

War by Nature: Rethinking International Humanitarian Law in the Age of Climate-Driven Conflict

Naresh Prajapati, Jyoti
Dr. Anwesha Ghosh

ABSTRACT

The Asia-Pacific region is marked by climate vulnerability and conflict risk, exposing doctrinal and protection limits within International Humanitarian Law (IHL), particularly in relation to Pacific Island insecurity and displacement in South Asia. The study analyses how current legal frameworks struggle to address slow-onset crises, climate-linked violence below the armed-conflict threshold, environmental accountability, and the emerging debate on ecocide. It proposes a prudent and gradual interpretive shift of IHL and places ecocide within the wider context of international criminal law and calls for enhancing regional legal mechanisms for enhanced humanitarian protection.

Keywords: *International Humanitarian Law, Asia Pacific, Climate-Induced Conflict, Environmental Protection, War Crimes, Ecocide*

Introduction

In the twenty-first century, alongside politics and territorial ambition, environmental pressure is also shaping armed conflict. International humanitarian law (IHL) is not the sole response to every instance of climate-related harm, and not every such harm necessarily constitutes

a cause of armed conflict. However, it can aggravate existing social, economic, and political vulnerabilities through droughts, resource depletion, sea-level rise, extreme climate events, and displacement.¹ The pressures are particularly apparent in the Asia-Pacific region, where livelihoods that are sensitive to climate change often co-exist with dense coastal populations and weak governance. Therefore, the question in this study is more specific and asks: How does climate change expose *lacunae* in the doctrine and protection of IHL in the Asia-Pacific context, particularly in armed conflicts where environmental stress precedes, follows, or occurs during such conflicts?

The study starts by clarifying that there are two relationships, though interconnected, between climate change as a cause and climate change as an accelerator or as a background condition of insecurity. Environmental pressures, in this context, can play a role in triggering instability, localised violence, and even competition over resources, provided that the situation is also one in which either an international or a non-international armed conflict exists under the provisions of IHL. The second relationship concerns environmental damage resulting from armed conflict, including pollution, deforestation, disruption of water resources, and damage to ecosystems from military operations. The second of these relationships is more directly linked to IHL, namely the rules of conduct of hostilities and protection of the natural environment. This distinction is significant because the legal regime, the evidentiary burdens, and the remedies will also differ in each context.²

¹ United Nations General Assembly, *Climate Change, and Its Possible Security Implications*, UN Doc A/64/350 (11 September 2009).

² Stavros-Evdokimos Pantazopoulos, “Navigating Legal Frontiers: Climate Change, Environmental Protection and Armed Conflict”, *International Review of the Red Cross*, Vol. 106, No. 925, 2024, pp. 366–392.

This present study does not require IHL to apply to all kinds of climate-related disturbances, disaster displacement, or environmental degradation. This expansion would misunderstand the purpose of IHL, which is to regulate behaviour in armed conflict, not in climate governance. The study suggests that climate change reveals the boundaries of IHL in the context of environmental stress and armed conflict. The damage that arises from some of the above-mentioned is thus not IHL failures per se but rather a result of fragmentation between IHL, international environmental law, international human rights law (IHRL), refugee law, and international criminal law. The main question is how these regimes interact, and where impacted people and degraded ecosystems are not adequately safeguarded, where climate stress and conflict converge.³ This also requires a conceptual separation between climate change and environmental degradation. The accepted scientific term for the long-term and systematic alteration of global or regional climate patterns due to anthropogenic, or human-caused, emissions of greenhouse gases are climate change, and it is regulated by agreements in the United Nations Framework Convention on Climate Change and the Paris Agreement. Environmental degradation is broader and can cover loss of forests, water pollution, soil erosion, loss of biodiversity, and destruction of ecosystems due to peacetime activities, military operations, or weak governance. IHL has generally only addressed the question of environmental harm when it has had a sufficiently close connection with armed conflict. It does not directly regulate global climate processes.⁴ This is because environmental damage during

³ See A. Opdyke and S. Banki, "A Review of the Climate Change-Disaster-Conflict Nexus and Humanitarian Framing of Complex Displacement Contexts", *Climate and Development*, Vol. 18, No. 3, 2026, pp. 240–253.

