# THE NEXUS BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW: A CRITICAL APPRAISAL OF THE ISRAEL, UNITED STATES, AND IRAN CONFLICT

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## Abstract

*International Human Rights Law seeks to protect the fundamental rights and freedoms of individuals at all times, while International Humanitarian Law specifically regulates the conduct of parties during armed conflict and seeks to minimise human suffering. The changing dynamics of modern warfare have increasingly blurred the traditional distinction between peace and armed conflict, thereby necessitating the concurrent application of both legal regimes. This study adopts a doctrinal methodology to examine the nexus between IHRL and IHL, using the ongoing hostilities involving Israel, the United States, and Iran as a case study. The study investigates the operation of the principle of lex specialis and the extent to which IHL and IHRL complement or conflict with one another in regulating the conduct of hostilities and the protection of individuals. The study argues that a complementary and harmonised application of IHL and IHRL provides the*

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*most effective legal framework for safeguarding human dignity and ensuring accountability during armed conflict. It concludes that although significant legal, political, and enforcement challenges persist, the convergence of these two regimes is essential for responding to the complexities of modern warfare and strengthening the international legal order.*

**Keywords**: International Human Rights Law, International Humanitarian Law, Armed Conflict, *Lex Specialis*, Human Dignity

## 1.0 INTRODUCTION

The relationship between International Human Rights Law[1] and International Humanitarian Law[2] represents one of the most consequential and intellectually contested questions in contemporary public international law.[3] Both legal regimes though pursuing similar humanitarian objectives, have evolved independently and traditionally operates within different legal contexts. IHRL developed primarily as a body of law governing the relationship between states and individuals during peacetime, while IHL emerged as a specialised legal framework regulating the conduct of hostilities and the protection of victims during armed conflicts.[4] The historical distinction between these regimes gave rise to the conventional assumption that IHRL ceases to operate during armed conflict and that IHL becomes the exclusive legal framework governing the actions of belligerents.

Contemporary international practice has challenged this traditional position. The emergence of transnational terrorism, asymmetric warfare,

[1] Hereinafter referred to as IHRL.
[2] Hereinafter referred to as IHL.
[3]Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 591.
[4] Jean Pictet, *Humanitarian Law and the Protection of War Victims* (Sijthoff 1975) 11.

cross-border military operations, cyber warfare, and prolonged armed conflicts has blurred the distinction between peace and war. International judicial bodies have increasingly affirmed that IHRL continues to apply during armed conflict, subject to permissible derogations[5] and the operation of IHL as the *lex specialis* where appropriate.[6] The International Court of Justice has consistently maintained that the protection afforded by human rights conventions does not cease in times of war except through lawful derogation and that both IHRL and IHL may operate concurrently.[3] This jurisprudential development has generated significant debate concerning the extent to which the two legal regimes complement or conflict with one another.

The ongoing hostilities involving Israel, the United States, and Iran provide a contemporary context for examining this relationship; as the conflict has generated complex legal questions relating to the use of force, targeted killings, and protection of civilian populations, cyber operations, self-defence, and international accountability. These issues transcend the boundaries of traditional IHL and require a comprehensive analysis that integrates relevant principles of IHRL.

Part one of this paper introduces the core of the paper. Part two examines the conceptual and theoretical foundations of both IHRL and IHL. Part three examines the nexus debate in doctrine and jurisprudence about *lex specialis* principle. Part four analyses the legal framework applicable to the Israel-Iran-United States conflict. Part five applies the IHRL-IHL nexus to specific issues arising in that conflict. Part six examines the

[5] The International Covenant on Civil and Political Rights (ICCPR) acknowledged in its derogation clause that certain rights might be suspended "in time of public emergency which threatens the life of the nation," thereby implicitly recognising the reality of armed conflict as a distinct legal condition, yet maintaining the presumption of the Covenant's continuity. See: International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art 4.

[6] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* (1996) ICJ Rep 226 para 25

accountability and enforcement mechanisms. Parts seven and eight offer recommendations and a conclusion, respectively.

## 2.0 CONCEPTUAL AND THEORETICAL FOUNDATIONS

### 2.1 International Human Rights Law

International Human Rights Law constitutes the body of international legal norms that protect individuals from the abuse of power by states, regardless of their own nationality, and that impose obligations on states to respect, protect, and fulfil individual rights. Its origins lie in the moral and political catastrophe of the Second World War, crystallised in the Universal Declaration of Human Rights (1948),[7] subsequently translated into binding treaty obligations through the twin International Covenants of 1966[8] and a proliferating architecture of specialised conventions addressing torture,[9] children's rights,[10] racial discrimination, disability, and other specific categories of vulnerability.[11]

IHRL operates on the fundamental premise of universality: human rights attach to all persons by virtue of their humanity, are inalienable, and bind states in all circumstances. The Human Rights Committee has emphasised that the International Covenant on Civil and Political Rights[12] applies to those within a State's power or effective control, irrespective of whether

[7]Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) (UDHR).

[8]ICCPR (n 5); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

[9]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

[10]Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

[11]See generally Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* (3rd edn, OUP 2007) 135–160.

[12] Hereinafter referred to as ICCPR.

such control is exercised in the state's own territory.[13] This extraterritorial reach, confirmed by the European Court of Human Rights in respect of occupation and military operations abroad[14] has been one of the most consequential developments in the field, since it brings the conduct of armed forces in foreign territories squarely within the ambit of human rights obligations.[15]

A structurally significant feature of IHRL is the distinction between derogable and non-derogable rights. While states may derogate from certain rights "in time of public emergency which threatens the life of the nation," a core of rights, including the right to life, the prohibition of torture, and the prohibition of slavery, admits of no derogation under any circumstances.[16] This non-derogable core is of particular significance in the IHRL-IHL nexus, since it establishes a minimum of protection that survives even in the most intense armed conflict.

The Special Rapporteur on Extrajudicial Killings has underscored that human rights law requires states to demonstrate a legal basis for any lethal force, to ensure necessity and proportionality, and to conduct meaningful post-hoc review.[17]

## 2.2 International Humanitarian Law

[13]Human Rights Committee, General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 10.

[14]*Loizidou v Turkey* (Merits) App No 15318/89 (ECtHR, 18 December 1996) para 52; see also *Al-Skeini and Others v United Kingdom* App No 55721/07 (ECtHR, 7 July 2011) paras 130–142.

