THE RIGHT TO LIFE DURING ARMED CONFLICTS: EXAMINING THE RELATIONSHIP BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

The right to life is a foundational guarantee of international human rights law, yet its operation during armed conflict requires engagement with the specialised rules of international humanitarian law. This article examines how the prohibition of arbitrary deprivation of life under Article 6 of the International Covenant on Civil and Political Rights interacts with the rules governing targeting, civilian protection and humane treatment under the Geneva Conventions and their Additional Protocols. It analyses the International Court of Justice's treatment of lex specialis, the continuing application of human rights treaties in wartime, and the distinction between conduct-of-hostilities and law-enforcement standards. Particular attention is paid to occupation, extraterritorial operations, investigative duties and accountability for unlawful deaths. The article argues that the two bodies of law should be applied complementarily through a context-sensitive approach that preserves both operational specificity and effective protection of human dignity.

Keywords: Right to life; armed conflict; international humanitarian law; international human rights law; lex specialis; civilian protection; accountability.

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Introduction

The protection of life is the premise upon which the international legal order's commitment to human dignity rests. Armed conflict tests that commitment in its most difficult setting: organized violence is occurring, lethal force may be lawful, and the people most exposed to death are often those least able to influence military decisions. The right to life cannot therefore be analysed during war by treating either human rights law or the law of armed conflict in isolation. International human rights law (IHRL) prohibits arbitrary deprivation of life and imposes obligations of prevention, investigation and accountability. International humanitarian law (IHL) regulates who may be attacked, which objects may be targeted, and how military operations must be planned and executed. Their relationship is not merely theoretical; it determines the standards by which deaths are judged lawful or unlawful.

The apparent tension is clear. In ordinary law-enforcement settings, potentially lethal force is tightly confined by the need to protect life. In hostilities, IHL may permit attacks against lawful military targets even where lethal consequences are intended. Yet that permission is not unlimited. Civilians are protected against direct attack, persons hors de combat must be spared, and attacks that are indiscriminate or expected to cause excessive incidental civilian harm are prohibited. A coherent legal analysis must explain why these standards differ, when each applies, and how human rights obligations continue to constrain State conduct.

This article argues that IHRL and IHL are mutually reinforcing legal frameworks rather than rival systems. IHL often supplies the more specific conduct-of-hostilities rules for assessing a wartime killing, but it does not extinguish the right to life or erase independent duties relating to detention, policing, investigation and remedy. A contextual, issue-specific approach is preferable to the broad assertion that war displaces human rights. This approach is supported by the International Court of Justice (ICJ), the United Nations Human Rights Committee and important regional human rights jurisprudence.

The Right to Life as a Continuing International Obligation

Article 3 of the Universal Declaration of Human Rights recognises everyone's right to life, liberty and security of person. The binding treaty formulation appears in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which declares the right to life inherent and prohibits arbitrary deprivation of life. The word 'arbitrary' is central: it requires

legal scrutiny of the grounds, procedures and circumstances surrounding a death, rather than treating every use of lethal force as automatically unlawful. Article 4(2) of the ICCPR excludes Article 6 from the rights from which States may derogate during a public emergency. Non-derogability, however, is not synonymous with an absolute ban on all wartime killing; the content of arbitrariness must be assessed in the relevant legal setting.

The Human Rights Committee's General Comment No. 36 interprets the right to life broadly. It encompasses negative duties not to take life arbitrarily and positive duties to address reasonably foreseeable threats to life. The Committee expressly accepts that the Covenant continues to apply in armed conflict and that the two legal regimes are complementary. It also explains that practices inconsistent with IHL, including attacks directed at civilians or disproportionate attacks, may violate Article 6. The practical significance is that the right to life remains an enforceable norm even when the factual environment is one of warfare.

The right to life also carries a procedural dimension. A credible allegation of potentially unlawful killing cannot be disposed of merely by invoking national security or military necessity. Depending on jurisdiction and the facts, States may have obligations to establish the circumstances of a death, preserve evidence, identify responsibility and provide an effective remedy. These duties are especially important in military operations because access to information is frequently controlled by the very institutions whose actions are in question. The requirement of meaningful scrutiny does not imply that every battlefield death must be investigated identically; the form and feasibility of an investigation depend on the operational circumstances.

