Law in War: Treaties, War Crimes, and the Evolution of the Laws of Armed Conflict

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Table of Contents

Introduction

War has long tested the outer limits of law. Yet even in the most violent conflicts, legal rules have sought to restrain cruelty, channel force, and safeguard human dignity. This book explains the legal framework governing warfare, tracing its evolution from the codification efforts of The Hague to the post–Second World War prosecutions at Nuremberg and onward to today’s web of treaties, customary norms, and accountability mechanisms. It is written for students and practitioners who need clear, practice-oriented guidance on rules of engagement, the investigation and prosecution of war crimes, and the persistent gaps that complicate enforcement in modern theaters of war. The aim is both explanatory and practical: to clarify what the law is, why it is structured as it is, and how it is applied in real cases.

The laws of armed conflict—also known as international humanitarian law—emerge from multiple sources that interact in complex ways. Treaties such as the Geneva Conventions and their Additional Protocols set widely accepted baselines, while customary international law fills in where texts are silent or contested. Domestic legislation, military manuals, and jurisprudence from international and hybrid courts further shape the content of obligations and liabilities. Throughout the chapters that follow, we situate each legal rule within this layered architecture, highlighting where consensus is strong, where state practice diverges, and where interpretive controversies persist. By foregrounding sources and methods, readers learn not only the rules but how to reason with them.

The historical arc from The Hague to Nuremberg reveals how law responds to the technologies, strategies, and tragedies of its time. Hague law emphasized means and methods of warfare and the rights and duties of belligerents; Geneva law centered the protection of the wounded, prisoners, and civilians. Nuremberg, in turn, catalyzed the modern project of individual criminal accountability, shaping doctrines of command responsibility, joint criminal enterprise, and the prosecution of crimes against humanity and genocide. This legacy reverberates through contemporary institutions—from ad hoc tribunals to the International Criminal Court—and through national courts exercising universal jurisdiction. Understanding this lineage is essential to grasping both the power and the limits of accountability today.

Modern conflict settings challenge established categories and enforcement pathways. Non-international armed conflicts dominate the landscape, often involving non-state armed groups, foreign fighters, and private military companies. Urban warfare magnifies risks to civilians and critical infrastructure; new domains like cyberspace blur lines of geography and attribution; and remote or autonomous weapons systems stress traditional notions of control, precaution, and proportionality. Counterterrorism frameworks intersect with humanitarian rules in detention, targeting, and sanctions, raising tensions between security imperatives and humanitarian access. These realities demand careful, source-grounded analysis to preserve the coherence and credibility of the law.

Accountability mechanisms have diversified beyond courts alone. Alongside international and hybrid tribunals stand domestic prosecutions, truth commissions, reparations programs, targeted sanctions, and monitoring bodies that document violations and catalyze compliance. Each mechanism carries distinct strengths, evidentiary demands, and political tradeoffs. For practitioners, the craft lies in selecting viable pathways, building factually rigorous cases, and safeguarding fair trial guarantees while centering victims and affected communities. For students, mapping this ecosystem reveals that enforcement is not a single pathway but a coordinated field of options, constraints, and opportunities.

This book is organized to bridge doctrine and practice. Early chapters establish core concepts—sources of law, the classification of conflicts, combatant status, rules of engagement, targeting, weapons, and protection regimes. Middle chapters address international crimes, modes of liability, defenses, immunities, evidence, and procedural guarantees. Later chapters examine institutions and mechanisms—the ICC, ad hoc and hybrid tribunals, universal jurisdiction, transitional justice, and contemporary accountability tools—before turning to cross-cutting issues such as sexual and gender-based violence, children in conflict, private military companies, and cyber operations. The concluding chapters assess compliance and enforcement trends and consider the future evolution of the laws of armed conflict amid rapid technological and geopolitical change. The goal throughout is practical clarity grounded in rigorous legal method, equipping readers to navigate, apply, and, where necessary, reform the law in war.

CHAPTER ONE: The Architecture of International Humanitarian Law

If international humanitarian law were a building, it would not be a modernist tower of glass and steel. It would be more like a medieval cathedral—constructed over centuries, bearing the marks of different architects, patched and renovated after fires and wars, yet somehow still standing and still recognizably whole. Understanding that architecture is the first task for anyone who wishes to work within the law of armed conflict, because without a sense of the structure, the individual rules and provisions become a disorienting heap of obligations. This chapter lays out the principal load-bearing walls, the buttresses, and the stained-glass windows of the edifice, so that the detail that follows in later chapters can be situated within a coherent picture.

