorting to armed force, may detract from the central purpose of modern international law and indeed the moral and political imperative to maintain and fortify international peace.

1 ICRC, "Brazil, China, France, Jordan, Kazakhstan, South Africa launch a Global Initiative to Galvanise Political Commitment to International Humanitarian Law and Call for a High-Level Meeting to Uphold Humanity in War in 2026", news release, 27 September 2024, available at: https://www.icrc.org/en/news-release/global-initiative-galvanise-political-commitment-ihl-uphold-humanity-war (all internet references were accessed in January 2025).

The debate over whether IHL legitimizes armed conflict has existed since before the first Geneva Convention of 1864. Critics have argued that IHL, along with the broader humanitarian movement, inadvertently condones armed conflict rather than advocating for its abolition. This criticism first came from the pacifist movement at the end of the nineteenth century, when war was not yet outlawed, as it is today – albeit with some exceptions – by the United Nations (UN) Charter. As the pacifist Bertha von Suttner wrote in 1912, "[s]o-called international law – dry legalism – does not fit into the peace movement, about as little as the Red Cross does".[2] This criticism was not entirely unjustified, as many international lawyers and States preferred to concentrate on regulating war in those days, not believing that war could be abolished or indeed not wanting its abolition. When Henry Dunant received the Nobel Prize for Peace in 1901, von Suttner asked him to write a few lines explaining that he had received it for his work on peace and not for his Red Cross work, because, as she wrote, "in general, the world only knows you as the founder of an institution that makes war easier". She wanted proof from him that he was one of those who "(after war has been made easier) wants to abolish war".[3] Early social democrats like Rosa Luxemburg similarly sought to "expose the bourgeois attempts to restrain militarism as pitiful half-measures",[4] considering that "[w]orld peace cannot be secured by such utopian or basically reactionary plans as international courts of arbitration composed of capitalist diplomats, diplomatic agreements concerning 'disarmament' … and the like".[5] The Disarmament Committee of the Women's International Organisations at the Conference for the Reduction and Limitation of Armaments of February 1932 stated: "We have no belief in the possibility of humanising warfare nor of defending civil populations from poison gases or other modern methods of waging war."[6]

The founders of the ICRC, on the other hand, saw no contradiction in supporting peace while at the same time working for the humanization of war. Gustave Moynier, the first president of the organization, was among the first to outline the ICRC's position in refraining from joining the pacifist movement while at the same time supporting its aims.[7] In Moynier's words, "[t]he Red

2 Brigitte Hamann, *Bertha von Suttner*, Pieper Verlag, Vienna, 2015, p. 169. Today, this criticism is shared by Samuel Moyn: see Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War*, Farrar, Straus and Giroux, New York, 2021, pp. 79 ff.

3 B. Hamann, above note 2, p. 231.

4 Rosa Luxemburg, "Peace Utopias", *Luxemburg Internet Archives*, 1911, available at: www.marxists.org/archive/luxemburg/1911/05/11.htm.

5 Rosa Luxemburg, "Either Or", *Luxemburg Internet Archives*, April 1916, available at: www.marxists.org/archive/luxemburg/1916/04/eitheror.htm

6 Cited in Louise Arimatsu, "Transformative Disarmament: Crafting a Roadmap for Peace", *International Law Studies*, Vol. 97, 2021, p. 855.

7 André Durand, "Gustave Moynier and the Peace Societies", *International Review of the Red Cross*, Vol. 36, No. 314, 1996, p. 544. Moynier was a founding member not only of the Ligue Internationale et Permanente de la Paix but also of the Institut de Droit International, one of whose main objectives was to encourage arbitration: see A. Durand, *ibid.*, p. 544; André Durand, "The Role of Gustave Moynier in the Founding of the Institute of International Law", *International Review of the Red Cross*, Vol. 34, No. 303, 1994; Jean de Senarclens, *Gustave Moynier: Le bâtisseur*, Slatkine, Geneva, 2000, pp. 256–258. However, as Doreen Lustig shows, the role of international law and lawyers (like Moynier) nonetheless led to a sidelining of

Cross also counts, let us say it loudly, on the contagious spectacle it gives of a firm faith in the fraternity of peoples, advocated by all the apostles of peace as their strongest support".[8] At the same time, the ICRC's founders were clear that while the protection of human dignity during armed conflict and peace are mutually reinforcing, they are not identical objectives.[9] As Daniel Palmieri shows in his article in this issue of the *Review*, the position of the ICRC in this respect has essentially remained the same until today: IHL seeks to lessen the evils of war, and thereby can indirectly contribute to restoring peace. Throughout its history, however, and with some notable exceptions, the ICRC has generally refrained from being involved in conflict prevention or peacebuilding and has concentrated on its mission to alleviate suffering for the victims of armed conflicts on all sides.