[15]Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, OUP 2013) 48.

[16]ICCPR (n 5) Art 4(2) (listing non-derogable rights including the right to life under Art 6, the prohibition of torture under Art 7, and the prohibition of slavery under Art 8).

[17]Philip Alston, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings*, UN Doc A/HRC/14/24/Add.6 (28 May 2010) paras 7–10.

International Humanitarian Law, also known as the law of armed conflict or the law of war, is the body of norms that seeks to limit the effects of armed conflict for humanitarian reasons. Its intellectual genealogy reaches back to classical natural law thinkers such as Grotius[18] and to the nineteenth-century movement towards codification of the laws and customs of war, catalysed by Henry Dunant's witness to the Battle of Solferino of 1859 and culminating in the first Geneva Convention of 1864.[19] The modern architecture of IHL rests principally upon the four Geneva Conventions of 1949[20] and the two Additional Protocols of 1977,[21] supplemented by a substantial body of customary international law authoritatively scripted in the ICRC's Customary IHL Study.[22]

IHL is traditionally divided into two streams: *Hague Law*, which governs the conduct of hostilities and restricts means and methods of warfare, and *Geneva Law*, which protects persons who are not, or no longer participating in hostilities, the wounded, sick, shipwrecked, prisoners of war, and civilians. The International Criminal Tribunal for the former

[18]Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1625), Trans Francis Kelsey (Clarendon Press 1925) Book I, ch I.

[19]Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (adopted 22 August 1864, entered into force 22 June 1865) 129 CTS 361 (First Geneva Convention 1864).

[20]Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Geneva Convention II); Geneva Convention III (n 3); Geneva Convention IV (n 3).

[21]Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (API); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (APII).

[22]Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (ICRC/CUP 2005) (ICRC Customary IHL Study).

Yugoslavia[23] observed in *Tadić* that customary IHL had by 1995 largely dissolved this distinction, since both streams of law share the common purpose of humanising armed conflict.[24]

The principle of proportionality prohibits attacks expected to cause incidental civilian casualties or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.[25] The principle of precaution requires all feasible measures to be taken to avoid, or in any event to minimise, incidental loss of civilian life.[26] Military necessity permits states to use measures not otherwise prohibited that are indispensable for securing the complete submission of the enemy as soon as possible. These principles apply as customary international law binding on all states, regardless of treaty ratification.[27]

## 3.0 HISTORICAL EVOLUTION OF THE RELATIONSHIP BETWEEN IHRL AND IHL

Historically, IHRL and IHL developed as separate branches of international law. IHL traces its origins to the nineteenth-century humanitarian movement, particularly the adoption of the first Geneva Convention of 1864 and the subsequent Hague Conventions regulating the conduct of warfare. IHRL, on the other hand, evolved as a response to the widespread human rights abuses committed during the Second World War and gained prominence through the establishment of the United Nations and the international human rights system.

For many years, the prevailing legal orthodoxy maintained that IHRL governed peacetime situations while IHL regulated armed conflicts. However, this rigid distinction gradually gave way to a more integrated approach as international courts and tribunals recognised that the realities

[23] Hereinafter referred to as ICTY.

[24] *Prosecutor v Tadić (Jurisdiction)* IT-94-1-AR72, Appeals Chamber (2 October 1995) para 70.

[25] Art 51(5) (b) AP I.

[26] Art 57 AP I.

[27] ICRC Customary IHL Study (n 23) Rule 1, 3.

of modern warfare frequently require the simultaneous application of both legal regimes. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice affirmed that the protection afforded by the ICCPR does not cease during armed conflict, although the question of whether a deprivation of life is arbitrary must be determined by reference to the applicable lex specialis, namely IHL.[28]

## 4.0 THEORETICAL FRAMEWORK GOVERNING THE RELATIONSHIP BETWEEN IHRL AND IHL

The interaction between IHRL and IHL has generated several competing theoretical approaches. The first is the ***separation theory***, which maintains that the two legal regimes operate independently and should not overlap.[29] Under this view, IHRL governs peacetime while IHL exclusively regulates armed conflict. Although this approach reflects the historical development of both branches of law, it has become increasingly difficult to sustain in light of contemporary judicial practice.

Israel has historically advanced vigorous state practice in support of the separability thesis. In its submissions to the Human Rights Committee, Israel maintained that the ICCPR was inapplicable to its military operations in the Occupied Palestinian Territory, on the ground that such operations were governed exclusively by IHL.[30] This position was consistently rejected by the Human Rights Committee,[31] but it has retained adherents among military lawyers and some academic commentators who argue that the practical operationalization of IHRL

[28] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 para 25

[29]See: Christopher Greenwood, "The Relationship between *ius ad bellum* and *ius in bello*" (1983) 9 *Review of International Studies* 221, 228.

[30]Israel, Occupied Territories – Human Rights Committee, Consideration of Reports Submitted by States Parties: Israel, CCPR/C/79/Add.93 (18 August 1998) para 10.

[31]Human Rights Committee, General Comment No 29: States of Emergency (Article 4), UN Doc CCPR/C/21/Rev.1/Add.11 (31 August 2001) para 3.

with its requirements of judicial authorisation, post-hoc review, and individualised justification is irreconcilable with the realities of armed conflict.[32]

The second approach is the ***complementarity theory***, which argues that IHRL and IHL are mutually reinforcing systems that should be interpreted harmoniously to maximise the protection of individuals. This theory recognises that while each regime possesses distinct objectives and rules, they share a common humanitarian purpose and may operate concurrently without necessarily creating legal contradictions.

The third and increasingly accepted approach is the ***convergence theory***, which views IHRL and IHL as interconnected components of a broader international legal order designed to protect human dignity. Under this framework, the two regimes should be interpreted in a manner that promotes coherence and avoids legal gaps, particularly in contemporary conflicts involving transnational military operations and non-state actors. The Inter-American Commission on Human Rights has similarly endorsed simultaneous application, observing that the standards of IHL "inform and are informed by human rights norms" and that neither regime alone provides adequate protection in all conflict scenarios.[33] Both prohibit torture and cruel, inhuman or degrading treatment; [34] both recognise the right to life; [35] and both impose obligations of humane treatment on those exercising authority over individuals.[36] As Doswald-Beck has argued, the

[32]Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism* (OUP 2011) 3–4.

[33]Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc 5 rev. 1 corr. (22 October 2002) paras 61–68.