⁴ C. S. Ferreira Fernandes, F. Alves, and J. Loureiro, "Sustainable Futures: From Causes of Environmental Degradation to Solutions", *Discov Sustain*, Vol. 5, 2025, p. 63.

conflict may be governed by IHL rules, while environmental damage as a result of climate change or slow-onset environmental damage may not be governed by IHL rules and may require other legal mechanisms to be addressed.⁵

In IHL, the real challenge is not the total absence of environmental protection, but the limited reach and demanding thresholds of existing rules, because at present these rules are not broadly applied and are difficult to meet. The protection of the environment in an armed conflict is addressed by Additional Protocol I and customary IHL, but some terms are difficult to apply, such as “widespread, long-term and severe.” Likewise, in times of armed conflict, IHL safeguards civilians, but is less effective where civilians are displaced by a range of slow-onset climate processes, particularly where the violence does not amount to armed conflict or where the displacement is caused by a combination of factors.⁶ However, the issue is not just one of the obsolescence of IHL but that the harm caused by climate change can span multiple legal regimes, and the impacts on affected communities can be one continuous humanitarian crisis.⁷

In the current study, the Asia-Pacific is not merely a collection of examples but also a regional context in which to explore these legal tensions. The study does not consider all situations vulnerable to

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 1125 UNTS 3 (adopted 8 June 1977, entered into force 7 December 1978), Arts. 35(3), 55.

⁶ Michael Bothe, Carl Bruch and Jordan Diamond, “International Law Protecting the Environment during Armed Conflict”, *International Review of the Red Cross*, Vol. 82, 2012, p. 569.

⁷ Walter Kälin, *Guiding Principles on Internal Displacement* (UN Doc E/CN.4/1998/53/Add. 2, 11 February 1998); Asian Development Bank, *Climate Change, Migration and Adaptation in Asia and the Pacific* (Asian Development Bank 2012).

climate change to be IHL issues, but rather two closely related themes of case studies. First, Bangladesh and the general situation in South Asia demonstrate how climate-related displacement, land pressure, border insecurity, and resource competition can lead to instability, which is frequently not within IHL unless there is a level of organised armed violence. Second, Pacific Island communities show the limits of IHL in addressing displacement by sea-level rise and existential environmental threats, rather than the direct result of armed conflict. These examples make the Asia-Pacific especially useful for examining the relationship between climate vulnerability, conflict risk, and humanitarian protection because of these examples.⁸

Therefore, the central discussion of the study is doctrinally narrow and limited. Climate change should be understood as a structural condition that changes the conditions under which armed conflict occurs and the humanitarian consequences that follow from it. Where armed conflict exists, IHL is relevant, particularly in regulating attacks, the protection of civilians, and the limitation of environmental damage in times of conflict. But IHL is not enough to properly respond to climate-related harms of insecurity, displacement, and environmental loss. The study thus calls for an even more holistic approach to interpretation, namely one that preserves the armed conflict threshold of IHL while enhancing its reach in times of armed conflict to environmental harm, and clarifying its connection with environmental, human rights, refugee, and international criminal law.⁹

⁸ Cymie R Payne, "Climate Change, Armed Conflict and International Law", *Journal of International Humanitarian Legal Studies*, Vol. 7, 2021, p. 1.

⁹ UN Environment Programme, *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law* (UNEP 2009).

The structure of the study reflects this narrow discussion. The first section explains the threshold-based operation of IHL and the challenges of applying it to cases of climate-related violence that are localised, intermittent, or of a non-armed-conflict nature. The second part examines environmental protection under IHL, including provisions in the treaties and customary law, as well as accountability issues under the Rome Statute. The third section explores how climate-driven displacement and civilian protection gaps can occur when affected people do not fit into the categories of IHL and refugee law or existing internal displacement frameworks. The final section considers reform possibilities such as regional cooperation and the new discourse on ecocide. Ecocide is not treated as an existing IHL rule; rather, it is considered a broader international criminal law proposal that demonstrates dissatisfaction with current accountability mechanisms for severe environmental destruction, including but not limited to wartime environmental harm.¹⁰