Today, similar debates persist. Some voices argue that the regulation of armed conflicts works to make the inevitability of wars acceptable. So long as they are fought "humanely", wars are more "digestible", thus enabling prolonged conflicts like the so-called "war on terror".[10] The emphasis should instead be on total disarmament and the abolition of war. Others, including important feminist voices, have cautioned that the regulation of war detracts from the need to concentrate on war's underlying root causes, and in particular the militarization of societies, gender inequality, global economic inequalities and the arms trade.[11] We have been warned against war as a "state of mind" that permeates legal thinking[12] and makes us accept too easily rules that contain fewer safeguards against violence and abuse than peacetime rules do.[13]

This brief overview cannot do justice to all the facets of this rich and important debate. Practitioners of IHL need to be ever mindful of these warnings, especially at a time when the inevitability of war is mentioned with alarming

the pacifist movement: "[T]he late nineteenth-century international codification would not follow the path of the abolition of war nor would it allow for the inclusion of civil society in its design. Conversely, the new legitimating force of the post-1860 laws of war would be consent (between governments) and expertise (of international lawyers)." Doreen Lustig, "The Peace Movement and Grassroots International Law", *Yearbook of International Humanitarian Law*, Vol. 24, 2021, pp. 175–176, available at: https://doi.org/10.1007/978-94-6265-559-1_6.

8 "La Croix-Rouge et l'œuvre de la paix", *Bulletin International des Societes de la Croix-Rouge*, No. 126, 1901, p. 77.

9 Nuance should be given in relation to Dunant, given that he would later become a staunch supporter and close ally of Bertha von Suttner, the ranks of whom he later joined to bolster and speak in favour of within the pacifism movement. For more on this transition, see André Durand, "The Development of the Idea of Peace in the Thinking of Henry Dunant", *International Review of the Red Cross*, Vol. 26, No. 50, 1986, pp. 18 ff.; Corinne Chaponnière, *Henry Dunant: La croix d'un homme*, Labor & Fides, 2018, pp. 465 ff.

10 S. Moyn, above note 2, pp. 12–13; Rebecca Sanders, "Human Rights and Counterterrorism: The American 'Global War on Terror'", in Damien Rogers (ed.), *Human Rights in War*, Springer, Singapore, 2022, pp. 425-443; Cheyney Ryan, *Pacifism as War Abolitionism*, Routledge, New York, 2024. See also David Kennedy, *Of War and Law*, Princeton University Press, Princeton, NJ, 2006.

11 See, for example, Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives*, University of California Press, Oakland, CA, 2000. More often perhaps, feminists deplore that IHL has traditionally disregarded women's distinct experience of armed conflict: see, for example, Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001.

12 Andrew Clapham, *War*, Oxford University Press, Oxford, 2021, p. vi.

13 *Ibid.*, p. xv.

frequency, and when the international security discourse speaks of security threats in such abstract terms that the reality of men, women and children who bear the consequences of armed conflict is invariably obscured, glossed over by military and political euphemisms.

To address some of these questions and warnings, the first thing to recall is that IHL must be understood as only one limited part of the wider construct of international law.

IHL acknowledges the reality of wars and offers a normative framework to curtail their catastrophic humanitarian costs to the extent practicable; it does not legitimize, condone or legalize the resort to armed force. The objective of IHL is to regulate the conduct of parties in armed conflict, once it breaks out, by limiting the scale and severity of suffering. It is oriented neither towards preventing armed conflicts, nor towards resolving them by addressing their underlying political, social, economic or other motivations – some of these considerations are addressed by *jus ad bellum* and international law in general. It is merely one piece of the puzzle of international law. It is the role of the UN Charter to prevent armed conflicts and preserve international peace and security.

