International Humanitarian Law in the Asia-Pacific: History, State Practice, and Contemporary Challenges

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Abstract

IHL scholarship has progressively moved beyond Eurocentric narratives into the analysis of regional contributions and practices. This article builds on such scholarship by outlining history and evolution of international humanitarian law in the Asia-Pacific through treaties, customary law, and state practice. It takes an exploratory look at how colonial legacies, post-independence conflicts, and regional security realities shape the interpretation and application of IHL. While humanitarian norms are mostly sanctioned by states in the Asia-Pacific region, implementation gaps still persist due to political and operational realities of warfare. This study goes on to contend that the experience of the regions in the Asia-Pacific reflect how IHL develops from the interaction between normative ideals and practice by states in armed conflict.

Keywords: *IHL, Asia-Pacific, State Practice, Customary International Law, Geneva Conventions, Non-International Armed Conflicts*

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Introduction

International humanitarian law or "IHL" refers to a body of rules which seek to limit the effects of armed conflict. However, as legal scholar Nils Melzer suggests, these rules are more precisely understood as addressing a particular category of effects: the humanitarian consequences—specifically the human suffering and the affronts to human dignity—that arise during hostilities.[1] By protecting persons who are not, or are no longer, participating in hostilities and by restricting the means and methods of warfare, IHL remains grounded fundamentally in the 'minimum standards of humanity.'[2] While the roots of IHL are often understood to be derived from developments in nineteenth and twentieth-century Europe and from the Geneva Conventions of 1949 (GCs), such a view neglects the existence of traditional humanitarianism and restraints in non-European societies, including the Asia-Pacific region.[3] Questioning the geographical or temporal narrowness of these accounts is not a recent phenomenon but builds on a long history of studies, notably by the ICRC, which emphasize that humanitarian considerations in warfare are neither geographically exclusive nor historically recent.[4] It is essential, however, to acknowledge the critiques of these studies, which argue that by attempting to universalize IHL, they may downplay cultural

[1] Nils Melzer, International Humanitarian Law: A Comprehensive Introduction, ICRC, Geneva, 2019, p. 18.

[2] Nils Melzer, International Humanitarian Law: A Comprehensive Introduction, ICRC, Geneva, 2019, p. 17.

[3] ICRC, Under the Protection of the Palm: International Humanitarian Law and Islamic Law, ICRC, Geneva, 2009; Samuel White, The Laws of War in the Asia-Pacific, Cambridge University Press, Cambridge, 2021.

[4] ICRC, Under the Protection of the Palm: International Humanitarian Law and Islamic Law, ICRC, Geneva, 2009.

differences and appeal to a 'natural law' approach that inadvertently aligns with European worldviews.[5]

The Asia-Pacific region provides a particularly compelling context for this investigation into the history and evolution of IHL. From South Asia, across Southeast and East Asia to the Pacific Islands, the region encompasses vast religious, cultural, political, and social diversity from small island states and post-colonial societies to major military powers wielding substantial influence over global security affairs.[6] Despite this diversity, Asia-Pacific societies have extensive norms of restraint in warfare through religious texts, philosophical traditions, customary practices, and early legal codes.[7] Ancient Chinese military thought, for example, followed principles of proportionality, necessity, and moral conduct in war, while Southeast Asian polities like Siam demonstrated notions of righteous warfare and civilian protection within its customary and royal codes.[8] Such traditions demonstrate that the underlying values of humanity and restraint that animate modern IHL were not alien to the region.

Notwithstanding these historical foundations, states across the disparate sub-regions of Asia and the Pacific occupied a marginal position in the early formal development of IHL as a codified body of international law. The diplomatic processes that produced the Hague Regulations and the early Geneva Conventions took place during a

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[5] This conceptual critique regarding the "natural law" approach and the universalization of IHL is a scholarly observation (often associated with TWAIL scholarship) that highlights the risk of homogenizing diverse traditions into a framework that remains fundamentally aligned with European worldviews.

[6] Sandesh Sivakumaran, "Asia-Pacific States and the Development of International Humanitarian Law", in Suzannah Linton, Timothy McCormack and Sandesh Sivakumaran (eds), *Asia-Pacific Perspectives on International Humanitarian Law*, Cambridge University Press, Cambridge, 2019.

[7] S. Linton, above note 2.

[8] Ibid.

period of colonial domination when much of Asia and the Pacific regions lacked sovereign representation.[9] Accordingly, the region's early treaty-determining influence was significantly curtailed. The formal legal shaping of IHL during this era is best understood as a jurisdictional encounter, where European legal views and strategic interests were propelled to dominance as a direct effect of the colonial endeavour. [10] This process facilitated what has been termed 'international legal reproduction,' ensuring that the local conceptual shaping of IHL emanated primarily from European state practice or legal inquiry rather than regional traditions.[11] This legacy of exclusion has spread the perception that IHL represents Western constructs imposed upon non-Western societies rather than shaped within non-Western societies themselves.[12]

Post-second world war period represents the first major discernible change regarding the involvement of the Asia-Pacific region with IHL. It is true that the negotiations regarding the Geneva Conventions of 1949 took place during the early stages of the decolonizing process.[13] This allowed some states within the Asia-Pacific region, like India, China and Pakistan to take part in the negotiations on the key rules, including the rules on the protection of prisoners of war and the regulation of non-international conflict.[14] Even though the number of states was relatively low, the introduction of voices from the periphery, such as the Asia-Pacific, reflects a diverse array of experiences ranging from the differing forms of colonial encounter and resistance in South and Southeast Asia to the distinct

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[9] S. Sivakumaran, above note 4.

[10] Rose Parfitt, The International Court of Justice and the Reproduction of the International Legal Order, Cambridge University Press, Cambridge, 2019.

[11] Ibid.

[12] S. Sivakumaran, above note 4.