The Legal Limits of IHL in Climate-Induced Conflicts

To study the boundaries of IHL in climate-induced conflict, however, it is important to first define the conceptual framework of IHL. IHL is threshold-based: that is, it applies when a situation is an armed conflict under international law. IHL does not apply to all types of instability, environmental stress, disaster, forced displacement, or social unrest. The importance of this point is that climate change causes many harms before, outside, or below the threshold of armed conflict. These harms could be covered under international environmental law, human rights law, refugee law, disaster law, or national law, but are not necessarily included in IHL. This section is

¹⁰ Cordula Droegel, "International Humanitarian Law and Peace: A Brief Overview", *International Review of the Red Cross*, Vol. 106, 2024, p. 989.

not intended, therefore, to claim that IHL should be used to regulate every suffering related to climate change. Instead, it asks the more restricted question of how IHL responds to or reaches its limits in relation to environmental stress as a cause of violence, where violence is nearing, or exceeding, the armed-conflict threshold, or where environmental harm occurs during an armed conflict.¹¹ IHL is based on a relatively stable notion of armed conflict, which presupposes recognisable parties, particular hostilities, and a distinct line drawn between the violence of war and the suffering of peace.¹² The environment's deterioration, the lack of resources, and the pressure from the climate are often indirect or slow causes of violence, making it difficult to see where the conflict ends and the crisis begins.¹³

The current section investigates the difficulties that the traditional IHL has in coping with these matters, thus revealing considerable gaps in both doctrine and accountability.¹⁴ The problem is not simply that IHL is outdated, but that climate-related harm can play out over a long period of time, in multiple ways and due to multiple causes, and does not fit neatly into its event-based and conduct-based framework of IHL. Traditional legal categories of armed conflict are often unable to provide a complete legal response to the humanitarian consequences that arise from slow-onset environmental harm.

¹¹ Taha Wiheba, "The International Law of Armed Conflict and the Natural Environment: An Analytical Resource for States", *HLS PILAC*, 2025, available at <https://hls.harvard.edu/wp-content/uploads/2025/07/The-International-Law-of-Armed-Conflict-and-the-Natural-Environment.pdf>.

¹² Carlos Frederico de Oliveira Pereira, "Non-International Armed Conflict – Current Conceptual Challenges: Confronting Organized Crime and Globalization of the Conflict", *Small Wars Journal*, 2025.

¹³ United Nations Security Council, *Maintenance of International Peace and Security: Climate Change* UN Doc S/PV.8451 (25 January 2019).

¹⁴ Cymie R Payne, "Climate Change, Armed Conflict and International Law", *Journal of International Humanitarian Legal Studies*, Vol. 7, 2021, p. 1.

Traditional Framework of IHL

IHL aims to reduce the impact of armed conflict by controlling the way hostilities are carried out and protecting people who are not taking, or no longer taking, part in hostilities. Among its important principles are distinction, proportionality, military necessity, and humanity. The latter are the core and are applied mainly through the four Geneva Conventions of 1949, their Additional Protocols, and customary IHL.¹⁵ These principles operate once armed conflict exists; they do not attribute responsibility for all environmental or climate-related harms outside armed conflict. Distinction is the principle that mandates during war that the opposing parties differentiate between fighters and non-combatants, and between military and civilian targets, always to some degree. The principle of proportionality prohibits attacks that are likely to cause civilian casualties disproportionately high in relation to the expected military advantage.¹⁶ Military necessity only allows measures that are necessary for achieving the legitimate military objective, whereas the humanity principle attempts to limit suffering to the minimum.¹⁷ These principles are fundamental to IHL, but their application is limited where civilian harm results from climate stress, resource depletion, or environmental degradation not connected to military activity. In these situations, the damage can be extensive, but the damage might not be legally considered as having

¹⁵ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31 (adopted 12 August 1949, entered into force 21 October 1950); Geneva Convention (II), 75 UNTS 85; Geneva Convention (III), 75 UNTS 135; Geneva Convention (IV), 75 UNTS 287.

¹⁶ ICRC, "Rule 14. Proportionality in Attack", available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule14>.

¹⁷ International Committee of the Red Cross, *The Fundamental Principles of International Humanitarian Law* (ICRC 1978).

been caused by an attack or other activity that would otherwise be covered by IHL.