At the same time, IHL treaties and the positions of States adopting them make very clear that the existence of IHL as a legal framework cannot be invoked to justify any resort to force between States.[14] The 1949 Diplomatic Conference stated that

> its work having been inspired solely by humanitarian aims, its earnest hope is that, in the future, Governments may never have to apply the Geneva Conventions for the Protection of War Victims …. [I]ts strongest desire is that the Powers … may always reach a friendly settlement … so that peace shall reign on earth for ever.[15]

Similarly, the preamble of Additional Protocol I states that the High Contracting Parties proclaim their wish for peace and that "nothing in this Protocol or in the Geneva Conventions of 12 August 1949 shall be construed as legitimizing or authorizing any act of aggression or any use of force inconsistent with the Charter of the United Nations". A number of weapons treaties and humanitarian disarmament treaties also affirm the link between disarmament and peace. For example, the Convention on Certain Conventional Weapons states as its goal "the ending of the arms race and the building of confidence among States, and hence … the realization of the aspiration of all peoples to live in peace".[16]

At the time of writing, there does not seem to be empirical evidence to demonstrate that respect for IHL has contributed to the multiplication or prolongation of armed conflicts; nor, for that matter, that respect for IHL has contributed to shortening armed conflicts. Nor are we aware of evidence showing

14 Anne Quintin, *The Nature of International Humanitarian Law*, Edward Elgar, Cheltenham, 2020, p. 18.
15 Diplomatic Conference, Geneva, 12 August 1949, Res. 8.
16 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1342 UNTS 137, 10 October 1980 (entered into force 2 December 1983), Preamble.

that the mere existence of a body of law insisting on preserving humanity in armed conflicts has a demonstrable impact on decisions to go to war in the first place.

That being said, it is important that the scope of application of IHL not be extended beyond the situations which it was meant to regulate. There can be a temptation by States to expand IHL's geographic, material, temporal or personal scope of application in situations which do not qualify as an armed conflict, in order to justify a use of force that would not be allowed in peacetime, including in situations of violence below the threshold of armed conflict.[17] Today, there is a real risk that

> the law simply adjusts to become an apology for what some states feel they need to do … [and] that the law of war is simply invoked in a rather casual way to explain away questions about the morality, wisdom and legitimacy of all sorts of activity.[18]

It must be made clear that IHL only applies in armed conflict situations[19] as they are defined under international law.[20] There is also a danger that IHL – instead of being applied as the protective body of law that it was designed to be – is simply invoked to justify unchecked levels of violence by stretching beyond breaking point the rules on

17 Gloria Gaggioli and Pavle Kilibarda, "Counter-Terrorism and the Risk of Over-Classification of Situations of Violence", *International Review of the Red Cross*, Vol. 103, No. 916–917, 2021; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2011, p 22, available at: www.icrc.org/sites/default/files/external/doc/en/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf.

18 A. Clapham, above note 12, pp. xviii–xix.

19 Save for some rules that apply in peacetime – precisely in order to be prepared in conflict situations to uphold IHL obligations – such as Art. 1 common to the four Geneva Conventions (common Art. 1); Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Arts 26 (notification of societies authorized to assist the medical services of armed forces), 44, 47; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Arts 43, 48; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Arts 122–123, 127; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Arts 136–137 and 140 (National Information Bureaux), 144; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Arts 18 (marking protected objects with the distinctive emblem), 36 (legal review of new weapons), 60 (establishment of demilitarized zones), 83; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 19 (dissemination of IHL); Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 143, available at: https://ihl-databases.icrc.org/en/customary-ihl/rules; and in the aftermath, such as GC I, Art. 49; GC II, Art. 50; GC III, Arts 5, 129; GC IV, Arts 6, 146 (investigation and prosecution of war crimes); AP II, Arts 2(2) (treatment of prisoners of war, civilian internees and persons detained in connection with the armed conflict until their final release and repatriation), 6(5) (granting of amnesties); ICRC Customary Law Study, Rules 158, 159.