[13] Ibid

[14] Ibid.

security realities of the Pacific Islands.[15] These variegated histories of colonial, internal, and conventional warfare fundamentally influenced how these states perceived the necessity of IHL, shifting the focus toward the mitigation of humanitarian consequences and the establishment of minimum standards of humanity during the 1949 negotiations.[16]

Following colonial independence, Asia-Pacific states demonstrated a tiered engagement with the IHL treaty regime. While ratification of the 1949 Geneva Conventions was nearly universal and relatively rapid for newly independent states such as India, Pakistan, and the Philippines in the early 1950s, consistency in treaty adherence remained uneven.[17] This is particularly evident in the lower ratification rates for Additional Protocol II, reflecting regional sensitivities regarding the regulation of internal conflicts that had characterized many post-colonial transitions.[18] Nevertheless, the region's shift from peripheral beneficiary to active shaper is evidenced by its influential role during the 1949 and 1977 negotiations. For instance, India's representative chaired the committee addressing key protections for war victims, while states like Burma actively shaped the debates on Common Article 3.[19] This active engagement extended

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[15] *Supra p.2*

[16] Ibid

[17] The 1949 Diplomatic Conference included seven Asia-Pacific countries, contributing 13.5% of the total state parties. Several of these, including India, Pakistan, China, Japan, and the Philippines, ratified the Conventions in the early 1950s, while others followed as they attained independence. IHL Treaties - Final Act of the Geneva Conference, 1949 Ratification

[18] While most regional governments have ratified Additional Protocol I, ratification of Additional Protocol II remains low, likely due to "sovereignty issues" and "sensitiveness regarding international regulation of internal conflicts" which are often viewed through the lens of post-colonial security realities. Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts:

[19] During the 1949 Conference, Australia served as Vice-President, and India's Sir Dhirer Mitra chaired Committee I. Pakistan, New Zealand, and China also contributed

to the formation of customary IHL rather than merely existing as a subject of study, and regional practice, including domestic military manuals, national legislation, and judicial decisions, formed a critical part of the evidentiary matrix for the ICRC's landmark study on customary law.[20] Furthermore, the region's normative influence is observable in active legal diplomacy, such as the detailed submissions by Japan and India to the International Court of Justice regarding the legality of nuclear weapons.[21]

The Asia-Pacific region has borne witness to a diverse and violent range of modern conflicts, including the foundational Indonesian war for independence, the Korean War, and the complex, multi-decade struggle in Vietnam.[22] These have been accompanied by recurring low-scale hostilities between India and Pakistan and non-international armed conflicts (NIACs) in the Philippines and Myanmar. While the international commitment to IHL is formally anchored in the universal ratification of the 1949 Geneva Conventions across all states in the region, representing a consensus on the 'minimum standards of humanity', this commitment is not consistently reflected in the ratification of the Additional Protocols. Specifically, while Additional Protocol I enjoys broad support, the ratification of Additional Protocol II remains low, as states continue to exhibit sensitivity regarding the international regulation of internal security and non-state armed groups. This gap between formal 'legal

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significantly to discussions on prisoners of war and non-international armed conflict. Two Conferences on Asian Matters in New Delhi

[20] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), Customary International Humanitarian Law, Vol. 1, Cambridge University Press, Cambridge, 2005.

[21] Japan and India provided detailed written and oral submissions to the ICJ in the *Nuclear Weapons* Advisory Opinion, applying principles of distinction and proportionality that were influenced by their specific historical and humanitarian perspectives. Legality of the Threat or Use of Nuclear Weapons

[22] RSIS and ICRC, *International Humanitarian Law in Asia: Regional Conference on Generating Respect for the Law*, Singapore, 2017.

effects' and actual 'humanitarian consequences' is evidenced by documented breaches: in Myanmar, recent military operations have involved aerial bombardments and the targeting of civilian infrastructure, while in the Philippines, hostilities continue to result in civilian displacement, and protection concerns despite advanced domestic oversight mechanisms.

Research today reveals a fundamental tension within the Asia-Pacific environment. While there is little evidence of conceptual resistance to the humanitarian principles of international humanitarian law (IHL),[23] due in part to a cultural familiarity that makes IHL more 'legible' than international human rights law in regional discourse, actual implementation remains patchy. This gap highlights a critical distinction between the near-universal ratification of key treaties and their actual observance in conflict zones, reinforcing the need to measure engagement through state practice rather than mere legal formalisms.[24] Despite this implementation gap, a significant expansion in regional discourse is observable, particularly regarding emerging domains such as cyber-warfare, where states like China are active in defining the intersection of state sovereignty and information security. Similarly, regional friction in the South China Sea has revitalized debates on the law of naval warfare, while states with advanced technological capacities are increasingly influential in discussions regarding the militarization of outer space and the environmental impact of autonomous weapons.[25] This shift from marginalization to normative engagement is further evidenced by the 'pluralistic' inclusion of regional military manuals and judicial decisions in the ICRC's Customary IHL study, as well as the detailed legal submissions by Japan and India to the International

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[23] RSIS and ICRC, *International Humanitarian Law in Asia: Regional Conference on Generating Respect for the Law*, Singapore, 2017.

[24] S. Linton, above note 2.

[25] S. Sivakumaran, above note 4.

Court of Justice.[26] This is due to an appreciation of the region's importance, not only in connection with situations of armed conflict, but also in its contribution to the development of IHL.

Guided by this perspective, this article takes a doctrinal approach in considering the elements of treaties, customary international law, and customary practice in the Asia pacific region with in their historic and political framework. It maintains that even though Asia-Pacific states have influenced the development of some of the main elements of IHL, the ongoing lacuna in their implementation points to the ongoing necessity of reconciling the ideal and the pragmatic in the conduct of hostilities.

Historical Origins of IHL in the Asia-Pacific

The historical origins of IHL in the Asia-Pacific date back well before the ratification of the Geneva Conventions of 1949. While the process of diplomacy leading to the codification of IHL emerged during the end of the nineteenth and the twentieth centuries within Europe, some of the Asia-Pacific founding cultures had already developed traditions of rules governing war, tied conceptually to moral restraints, military needs, and protecting civilians.[27] This complex history defies an entirely Western-based legal narrative and demonstrates a long-standing regional engagement with humanitarian concepts that were neither geographically exclusive nor historically recent.[28] This regional legacy, including ancient Chinese military thought regarding proportionality and Siamese royal codes on righteous warfare, proves that the underlying values of

[26] Ibid

[27] S. Linton, above note 2.

[28] Samuel White, The Laws of War in the Asia-Pacific, Cambridge University Press, Cambridge, 2021.

humanity and restraint that animate modern IHL were already deeply embedded in the region.[29]

The first instances of sovereign Asia-Pacific participation in the codification of warfare are found in the Hague Peace Conferences of 1899 and 1907.While Japan, China, and Siam (modern-day Thailand) were the first Asian countries, to enter this European led diplomatic space, that participated in the Hague peace meetings, thus contributing to some of the earliest attempts by Asian states to cooperate with the laws of war.[30] Japan's participation, in particular, was a deliberate strategic outcome of 1868 with the Meiji Restoration[31] during which the state systematically internalized and implemented Western understandings of international law to assert its status as a 'civilized' sovereign power equal to its European counterparts. [32] Similarly, China's decision to send a sizeable delegation despite internal political instability was motivated by a pragmatic need to navigate the harsher aspects of European law, specifically the 'unequal treaties' and foreign interference that had marginalized its sovereignty. [33] Siam's involvement was driven by an equally high stake: as one of the few remaining independent entities in Southeast Asia to avoid colonization, its engagement at The Hague was a critical attempt to utilize the burgeoning international legal framework to protect its independence from further colonial encroachment.[34]

Despite this early involvement, the input of Asia-Pacific countries in the early years of the construction of the body of

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[29] ICRC, Under the Protection of the Palm: International Humanitarian Law and Islamic Law, ICRC, Geneva, 2009.