[34]Alejandro Chehtman, "Revisiting the Lex Specialis Principle: A Theoretical Assessment" in Robert Kolb and Gloria Gaggioli (eds), *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar 2013) 48.

[35]Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (Hart 2008) 257.

[36]ICRC, *International Humanitarian Law and International Human Rights Law: Similarities and Differences* (ICRC Advisory Service 2003) 3.

practical effect of convergence is to create a "minimum floor" of protection below which states may never fall. [37]

Central to the debate is the doctrine of *lex specialis derogat legi generali*, which provides that a more specific legal rule prevails over a more general one where both govern the same subject matter. In the context of armed conflict, this principle generally means that IHL operates as the specialised legal framework for regulating hostilities, while IHRL continues to apply in matters not specifically addressed by IHL.[38] However, the doctrine should not be understood as excluding the operation of IHRL altogether.[39] Rather, it serves as a mechanism for coordinating the application of both regimes to ensure that the highest possible level of protection is afforded to individuals.

The *lex specialis* principle is not without limitations.[40] First, it applies only where there is an actual conflict between IHL and IHRL norms; where both regimes are consistent, no displacement is necessary. Second, it cannot be used to diminish the level of protection afforded to individuals. As Ben-Naftali and Shany argue, where IHRL provides greater safeguards, particularly in situations of occupation, IHL should not operate in a way that reduces those rights. Third, the principle of humanity, reflected in both legal regimes and embodied in the Martens

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[37]Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism* (OUP 2011) 7.

[38] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 para 25.

[39] That is, the operation of IHL during armed conflict does not suspend IHRL but rather informs the interpretation and application of human rights standards in such situations.

[40]Orna Ben-Naftali and Yuval Shany, "Living in Denial: The Application of Human Rights in the Occupied Territories" (2004) 37 *Israel Law Review* 17, 62. See also: Gloria Gaggioli, "The Principle of Humanity" in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014) 250. See also: Nils Melzer, *Targeted Killing in International Law* (OUP 2008) 234–240.

[40]Cordula Droege, "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict" (2007) 40 *Israel Law Review* 310, 347.

Clause, remains an overarching norm that specific IHL rules cannot displace.

## 5.0 THE JURISPRUDENTIAL NEXUS BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

### 5.1 Concurrent Application of IHRL and IHL

The International Court of Justice (ICJ) has played a pivotal role in clarifying the relationship between IHRL and IHL. In the *Legality of the Threat or Use of Nuclear Weapons Advisory Opinion*, the Court held that the protection guaranteed under the International Covenant on Civil and Political Rights does not cease during armed conflict except through lawful derogation.[41] The Court further observed that whether a deprivation of life is arbitrary during armed conflict must be determined by reference to the applicable *lex specialis*, namely the rules of International Humanitarian Law.[42]

The Court reaffirmed this position in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion*, where it held that the protections afforded by human rights conventions continue to apply alongside IHL in situations of armed conflict.[43] According to the Court, some rights may fall exclusively within the domain of IHL, others exclusively within IHRL, while a third category may be governed simultaneously by both regimes. This jurisprudence represents one of the clearest judicial affirmations of the complementary relationship between IHRL and IHL.

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[41] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 para 25.

[42] *Ibid*

[43] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 paras 105–106

### 5.2 Contributions of International and Regional Human Rights Tribunals

International criminal tribunals and regional human rights courts have further reinforced the concurrent application of IHRL and IHL. The International Criminal Tribunal for the Former Yugoslavia (ICTY), in *Prosecutor v Tadić*, expanded the understanding of armed conflict and emphasised the humanitarian principles underlying IHL regardless of the formal classification of hostilities.[44] The Tribunal recognised that the purpose of humanitarian law is to protect persons from the effects of armed violence and that its application should not be interpreted restrictively.

Similarly, the European Court of Human Rights has acknowledged the relevance of IHL when interpreting state obligations during military operations. In *Hassan v United Kingdom*, the Court accepted that the detention of individuals during international armed conflict could be interpreted in light of the Geneva Conventions while maintaining the applicability of the European Convention on Human Rights.[45] The Inter-American Court of Human Rights has also contributed to this jurisprudence by recognising that IHL may serve as an interpretative guide in determining the scope of human rights obligations during armed conflicts.

### 5.3 Areas of Complementarity and Tension

Despite their shared humanitarian objectives, IHRL and IHL differ in their scope, operation, and methods of enforcement. IHRL primarily regulates the relationship between states and individuals and is enforced through international and regional human rights mechanisms. IHL, by contrast, regulates the conduct of hostilities and imposes obligations upon parties to an armed conflict irrespective of reciprocity.

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[44] *Prosecutor v Duško Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY-94-1-A, 2 October 1995 para 70

[45] *Hassan v United Kingdom* (2014) 38 BHRC 358.

The principal area of complementarity lies in their common objective of protecting human dignity. Both regimes prohibit torture, inhuman treatment, arbitrary killings, and discrimination. However, tensions arise in relation to issues such as detention, the use of lethal force, and the targeting of combatants. Under IHRL, lethal force is generally permissible only where it is strictly necessary and proportionate to protect life. Under IHL, lawful combatants may be targeted based on their status, subject to the principles of distinction and proportionality.

The doctrine of *lex specialis* has emerged as the principal mechanism for resolving these tensions. Rather than displacing IHRL, the doctrine enables IHL to function as the more specialised body of law in matters directly connected to the conduct of hostilities while preserving the continued operation of human rights norms where appropriate.