20 ICRC, *How Is the Term "Armed Conflict" Defined in International Humanitarian Law?*, opinion paper, Geneva, 2024, available at: www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf; Jelena Pejic, "The Protective Scope of Common Article 3: More than Meets the Eye", *International Review of the Red Cross*, Vol. 93, No. 881, 2011.

the conduct of hostilities. These rules require a balancing of military necessity and humanity that is designed to allow parties to conflict to defeat the military forces of the enemy, and only those forces, but their ultimate purpose is to protect civilians against the dangers of military operations. IHL, restrictive though it is meant to be for the exceptional situation of armed conflict, is nonetheless in some areas more permissive than human rights law when it comes to using force against people or depriving them of liberty.[21] It is therefore sometimes invoked to displace peacetime rules, especially international human rights law, in order to justify wide-reaching powers of the belligerents. In order to avoid abuse in this area, IHL, like all other bodies of law, must be read in light of other applicable rules of international law, especially human rights law.[22]

IHL is indeed at risk of being misused to justify excessive amounts of military violence. While it does acknowledge that in armed conflict military operations take place and will cause death and destruction, its object and purpose are not to fuel more violence but to limit its effects on the victims, and to limit their number. Evidence over the years has shown that IHL does provide a measure of humanity when respected. This, however, requires that, while being an integral part of international law, IHL must be strictly kept separate from another part: *jus ad bellum*.

Why *jus ad bellum* and *jus in bello* must continue to remain separate bodies of law

If the UN Charter is the modern law of peace, and IHL is the law of war, how can the law of war be disconnected from the law of peace?

Jus ad bellum is a distinct body of international law which governs the legality of the resort to armed force between States. The general prohibition against the use of force amongst States and the very limited exceptions thereto, set out in the UN Charter or reflected in custom, are the core norms of *jus ad bellum*. The primary goal of *jus ad bellum* is to ensure, as far as possible, international peace and security between States by eliminating war altogether.[23] It does so by prohibiting States from resorting to armed force[24] except for reasons of self-defence[25] or collective security (as authorized by the UN Security Council),[26] requiring the peaceful resolution of disputes instead.[27]

21 For a discussion on the permissive and restrictive nature of IHL, see Anne Quintin, *The Nature of International Humanitarian Law*, Edward Elgar, Cheltenham, 2020; Adil Haque, *Law and Morality at War*, Oxford University Press, Oxford, 2017, pp. 23 ff.
22 See Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entered into force 27 January 1980), Art. 31(3)(c).
23 Charter of the United Nations, 1 UNTS XVI, 26 June 1945 (entered into force 24 October 1945) (UN Charter), Preamble.
24 *Ibid.*, Art. 2(4).
25 *Ibid.*, Art. 51.
26 *Ibid.*, Art. 42.
27 *Ibid.*, Art. 2(3).

Unlike *jus ad bellum*, which addresses the justification(s) for resorting to war, *jus in bello* is synonymous with IHL. *Jus in bello* is therefore aimed at regulating and imposing limits on the conduct of belligerent parties, regardless of the reasons for going to war or the justness of the causes for which they are, or claim to be, fighting.[28] Thus, when there is an outbreak of armed conflict, irrespective of its actual, claimed or perceived legitimacy or lawfulness under *jus ad bellum,* the protective rules of *jus in bello* kick into action and bind all belligerent parties equally.[29]

Though *jus ad bellum* and *jus in bello* have distinct objectives and domains of application, there have been attempts at conflating the two, especially in the context of contemporary armed conflicts. The argument goes that in order to maintain the peace, would-be aggressors have to be deterred by being put at a disadvantage compared to law-abiding parties, and no incentive or legitimacy should be given to would-be aggressors by putting them on the same footing as defenders, as IHL purportedly does.[30]

For instance, some scholars (and States) argue that the *jus in bello* obligations of a belligerent party should be shaped by the legality of their resort to armed force under *jus ad bellum*. The party which is fighting for a "just" cause ought to have a greater leeway in the manner in which it applies *jus in bello* norms to its conduct vis-à-vis the other party. This entails interpretations of what qualifies as "military advantage", "proportionality" or "military necessity" that are relative to the justness of the cause, with the "just" party being entitled to greater use of force and protection against accountability, and the other party to less.[31] Combatant immunity is similarly challenged, with the argument that accountability for the crime of aggression should not be limited to leaders of a State, but should extend to its soldiers, sailors and pilots.[32]

The blurring of the lines between *jus ad bellum* and *jus in bello* would, however, lead to the erosion of humanitarian protections in armed conflict. The

28 ICRC, "What Are *Jus ad Bellum* and *Jus in Bello*?", 2015, available at: www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0.