IHL applies when there is an armed conflict, whether it is international or non-international. International armed conflicts occur between states, while non-international armed conflicts (NIACs) require prolonged armed violence between government troops and non-state armed groups, or between such groups. The two prerequisites of organisation and intensity, developed in international jurisprudence, serve as gatekeeping criteria. If the violence continues locally, in a limited area, is criminal, communal, or riotous, it can have significant humanitarian impacts but not meet IHL criteria.¹⁸ With this threshold-based model of applying IHL, several instances where humanitarian harm arises out of climate change do not receive the same level of protection under IHL as they would if they occurred in formally recognised armed conflict situations.

Climate-related violence makes this threshold difficult to apply.¹⁹ Armed conflict is not always solely or directly caused by climate change. Instead, it exacerbates pre-existing vulnerabilities, undermines the capacity of the state, deepens land and water/resource conflict, and places greater strain on already fragile communities. The resulting violence can be intermittent, geographically limited, or even mixed with crime and social unrest. Such scenarios are often below the legal threshold for the application of IHL, allowing the affected people to be excluded from its protection. These hybrid and fragmented forms of violence may leave affected populations outside IHL's protection. This should not be conceived as

¹⁸ Prosecutor v. Tadić (Jurisdiction), ICTY-94-1-AR72, 2 October 1995 (70).

¹⁹ UN Environment Programme, *Climate Change and Security: Risks and Responses* (UNEP 2020).

a “failure” of IHL in every case. It often mirrors the separation of labour between IHL and other legal regimes. Protection gaps occur when those other protection regimes are also ineffective or do not offer effective protection or remedies that are enforceable.

Incompatibility with Climate Triggers of Conflict

One significant limitation of IHL in relation to climate-induced conflict is that it applies only after violence reaches the legal threshold of armed conflict. IHL is mainly a reactive measure that regulates violence only after it reaches a certain level and is perpetrated by a certain organisation. In contrast, climate change operates gradually, combining with other risk factors in ways that may increase the likelihood of violence without immediately producing hostilities.²⁰ The mismatch between the temporal nature of IHL and the cumulative nature of harm caused by climate change is therefore an issue.

The legal definition of armed conflict does not include non-violent environmental pressures, such as drought, rise in sea level, and desertification. These things can, however, destabilise populations, deteriorate their means of survival, and intensify disputes over land and water. However, IHL applies only if the resulting violence satisfies the intensity and organisation requirements for a NIAC, or if it occurs between states so as to constitute an international armed conflict.²¹ This situation results in the legal invisibility of climate-linked violence from the IHL viewpoint, even where its humanitarian consequences

²⁰ United Nations Development Programme, *Climate Change and Conflict: Understanding the Linkages* (UNDP 2018).

²¹ *Ibid.*

are serious.²² Consequently, communities impacted by these matters do not benefit from the protections provided by IHL, although the conditions they live under are similar (in terms of the effects suffered) to those suffered by persons engaged in formally declared armed conflicts.

The Asia-Pacific region illustrates this problem analytically, not merely descriptively. South Asia, especially Bangladesh and its border regions, shows how climate-induced displacement, river erosion, flooding, land loss, and livelihood insecurity can amplify social tension and pressure on urban and border communities. They can lead to a certain degree of localised violence or insecurity but do not necessarily meet the threshold for IHL. Their legal importance is that they demonstrate the potential for conflict risk to arise from climate stress but are largely beyond the scope of IHL.²³ Urban and border regions may come under pressure from displaced populations, and competition for limited resources may contribute to localised violence.²⁴ The point is not to classify these situations artificially as armed conflict, but to show that they create humanitarian needs that IHL cannot address unless the armed conflict threshold is met.

Myanmar has a similar, although distinct, issue. There, the existing ethnic conflict, displacement, weak governance, and insecurity are compounded by climate vulnerability. If there is already

²² International Committee of the Red Cross, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People's Lives* (ICRC 2020).

²³ Asian Development Bank, *Climate Change, Migration and Adaptation in Asia and the Pacific* (Asian Development Bank 2012); Maria Camila Duque, "Climate Change in Bangladesh Shapes Internal Migration and Movement to India", *Migration Information Source*, 2024.

