



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

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
INTRODUCTION.....	6
I. THE PROHIBITION OF NUCLEAR WEAPONS: PROTECTING HUMANITY FROM UNSPEAKABLE SUFFERING	10
1. Nuclear weapons and IHL.....	12
2. The Treaty on the Prohibition of Nuclear Weapons.....	12
II. CLARIFYING THE LEGAL FRAMEWORK: ‘GREY ZONES’, ‘COMPETITION’, ‘HYBRID WARFARE’ OR ‘PROXY WARFARE’	14
III. TOWARDS MORE EFFECTIVE PROTECTION FOR PEOPLE IN THE HANDS OF PARTIES TO ARMED CONFLICT	18
1. People deprived of liberty in armed conflict.....	19
A) Detention by states	19
B) Non-state armed groups and the prohibition against arbitrary detention.....	22
2. Separated family members, missing people and the dead and their families.....	24
A) Respecting family life	25
B) The ‘right to know’ under IHL.....	25
C) Recording and providing information on separated family members, missing people and the dead.....	26
D) Respecting the dead	27
3. The separation of children from their families.....	28
A) Key legal provisions in international and non-international armed conflict.....	29
B) Legal grounds and safeguards.....	29
4. Protecting diverse people.....	31
A) Reflecting gendered impacts of armed conflicts in applying IHL.....	31
B) Interpreting and implementing IHL in a disability-inclusive manner	33
IV. BALANCING IN GOOD FAITH THE PRINCIPLES OF HUMANITY AND MILITARY NECESSITY IN THE CONDUCT OF HOSTILITIES	36
1. The urbanization of armed conflict.....	37
A) Heavy explosive weapons in populated areas: A change in mindset is urgently required	38
B) Protection of critical infrastructure enabling essential services to civilians.....	40
2. The protection of medical facilities.....	42
A) Acts harmful to the enemy and their consequences	43
B) The warning requirement	43
C) Further constraints on attacks against medical facilities that have lost their protection.....	44
3. Food security	45
A) The prohibition against using starvation of civilians as a method of warfare.....	45
B) Objects indispensable to the survival of the civilian population	46
C) Other pertinent rules.....	47
D) Challenges to effective protection in practice.....	48
4. Protection of the natural environment	49
A) Implementing IHL to protect the natural environment during armed conflict	49
B) Protection of the natural environment by the general rules on the conduct of hostilities	50
C) Clarifying the “widespread, long-term and severe” threshold of prohibited damage to the natural environment	51
D) Protected environmental zones in armed conflict.....	51

5. Reinforcing the stigma associated with anti-personnel mines and cluster munitions	52
A) Faithfully implementing the APMBC and the CCM.....	53
B) Reinforcing the humanitarian norms underpinning the APMBC and the CCM.....	54
V. APPLYING IHL TO NEW TECHNOLOGIES OF WARFARE.....	56
1. Cyber operations, information operations and other digital threats.....	57
A) IHL limits on cyber operations.....	57
B) IHL limits on information operations.....	58
C) Risks and legal limits when civilians are drawn closer to hostilities through the use of digital technology.....	59
2. Autonomous weapon systems	60
A) Humans must determine the lawfulness of attacks.....	61
B) Challenges in assessing the lawfulness of attacks carried out using AWS.....	61
C) The need for new international law rules on AWS.....	63
3. Artificial intelligence in military planning and decision-making	64
A) Under IHL, humans must make legal determinations.....	64
B) AI is not suited to all tasks.....	65
C) Potential for AI-decision-support systems to support compliance with IHL and mitigation of civilian harm.....	66
D) Preserving time and space for human deliberation.....	66
4. Reducing the human cost of military operations in outer space	67
A) Existing limits under international law on military operations in, or in relation to, outer space	67
B) Working together to prevent and address the risk of civilian harm due to military space operations	68
VI. PROTECTING AND FACILITATING IMPARTIAL HUMANITARIAN WORK IN EVOLVING CONFLICTS	70
1. Maintaining space for humanitarian action in sanctions and counter-terrorism measures.....	71
A) Considering IHL in sanctions and counter-terrorism measures.....	71
B) Remaining challenges in sanctions frameworks	72
C) IHL compliance when implementing counter-terrorism measures.....	73
2. Protecting humanitarian organizations against digital threats.....	73
A) Cyber operations that breach and disrupt the IT systems of humanitarian organizations.....	74
B) Disinformation that undermines the reputation and operations of humanitarian organizations	74
VII. BUILDING A CULTURE OF COMPLIANCE WITH IHL	76
1. Bringing IHL home: States' implementation of IHL and the repression of violations	78
A) Ratifying core IHL treaties.....	78
B) Adopting national implementation measures.....	78
C) Investigating and suppressing IHL violations.....	79
D) Investing in IHL education.....	79
E) Sharing good practices	80
2. Building bridges for IHL through dialogue with cultural and legal frameworks.....	80
3. Ensuring respect for IHL in the transfer of weapons	81
A) The international legal obligation to respect IHL in arms-transfer decisions.....	82
B) Closing the gap between commitment and practice: Ensuring respect for IHL in arms-transfer decisions.....	82
4. Respect for IHL and easing the path to peace.....	83
CONCLUSION	84



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 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.²²⁸ Good practices exist throughout the world.²²⁹ Many of these, and more, are captured as recommendations in the ICRC's 2021 *Guidelines on the National Implementation of International Humanitarian Law*.²³⁰ 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.

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".²³¹ 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.²³² 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.

228 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).

229 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>.

230 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>.

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

232 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.²³³ 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.²³⁴ 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,²³⁵ 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 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.²³⁶ To educate the public informally, journalists and media professionals should be given support for reporting on IHL-related issues accurately.²³⁷ 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.

233 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>.

234 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>.

235 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>.

236 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>.

237 See ICRC, “IHL resources for media professionals”, ICRC, Geneva, 2017; <https://www.icrc.org/en/document/ihl-resources-media-professionals>.

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;²³⁸ a small but growing number of states are submitting contributions to the UN Secretary-General's report on the status of the Additional Protocols;²³⁹ and many states present their achievements at regional meetings on IHL organized with the ICRC.²⁴⁰ 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 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.²⁴¹ 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.²⁴² 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.

238 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>.

239 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>.

240 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.

241 ICRC, *The Roots of Restraint in War*, ICRC, Geneva, 2018.

242 For selected reports on this work, see: <https://blogs.icrc.org/religion-humanitarianprinciples/>.

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 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.²⁴³ 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 incentives – the promotion of responsible action and restraint in international arms trade remains a pressing humanitarian imperative.

²⁴³ 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>.

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.²⁴⁴

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.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷

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).²⁴⁸ 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 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.²⁴⁹

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.

²⁴⁴ 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.

²⁴⁵ ICRC, *2015 Challenges Report*, "Responsible Arms Transfers", pp. 53–56.

²⁴⁶ 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.

²⁴⁷ ICRC, *Commentary on the Third Geneva Convention*, 2020, para. 200; ICRC, *2015 Challenges Report*, p. 55; ICRC, *2019 Challenges Report*, p. 75.

²⁴⁸ Arms Trade Treaty, Preamble ('Principles'), Arts 6.3 and 7.1.b.i.

²⁴⁹ 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>.

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.

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.