29 ICRC, above note 20, p. 7.

30 The concept of *jus ad bellum* only applies between States, but similar arguments are made in relation to non-international armed conflicts, especially the argument that IHL should not provide "equality of belligerents" to non-State armed groups. See Eyal Benvenisti, "Rethinking the Divide between *Jus ad Bellum* and *Jus in Bello* in Warfare against Nonstate Actors", *Yale Journal of International Law*, Vol. 34, 2009, pp. 545 ff.

31 See David Rodin, "The Moral Inequality of Soldiers: Why *Jus in Bello* Asymmetry is Half Right", in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Oxford University Press, Oxford, 2008, p. 53: ("those fighting a just war may inflict harm (including foreseen but unintended harm on non-combatants) to a level which is a function of the goodness of their cause and the contribution a given military action makes to the cause. But those fighting an unjust war may not inflict any harm on combatants or non-combatants, for (their cause being unjust) there is no good which could render the harmful effects proportionate"); Thomas Hurka, "Proportionality in the Morality of War", *Philosophy and Public Affairs*, Vol. 33, No. 1, 2005, p. 45 ("Whether an act in war is *in bello* proportionate depends on the relevant good it does, which in turn depends on its *ad bellum* just causes"); Jeff McMahan, *Killing in War*, Oxford University Press, Oxford, 2009, pp. 18–32. See also the discussion on just and unjust war in A. Haque, above note 21, pp. 1–18; Seth Lazar, "Just War Theory: Revisionists versus Traditionalists", *Annual Review of Political* Science, Vol. 20, 2017.

32 A. Clapham, above note 12, p. 277.

reason for IHL to be strictly separate from *jus ad bellum* is first and foremost humanitarian: there are victims on all sides of a conflict, and they all deserve protection. Indeed, at the very origin of the first Geneva Convention is the idea that all wounded and sick soldiers must be cared for, no matter which side they are on. This has been the theme of protection throughout the history of IHL: the means and methods of warfare are subject to limitations for all parties, and anyone not or no longer fighting must be protected.[33] Also, as States inevitably see themselves as the victims of aggression from the other side, to undermine combatant immunity would inevitably invite an unravelling of the prisoner of war status and the protections that come with it.

This strict separation between *jus ad bellum* and *jus in bello* is reflected in Article 1 common to the four Geneva Conventions (common Article 1), which imposes the obligation "to respect and to ensure respect for the … Convention[s] *in all circumstances*" (emphasis added), indicating that the application of the Geneva Conventions (and IHL in general) is not contingent on the legal (or moral) justification(s) for an armed conflict.[34] It is also explicitly affirmed by the preamble to Additional Protocol I, which states that IHL provisions "must be fully applied in all circumstances … without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict", and has been reiterated in various judicial decisions.[35]

Consequently, the ICRC has consistently maintained that there must be strict separation between *jus in bello* and *jus ad bellum* – *jus ad bellum* considerations have no effect on the application of IHL rules, which uniformly bind all belligerent parties, with no regard to who started the fighting or why.[36] So, while both *jus ad bellum* and *jus in bello* may apply concomitantly through

33 ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed., Geneva, 2020 (ICRC Commentary on GC III), para. 249 on Art. 2, para. 553 on Art. 3; Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, Cheltenham, 2024, pp. 2, 10; ICRC, *International Humanitarian Law: Answers to your Questions*, Geneva, 2015, p. 9, available at: www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0703.pdf. The International Law Commission (ILC) also holds an identical view: see ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, in *Yearbook of the International Law Commission*, Vol. 2, No. 2, 2001, para. 3 on Art. 21, citing International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, *ICJ Report 1996*, para. 79.

34 ICRC Commentary on GC III, above note 33, para. 219 on Art. 2. See a discussion on the legal reasons for the separation of *jus and bellum* and *jus in bello* in Kubo Mačák, "In Honor of Yoram Dinstein: The Separation between the Jus ad Bellum and the Jus in Bello", *Articles of War*, 10 May 2024, available at: https://lieber.westpoint.edu/separation-between-jus-in-bello-jus-ad-bellum/.

35 UN War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 8, HM Stationery Office, London, 1949, pp. 59–60, available at: www.jewishvirtuallibrary.org/jsource/Holocaust/Hostages-Trial.pdf, citing Lassa Oppenheim, *International Law: A Treatise*, Vol. 2: *War and Neutrality*, 1912; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgment (Appeals Chamber), 17 December 2004, para. 1082; Special Court for Sierra Leone, *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-A, Judgment (Appeals Chamber), 28 May 2008, paras 529–530, citing AP I, Preamble.