²⁴ United Nations Office for the Coordination of Humanitarian Affairs, *Bangladesh: Climate Change and Displacement* (UNOCHA 2019).

a conflict with organized armed violence, IHL may regulate the conduct of parties to the conflict. Nevertheless, displacement and vulnerability to climate events may remain outside IHL if they are not connected to any specific conduct in conflict or to obligations during conflict. This is demonstrated by Myanmar, where, even if IHL is applicable, it does not capture all forms of climate-related civilian harm.²⁵

Island countries in the Pacific will face even more serious problems because of climate change. Rising sea levels and severe weather conditions are threatening the sovereignty of numerous island nations as well as their ability to survive economically.²⁶ However, the harm is typically not caused by armed conflict and thus falls well beyond the scope of IHL. The Pacific Islands example is significant because it illustrates the extent to which IHL can be regarded as the legal solution to climate-related displacement, loss of territory, and/or existential environmental injury. These are issues more directly related to international environmental law, human rights law, law of the sea, migration governance, and statehood debates.

Weaknesses of Accountability Mechanisms

Where climate stress intersects with armed conflict, accountability gaps remain for environmental harm and damage to natural resources.²⁷ But accountability needs to be analysed carefully. Some

²⁵ Climate Diplomacy, “Myanmar Climate-Fragility Risk Brief”, available at: <https://climate-diplomacy.org/magazine/conflict/myanmar-climate-fragility-risk-brief>.

²⁶ United Nations Economic and Social Commission for Asia and the Pacific, *Climate Change and Migration in the Pacific* (UNESCAP 2020).

²⁷ Michael Bothe, Carl Bruch, and Jordan Diamond, “International Law Protecting the Environment during Armed Conflict”, *International Review of the Red Cross*, Vol. 82, 2010, p. 569.

environmental harms in times of armed conflict can be dealt with under IHL and international criminal law, but they do not provide a general mechanism for assigning responsibility for climate change itself or all climate-related suffering. The accountability gap arises from narrow legal definitions, demanding evidentiary standards, and the difficulty of linking gradual environmental harm to specific military conduct.²⁸

Article 8(2)(b)(iv) of the Rome Statute exemplifies these higher standards when dealing with (exclusively) positive acts taken in an armed conflict.²⁹ The provision criminalises intentionally launching an attack in the knowledge that it will cause widespread, long-term, and severe damage to the natural environment that would be clearly excessive in relation to the concrete and direct overall military advantage anticipated. There are several difficult components in this formulation: the conduct must be related to an attack, the environment must be so severely damaged as to meet a high threshold, the accused must have the necessary mental element, and the harm must be considered by conducting a proportionality test. The climate-related harm that will need to be proved is usually gradual, takes place over several years, and arises from actions taken as part of indirect military activities. Thus, while the Rome Statute may be one means for prosecuting the environmental harm caused by warfare, it still limits those prosecutions based on the thresholds, which are difficult to prove in practice.³⁰

²⁸ Thomas Obel Hansen, "Gaps and Options for Accountability for Environmental Crimes in Armed Conflict", *SSRN*2022.

²⁹ Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), Art. 8(2)(b)(iv).

³⁰ Frédéric Mégret, "The Problem of an International Environmental Criminal Law", *European Journal of International Law*, Vol. 20, 2011, p. 307.

Another restriction is that international criminal law lends itself well to the prosecution of identifiable acts rather than diffuse omissions or structural failures. Climate-related harm can be caused by a state's inaction in controlling resource extraction, safeguarding vulnerable populations, avoiding environmental degradation, and mitigating risks that it can foresee. Whereas human rights law, environmental law, or domestic public law might offer a route to holding a party accountable for a failure to prevent a slow-onset climate crisis, IHL offers no clear way of doing so unless it is linked to other obligations that arise in the context of armed conflict.³¹

The situation is further complicated in the Asia Pacific, where access to international judicial mechanisms and domestic enforcement varies significantly to seek accountability from the actors responsible for the violations. Many states within the region lack the political will or institutional capacity to investigate and prosecute environmental crimes relating to conflict, and thus, regional mechanisms are still being developed.³² Environmental damage is often treated as secondary to urgent security threats.³³ This reinforces the need for a multi-regime approach. IHL can regulate conduct during armed conflict, but there is a need for more robust domestic environmental enforcement, human rights protection, regional cooperation, and international criminal law involvement when severe environmental destruction during wartime is at stake.