The Humanitarian Law Framework for the Protection of Life

The Geneva Conventions of 1949 and their Additional Protocols form the principal treaty architecture of modern IHL. Common Article 3 establishes indispensable minimum guarantees in non-international armed conflicts, including a prohibition of murder and cruel treatment of persons taking no active part in hostilities. The Fourth Geneva Convention protects civilians who fall within its personal and situational scope, including persons in occupied territory. Additional Protocol I elaborates the conduct-of-hostilities rules for international armed conflict, while Additional Protocol II develops protections in qualifying non-international armed conflicts. Many core rules, including distinction and the prohibition of indiscriminate attacks, are also recognised as customary IHL.

Distinction is the starting point. Article 48 of Additional Protocol I requires parties to distinguish between the civilian population and combatants and between civilian objects and military objectives. Article 51(2) prohibits making civilians the object of attack. Article 52(2) defines military objectives, in relation to objects, by their effective contribution to military action and the definite military advantage offered by their destruction, capture or neutralisation in the circumstances ruling at the time. The mere presence of military activity somewhere within a town does not transform the town or its inhabitants into a single military objective.

Proportionality is a separate inquiry. Article 51(5)(b) prohibits an attack expected to cause incidental civilian loss of life, injury or damage that would be excessive in relation to the concrete and direct military advantage anticipated. This is an ex ante assessment based on information reasonably available to decision-makers, not a mechanical comparison conducted solely after casualties are known. Crucially, proportionality cannot legitimise intentionally directing an attack against civilians; such targeting is independently prohibited. Nor does a claim of military advantage relieve attackers of the obligation to verify targets and take feasible precautions.

Article 57 of Additional Protocol I translates protection into operational duties: those planning or deciding upon an attack must do everything feasible to verify the target, select means and methods with a view to avoiding or minimising civilian harm, and cancel or suspend an attack if its unlawfulness becomes apparent. Effective warning must be given of attacks affecting civilians when circumstances permit. These obligations matter because compliance is measured not only by the final number of deaths but also by the quality of decisions and safeguards preceding an attack. The legal evaluation must distinguish foreseeable incidental harm from attacks directed at protected persons.

IHL also protects life beyond the battlefield. Wounded and sick persons must be respected and cared for; prisoners of war and detained civilians must be treated humanely; and persons who surrender or are otherwise hors de combat may not be attacked. The prohibitions of murder, torture and summary execution protect individuals already within a party's power. In these contexts, the distance between IHL and IHRL is often smaller than it appears in conduct-of-hostilities debates: both bodies of law impose strong constraints on deliberate killing and mistreatment.

Concurrent Application and the Meaning of Lex Specialis

The ICJ's 1996 Nuclear Weapons Advisory Opinion is the leading starting point. The Court stated that the ICCPR's protection does not cease in time of war, except through lawful derogation where permitted; because Article 6 is non-derogable, its protection persists. The Court then reasoned that whether a particular loss of life through the use of a weapon in warfare is 'arbitrary' must be determined by the applicable lex specialis, namely the law applicable in armed conflict. This formulation did not pronounce that human rights law disappears. Rather, it explained how a general human rights standard is informed by the specialised rules governing hostilities.

The ICJ refined the relationship in its 2004 Wall Advisory Opinion. It identified three possible situations: some matters may be exclusively questions of IHL, others exclusively questions of IHRL, and still others questions of both. This formulation rejects the crude proposition that one entire legal regime always overrides the other. The Court also addressed the applicability of human rights instruments in occupied territory, demonstrating that the relevant legal analysis must attend to jurisdiction and the nature of State control. Its later judgment in Armed Activities on the Territory of the Congo similarly considered obligations arising under both regimes in the context of military occupation.

Lex specialis should therefore be applied issue by issue. When a soldier attacks an opposing combatant in active hostilities, IHL provides the principal rules on targeting. When soldiers arrest a person at a checkpoint and exercise effective control over that person, rules concerning detention, humane treatment and potentially law-enforcement standards become central. A military label does not settle the legal classification of every use of force. The distinction between conducting hostilities and exercising authority over persons is particularly important in occupation, internal security operations and situations where armed forces perform policing functions.