[30] S. Sivakumaran, above note 4

[31] S. Linton, above note 2.

[32] Oona Hathaway and Scott J. Shapiro, The Internationalists: How a Radical Plan to Outlaw War Remade the World, Simon & Schuster, New York, 2017

[33] Ibid.

[34] Ibid.

international humanitarian law in the Hague era remained limited. These conferences had largely European input, and the material content of the Hague Regulations reflected this European military experience and strategic interests. Nonetheless, the involvement of Asian states provided a significant framework for later inputs, ensuring that regional players became acquainted with the terminology, content, and forms that international humanitarian law had taken in its early years.[35] The Second World War represents a definitive turning point in the history of IHL, marking a shift from the 'Hague era' to the modern humanitarian framework established in 1949,. During this period, the region witnessed a catastrophic breakdown of restraint, characterized by what have been described as blatant breaches of the then-existing laws and customs of war.[36] Specific instances, most notably the treatment of prisoners of war during the Pacific War and the atomic bombings of Hiroshima and Nagasaki, demonstrated a dual crisis in the legal order.[37] On one hand, these events constituted clear violations of established customary and treaty-based protections for non-combatants and captives. On the other, the unprecedented scale of civilian infrastructure degradation and the use of weapons of mass destruction illuminated the profound shortcomings of a pre-war legal structure that was not designed for the exigencies of modern, total warfare. Consequently, the post-1945 period necessitated a 'juridical answer' to these atrocities, leading to a conceptual intensification of IHL that sought not merely to reaffirm existing rules, but to fundamentally expand the 'minimum standards of humanity' through the 1949 Geneva Conventions.

Furthermore, the end of the Second World War also marked the end of the growing decolonisation of the countries in Asia and the Pacific. As the newly formed states began to appear on the world

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[35] S. Sivakumaran, above note 4.

[36] Ibid.

[37] K. Okimoto, above note 14

scene, with them also appeared perceptions and points of view that arose out of the experience of foreign occupation, resistance, and internal conflict.[38] Unlike the interwar period (the years between the First and Second World Wars), the post-1945 international order provided greater opportunities even though uneven, for participation by non-European states in treaty-making processes.[39] The 1949 Diplomatic Conference in Geneva, which sought to revisit and expand the Geneva Conventions, marks an important point for Asia-Pacific involvement in IHL. The 59 state parties at this Diplomatic Conference included 7 countries from the Asia-Pacific region: Australia, Burma, China, India, New Zealand, Pakistan, and Thailand.[40] Although these numbers were relatively small, they were significant, especially if they are placed in an international context of colonialism, where some of these newly independent states were relatively recently freed from colonial rule. The Asia-Pacific region contributed 13.5% of all state parties, which, while small, is an important, albeit slight, measure of state representation.[41]

Asia-Pacific states were actively engaged during the proceedings at the Conference. Australia was a Vice-President in the Conference; hence, it was acknowledged as a seasoned participant in international legal diplomacy.[42] India also played a particularly prominent role, as the country's representative, Sir Dhirer Mitra, was the Chairman of Committee I, where key substantive matters concerning the protection of the victim of the wars would be addressed.[43] Pakistan, New Zealand, and China all contributed during

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[38] S. Linton, above note 2.

[39] Ibid.

[40] S. Sivakumaran, above note 4.

[41] Ibid.

[42] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. I.

[43] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II, Federal Political Department, Geneva, 1949.

discussions on the provisions that would become the final Convention, particularly concerning prisoners of war and non-international armed conflicts.[44] Of particular note is the objections raised by the Burmese delegation concerning what would become common Article 3[45], as the country was concerned that if there is control over internal conflicts, this would legitimize rebel movements, thereby undermining the sovereignty of the states.

The involvement of Thailand further highlighted the Asia-Pacific state's diversity at the Conference. With a pre-existing track record in navigating international law via the system established at The Hague, the involvement of Thailand at the conference served to bridge early involvement in Asia in the laws of war with the more modern framework in humanitarian law. The Asia-Pacific states' ideas were not universally adopted in the process, but they did inform the process in whatever fashion they were approved.[46] The adoption of the four Geneva Conventions of 1949 marked something of a watershed in the evolution of IHL. For Asia-Pacific states, the Conventions represented both a response to the atrocities of the Second World War and a legal framework through which newly independent states could assert their commitment to international norms. Ratification patterns reflect this engagement.[47] Several Asia-Pacific states ratified the Conventions in the early 1950s, including India, Pakistan, China, Japan, and the Philippines. Over time, universal ratification of the Geneva Conventions was achieved, making them the most widely accepted treaties in international law.[48]

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[44] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II-A, Federal Political Department, Geneva, 1949

[45] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II-B, Federal Political Department, Geneva, 1949.

[46] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. IIB.

[47] S. Sivakumaran, above note 4.

[48] Ibid.

Therefore, the post-1949 period marked the transition in the Asia-Pacific region from marginal participation to formal inclusion within the IHL treaty regime. Yet this represented little more than a starting point. Internal armed conflicts, post-colonial instability, and various forms of external intervention within many Asia-Pacific states further subjected the humanitarian norms to practical tests of applicability.[49] On the other hand, the regional engagement with the Geneva Conventions provided an important foundation for subsequent contributions to the development of customary international humanitarian law and subsequent treaty-making processes, such as the Additional Protocols of 1977. The region's history of decolonization directly influenced the drafting of Additional Protocol I (AP I). Specifically, the provisions concerning wars of national liberation and the criteria for revolutionary forces to attain combatant status were included to bring IHL into conformity with the independence struggles prevalent in the Asia-Pacific. During the 1977 negotiations, regional states were instrumental in formulating treaty rules that governed combatant status and the control of anti-colonial conflicts, moving the law beyond its previous European-centric focus.[50]

In sum, the historical underpinnings of IHL in the Asia-Pacific show a more complex trajectory than the Western countries. Early involvement in the Hague system, the transformative encounter with World War II and active though confined participation in the 1949 Geneva Conference collectively indicate that certain actors within the region were neither absent from nor indifferent to the development of humanitarian law. Rather, Asia-Pacific states came into the post-war IHL framework shaped by distinct historical experiences that

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[49] Ibid.

[50] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1, Cambridge University Press, 2005.

continue to inform their approach toward humanitarian norms. Understanding this history is crucial for appreciation of both the region's contributions toward IHL and the enduring challenges of its implementation that remain with us today.