Environmental Destruction as a Violation of IHL

³¹ Lavanya Rajamani, "Climate Change and International Law: A Gap Analysis", *European Journal of International Law*, Vol. 27, 2016, p. 159.

³² United Nations Environment Programme, *Protecting the Environment during Armed Conflict (n x): An Inventory and Analysis of International Law* (UNEP 2009).

³³ Asian Development Bank, *Law and Policy Reform for Environmental Justice in Asia and the Pacific* (Asian Development Bank 2016).

In IHL, environmental destruction has traditionally been regarded as a marginal issue rather than a core component of the legal framework.³⁴ In the past, the natural environment was often treated as the backdrop for hostilities or as collateral damage caused by military operations.³⁵ Contemporary conflicts, however, show that environmental degradation is not merely a side-effect of war. It has the potential to directly impact civilian lives, public health, food security, access to water, displacement, and post-conflict recovery. As climate-induced conflict becomes a more prevalent cause of violence through direct or indirect means, the role of environmental destruction in relation to armed conflicts is growing increasingly important.³⁶ Rather than examining environmental destruction generally, the present section focuses only on environmental harm with a sufficient nexus to armed conflict. It does not state that all forms of environmental degradation or climate damage are necessarily in breach of IHL. Instead, it is limited to the narrower issue of the regulation of environmental harm during armed conflict, why the rules for it are hard to implement, and how ongoing discussions on ecocide reflect gaps in existing rules for environmental accountability.

The growing recognition of the humanitarian consequences of environmental damage has increased scrutiny of whether existing IHL rules adequately address severe wartime environmental harm. This evaluation is particularly timely given recent climate-related conflicts,

³⁴ Saeed Bagheri and Gerhard Kemp, “Damage to and Destruction of the Natural Environment: Terraforming Warfare in Gaza and Accountability for Ecocentric Crimes”, *Journal of International Criminal Justice*, Vol. 23, No. 3-4, 2025, pp. 427–448.

³⁵ Iryna Rekrut, “Environmental Destruction in Conflict: Broadening Accountability in War”, 2025, available at: <https://blogs.icrc.org/law-and-policy/2025/03/20/environmental-destruction-in-conflict-broadening-accountability-in-war/>.

³⁶ *Ibid.*

in which environmental destruction may operate both as a driver of instability and as a result of armed conflict.

Environmental Protections in IHL

Additional Protocol I to the Geneva Conventions contains specific provisions on environmental protection during armed conflict.³⁷ Article 35(3) prohibits methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment.³⁸ Under Article 55, parties to an international armed conflict must take steps to ensure that their use of military force does not cause environmental harm and cannot retaliate by attacking the environment.³⁹ However, these treaty provisions need to be read with great care. Articles 35(3) and 55 apply in the context of international armed conflict and are based on a high cumulative threshold: widespread, long-term, and severe damage. Many incidents of environmental damage that happen during conflict could be a humanitarian problem but not strictly covered by the wording of these provisions.

The ICRC's customary humanitarian law outlines several critical provisions with respect to environmental protection within the framework of IHL and recognises that the protection of the environment is an inherently positive feature of the protection of civilians. It is particularly important because customary IHL may be applicable beyond treaty ratification and may impact on both

³⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 1125 UNTS 3 (adopted 8 June 1977, entered into force 7 December 1978).

³⁸ Additional Protocol I, Art. 35(3).

³⁹ Additional Protocol I, Art. 55.

international and non-international armed conflicts, though the extent to which rules of the environment may be applicable remains to be debated. The customary law framework is significant because customary rules may bind parties independently of treaty ratification, where state practice and *opinio juris* are established.