36 ICRC, above note 28. This principle was reaffirmed in Resolution 1 of the 2024 International Conference of the Red Cross and Red Crescent, entitled "Building a Universal Culture of Compliance with International Humanitarian Law".

their own, distinct rules, they can never influence the application of one another. Nor do they displace each other: the applicability of IHL does not displace the application of the UN Charter.[37]

In sum, it is only by upholding the strict separation of *jus ad bellum* and *jus in bello* that IHL can contribute in concrete and pragmatic ways to alleviating the suffering of all people affected by armed conflict, regardless of which side they are on.

How can IHL contribute to finding pathways to peace?

IHL cannot prevent wars or end them, nor is that its function. However, though there is no empirical evidence at the time of writing to demonstrate that armed conflicts have been short-lived or prolonged relative to their level of adherence to IHL, IHL is certainly equipped to play a part in the peacebuilding process and post-conflict recovery, albeit indirectly.

Firstly, respect for IHL rules can foster conditions that promote peace. For instance, by requiring the humane treatment of detainees,[38] proper handling of the dead,[39] and medical care for civilians and combatants alike,[40] IHL protects and upholds the human dignity, physical integrity and life of those not or no longer fighting, without discrimination. Further, it can prevent dehumanization and deepening spirals of retribution and violence.[41] Respect for IHL can remove at least some obstacles to peacemaking: fewer displaced people, refugees and destroyed homes mean less effort spent on negotiating return or resettlement; better respect for safeguards in detention means more clarity and simplicity in determining whom to release and when; the resolution of missing persons cases and the reunification of families means relief from the collective anguish and resentment that can hinder peace; and fewer explosive remnants of war mean a less onerous clearing burden and a smoother return to productive urban and agricultural life.[42]

37 The fact that the ICRC, as a neutral humanitarian organization, does not take a position on the UN Charter (and, in parallel, in non-international armed conflict, does not take sides in the conflict) is simply a method that allows the ICRC to carry out its work for the benefit of victims on all sides of the conflict – it is never a legal statement on *jus ad bellum* questions or the legitimacy of a party to a conflict. See Fiona Terry, "Taking Action, not Sides: The Benefits of Humanitarian Neutrality in War", *Humanitarian Law and Policy Blog*, 21 June 2022, available at: https://blogs.icrc.org/law-and-policy/2022/06/21/taking-action-not-sides-humanitarian-neutrality/.

38 GC III, Art. 52; GC IV, Section IV.

39 ICRC Customary Law Study, above note 19, Rules 113–116; GC I, Art. 17; GC II, Art. 20; GC III, Art. 120; GC IV, Art. 130; AP I, Art. 34; AP II, Art. 8.

40 ICRC Customary Law Study, above note 19, Rule 110; common Art. 3; GC I, Art. 12; GC II, Art. 12; AP I, Art. 10; AP II, Art. 7(2).

41 See, for example, UN Development Programme, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment*, 2017, p. 5, reporting that 71% of respondents pointed to "government action", including "killing of a family member or friend" or "arrest of a family member or friend", as the incident that prompted them to join violent extremist groups.

42 The Convention on Cluster Munitions, 2688 UNTS 39, 30 May 2008 (entered into force 1 August 2010), is explicit in its preamble about the need to prohibit cluster munitions in order to eliminate obstacles to post-

Respect for IHL can also facilitate a return to peace by reducing the material cost of war on civilians and civilian objects, thus potentially contributing to the restoration of stability in the war's aftermath. By specially protecting objects indispensable to the survival of the civilian population (such as foodstuffs, water sources and livestock),[43] hospitals,[44] schools,[45] and religious, cultural and historic monuments,[46] IHL helps conserve these resources and lay the groundwork for rebuilding villages, cities and societies after war. Moreover, ensuring that essential civilian infrastructure and civilian institutions that are critical for domestic and international commerce remain operational helps preserve some measure of economic security for the population, and can make the resumption of peaceful life at the end of an armed conflict quicker. In sum, better respect for IHL can make reconstruction less costly and onerous once war is over.