Thus, it can be gleaned that contemporary international law no longer supports the rigid separation of IHRL and IHL. Instead, the prevailing judicial trend favours a complementary and coordinated application of both regimes, thereby providing a stronger framework for the protection of individuals during armed conflict.[46]

## 6.0 THE ISRAEL-UNITED STATES-IRAN CONFLICT AND THE APPLICATION OF IHRL AND IHL

### 6.1 Classification of the Conflict

The threshold classification question, whether the conflicts involving Israel, the United States, and Iran constitute international armed conflicts (IACs), non-international armed conflicts (NIACs), or some combination thereof, is both legally consequential and factually complex. Under common Article 2 of the Geneva Conventions, an IAC exists whenever there is "any difference arising between two or more High Contracting Parties and leading to the intervention of members of their armed

[46] Droege (n 46).

forces."[47] This threshold is low: no formal declaration of war or recognition of a state of war is required.[48]

The conflict theatre examined in this paper involves at least three distinct but interrelated armed confrontations:

i. the conflict between Israel and Hamas in Gaza and the West Bank;
ii. the conflict between Israel and Hezbollah in Lebanon; and
iii. the direct military exchange between Israel and Iran, including the Iranian ballistic missile and drone strikes of April and October 2024 and the Israeli retaliatory strikes on Iranian territory.[49]

The United States is a participant in this conflict through its support, operational, logistical, and intelligence, for Israeli military operations, and through its own direct military action against Iranian proxy forces, including the January 2020 targeted killing of IRGC Quds Force Commander Major General Qasem Soleimani.[50]

The classification of these conflicts is legally contested. The Gaza conflict is most plausibly characterised as an IAC, given Israel's designation as an occupying power and Hamas's de facto governmental authority in the territory.[51] The Israel-Hezbollah conflict in Lebanon is similarly an IAC, given that Hezbollah operates from Lebanese territory with the effective acquiescence of the Lebanese state. The direct Israel-Iran exchanges, the missile strikes of 2024, are unambiguously IAC in character, as they involved the direct use of force between two high contracting parties'

[47]Prosecutor v Tadić (n 50) para 70. See also Common Article 2 of the Geneva Conventions (n 25).

[48]Geneva Convention IV (n 3) Art 2 (common Article 2).

[49]For a comprehensive account of the conflict, see Amos Harel, "The War Between Israel and Iran: From Shadow War to Open Conflict" (2024) 60 *Survival* 7.

[50]The Islamic Revolutionary Guard Corps (IRGC) was designated a Foreign Terrorist Organization by the United States in April 2019: see US Department of State, "Designation of the Islamic Revolutionary Guard Corps" (8 April 2019).

[51]See Prosecutor v Tadić (Merits) IT-94-1-T, Trial Chamber (7 May 1997) para 562 (overall control test for IAC classification).

armed forces.[52] The US strikes on Iranian proxy forces in Iraq and Syria are more contestable: depending on the degree of Iranian command and control over the relevant proxy groups, they may be characterised as IAC (if the overall control standard of *Tadić* is met) or NIAC (if they are characterised as independent armed groups).[53]

### 6.2 Application of IHRL and IHL to the Conflict

The Israel-United States-Iran conflict illustrates the practical intersection of IHRL and IHL. Questions concerning the legality of targeted killings, the protection of civilians, attacks against civilian infrastructure, restrictions on humanitarian assistance, and the treatment of detainees cannot be resolved exclusively under one legal regime. Instead, they require an integrated assessment of the obligations arising under both IHL and IHRL.

For example, the use of lethal force during military operations must comply with IHL principles of distinction, proportionality, military necessity, and precaution. At the same time, the right to life protected under human rights law remains relevant in determining whether the deprivation of life is arbitrary. Likewise, detention practices must satisfy the requirements of the Geneva Conventions while respecting internationally recognised guarantees of due process and humane treatment.

The increasing use of cyber operations and autonomous military technologies further demonstrates the need for a harmonised legal approach. Although IHL provides general principles governing methods and means of warfare, IHRL offers additional protections concerning

[52]*Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 14 (*Nicaragua*) para 109 (effective control test).

[53]See Marko Milanovic, "The Lost Origins of Lex Specialis: Rethinking the Relationship between Human Rights and International Humanitarian Law" in Jann Kleffner and Georg Nolte (eds), *International Humanitarian Law and International Human Rights Law* (OUP 2011) 15.

privacy, access to information, and the broader impact of technological warfare on civilian populations.

### 6.3 The Legal Status of Iran's Nuclear Programme under International Law

Iran is a non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).[54] Under Article II of the NPT, Iran has undertaken not to manufacture or otherwise acquire nuclear weapons.[55] The Joint Comprehensive Plan of Action (JCPOA), endorsed by UN Security Council Resolution 2231 (2015),[56] imposed specific limitations on Iran's enrichment activities in exchange for sanctions relief. The IAEA (International Atomic Energy Agency) Board of Governors has on multiple occasions reported Iran's non-compliance with its safeguards obligations.[57]

The ICJ, in the *Nuclear Weapons Advisory Opinion*, declined to pronounce definitively on the legality of the threat of nuclear weapons under all circumstances. However, the Court affirmed that there exists an obligation on all states to pursue in good faith negotiations leading to nuclear disarmament.[58] More broadly, the Court's analysis implicitly confirmed that the development of nuclear weapons by a non-nuclear-weapon state in breach of the NPT would constitute a violation of international law, potentially triggering the collective security mechanisms of the UN Charter.[59]

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[54]Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT).
[55]*ibid* Art II.
[56]UN Security Council Resolution 2231 (n 10).
[57]IAEA Board of Governors, "NPT Safeguards Agreement with the Islamic Republic of Iran" (24 September 2005) GOV/2005/77.
[58]See Nuclear Weapons Advisory Opinion (n 6) paras 59–63.
[59]Martti Koskenniemi, "The Place of Law in Collective Security" (1996) 17 Michigan JIL 455, 468.

The UN Security Council imposed four rounds of mandatory sanctions on Iran between 2006 and 2010,[60] and the International Atomic Energy Agency (IAEA) has repeatedly referred Iran's non-compliance to the Security Council. The legal and political controversy surrounding Iran's nuclear programme, specifically, whether it constitutes a "threat to international peace and security" within the meaning of Article 39 of the UN Charter, and whether it could justify anticipatory self-defence, is directly relevant to the legality of Israeli and American uses of force against Iran.[61]

## 7.0 CRITICAL APPLICATIONS: THE IHRL-IHL NEXUS IN PRACTICE

### 7.1 Self-Defence, Pre-emption and Prevention

Article 51 of the UN Charter preserves the "inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations."[62] The ICJ has interpreted this provision as requiring an "armed attack" of sufficient gravity before the right of self-defence is triggered,[63] and has confined the exercise of self-defence to measures that are necessary and proportionate to repelling the attack.[64]

The legal controversy in the present context concerns the extension of self-defence to anticipatory uses of force, strikes taken not in response to an actual armed attack but in anticipation of an imminent one, and the even more controversial doctrine of preventive self-defence, which would permit force against threats that are not yet imminent but are foreseeable