Evolution of IHL post-World War II

The post-WWII period witnessed the expanded extension and conceptual intensification of IHL, primarily as a result of the dual phenomenon of decolonization and the juridical answer to the remarkably devastating scale of early-to-mid-twentieth-century conflicts.[51] With particular respect to the Asia-Pacific region, the post-1945 period may be highlighted to have been defined by the dual phenomenon of the increasing capabilities of regional countries to influence treaty-level international norm creation on the one hand, and state practice from the regions on the other a dual phenomenon that crystallized most prominently on the international negotiating path leading to the 1977 Protocols to the Geneva Conventions.[52] This process was significant as it was completed after the phenomenon of decolonization had altered the composition of regional contributions to such international normative creation.[53]

The Additional Protocols (AP I and AP II) marked a step forward in humanitarian doctrine by confirming and expanding existing protections for the victims of warfare and setting new and/or clarified rules on the waging of hostilities, the protection of civilians in these

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[51] S. Linton, above note 2.

[52] S. Sivakumaran, above note 4.

[53] Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974–1977), Vol. I, Federal Political Department, Geneva, 1978.

hostilities, and the protection of the natural environment in warfare.[54] Of particular relevance to the Asia-Pacific was the AP I's broadening conception of the combatant immunity, its broadening protection of civilians in international conflicts, and the innovative references to the right to self-determination of peoples and the wars of national liberation topics that had received direct relevance to the struggles for independence in the Asia-Pacific.[55] More specifically, the AP I provisions concerning wars of national liberation and the circumstances in which revolutionary forces would attain combatant status reflected the attempt to bring the international law on wars into conformity with the process of decolonisation itself.[56]

Asia-Pacific states' involvement in the negotiations and/or later interaction with the Protocols cannot be understood without the filter of the "process of decolonisation." Newly independent states aimed not only to establish themselves within the fledgling format of international law but also to secure instruments which could tackle the special nature of internal and international conflict, including conflict with colonial rulers and occupiers.[57] The interaction of Asia-Pacific states with the 1977 Additional Protocols must be viewed through the "filter of the process of decolonization". Unlike earlier "European-led" diplomatic efforts at the Hague or the 1949 Geneva Conventions where regional participation was often a strategic tool to assert sovereign status or was limited by colonial occupation, the 1977 negotiations allowed newly independent states to act as active shapers of international law. The notably higher "acceptability" of AP

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[54] Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, pp. 3–22.

[55] Protocol Additional (I) to the Geneva Conventions, above note 40, Art. 1(4).

[56] Kriangsak Kittichaisaree, "International Humanitarian Law and the Asia-Pacific Struggles for National Liberation", in Linton, McCormack and Sivakumaran (eds), *Asia-Pacific Perspectives on International Humanitarian Law*, above note 2, pp. 139–155.

[57] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), above note 37.

I in the region, compared to prior legal frameworks, is explained by its inclusion of provisions directly relevant to the region's history, such as the right to self-determination and the legal status of wars of national liberation. These innovations reflected a deliberate attempt to bring the international law of war into conformity with the process of decolonization itself.[58] Despite the development of customary international humanitarian law, the second pillar of doctrinal authority in IHL, depends on evidence of state practice coupled with *opinio juris*. The ICRC's landmark study on customary IHL deployed a rigorous methodology to identify rules and the practice that underpins them, and this study recognized that evidence from the Asia-Pacific region was both present and revealing, even when less visible in certain doctrinal inventories. The ICRC study's two volumes demonstrate how state practice including military manuals, national legislation, official statements, and judicial decisions contributes to the formation and clarification of customary rules, and how Asia-Pacific contributions form part of that evidentiary matrix.[59]

Doctrinally, the sources of evidence of *opinio juris* in the Asia-Pacific are multifaceted. First, national legislation and military manuals-for instance, the domestic incorporation of Geneva Conventions (GC) obligations and guidelines for armed forces-indicate that states regard some rules as legally binding.[60] Second, judicial pronouncements and executive submissions to international fora (including ICJ written statements and other government communications) afford concrete demonstrations of how states understand and accept IHL norms in concrete cases.[61]

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[58] Ibid, pp. 139-155.

[59] Ibid.

[60] Ibid.

[61] S. Linton, above note 2.

National courts and tribunals, despite significant variability of both doctrine and ability across the region, offer material evidence of state practice relevant to customary IHL.[62] Domestic trials of war crimes, administrative application of IHL rules, and evaluation of the law of occupation or detention regimes offer material evidence of legal reasoning relevant and appropriate for review and guidance of both international and national theorists of customary law. National cases grounded upon treaty and customary rules demonstrate state practice, while detailed submissions to international bodies such as those by India and Japan to the ICJ, provide concrete evidence of *opinio juris* regarding the legality of specific methods of warfare.[63] It has been argued by long history of studies, notably by the ICRC that this cultural familiarity contributed toward a more 'legible' humanitarian element of IHL in regional discourse, even if there was underperformance in practical implementation.

Nevertheless, the formation of customary international law cannot be taken for granted, as the mere identification of rules cannot overcome the practical hurdles, such as inconsistent implementation and sovereignty concerns, found along the Asia-Pacific's historical trajectory.[64] A large number of non-international armed conflicts, asymmetric warfare, and counter-insurgency activities in the region create difficulties in recognizing the consistency of state practice, as well as the legal belief that supports such practice. States that are involved in internal armed struggles may support rules on the international scene, while on the domestic scene, states may soften

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[62] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, paras. 78–95.

[63] Written Statement of Japan, *Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice, available at: www.icj-cij.org.

[64] S. Linton, above note 2.

the observance of such rules.[65] Therefore, the validity of the evidence responsible for the establishment of specific rules related to the legalization of international armed conflict must be scrutinized.[66]

However, it is possible to identify some elements of the Asia-Pacific contribution to international humanitarian law through these challenges. First, regional states actively participated in multilateral processes, in particular in the negotiations that led to Additional Protocol I and Additional Protocol II, and thus contributed directly to the development of treaty rules governing combatant status and the regulation of anti-colonial conflicts.[67] Second, state practice from the region, as evidenced by military manuals, legislation and judicial decisions, has been referred to in prominent customary law studies and commentaries as providing support for rules safeguarding civilians' rights, humane treatment of detainees and restrictions on the means and methods of warfare.[68] Third, the ongoing and active positions of Asia-Pacific states toward emerging issues—including naval operations in contested maritime areas and protection of that environment from the effects of hostilities—show features—albeit not comprehensive—that are continuing to contribute to shaping

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[65] M. Rafiqul Islam and Nakib Nasrullah, "The Application of International Humanitarian Law by the International Crimes Tribunal of Bangladesh", in Linton, McCormack and Sivakumaran (eds), *Asia-Pacific Perspectives on International Humanitarian Law*, above note 2, pp. 586–607.

[66] RSIS and International Committee of the Red Cross, *International Humanitarian Law in Asia: Regional Conference on Generating Respect for the Law*, Singapore, 27–28 April 2017.