The Human Rights Committee's General Comment No. 36 adopts a complementary approach. It does not suggest that every killing compliant with IHL automatically resolves every possible human rights question. For example, an attack may require separate examination of whether adequate investigations were conducted after credible allegations of unlawful conduct. Conversely, human rights adjudicators must not simply transpose peacetime arrest standards to all battlefield engagements without recognising the specialised structure of IHL. Legal

coherence requires identifying the operative rule, the protected person, the relevant type of force and the circumstances in which it was used.

Conduct of Hostilities and Law-Enforcement Paradigms

Two regulatory paradigms are often distinguished. The conduct-of-hostilities paradigm concerns attacks against lawful military targets in armed conflict; its organising rules include distinction, proportionality and precautions. The law-enforcement paradigm generally governs force used to maintain public order or exercise authority over individuals, including arrest and crowd control. Under the latter, intentional lethal force is subject to especially strict necessity constraints, reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Although those Principles are not a treaty, they provide an influential articulation of international standards.

The difference has practical consequences. An individual who may lawfully be targeted under IHL is not necessarily someone whom a police officer may intentionally kill merely because arrest would be inconvenient. Equally, the fact that an armed conflict exists does not mean every interaction between State agents and civilians becomes an attack governed by conduct-of-hostilities rules. Consider a civilian demonstration in an occupied area: the appropriate analysis may involve public-order standards, even though an armed conflict forms the wider background. A person held securely in custody cannot be treated as if still posing the same battlefield threat as an active fighter.

Classification is nevertheless difficult in mixed environments. Non-State armed groups may engage in hostilities while State forces simultaneously undertake policing. Some incidents may occur amid uncertain information, rapidly shifting threats or overlapping operations. The proper response is not to erase the distinction between paradigms but to articulate transparent criteria for identifying the nature of the operation, the status and conduct of the person concerned, and the degree of control exercised by the State. Otherwise, military necessity risks becoming an unreviewable justification for lethal force.

Extraterritorial Operations, Occupation and Jurisdiction

Modern armed conflicts often involve operations outside a State's own territory. The territorial reach of human rights treaties consequently becomes a major question. Article 2(1) of the

ICCPR refers to individuals within a State party's territory and subject to its jurisdiction, but the Human Rights Committee and ICJ have interpreted relevant obligations as capable of applying in extraterritorial settings. In the Wall Advisory Opinion, the ICJ held that the ICCPR was applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory. The precise boundaries of jurisdiction remain contested, particularly in relation to remote strikes and transient uses of force.

Occupation presents a comparatively clear setting for concurrent application because the occupying power may exercise extensive authority over territory and inhabitants. IHL imposes detailed duties on an occupying power, while human rights obligations may also govern matters such as detention, movement, health and protection of life. The ICJ's Armed Activities judgment illustrates that violations may engage both humanitarian and human rights obligations. The overlapping rules should be applied without allowing a formal distinction between war and peace to deprive affected individuals of legal protection.

European human rights jurisprudence further illustrates the importance of control and context. In Al-Skeini and Others v United Kingdom, the European Court of Human Rights examined jurisdiction in relation to deaths occurring during British security operations in Iraq and recognised an obligation to investigate under Article 2 of the European Convention. In Hassan v United Kingdom, the Court interpreted detention obligations in light of IHL during international armed conflict. These decisions arise under a regional treaty, not the ICCPR, but they demonstrate judicial efforts to read human rights guarantees alongside humanitarian rules rather than assuming categorical exclusion.

Investigation, Accountability and Effective Remedies

Substantive prohibitions are weakened if allegations of unlawful killing cannot be independently examined. The right to life requires attention to the circumstances in which force was used and, where there is a credible basis for concern, the adequacy of investigative responses. A meaningful investigation should be capable of determining relevant facts and responsibility; independence, impartiality, promptness and reasonable transparency are essential considerations. Practical constraints in an active conflict may affect investigative methods, but they do not justify a blanket refusal to investigate deaths merely because they occurred during military operations.

International criminal law adds a distinct accountability framework. Article 8 of the Rome Statute of the International Criminal Court identifies war crimes, including intentionally directing attacks against civilians and, in international armed conflicts, launching certain attacks with knowledge that incidental civilian harm will be clearly excessive in relation to the anticipated concrete and direct overall military advantage. The threshold for individual criminal responsibility differs from the standard for State responsibility or a human rights violation. Not every unlawful death is necessarily a war crime, and criminal guilt requires proof of the applicable elements and mental state.