[60]UN Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010) (imposing sanctions on Iran).
[61]John Yoo, "Using Force" (2004) 71 *University of Chicago LR* 729, 732.
[62]UN Charter (n 2) Art 51.
[63]Nicaragua (n 88) para 176.
[64]John Yoo, "Using Force" (2004) 71 *University of Chicago LR* 729, 732.

and severe.[65] The George W. Bush administration's 2002 National Security Strategy articulated the most expansive version of preventive self-defence, claiming the right to act against emerging threats before they fully materialise.[66] This doctrine was explicitly rejected by the UN High-Level Panel on Threats, Challenges and Change, which affirmed that a threatened state's right to use force preventively does not exist in international law.[67]

In the Israel-Iran context, Israel has invoked self-defence to justify both its military operations in Gaza and Lebanon, predicated on the armed attacks by Hamas and Hezbollah, which Israel treats as proxies of Iran[68]and its direct strikes on Iranian territory following the missile attacks of 2024. The United States invoked self-defence and the protection of its forces in Iraq and Syria to justify the killing of General Soleimani,[69] a legal characterisation that was widely contested by international lawyers, many of whom argued that the killing constituted an extrajudicial execution in violation of both the right to life and the prohibition on the use of force against non-imminent threats.[70]

### 7.2 Targeted Killings and the Right to Life

Targeted killing, which is the deliberate, premeditated killing of a specifically identified individual by a state, presents the sharpest

[65]Michael Schmitt, "Preemptive Strategies in International Law" (2003) 24 Michigan JIL 513, 531.
[66]President George W Bush, "The National Security Strategy of the United States of America" (September 2002) 15 (the "Bush Doctrine").
[67]High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (UN 2004) para 188.
[68]See Yoram Dinstein, *War, Aggression and Self-Defence* (n 84) 182–186.
[69]Assassination of Major General Qasem Soleimani: US Letter to UN Security Council, UN Doc S/2020/20 (8 January 2020).
[70]See: Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 160–165. See also: Israel's letter to the UN Security Council following the October 2023 Hamas attacks: UN Doc S/2023/741 (8 October 2023).

normative conflict between IHL and IHRL at the nexus of the two regimes.[71] Article 6(1) of the ICCPR provides that "every human being has the inherent right to life" and that "no one shall be arbitrarily deprived of his life."[72]

Under IHL, combatants [73] may be targeted and killed at any time during hostilities, subject only to the prohibition on attacking those who are *hors de combat*. The question of direct participation in hostilities (DPH) determines when civilians temporarily lose their protection from targeting.[74] The ICRC's Interpretive Guidance on DPH identifies three cumulative criteria for a civilian to be directly participating in hostilities:

i. the civilian's act is likely to adversely affect the military operations of a party;
ii. there is a direct causal link between the civilian's act and the harm; and
iii. the civilian's act is specifically designed to directly cause the required threshold of harm.[75]

The targeted killing programme raises acute nexus questions. When a state conducts targeted killings in the context of an ongoing armed conflict, as the United States has done against Al-Qaeda and Iranian proxy leaders, and as Israel has done against Hamas and Hezbollah commanders, the IHL framework permits such killings if the targets qualify as combatants or DPH civilians. The human rights framework, by contrast, requires that lethal force be used only as a last resort and that the threat be

[71]Philip Alston (n 21) para 1.
[72]ICCPR (n 4) Art 6(1).
[73]API (n 26) Art 43(2) (definition of combatants).
[74]Nils Melzer, "Keeping the Balance between Military Necessity and Humanity: A Response to Four Critiques of the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities" (2010) 42 NYU JILP 831, 888.
[75]ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (ICRC 2009) 27 (DPH Guidance).

sufficiently concrete and imminent to make capture impractical.[76] The European Court of Human Rights in *McCann v United Kingdom* held that Article 2 ECHR (right to life) requires an operation "absolutely necessary" test, a higher threshold than necessity under IHL.[77]

Applying the *lex specialis* principle to targeted killing, the critical question is whether IHL sufficiently determines the content of the "arbitrariness" standard in Article 6 ICCPR such that compliance with IHL targeting rules immunises a state from human rights accountability. Droege argues persuasively that it does not: a killing that is lawful under IHL (because the target was a combatant) may nonetheless constitute an arbitrary deprivation of life under IHRL if it was carried out in a context where the individual could have been captured without undue risk. Melzer similarly argues for a "least harmful means" test that draws on human rights principles to constrain the IHL killing authority.[78]
Applied to the killing of General Soleimani, the IHRL-IHL nexus analysis yields a troubling conclusion. The United States characterised Soleimani as a legitimate target based on his role as commander of an armed force engaged in hostilities against US forces. Even if this characterisation is accepted, which is legally contested,[79] the strike occurred outside any theatre of active hostilities, in a third state (Iraq), without the consent of the territorial state, and without meaningful attempt at capture. The UN Special Rapporteur on extrajudicial killings characterised such strikes as

[76]US Department of Justice, *Lawfulness of a Lethal Operation Directed Against a US Citizen who is a Senior Operational Leader of Al-Qa'ida or an Associated Force* (White Paper, 2011) 1–2.
[77]McCann and Others v United Kingdom App No 18984/91 (ECtHR Grand Chamber, 27 September 1995) para 147.
[78]Melzer, *Targeted Killing* (n 68) 422–428.
[79]For analysis of the Soleimani killing, see Mary Ellen O'Connell, "The Killing of Qasem Soleimani and International Law" (2020) EJIL:Talk! (13 January 2020) <https://www.ejiltalk.org/the-killing-of-qasem-soleimani-and-international-law/>.

presumptively unlawful under human rights law, that is, absent clear evidence of imminent threat.[80]

### 7.3 Civilian Protection and the Principles of Distinction and Proportionality

The principles of distinction and proportionality, codified in Articles 48, 51, and 57 of Additional Protocol I[81] and recognised as customary international law[82], impose on parties to an armed conflict absolute obligations to distinguish civilian from military targets, to refrain from attacks expected to cause excessive civilian casualties, and to take all feasible precautions in attack and against the effects of attacks.