[67] Simon Chesterman, "Asia's Ambivalence about International Law and Institutions: Past, Present and Futures", *European Journal of International Law*, Vol. 27, No. 4, 2016.

[68] International Committee of the Red Cross, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., ICRC, Geneva, 2016, Introduction, paras. 45–52.

doctrinal developments capable of refining and updating classical law of armed conflict.[69]

In brief, the post-Second World War evolution of international humanitarian law in the Asia-Pacific appears as a dynamic balance of the treaty approach, as exemplified in the two 1977 Additional Protocols, and the slow accumulative process of the crystallisation of customary law through various forms of state practice and *opinio juris*. Decolonisation brought a proliferating number of participants in the negotiating process, as well as a specific body of claims in the realm of international humanitarian law, which had important implications for the law of armed conflicts generally, in the areas of self-determination and organized armed opposition.[70] A nuanced approach, attuned to the specific debates surrounding the evolution of international humanitarian law that privileges the evidence of practice and pronouncements in addition to treaty texts, is essential in attempting to understand the evolution of international humanitarian law in and through the Asia-Pacific region.

Ratification and Implementation of Treaties in the Asia Pacific Region

The ratification process of international humanitarian law treaties represents the utmost visible expression of states' consent to universally accepted humanitarian rules. With the states in the Asia-Pacific region displaying robust formal commitment to the leading treaties of international humanitarian law, in particular the 1949 Geneva Conventions, almost all Asia-Pacific states are party to the four Geneva Conventions. This represents a strong indication of the universally accepted nature of the treaties. The strong support in

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[69] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), above note 37.

[70] S. Linton, above note 2.

terms of treaty ratification represents a marked distinction from the varying acceptance of the Additional Protocols of 1977.[71]

The ratifications of AP I and AP II differ greatly among the Asia-Pacific nations. Though the state governments have ratified AP I, which deals with international wars and some of the rules of wars of national liberation, the ratification of AP II covering wars of non-international nature is low.[72] This point is especially noteworthy in light of the reality that non-international armed conflicts have historically been the dominant form of violence in the region. In this context, concerns surrounding sovereignty, internal security, and the control of opposition groups have been cited as significant obstacles to the ratification of Additional Protocol II.[73] There is a sense of sensitivity regarding international regulation of internal conflicts.

While there have been differing rates of treaty acceptance, Asia-Pacific states have begun emphasizing internal mechanisms of IHL treaty application. One of the more significant developments has been in the establishment of IHL national committees, acting as a coordination mechanism between treaty application, dissemination, and advisory activities, filling in the gaps between IHL treaty application and internal practices.[74] One of the more discussed regional examples comes in the form of the Philippine Inter-Agency Committee on International Humanitarian Law (IAC-IHL). Executed through an executive order, it enshrines interagency coordination between sixteen different state agencies, ranging from defense and

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[71] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), above note 37.

[72] S. Sivakumaran, above note 4.

[73] Ibid.

[74] International Committee of the Red Cross, *National Committees on International Humanitarian Law, ICRC,* Geneva.

law enforcement to foreign affairs and education.[75] Its mandate includes treaty implementation, legislative review, promotion of IHL, and working with international organizations, showing a holistic approach.[76]

The experience in the Philippines shows the role national IHL committees may play in ensuring coherence and continuity in implementation, particularly where there are long-running internal conflicts. The IAC-IHL has been key in helping to secure the adoption of national laws that incorporate war crimes, aiding IHL education within the military and civilian realm, and engaging with regional activities within ASEAN.[77] The way it was structured was even considered by several states in Southeast Asia that are working towards bolstering national implementation systems, showing the normative influence of the IAC-IHL even outside national boundaries.[78]

A pertinent precedent in the case of Australia can serve as an early exemplar of institutional engagement with the implementation of IHL rules and principles.[79] Australia, as one of the first Asia-Pacific states that enacted domestic legislation that incorporated the Geneva Conventions, enacted the Geneva Conventions Act in 1957, which provided for the incorporation of grave breaches provisions therein. Australia has also demonstrated continuous dedication to dissemination and training, especially in its own armed forces, using military manuals, operational law courses, and participation in

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[75] RSIS and International Committee of the Red Cross, *International Humanitarian Law in Asia: Regional Conference on Generating Respect for the Law*, Singapore, 2017.

[76] Philippine Inter-Agency Committee on International Humanitarian Law (IAC-IHL), *Implementing Rules and Regulations of Republic Act No. 9851*, Government of the Philippines, Manila, 2010.

[77] Ibid.

[78] Ibid.

[79] S. Linton, above note 2.

multinational military exercises.[80] These developments demonstrate a long-standing awareness of the importance of embedding IHL rules in military thought and operational conceptualization, rather than relying on post-conflict consequences.

Japan's approach to the implementation of IHL can again be characterized by its unique set of criteria and constitutional provisions. While Japan ratified the Geneva Conventions (GCs) rather quickly, its anti-war-oriented post-WWII Constitution and increasingly divergent viewpoint toward the scope of its Self-Defence Forces have influenced the methods of the dissemination and practice of IHL. [81] Specifically, Japan's focus on the educational and developmental roles of its Self-Defence Forces, coupled with its involvement in international humanitarian assistance, relief operations, and peacekeeping missions, underscores the central pillars of its commitment to international humanitarian law [82] Legislative enactment of its IHL responsibilities, in turn, has been marked by regional apprehensions.[83]

The experience of Indonesia provides an additional example of the variety of the application process found within the region. As a state that has undergone a range of internal conflict incidents, Indonesia has developed slowly but surely its application of IHL within military training and doctrine, and alongside its dialogue with international bodies and academic institutions with regard to humanitarian law.[84] The dissemination of IHL within the Indonesian

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[80] Ibid.

[81] Satoshi Hirose, "Japan and Nuclear Weapons", in *Asia-Pacific Perspectives on International Humanitarian Law.*

[82] Ibid.

[83] International Committee of the Red Cross, *National Implementation of International Humanitarian Law: A Manual*, ICRC, Geneva, 2013.

[84] Suzannah Linton, "International Humanitarian Law in Indonesia", in *Asia-Pacific Perspectives on International Humanitarian Law*.

military forces is enabled via its relationship with the ICRC and its integration within military training curricula.[85] The operational application, however, of IHL within internal conflict scenarios is seen as a challenge.[86]

As far as its application in the Pacific Island states of the Pacific Islands group is concerned, it has always been in an environment of scarce institutional ability, and exposure to situations of warfare or armed conflict is rather rare.[87] However Pacific Island states have still ratified the conventions, and it is said that they have also ratified the protocols, which indicates that there is still a commitment to IHL, irrespective of scarce ability. However, it can still have regional support, and its application will always depend on its integration into its framework.[88]

Generally, within the context of the Asia-Pacific, a significant role of dissemination of IHL has come to be recognized as an essential part of IHL implementation strategy. Military training, the expression of IHL within national laws, educational campaigns, and working with academic institutions and civic society are examples of forms of dissemination of IHL followed across Asia-Pacific countries.[89] In military law, military manuals and rules of engagement are utilized as foundational tools for operationalization of IHL rules and regulations. In addition, dissemination of IHL helps raise awareness of IHL rules and regulations within the rest of the populace and influences the internalization of rules and regulations of IHL.