By a similar token, systematic IHL violations undermine the reputation of belligerent parties, which may create an additional obstacle to dialogue toward peace. Non-State armed groups, especially those seeking legitimacy and the support of the international community, can seek to adhere to (or to be seen to adhere to) IHL norms, so as to be accepted into political processes and governance structures in post-conflict scenarios.[47]

Secondly, IHL encourages the belligerent parties to create humanitarian spaces that protect victims of war, which may, in the long run, serve to inspire a spirit in which humanitarian agreements, rather than violence, become a trusted method underpinning future peace negotiations. For example, parties may enter into "special agreements"[48] for the establishment of safety and neutralized zones,[49] for cooperation in the search for missing persons,[50] for the recovery and exchange of remains of the dead,[51] for the reciprocal release of

conflict rehabilitation and international peacebuilding: "Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use."

43 ICRC Customary Law Study, above note 19, Rule 54; GC IV, Art. 23; AP I, Art. 54; AP II, Art. 14.

44 ICRC Customary Law Study, above note 19, Rule 28; GC I, Art. 19; GC II, Arts 22–23; AP I, Art. 12; AP II, Art. 11.

45 AP I, Art. 52(3).

46 ICRC Customary Law Study, above note 19, Rules 38–40; AP I, Art. 53; AP II, Art. 16.

47 Hyeran Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics*, Cambridge University Press, Cambridge, 2015, pp. 52, 93; Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law*, Cambridge University Press, Cambridge, 2017, p. 7; Margarita Konaev and Tanisha Fazal, "Can International Humanitarian Law Restrain Armed Groups? Lessons from NGO Work on Anti-Personnel Landmines", *Lawfare*, 30 September 2018, available at: www.lawfaremedia.org/article/can-international-humanitarian-law-restrain-armed-groups-lessons-ngo-work-anti-personnel-landmines; Ezequiel Heffes, "Compliance with IHL by Non-State Armed Groups: Some Practical Reflections at the 70th Anniversary of the 1949 Geneva Conventions", *EJIL: Talk!*, 21 August 2019, available at: www.ejiltalk.org/compliance-with-ihl-by-non-state-armed-groups-some-practical-reflections-at-the-70th-anniversary-of-the-1949-geneva-conventions/.

48 Common Art. 3; GC I, Art. 6; GC II, Art. 6; GC III, Art. 6; GC IV, Art. 7.

49 GC I, Art. 23; GC IV, Arts 14–15.

50 GC I, Art. 15; GC II, Art. 18; GC III, Art. 119; GC IV, Arts 17, 133; AP I, Art. 33.

51 AP I, Art. 34.

detainees,[52] or for temporary ceasefires[53] to facilitate humanitarian relief[54] or evacuation of the wounded.[55] These temporary measures can be first steps towards building mutual trust between the belligerent parties, thereby showing ways to resolve at least part of their dispute peacefully.[56] Importantly, IHL also contains detailed rules for the release and repatriation of prisoners of war and civilians at the end of hostilities.[57]

If agreed by all parties to the armed conflict, humanitarian organizations like the ICRC may perform a variety of humanitarian activities under the framework of IHL. Such activities can constitute small, modest bridges to peace, such as providing safe passage to participate in peace talks, bringing detainees home, sharing information about missing people, accompanying members of separated families across front lines and reuniting them with their relatives, escorting and enabling the work of humanitarian demining missions through combat zones, or conveying messages to organize ceasefires, simultaneous releases of detainees or evacuations from besieged areas.[58]

Thirdly, IHL supports peacebuilding by providing a framework for transitional justice and accountability. On the one hand, IHL operates on the basis that combatants in international armed conflicts are immune from prosecution for merely participating in hostilities. It encourages clemency and forgiveness at the end of non-international armed conflicts by including an obligation of the authorities in power to endeavour to grant the broadest possible amnesties to persons who have taken a direct part in the hostilities (without having committed war crimes).[59] Such amnesties, where lawful, are a facet of transitional justice which would go a long way in facilitating post-war reconciliation. On the other hand, IHL also seeks to support sustainable and lasting peace by providing accountability for war crimes and requiring States to investigate and prosecute them.[60] This too is an important part of the transition to peace, restoring a measure of justice to the victims, acknowledging their