International humanitarian law, or IHL, is the body of rules that seeks to limit the effects of armed conflict. It does so by protecting persons who are not, or are no longer, participating in hostilities, and by restricting the means and methods of

warfare available to the fighting parties. It is one branch of public international law, sitting alongside the law of the sea, diplomatic law, the law of treaties, and international criminal law. Its sources are treaties, customary international law, general principles of law recognized by civilized nations, and—increasingly—judicial and scholarly interpretation that gives those sources operational content. The first thing to grasp about the architecture of IHL is that it is not a single, self-contained code but a layered and overlapping system, shaped by different historical moments and by the competing demands of military necessity and human compassion.

The notion that war can and should be regulated is not modern. Ancient civilizations, including those of India, China, and the Greco-Roman world, produced codes and customs governing the conduct of hostilities. The Mahabharata counseled restraint in the treatment of surrendered enemies. Islamic jurisprudence developed elaborate rules regarding the declaration of war, the treatment of prisoners, and the protection of noncombatants. Medieval European chivalric codes, whatever their romantic veneer, also contained practical restraints on the plunder of civilians and the treatment of the vanquished. These antecedents mattered not because they constituted a formal legal system comparable to modern IHL, but because they demonstrated a recurring human intuition: that even in organized violence, some limits are both possible and necessary.

The modern codification of those intuitions began in the second half of the nineteenth century. Henry Dunant's eyewitness account of the Battle of Solferino in 1859, published as A Memory of Solferino, catalyzed the founding of the International Committee of the Red Cross and the adoption of the first Geneva Convention in 1864. That instrument, modest in scope, established the principle that wounded soldiers on the battlefield deserved medical care regardless of which side they belonged to. It was a revolutionary idea dressed in simple language: the battlefield was not beyond the reach of law. What followed was a gradual expansion of that premise, both in the categories of persons protected and in the domains of warfare regulated.

To speak of the architecture of IHL is inevitably to speak of two great traditions that grew up alongside each other and were eventually joined. The first is the tradition associated with The Hague, inaugurated by the peace conferences of 1899 and 1907. Hague law, as it is commonly called, is primarily concerned with the means and methods of warfare. It addresses which weapons may be used, how hostilities may be conducted, and what rights and duties attach to belligerents in the field. The second tradition is the Geneva tradition, rooted in the 1864 Convention and expanded through successive revisions in 1906, 1929, and 1949. Geneva law is primarily concerned with the protection of persons—wounded and sick soldiers, prisoners of war, and civilians. The two traditions were formally unified in 1949 under the single umbrella of the Geneva Conventions, and later supplemented by the Additional Protocols of 1977, but the conceptual distinction between means-and-methods regulation and person-protection remains analytically useful.

Understanding this dual structure is important because it explains why IHL contains two rather different kinds of obligations. On one hand, there are rules that operate like speed limits on a highway: they constrain what a party may do in the course of conducting operations, regardless of whether any particular individual is directly affected. Prohibitions on certain weapons, requirements to distinguish between military objectives and civilian objects, and rules governing the treatment of occupied territory all fall into this category. On the other hand, there are rules that function more like duties of care toward specific persons: an obligation to collect and care for the wounded, to provide prisoners of war with adequate food and shelter, to allow humanitarian organizations access to civilian populations. The first set of rules looks outward, toward the battlefield; the second looks inward, toward the human consequences of fighting.

The architecture of IHL also depends on a set of foundational principles that operate across both traditions. These principles are not always codified in a single authoritative text, which has led to vigorous doctrinal debate about their precise legal status. Nonetheless, they recur in treaties, military manuals, and judicial decisions with sufficient consistency to be regarded as structural elements of the system. The principle of distinction, which requires parties to an armed conflict to distinguish at all times between combatants and civilians, is perhaps the most fundamental. Without it, the entire framework of protection for civilians collapses. The principle of proportionality, which prohibits attacks expected to cause excessive civilian harm relative to the anticipated military advantage, works in tandem with distinction to set limits on the acceptable cost of military operations. Military necessity, the principle that permits only those measures required by the necessities of war, supplies the outer boundary. And the principle of humanity—sometimes described as the animating spirit of IHL—provides the moral substrate from which all of these rules ultimately derive.

These principles do not operate in isolation from each other. They exist in a state of creative tension. Military necessity drives the conduct of war forward, while humanity restrains it. Distinction channels violence toward legitimate targets, and proportionality calibrates the amount of force that may be applied. The result is a dynamic equilibrium rather than a static set of commands. Practitioners must constantly balance these principles against one another in concrete situations, and disputes about how to strike that balance are the stuff of which IHL litigation and debate are made. Different legal traditions and military cultures sometimes weight the principles differently, which is one reason why IHL remains a living and contested body of law rather than a settled code.