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[85] Ibid.

[86] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, pp. 1–5.

[87] Suzannah Linton, "Pacific Island States and International Humanitarian Law", in *Asia-Pacific Perspectives on International Humanitarian Law.*

[88] Ibid.

[89] RSIS and ICRC, above note 66.

Nonetheless, gaps continue to exist between the formally ratified measures of IHL ratification, institutionalization, and actual implementation. Despite the presence of national IHL committees and legislative measures, success may continue to be dependent on political will and engagement in the process.[90] In states plagued by ongoing and/or repeated armed conflicts, the actual implementation of IHL may be hindered by the presence of non-state armed groups beyond state-centric compliance measures. When looking at the ratification and implementation of IHL in the Asia-Pacific region, a complex and multi-layered reality presents itself. The nearly complete ratification of the GCs exposes a high degree of acceptance of humanitarian law, but varying patterns in relation to the AP display sensitivities around sovereignty and internal conflict. Factors such as the military dissemination efforts, and legislative implementation expose a high degree of effort in relation to translating treaty commitment into practice. [91]

Contemporary Challenges

The contemporary challenges facing IHL across the Asia-Pacific region require consideration against a broader appreciation of the region's historical engagement with humanitarian norms. Although the post-Second World War period ushered in a shift from marginal participation to formal engagement in IHL treaty regimes, the persistence of armed conflict and advancement of new methods of warfare have revealed continuing tensions between ideals set out in law and operational realities. These are modern expressions of issues that have followed the region's application of IHL since its original codification.

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[90] S. Linton, above note 2.

[91] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, pp. 6–10.

1. Persistent Violations in Contemporary Conflicts

Armed conflict in the Asia-Pacific continues to produce serious IHL concerns, most significantly in non-international armed conflict contexts. The hostilities between state forces and non-state armed groups in the Philippines have frequently produced issues surrounding the protection of civilians, conduct of hostilities, and displacement.[92] Despite the Philippines having developed some quite advanced institutional mechanisms for the implementation of IHL, such as a national IHL committee, violations continue and reflect the limits of institutionalization absent of effective enforcement.[93] This debate reflects the earlier historical debates around Common Article 3 and Additional Protocol II, in which states expressed similar concerns in relation to internal conflict regulation, but at the same time acknowledged the humanitarian imperative.

The situation in Myanmar provides a particularly stark illustration of these challenges. Since 2021, allegations of aerial bombardment, attacks on civilian infrastructure, and restrictions on humanitarian access have drawn widespread international condemnation and intensified debates concerning responsibility for violations of international humanitarian law, including in the context of the proceedings in The Gambia v Myanmar.[94] Myanmar also ratified some other humanitarian instruments prior to joining the Geneva Conventions (joining relatively late in 1992), including the Genocide Convention (1956). This mixed treaty engagement makes for some

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[92] RSIS and International Committee of the Red Cross, *International Humanitarian Law in Asia: Regional Conference on Generating Respect for the Law*, Singapore, 2017.

[93] Ibid.

[94] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures Order, International Court of Justice, 23 January 2020.

difficult conclusions about its historical relationship to international humanitarian law. Myanmar was not a party to the Geneva Conventions until its ratification in 2013 but was still bound by applicable rules of customary international law. Nonetheless, the amount of state practice at this time constituted breaches of customary norms is not always so certain in the historical record. In a more general sense, the delay in Myanmar's joining treaties, coupled with relatively limited domestic incorporation of international legal obligations, reflects wider structural challenges in the universalization and implementation of international humanitarian law. Accordingly, allegations of breaches of international law must be situated within this broader legal and historical context rather than assessed in isolation.[95] The breach of international laws cannot be considered in isolation.

Maritime conflicts in the Asia-Pacific make it more challenging in the case of the observance of IH rules. Dispute in the South China Sea, which involves naval and air forces in close proximity, causes some worries regarding the law of naval warfare, the principles of attack, and the protection of civilians on the vessels.[96] Historically, the region's engagement with the Hague law of naval warfare was limited, and contemporary operational environments now test the adequacy of existing legal frameworks. The increasing militarisation of contested maritime spaces underscores how historical gaps in normative development can generate contemporary uncertainty.

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[95] S. Linton, above note 2.

[96] Rob McLaughlin, "Anticipating Operational Naval Warfare Issues in International Humanitarian Law that May Arise in the Event of a Conflict in the South China Sea", in *Asia-Pacific Perspectives on International Humanitarian Law*, Cambridge University Press, 2019.

2. Emerging Domains of Warfare

Evolution of warfare into new domains: Lessons can be drawn from historical patterns of adaptation concerning contemporary challenges emanating from the exploration of cyberspace, and outer space. Asia Pacific states demonstrate an emerging trend in cyberspace warfare, both in offense and defense. However, considerable variability exists in the perceptions of existing principles of IHL.[97] For example, China has proposed several positions based on the sovereignty of state and information security, while other states and actors in the Asia Pacific region proposed the extension of traditional principles of IHL, specifically the law of distinction and proportionality, to cyberspace warfare.[98] Historical debates focused on the potential for regulation of emerging warfare, for example, through the lens of aerial bombardment or naval warfare. [99]

Similarly, the domain or space of outer space can be cited, with many states within the Asia-Pacific region possessing highly developed capacity within this sphere, having significantly contributed towards international debate on the militarisation of space. [100] While IHL has responded over time to the evolving environment within the conduct of warfare, the lack of conflict-specific treaty regimes applicable within the sphere of outer space results in legal uncertainty around the applicability of the principles. Increasing activity within this sphere positions the Asia-Pacific states

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[97] Zhang Binxin, "Cyberspace and International Humanitarian Law: The Chinese Approach", in *Asia-Pacific Perspectives on International Humanitarian Law*,

[98] United Nations Group of Governmental Experts, *Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, UN Doc A/70/174, 2015.

[99] Ibid.

[100] Steven Freeland and Elise Gruttner, "Critical Issues in the Regulation of Armed Conflict in Outer Space", in *Asia-Pacific Perspectives on International Humanitarian Law*.

at the centre continuing the trend that was established within the negotiations on the Additional Protocols.