Under IHRL, the right to life under Article 6 ICCPR and Article 2 ECHR imposes comparable obligations: any use of force that results in the deprivation of life must be lawful, necessary, and proportionate. The convergence between IHL and IHRL in this area is strong: both prohibit the indiscriminate killing of civilians, whether characterised as arbitrary deprivation of life under human rights law or as a violation of the principle of distinction under IHL.[83]

The scale of civilian casualties and destruction of civilian infrastructure in the Gaza conflict since October 2023 has generated the most extensive legal controversy about the IHRL-IHL nexus in the present generation. By March 2024, the UN Office for the Coordination of Humanitarian Affairs reported over 30,000 Palestinian deaths, the displacement of approximately 85% of the population, and the destruction or damage of approximately 60% of the housing stock in Gaza.[84] The UN Human

[80]UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, *Report on the Targeted Killing of Mr Jamal Khashoggi*, UN Doc A/HRC/44/38 (19 June 2019) para 52.

[81]API (n 26) Arts 48, 51, 57.

[82]ICRC Customary IHL Study (n 27) Rules 1–10.

[83]ICCPR (n 4) Art 6; ECHR (n 40) Art 2.

[84]UN Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Situation Update: Gaza* (March 2024) 2–3.

Rights Office documented repeated strikes on hospitals, schools, and refugee camps, raising grave questions about Israeli compliance with the principles of distinction and proportionality.[85]

The central legal dispute concerns the characterisation of specific targets under Article 52(2) of Additional Protocol I, which defines military objectives as those that make an "effective contribution to military action" and whose destruction offers a "definite military advantage."[86] Israel has maintained that Hamas embeds its military infrastructure within civilian structures such as hospitals, schools, mosques, thereby using the civilian population as a human shield and rendering those structures lawful military objectives. Even accepting this characterisation, however, the proportionality rule requires that the anticipated civilian harm be not "excessive in relation to the concrete and direct military advantage anticipated."[87]

The ICJ's Wall Advisory Opinion affirmed that the use of force to protect against threats emanating from occupied territory cannot extinguish the occupying power's obligations towards the civilian population under IHL and IHRL.[88] The UN Commission of Inquiry on the 2014 Gaza Conflict found credible evidence of violations of IHL by both Israeli forces and Palestinian armed groups.[89] More recently, the 2024 Commission of Inquiry documented patterns of conduct in the 2023-2024 conflict that it characterised as violations of both IHL and IHRL, including the use of starvation as a method of warfare, collective punishment of the civilian

[85]UN Human Rights Office of the High Commissioner, *Report on the Human Rights Situation in Gaza* (15 November 2023) paras 12–25.
[86]API (n 26) Art 52(2) (definition of military objective).
[87]*ibid* Art 51(5)(b) (proportionality rule).
[88]*Wall Advisory Opinion*, para 134.
[89]Commission of Inquiry on the 2014 Gaza Conflict, UN Doc A/HRC/29/52 (22 June 2015) para 14.

population, and the destruction of water, sanitation, and medical infrastructure.[90]

### 7.4 Cyber Operations and Dual-Use Infrastructure

The use of cyber operations in armed conflict is one of the most rapidly evolving and legally contested areas at the IHRL-IHL nexus. The *Tallinn Manual 2.0* represents the most authoritative non-binding restatement of the international law applicable to cyber operations, concluding that existing IHL applies to cyber operations in armed conflict and that the principles of distinction, proportionality, and precaution govern cyber-attacks in the same manner as kinetic attacks.[91]

The Stuxnet operation, widely attributed to Israel and the United States, represents the most consequential example of cyber operations in the Israel-Iran conflict theatre. Stuxnet, discovered in 2010, was designed to cause physical damage to Iranian uranium enrichment centrifuges at the Natanz facility. As a cyberattack that produced kinetic effects (the physical destruction of industrial equipment), Stuxnet falls within the definition of "attack" under IHL Rule 80 of the *Tallinn Manual 2.0*, which holds that cyber operations constituting "attacks", defined as acts of violence against the adversary, whether in offence or defence, must comply with the rules of IHL governing attacks, including the principles of distinction and proportionality.[929394]

The dual-use character of critical infrastructures, such as: electrical grids, water systems, communication networks, poses particular challenges for the principle of distinction in cyber operations. An attack on Iran's

[90]Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/HRC/55/26 (5 March 2024) paras 22–45.

[91]Michael Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) (Tallinn Manual 2.0).

[92]*ibid* Rule 80.

[93]*ibid* Rule 92.

[94]For analysis of Stuxnet, see Kim Zetter, *Countdown to Zero Day: Stuxnet and the Launch of the World's First Digital Weapon* (Crown 2014) 3–8.

national power grid, for instance, would directly affect both military command-and-control systems (a legitimate military objective) and hospitals, water treatment plants, and civilian households (civilian objects). The *Tallinn Manual* addresses this in Rule 103, which applies the principle of proportionality to cyber-attacks affecting dual-use infrastructure: the anticipated military advantage must not be excessive relative to the expected civilian harm.[95]

From the perspective of IHRL, cyber operations affecting civilian infrastructure raise rights to life (where disruption of hospitals or water systems causes civilian deaths), rights to health, and rights to privacy and non-arbitrary surveillance. Article 54 of Additional Protocol I prohibits attacks on objects indispensable to the survival of the civilian population,[96] a norm recognised in customary IHL[97] that has clear human rights correlates in the rights to water, food, and health.

### 7.5 Detention, Torture, and the Prohibition of Ill-Treatment

The detention of persons in armed conflict is comprehensively regulated by IHL: prisoners of war under Geneva Convention III enjoy extensive procedural and substantive protections,[98] while civilian internees are protected under Geneva Convention IV. A fundamental IHL requirement is that all detained persons must be treated humanely and that their status, combatant, civilian internee must be determined by a competent tribunal in case of doubt.[99]

Article 1 of the Convention against Torture (CAT) defines torture as any act by which severe pain or suffering is intentionally inflicted on a person

[95]Tallinn Manual 2.0 (n 103) Rule 103.
[96]API (n 26) Art 54 (prohibition of starvation and attacks on objects indispensable to civilian survival).
[97]ICRC Customary IHL Study (n 27) Rule 54.
[98]Geneva Convention III, Arts 4, 17.
[99]*ibid* Art 5 (doubts as to status to be resolved by competent tribunal).

for specified purposes by a public official.[100] Article 2(2) CAT provides that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[101] This absolute prohibition is mirrored in IHRL (Article 7 ICCPR; Article 3 ECHR)[102] and in IHL (common Article 3; Article 87 Geneva Convention III). The IHRL and IHL norms converge entirely on this point.[103]