52 ICRC Commentary on GC III, above note 33, para. 1138 on Art. 6.
53 *Ibid.*, para. 1139 on Art. 6.
54 GC III, Arts 72–73; GC IV, Arts 108–109; AP I, Art. 70.
55 GC I, Art. 15; GC II, Art. 18; GC IV, Art. 17.
56 See, for example, Marcela Giraldo Muñoz and Jose Serralvo, "International Humanitarian Law in Colombia: Going a Step Beyond", *International Review of the Red Cross*, Vol. 101, No. 912, 2019; César Rojas-Orozco, "The Role of International Humanitarian Law in the Search for Peace: Lessons from Colombia", *International Review of the Red Cross*, Vol. 102, No. 914, 2021. See also the example of the Dominican Republic, mentioned in Daniel Palmieri's article in this issue of the *Review*: Daniel Palmieri, "'Si vis Pacem, Impera Bellum': The ICRC, International Humanitarian Law and Peace", *International Review of the Red Cross*, Vol. 106, No. 927, 2024.
57 ICRC Commentary on GC III, above note 33, para. 1138 on Art. 6.
58 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2024, pp. 71–72, available at: https://shop.icrc.org/international-humanitarian-law-and-the-challenges-of-contemporary-armed-conflicts-building-a-culture-of-compliance-for-ihl-to-protect-humanity-in-today-s-and-future-conflicts-pdf-en.html; ICRC, "There Are 100 Steps to Peace; the First are Humanitarian", ICRC President Guest Lecture at the International Academy of Red Cross and Red Crescent, Suzhou University, Suzhou, 2023, available at: www.icrc.org/en/document/100-steps-to-peace-first-humanitarian.
59 ICRC Customary Law Study, above note 19, Rule 159; AP II, Art. 6(5).
60 ICRC Customary Law Study, above note 19, Rule 158; GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146.

suffering, contributing to trust in legal institutions, and sending a strong signal against impunity and repetition of such violations. Such actions should make it easier for all levels of society to take steps toward peace.

Lastly, several IHL rules continue to apply in the aftermath of armed conflict, protecting people in the transition from conflict to peace. For example, even (years) after the end of an international armed conflict, the treatment of prisoners of war and civilian internees in detention continues to be regulated by IHL until their final release and repatriation.[61] Similar protections are also available to persons deprived of their liberty in connection with a non-international armed conflict.[62] Belligerent parties remain bound by obligations related to the restoration of family links, accounting for the missing and the dead, the prosecution and punishment of those responsible for war crimes and serious violations of IHL, and the clearance of unexploded ordnance and explosive remnants of war, even after the end of an armed conflict.[63]

Conclusion

As experience has demonstrated, no legal framework has so far been capable of entirely stopping wars – the factors leading to armed conflicts are too complex. The urgency to pursue peace and counter the discourse of the inevitability of war must therefore continue, and the trend of multiplying conflicts must be reversed. No amount of IHL and no amount of humanitarian assistance could ever make wars free of suffering – which makes it difficult to maintain the notion that the mere existence of a legal framework designed to regulate what has otherwise been outlawed plays any role in decisions to engage in armed conflicts.

In the meantime, even though IHL does not prevent wars, it does provide a measure of humanity when they break out, and is a crucial piece of the puzzle in modern international law's quest for international peace and security. In the absence of the restraints imposed by IHL, however, armed conflicts would likely become more barbaric, destructive and inhumane. Without IHL's enabling framework, humanitarian actors would struggle even more to perform their essential work, such as delivering relief and assistance to civilian populations[64] and engaging with parties to protect those deprived of liberty.[65] IHL provides many rules and incentives which, when respected, may eventually facilitate a way out of conflict. Humanitarian restraint in war and the quest for peace are not mutually exclusive, they are complementary endeavours.

61 GC III, Art. 5; GC IV, Art. 6.
62 AP II, Art. 2(2); ICRC Commentary on GC III, above note 33, para. 535 on Art. 3.
63 Ramin Mahnad and Kelisiana Thynne, "Silenced Guns Do Not Mend Lives: What Does the Law Say about Human Suffering at the End of Conflict?", *Humanitarian Law and Policy Blog*, 21 July 2022, available at: https://blogs.icrc.org/law-and-policy/2022/07/21/silenced-guns-lives-law-end-of-conflict/.
64 ICRC Customary Law Study, above note 19, Rules 31, 32, 55, 56; common Art. 3; GC IV, Arts 23, 59; AP I, Art. 70(2); AP II, Art. 18(2).
65 ICRC Customary Law Study, above note 19, Rule 124; GC III, Art. 126; GC IV, Art. 76.