3. Reviews of weapons with regard to Article 36 of AP I

Reviews of weapons with regard to Article 36 of AP I represent yet another area where past treaty commitments and present challenges coincide. Additionally, while AP I does mandate for states in the Asia Pacific region to consider and evaluate the legality of new weapons technology, only a few Asia-Pacific states have so far developed formal mechanisms in this regard.[101] With the development of autonomous weapons technology and missile systems, it is of utmost importance to effectively evaluate these arms in this region of intense military modernization.

The region's concern for the environment is not merely a modern trend but is rooted in a "juridical answer" to the "catastrophic breakdown of restraint" during the Second World War. The atomic bombings of Hiroshima and Nagasaki demonstrated the unprecedented scale of "civilian infrastructure degradation" and long-term harm, which illuminated the profound shortcomings of pre-war legal structures. This history informs the region's early engagement with the ENMOD Treaty and the environmental protections in AP I, which are now seen as the foundational pillars for contemporary environmental discourse in regional IHL.[102] Military activities in the South China Sea have revitalized debates on the law of naval warfare and the "protection of the [maritime] environment against the impact of warfare". These military activities pose a risk of "enduring damage to the environment," which directly "impacts the lives of civilians" who

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[101] Yves Sandoz et al. (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, pp. 423–427.

[102] Emily Crawford, "Accounting for the ENMOD Convention", in *International Law and the Cold War*, Cambridge University Press, 2020.

depend on these ecosystems for their livelihoods. The militarization of new domains, such as outer space and the development of autonomous weapons, has created further uncertainty regarding environmental degradation, as there are few "conflict-specific treaty regimes" to regulate these high-tech military activities

4. Compliance Challenges and Structural Constraints

Another recurring theme within the Asia-Pacific is the position and role of non-state groups, and the historical resistance, especially regarding the regulation of internal conflict, is evident within the posturing of states during the drafting of common Article 3 and AP II. It is evident, especially within contemporary conflict, that the role of non-state groups inhibits compliance, and the attempt to work with such groups particularly regarding the dissemination of the laws, has had limited success within these frameworks.[103]

Another area which needs to be addressed is the prevalence of impunity. Though international criminal law has devised measures to impose accountability, national practice in the Asia-Pacific on the prosecution of IHL violations is inconsistent.[104] The historic lack of willingness to place military activities under the scanner of legal accountability continues to affect current practices. The issue of lack of accountability mechanisms has been highlighted in the lack of deterrence it provides, impacting the overall viability of IHL.

In addition, the restrictions on humanitarian access further exacerbate compliance challenges. In several contemporary conflicts,

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[103] Sandesh Sivakumaran, "Binding Armed Opposition Groups", *International and Comparative Law Quarterly*, Vol. 55, 2006.

[104] M. Rafiqul Islam and Nakib Nasrullah, "The Application of International Humanitarian Law by the International Crimes Tribunal of Bangladesh", in *Asia-Pacific Perspectives on International Humanitarian Law*, above note 5.

humanitarian actors face administrative, security, and political obstacles that impede the delivery of aid.[105] Such restrictions reflect longstanding tensions between sovereignty and humanitarian intervention that have characterized the region's engagement with IHL since decolonisation. While states formally recognize obligations to allow humanitarian access, operational realities often diverge from legal commitments.

5. Comparative Perspective and Evolutionary Insights

In comparison, it is evident that present trends in Asia-Pacific face issues of continuity as well as transformation i.e., continuity in relation to IHL, owing to earlier involvement in treaty creation as well as custom development based on norms of humanity. Alongside this, there is transformation owing to issues like non-international armed conflicts, technologically advances, as well as geopolitical dynamics.[106] The low levels of regional resistance to IHL, based on its historical humanitarian traditions, again represent a paradox in relation to the actual levels of implementation. It confirms the key finding of the Asia-Pacific experience that the acceptance of humanitarian law in practice by itself, without the development of institutions, the political resolve, and the mechanisms of accountability, fails to translate into effective implementation. As the region enters discussions in the emerging sphere of Cyber War, Outer Space Law, and the Law of the Environment, its historical path suggests it again holds the key in the development of the evolving IHL.

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[105] International Committee of the Red Cross, *Challenges to Humanitarian Access*, ICRC, Geneva.

[106] S. Linton, above note 2.

From Peripheral Participation to Normative Influence

The Asia-Pacific region has gradually shifted from its position as a peripheral contributor to the development of international humanitarian law to an increasingly important player in its interpretation, explanation, and diffusion. This is occurring not only through treaty accession and national implementation but also in the engagement of the region with international processes of adjudication, doctrinal articulation, and education. Current regional contributions must therefore be seen as the result of a longer path shaped by iterative processes of norm internalization and institutional development.

1. Judicial and Doctrinal Contributions to International Humanitarian Law

One such example of the region's influence on the development of IHL lies in its engagement with the International Court of Justice. The written statements and oral pleadings submitted by the states of Asia-Pacific in advisory procedures have contributed to the clarification of the basic IHL principles, especially those referring to the conduct of hostilities and the protection of civilians. A good example is the Advisory Opinion of the ICJ on the Legality of the threat or use of nuclear weapons.[107] Other state parties such as Japan and India also made detailed written submissions providing an analysis of the applicability of principles of distinction, proportionality, and unnecessary suffering, primarily relying upon humanitarian elements of IHL developed and influenced historically.[108]

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[107] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, International Court of Justice, 8 July 1996, para. 78.

[108] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, paras. 78–95; Written Statement of Japan and Written

2. Regional State Practice, Authoritative IHL Commentaries, and Teaching Materials

Apart from the legal institutions themselves, Asia-Pacific state practice in IHL has emerged in the form of doctrinal texts emanating from international institutions. The newly revised Commentaries to the GCs and the Additional Protocols issued by the ICRC include state practice from the region, specifically examples from Asia-Pacific military manuals, legislation, and decisions.[109] This is evident "from a methodological position that the interpretation of IHL cannot be based exclusively or mainly upon a handful of states' practice." The interest in Asia-Pacific practice in IHL in authoritative doctrinal texts constitutes a significant move away from a fragmented approach in favor of a more holistic practice.

Academic and training texts produced within the region further attest to its imprint on the norm development of IHL as a whole. Universities and training centers within the region increasingly engage in the production and popularization of IHL scholarship relevant to regional realities.[110] This can be seen as another precursor of developments within the law of treaties and the creation of custom, again highlighting the importance of internalization both at the level of doctrine and its application.

Statement of India, ICJ, available at: www.icj-cij.org (all internet references accessed 21 January 2026).

[109] International Committee of the Red Cross, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., ICRC, Geneva, 2016, Introduction, paras. 45–52.

[110] S. Linton, above note 2.