Another critical element of IHL's architecture is the distinction between international armed conflicts and non-international armed conflicts. International armed conflicts—wars between states—are governed by the most developed and detailed

body of rules. The four Geneva Conventions of 1949, read alongside the Hague Regulations of 1907, provide a comprehensive framework for these situations. Non-international armed conflicts—civil wars, insurgencies, and similar internal disturbances—were historically given far less detailed treatment. Common Article 3 of the Geneva Conventions provides a baseline of humanitarian protection for non-international conflicts, but it is brief and general compared to the provisions applicable to international conflicts. Additional Protocol II of 1977 attempted to fill the gap by extending a broader range of protections to non-international armed conflicts, but its acceptance among states has been uneven, and significant lacunae remain. This asymmetry is one of the most consequential structural features of IHL, because in practice the majority of armed conflicts since the Second World War have been non-international in character.

The classification of a conflict is therefore not a mere academic exercise. It determines which body of rules applies, which persons are entitled to protections, and which obligations fall upon the parties. A conflict must reach a certain threshold of intensity and organization before IHL applies at all; sporadic acts of violence or isolated incidents do not trigger its protections. The threshold for international armed conflicts is generally regarded as any resort to armed force between states, however brief or limited. For non-international armed conflicts, the test is more demanding, requiring a minimum level of intensity and a degree of organization among the parties. These threshold questions give rise to some of the most difficult legal disputes in the field, particularly in situations where one or more parties deny that an armed conflict exists at all or seek to characterize it in terms that minimize their legal obligations.

International humanitarian law does not exist in a vacuum. It intersects and sometimes collides with other branches of international law, and the architecture of legal regulation of armed conflict cannot be understood without reference to those intersections. International human rights law, for instance, continues to apply during armed conflict to the extent that it is not derogated from by the state concerned. The relationship between IHL and human rights law is a matter of ongoing scholarly and judicial debate. Some commentators speak of a "lex specialis" relationship, in which IHL, as the more specific body of law, displaces human rights law in areas of clear overlap. Others argue that the two bodies of law are complementary, each contributing distinct protections that may be invoked simultaneously. International criminal law, too, overlaps with IHL in the prosecution of war crimes and other offenses committed in the context of armed conflict. The United Nations Charter, with its provisions on the use of force and the maintenance of international peace and security, provides the broader political and legal context in which all of these rules operate.

The institutions that administer and develop IHL are themselves part of its architecture. The International Committee of the Red Cross plays a unique and somewhat sui generis role as the custodian and promoter of humanitarian law. It is not

a court and does not adjudicate disputes, but its influence on the interpretation and dissemination of IHL is immense. The International Court of Justice, the ad hoc tribunals established by the United Nations Security Council, the International Criminal Court, and various regional and hybrid courts have all contributed to the elaboration of IHL through their judgments and rulings. Domestic courts, particularly in states that have adopted universal jurisdiction legislation, have increasingly applied IHL in national proceedings, further enriching the body of case law.

One of the recurring challenges in IHL's architecture is the problem of compliance and enforcement. International law lacks a centralized enforcement mechanism comparable to the police or judiciary of a domestic legal system. States are sovereign, and the international system remains fundamentally decentralized. Treaties bind only those states that have consented to them, and customary law, while theoretically binding on all states, often proves difficult to identify and apply with precision. The gap between law on the book and law in practice is a persistent and sobering feature of the field. Violations of IHL are widespread in contemporary conflicts, and the enforcement record of the international community is uneven at best. Mechanisms of accountability—prosecutions, sanctions, truth commissions, and commissions of inquiry—have proliferated, but they operate under significant political and resource constraints.

Technology has introduced new structural challenges to the architecture as well. The rise of cyber operations, unmanned aerial vehicles, and increasingly autonomous weapons systems has outpaced the development of legal rules to govern them. Traditional concepts such as distinction and proportionality were formulated with conventional kinetic warfare in mind and do not always translate neatly to digital or remote warfare environments. The architectural challenge is to adapt existing principles to new technologies without discarding the foundational logic that has sustained the system for over a century and a half. Whether the existing framework can absorb these pressures or whether it requires a more fundamental renovation remains one of the defining questions of the field.

For all these complexities, the essential logic of IHL's architecture remains accessible. The system rests on two pillars—Hague law and Geneva law—supported by foundational principles and buttressed by a network of institutions, treaties, and customary norms. Its strength lies in its adaptability: it has survived the transition from horse-drawn artillery to precision-guided munitions, from colonial wars to asymmetric insurgencies, from bilateral conflicts to multinational coalitions. Its weakness lies in the perennial gap between aspiration and reality, law and enforcement, principle and practice. Anyone entering this field must understand both dimensions—the idealism that drives the system and the pragmatism required to work within its limitations. That dual awareness is what this book aims to provide, starting with the architecture that makes it all possible.