In the context of Israel's detention of Palestinians in the West Bank and Gaza, and the detention of suspected Hezbollah and Hamas members by Israeli forces, the IHRL-IHL nexus is particularly acute. The ECtHR's Grand Chamber in *Al-Jedda v United Kingdom* held that where a state detains individuals in the context of an armed conflict, it must comply with both IHL detention standards and Article 5 ECHR (right to liberty), with the latter being subject to interpretation in the light of IHL.[104]

### 7.6 Protection of Cultural Property and Environmental Harm

The protection of cultural property in armed conflict is governed by the 1954 Hague Convention on Cultural Property[105] and by customary IHL Rule 38, which prohibits attacks against cultural property unless imperatively required by military necessity.[106] Under IHRL, the destruction of cultural property implicates the rights of minority and indigenous populations under Article 27 ICCPR and the UN Declaration

[100]CAT (n 14) Art 1.
[101]*ibid* Art 2(2) (absolute prohibition).
[102]ICCPR, Art 7; ECHR, Art 3.
[103]*Ireland v United Kingdom* App No 5310/71 (ECtHR, 18 January 1978) paras 167–168.
[104]*Al-Jedda v United Kingdom* App No 27021/08 (ECtHR Grand Chamber, 7 July 2011) paras 100–109.
[105]Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240 (Hague Cultural Property Convention 1954).
[106]ICRC Customary IHL Study, Rule 38.

on the Rights of Indigenous Peoples.[107] The deliberate destruction of mosques, churches, and historical sites in Gaza, captured by multiple UN and NGO reports, raises questions under both IHL (as a war crime of destruction of cultural property) and IHRL (as a violation of the cultural rights of the Palestinian population).[108]

The ICJ in the *Nuclear Weapons Advisory Opinion* affirmed that states must take account of environmental considerations in applying the principle of proportionality in armed conflict, noting that the environment is not an abstraction but represents "the living space, the quality of life and the very health of human beings, including generations unborn."[109] This formulation bridges the IHL and IHRL frameworks, grounding the environmental protection obligation in the foundational value of human dignity that animates both regimes.

## 8.0 ACCOUNTABILITY AND ENFORCEMENT MECHANISMS

### 8.1 The International Criminal Court and Individual Responsibility

The International Criminal Court represents the principal permanent forum for individual criminal accountability for violations of IHL that also constitute international crimes. The Rome Statute[110] confers jurisdiction over war crimes, crimes against humanity, genocide, and, since the Kampala Amendment entered into force in 2018, the crime of aggression.[111] War crimes as defined in Article 8 of the Rome Statute directly codify IHL violations, including willful killing, torture, intentional attacks on civilians, and attacks on civilian objects.[112]

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[107]ICCPR, Art 27 (rights of minorities); UN Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007) Art 11.

[108]Palestinian Authority, Report to the 55th Session of the Human Rights Council on Environmental Damage Resulting from Military Operations in Gaza (March 2024).

[109]*Nuclear Weapons Advisory Opinion*, para 31.

[110]Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute).

[111]*ibid* Art 5 (war crimes, crimes against humanity, genocide, crime of aggression).

[112]*ibid* Arts 8(2)(a), 8(2)(b) (war crimes in IAC).

The ICC's complementarity principle, under which the Court acts only when national jurisdictions are unwilling or unable genuinely to investigate and prosecute, poses a fundamental challenge in the present context.[113] Israel maintains a functioning military justice system but has been criticised for its lack of genuine accountability for IHL violations in Gaza. The United States, as a non-party to the Rome Statute,[114] is not subject to ICC jurisdiction unless it commits crimes on the territory of a state party. Iran is similarly not a state party. The practical result is that the most powerful actors in the conflict theatre are not directly subject to ICC jurisdiction, profoundly limiting the Court's effectiveness as an accountability mechanism.[115]

### 8.2 The UN Human Rights System

The UN Charter imposes obligations on member states to promote universal respect for, and observance of, human rights,[116] and the UN Human Rights Council has the mandate to promote human rights and to address situations of violations, including in the context of armed conflict. The Council has established multiple Commissions of Inquiry and Fact-Finding Missions concerning the Israel-Palestine conflict,[117] including an ongoing Independent International Commission of Inquiry established in 2021 whose most recent reports have documented violations of both IHL and IHRL in the 2023-2024 conflict.[118]

The ICJ's provisional measures ruling in *South Africa v Israel* (January 2024) a case brought under the Genocide Convention alleging that Israel's military operations in Gaza constituted genocide, represents a landmark

[113]Rome Statute (n 125) Art 17 (admissibility and complementarity).

[114]Neither the United States nor Israel is a party to the Rome Statute.

[115]Darryl Robinson, "The Identity Crisis of International Criminal Law" (2008) 21 *Leiden JIL* 925, 928.

[116]UN Charter (n 2) Arts 55, 56.

[117]UN Human Rights Council Resolution S-21/1 (23 July 2014) (establishing the Commission of Inquiry on the 2014 Gaza Conflict).

[118]Independent International Commission of Inquiry on the Occupied Palestinian Territory (n 137).

intersection of IHRL and IHL accountability mechanisms. The Court, in ordering provisional measures, found it plausible that the rights of Palestinians under the Genocide Convention were at risk and ordered Israel to take all measures within its power to prevent acts within the scope of the Convention, to ensure its military forces did not commit genocide, and to ensure humanitarian aid reached the civilian population.[119][120]

The Genocide Convention case illustrates both the potential and the limits of the UN human rights system as an accountability mechanism in armed conflict. The Court can indicate provisional measures and ultimately render judgment on state responsibility, but lacks enforcement mechanisms beyond the Security Council, which is itself paralysed by the veto power of permanent members.[121] The United States has vetoed multiple Security Council resolutions calling for a ceasefire in Gaza,[122] demonstrating the structural incapacity of the Council to function as an effective enforcer of IHL or IHRL obligations when a permanent member's strategic interests are engaged.[123]

### 8.3 State Responsibility and Countermeasures

The International Law Commission's Articles on State Responsibility (ARSIWA) provide the general framework for attributing internationally wrongful acts to states and for determining the legal consequences of such acts.[124] Under ARSIWA Article 1, every internationally wrongful act of a