3. Bridging Normative Influence and Compliance: Institutional and Regional Strategies

Despite the region's contributions, considerable challenges remain. These can arguably be overcome through forward-thinking strategies that build on existing structures while remaining responsive to the changing nature of conflict. The same trend is experienced throughout the region. There was early acquiescence within the region, yet inconsistent implementation. Thus, there has been a lag in the implementation.

Strengthening national IHL committees also marks a critical starting point. For although the Asia-Pacific region possesses several countries that have established national IHL committees, the scope of their mandates also varies considerably. [111] Strengthening the effectiveness of national IHL committees could likely produce greater synergies of implementation and dissemination. Intermeshed strategies could potentially be realized on a regional platform, too. This could be achieved either through the auspices of ASEAN or the Pacific Islands Forum, or on an ad-hoc basis.

4. Beyond Treaty Adherence: Internalisation of Humanitarian Norms

Regional dialogues also have an essential role to play, particularly in dealing with emerging threats that are not solely national security threats. Cyber operations, security in the maritime domain, protecting the environment in the course of war, are all key areas that need collective involvement, considering their non-national security connotations. The experience of the Asia-Pacific region is worth

[111] RSIS and ICRS, above note 66.

citing, showing that regional perspectives are capable of playing a role, even in setting global norms.

Education and training, not only for the armed forces, but also for civilian authorities, the legal system, and civil society, remain a key area for ensuring the internalization of norms. A level of conceptual resistance to the internalization of IHL remains relatively lower in the region due to its rich humanitarian legacy.[112] Building upon this can go a long way in promoting its observance.

5. Future Directions for Asia-Pacific Engagement with IHL

Under the outlook, the Asia-Pacific region is seen to be at a juncture in its relationship with IHL that has delineated its position both as a beneficiary and a shaper of humanitarian norms. The ongoing role in internationalized adjudications, doctrinal development, and innovation in institutions presents an opportunity to reinforce its compliance record, including its confrontation with myriad challenges, in pursuing this path. The development of IHL in the Asia-Pacific region therefore signifies its prospect in the years to come, not based on the development of any new legal instruments, but the entrenchment of existing commitments in the region.

Conclusion

This article has narrated the history and evolution of international humanitarian law (IHL) in relation to states within the Asia-Pacific region, from normative involvement through to the challenges, confirms that the Asia-Pacific region was never at the periphery of the putative humanitarian ethos upon which the law of warfare was constituted. From restraints upon warfare through to the involvement

[112] S. Linton, above note 2.

with the early Hague Conventions, the impact of the Second World War, and active involvement in the Geneva Conference of 1949, states within the Asia-Pacific region have been engaged with IHL from perspectives that are reflective of historical, political, and cultural circumstance. The post-1945 period, from the decolonisation, saw a change in character from limited involvement to more engaged involvement.

The acceptance of the Geneva Conventions of 1949 and their almost universal ratification in the region suggest the wide and sustained acceptance of humanitarian law. Engagement with the 1977 Additional Protocols suggests that the region continued to seek, in practical terms, to frame IHL to meet the needs of wars of national liberation and internal conflicts.

Significantly, Asia-Pacific state practice has contributed meaningfully to the development of customary international humanitarian law, and its recognition in International Committee of the Red Cross commentaries points to a more inclusive and pluralistic evolution of the field. Nevertheless, at the same time, this research points out some existing discrepancies between normative-perceived acceptance and practical implementation. For instance, recent conflicts in the Asia-Pacific region demonstrated an obvious gap in IHL compliance, particularly in NIAC situations, despite treaty ratification. This is not necessarily a deviation, as it is rather an extension of underlying historical dynamics, particularly where issues of sovereignty, internal conflicts, and external interference are at play. The role of non-state armed groups, as well as limitations with accountability, have all contributed significantly.

These challenges are further complicated by emerging types of warfare. Cyberspace warfare, outer space activities, robotic weapons systems, and hybrid warfare create pressure on traditional legal

systems, which have been shaped by traditional warfare. While there is a growing engagement of Asia-Pacific countries on various international and regional platforms regarding such challenges, the legal ambiguity and application thereof still persist.

Against this backdrop, the Asia-Pacific experience offers important lessons for the future development and effectiveness of IHL. One central insight is that low conceptual resistance to humanitarian norms rooted in historical and cultural traditions emphasising restraint and humanity in warfare does not automatically translate into compliance. Effective implementation requires sustained political will, institutional capacity, and operational integration. Accordingly, policy responses must move beyond reaffirming existing principles to strengthening mechanisms that enable their application in complex and evolving conflict environments.

First amongst the priorities is the encouragement of the universal ratification process of the Additional Protocols, particularly AP II. As the states in the concerned regions face the issue of non-international conflicts, ratifying AP II would strengthen the norm that guides non-interventional conflicts, thereby ensuring the standardization of the handling of internal violence in the region. During the ratification process, the domestic laws would also require the incorporation of the treaty provisions.

Secondly, states should build upon and empower national IHL committees as they are considered to be key coordinating entities in the implementation and dissemination of IHL. While several Asia-Pacific states have established such entities, their effectiveness differs from one country to another. The exchange of best practice at the regional level in the context of inter-state platforms of dialogue

involving national IHL committees can facilitate greater conformity in the midst of legal diversity.

Thirdly, the military trainings undertaken and the planning involved in warfare need to be adjusted so that they are compatible with the changing nature of warfare. The hybrid warfare environments, cyber warfare, information warfare, and warfare involving the use of advanced technologies have resulted in the need for special trainings in accordance with IHL. The Asia-Pacific states, being equipped with advanced technology, are better suited to develop special trainings for this region, adapting IHL to the changing risks. The Asia-Pacific states for decades have been very active in IHL.

Fourth, there is a need to enhance the mechanisms of accountability to overcome the problem of impunity ruling IHL breaches. Domestic prosecution, especially, is key in buttressing compliance and inhibiting future IHL violations. However, regional cooperation and international mechanisms may also be necessary, especially whenever there is weakness on the part of the national framework. Access to justice is evidently necessary and key to the legitimacy and acceptance of IHL rules.

Finally, the internalization of the norms over the long term calls for a continued investment in education and advocacy programs. Building on the strong humanitarian traditions of the Asia-Pacific region throughout history could provide the normative foundation on which to establish support for IHL at the societal level, thus building the culture of moderation even in the midst of war.

In conclusion, it is vital to note that the development of international humanitarian law in the Asia-Pacific has been characterized by an intricate relationship between engagement, contribution, and challenges in the region. The Asia-Pacific has

contributed to, and continues to contribute to, the development of international humanitarian law, but it has continually encountered challenges in the implementation of international humanitarian obligations. Thus, in overcoming the challenges, it is vital to adopt an integrative approach to treaty compliance, capacity building, rendering, and internalization. Thus, Asia-Pacific states not only strengthen compliance in the region but contribute to the development of international humanitarian law in an ever-changing world of warfare.