State responsibility and individual responsibility must also be distinguished. A State may breach treaty or customary obligations even where no individual criminal conviction follows. Victims and families may have interests in truth, acknowledgement, reparation and institutional reform. Investigations also serve a preventive function: they reveal failures in target verification, command supervision, training or intelligence assessment and can reduce the risk of recurrence. In this respect, procedural protection of life complements the operational rules of IHL.

Contemporary Challenges to the Protection of Civilian Life

Urban warfare exposes civilians to exceptionally difficult risks because military objectives, homes, hospitals, schools and indispensable services may be located close together. The legal problem is not solved by assuming that civilian presence prohibits every attack or that the presence of a military target permits unrestricted destruction. Parties must still identify lawful targets, estimate foreseeable incidental effects, assess proportionality and adopt feasible precautions. Reverberating effects on water, electricity and healthcare may be relevant where reasonably foreseeable. The protection of life thus requires attention to both immediate casualties and predictable consequences for essential civilian systems.

Technological change presents another challenge. Remotely piloted systems, increasingly automated targeting tools and complex intelligence systems can alter the speed and distance at which lethal decisions are made. Existing IHL principles remain applicable, but their effective implementation depends on human judgment, reliable information and mechanisms for reviewing errors. A system that makes targeting decisions opaque may complicate the assessment of distinction, proportionality and accountability. Claims of precision must be tested against actual operational limitations rather than accepted as substitutes for legal

analysis.

Non-international armed conflicts also raise difficult questions concerning the identification of fighters and civilians who directly participate in hostilities. Treaty rules differ in detail between international and non-international conflicts, although common minimum protections and customary rules continue to apply. Legal debates over membership in organised armed groups, the temporal limits of direct participation and the treatment of persons who disengage from violence are directly connected to the risk of arbitrary killing. The uncertainty should strengthen the obligation to verify status and circumstances, not weaken it.

Finally, enforcement is often constrained by political interests, restricted access to conflict areas, the destruction of evidence and the limited capacity of domestic institutions. International legal rules cannot protect life effectively unless States incorporate them into operational orders, military education, investigative practice and judicial oversight. The strongest normative framework is insufficient where decisions are not recorded, civilian harm is not assessed and alleged violations are not scrutinised.

Critical Assessment and the Way Forward

The coexistence of IHRL and IHL should be treated as a protective advantage. Each regime addresses aspects of wartime violence that the other may regulate less fully. IHL supplies precise rules for targeting and the treatment of protected persons; IHRL maintains the broader insistence that life may not be taken arbitrarily and that States must account for their exercise of power. A rigid hierarchy risks either ignoring the operational specificity of warfare or creating an unjustified human-rights vacuum.

Four interpretive commitments follow. First, armed conflict must be legally classified, because the applicable IHL rules depend partly on whether the conflict is international or non-international. Secondly, the operation itself must be characterised: an attack in hostilities is not identical to an arrest or custodial killing. Thirdly, decision-makers must apply the relevant substantive standards without collapsing distinction, proportionality and precaution into a vague appeal to necessity. Fourthly, procedural obligations must be addressed independently, particularly when credible allegations suggest that the substantive rules were violated.

Improvement also requires institutional measures. States should maintain operational records

sufficient to permit meaningful review, train commanders in both legal regimes, and establish independent mechanisms for investigating civilian deaths. Civilian-harm mitigation should be integrated into target selection and after-action assessment. International and regional courts, treaty bodies and national judiciaries should continue developing context-sensitive jurisprudence that protects life without mischaracterising the realities of hostilities. The objective is not to abolish the distinction between IHL and IHRL but to make their interaction intelligible, principled and accountable.

Conclusion

The right to life does not disappear when armed conflict begins. International human rights law continues to prohibit arbitrary deprivation of life, while international humanitarian law specifies the rules by which lethal force in hostilities is constrained. The ICJ's Nuclear Weapons and Wall opinions establish the core of this relationship: the two regimes may apply concurrently, and specialised humanitarian rules can inform the assessment of arbitrariness without extinguishing human rights protections.

The most persuasive legal approach is contextual rather than categorical. It distinguishes combat operations from law enforcement, recognises protections owed to civilians and persons in custody, and preserves duties of investigation and accountability. The decisive challenge is to translate these obligations into military planning, credible fact-finding and effective remedies. Human dignity is not protected by denying the reality of war; it is protected by insisting that even war remains governed by law.

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