[119]ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures Order (26 January 2024).
[120]*ibid* para 74.
[121]*ibid* Dissenting Opinion of Judge Sebutinde.
[122]UN Security Council Res 2728 (2024) (calling for humanitarian ceasefire in Gaza).
[123]UN General Assembly Resolution ES-10/21 (2 March 2022) (demanding cessation of hostilities in Ukraine, by analogy demonstrating UNGA capacity to address humanitarian crises).
[124]ILC, Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), annexed to UNGA Res 56/83 (12 December 2001) UN Doc A/RES/56/83.

state entails its international responsibility.[125] Of particular significance in the present context is the regime for "serious breaches of peremptory norms of general international law" (*jus cogens*), including the prohibitions on genocide, crimes against humanity, and grave breaches of IHL which generate additional obligations for all states, including obligations of non-recognition and non-assistance.[126][127]

The question of third-state responsibility is particularly acute in the context of US military support for Israeli operations in Gaza. The United States has provided Israel with billions of dollars in military assistance, including precision munitions and intelligence support. Under ARSIWA Article 16, a state that aids or assists another state in the commission of an internationally wrongful act is internationally responsible for the assistance to the extent that it does so with knowledge of the circumstances of the wrongful act.[128] This provision has significant potential application to US arms transfers to Israel if those transfers were made with knowledge that the weapons would be used in the commission of war crimes or grave violations of human rights law.[129]

Countermeasures are measures that would otherwise be unlawful but are taken in response to a prior internationally wrongful act to induce the responsible state to comply with its obligations, are available to injured states under ARSIWA. The question of whether third states may take countermeasures in response to serious breaches of *jus cogens* norms remains contested, with ARSIWA Article 54 preserving without resolving the point.[130] In the context of the Iran-Israel-US conflict, Iran's supply of weapons to Hamas and Hezbollah, characterised by Iran as lawful support

[125] *ibid* Art 1.
[126] *ibid* Art 40 (serious breaches of peremptory norms).
[127] *ibid* Art 41 (obligation of non-recognition and non-assistance).
[128] ARSIWA (n 193) Art 16 (aid or assistance in the commission of an internationally wrongful act).
[129] For analysis of complicity, see James Crawford, *State Responsibility: The General Part* (CUP 2013) 397–412.
[130] *ibid* Art 54 (countermeasures by third states).

for resistance movements and by Israel and the United States as unlawful arming of terrorist groups, illustrates the contested normative terrain of countermeasures and third-state responsibility.[131]

## 9.0 RECOMMENDATIONS

### (a) Adoption of a Harmonised Interpretative Approach

International courts and tribunals should continue to adopt a complementary approach to the interpretation of IHRL and IHL. The doctrine of lex specialis should be applied as a principle of coordination rather than exclusion, thereby ensuring that the highest possible level of protection is afforded to individuals affected by armed conflict.

### (b) Strengthening Compliance with International Humanitarian Obligations

States involved in armed conflicts should strictly comply with their obligations under the four Geneva Conventions of 1949 and the Additional Protocols of 1977, particularly the principles of distinction, proportionality, military necessity, and precaution.[132] Compliance with these principles should be reinforced through enhanced military training and operational guidelines.

### (c) Protection of Non-Derogable Human Rights

States should ensure that military operations respect non-derogable human rights recognised under the ICCPR and customary international law, including the prohibitions against torture, slavery, genocide, and arbitrary deprivation of life.[133] Even where derogations are permissible under Article 4 of the ICCPR, such measures must remain strictly necessary and proportionate.

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[131] Nicaragua (n 88) paras 187–201.

[132] Geneva Conventions of 12 August 1949; Protocol Additional I 1977, arts 48, 51 and 57.

[133] International Covenant on Civil and Political Rights 1966, arts 4, 6, 7 and 8.

**(d) Development of International Legal Rules Governing Cyber Warfare**

Given the increasing significance of cyber operations in contemporary conflicts, the international community should work towards the development of a multilateral legal framework regulating cyber warfare and protecting civilian digital infrastructure. Such a framework should incorporate both humanitarian and human rights principles.

**(e) Strengthening International Accountability Mechanisms**

States should strengthen cooperation with international courts and investigative bodies and should domesticate international criminal obligations within their national legal systems. The principle of universal jurisdiction should be utilised where appropriate to ensure that perpetrators of serious international crimes do not enjoy impunity.

**(f) Reform of International Institutional Mechanisms**

The United Nations and other international organisations should establish stronger mechanisms for monitoring compliance with IHRL and IHL during armed conflicts. Greater cooperation between humanitarian organisations and human rights institutions would improve the effectiveness of international protection systems.

## 10. CONCLUSION

The relationship between International Human Rights Law and International Humanitarian Law has undergone a significant transformation in response to the changing nature of armed conflict. The traditional distinction between peace and war, which once justified the separate operation of these legal regimes, has become increasingly difficult to sustain in an era characterised by hybrid warfare, transnational terrorism, cyber operations, and the participation of both state and non-state actors.

Through an examination of the Israel-United States-Iran conflict, this article has demonstrated that many of the most pressing legal issues confronting contemporary international law, including the use of force, targeted killings, civilian protection, detention practices, cyber warfare,

and international accountability, cannot be adequately addressed through the exclusive application of either IHRL or IHL. Rather, they require a coordinated and complementary application of both legal frameworks.

The jurisprudence of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, and regional human rights courts strongly supports the concurrent operation of IHRL and IHL. Cases such as *Legality of the Threat or Use of Nuclear Weapons*, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Armed Activities on the Territory of the Congo*, *Prosecutor v Tadić*, and *Hassan v United Kingdom* collectively establish that armed conflict does not create a legal vacuum in which human rights protections disappear. Instead, they affirm that humanitarian and human rights norms should be interpreted in a manner that promotes coherence and maximises the protection of human dignity.

This article therefore rejects the rigid separation theory and argues in favour of a convergence model founded upon the complementary application of IHRL and IHL. Under this model, IHL operates as the specialised framework governing the conduct of hostilities, while IHRL continues to provide broader normative safeguards that preserve the inherent dignity and fundamental rights of all persons affected by armed conflict.

Ultimately, the future development of international law depends upon its capacity to adapt to the realities of modern warfare without abandoning its humanitarian foundations. The effective protection of human dignity requires not the displacement of one legal regime by another, but the harmonious operation of both. In this regard, the convergence of IHRL and IHL represents not merely a jurisprudential development but an essential normative response to the legal challenges of the twenty-first century.