Rule 43 applies the general principles on the conduct of hostilities to the natural environment⁴⁰, while Rule 44 requires due regard for the protection and preservation of the natural environment during military operations.⁴¹ Additionally, Rule 45 prohibits the use of warfare methods intended or expected to cause widespread, long-term, and severe damage to the environment.⁴² The potential practical impact is limited due to uncertainty about the significance of the relevant thresholds, proving foreseeability and causation, and inconsistent enforcement practices. These rules collectively demonstrate the recognition within IHL that the destruction of the environment has significant consequences beyond ecological harm; i.e., destruction of the environment can lead directly to consequences for civilian survival, public health, food security, and displacement from home.⁴³ The humanitarian significance of these rules is especially clear in the Asia-Pacific region where many communities are very reliant on the land, forests, rivers, fisheries, and coastal ecosystems. Wartime environmental degradation can exacerbate the climate vulnerability already present and can extend the hardship for

⁴⁰ International Committee of the Red Cross, *Customary International Humanitarian Law Database*, Rule 43.

⁴¹ International Committee of the Red Cross, *Customary International Humanitarian Law Database*, Rule 44.

⁴² International Committee of the Red Cross, *Customary International Humanitarian Law Database*, Rule 45.

⁴³ Michael Bothe, Carl Bruch and Jordan Diamond, "International Law Protecting the Environment during Armed Conflict", *International Review of the Red Cross*, Vol. 82, 2010, p. 569.

civilians beyond the war.⁴⁴ In climate-vulnerable regions, environmental destruction may act as a force multiplier by increasing displacement, reducing food security, damaging livelihoods, and contributing to long-term instability even after hostilities have ceased.

Table 1: IHL Provisions in Environmental Protection and Their Practical Limitations

IHL Provision	Environmental Protection Offered	Key Limitation
AP I, Art. 35(3)⁴⁵	Prohibits widespread, long-term, severe environmental damage	Extremely high threshold, vague terms
AP I, Art. 55⁴⁶	Obligation to protect the natural environment	Weak enforcement
Customary IHL Rules 43-45	General duty to avoid environmental harm	No clear accountability mechanism

Source: Compiled by the authors from Additional Protocol I (1977) and ICRC Customary International Humanitarian Law Study (2005)

Limitations of Existing Norms

The effectiveness of these rules is limited by uncertainty over what constitutes “widespread, long-term and severe” damage.⁴⁷ Because the threshold under Additional Protocol I is cumulative,

⁴⁴ International Committee of the Red Cross, *The Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

⁴⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 1125 UNTS 3 (adopted 8 June 1977, entered into force 7 December 1978), Art. 35(3).

⁴⁶ Additional Protocol I (n 1) Art. 55; International Committee of the Red Cross, *Protection of the Natural Environment under International Humanitarian Law* (ICRC 2014).

⁴⁷ Protocol Additional to the Geneva Conventions (Additional Protocol I), Arts. 35(3), 55.

accountability is difficult because the damage must generally meet all three elements, rather than just one.⁴⁸ The lack of legally defined thresholds means that interpretation remains inconsistent, and courts rarely address environmental damage caused during armed conflict. This uncertainty about the application of IHL environmental protection laws creates considerable challenges to their implementation in situations involving climate-induced conflict. In many instances, environment-related harm occurs in an incremental, rather than a sudden, manner. Environmental damage can result from military activity, resource extraction, and poor governance practices during conflict, and these combinations can produce environmental impacts that cause great harm to the people affected by these actions. These impacts can be especially severe in terms of humanitarian consequences; however, the challenge remains in classifying such harm as “widespread” or “long-term.”⁴⁹ The issue is not just one of evidence, but also one of doctrine. IHL is often better suited to assessing identifiable attacks or military operations than gradual, cumulative, or multi-causal environmental degradation.

Additionally, obstacles arise from the enforcement of the International Criminal Court (ICC). The ICC has the authority to prosecute war crimes related to environmental harm as defined by the Rome Statute but has not prosecuted any cases to date.⁵⁰ Article 8(2)(b)(iv) of the Rome Statute criminalises intentionally launching an attack knowing that the attack will cause widespread, long-term, and severe damage to the natural environment that is clearly excessive in relation to the concrete and direct overall military advantage expected.

⁴⁸ *Ibid.*

⁴⁹ International Committee of the Red Cross, *The Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

⁵⁰ Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), Art. 8(2)(b)(iv).

This formulation requires proof of an attack, knowledge of expected environmental damage, widespread, long-term, and severe harm, and excessiveness in relation to the anticipated military advantage.⁵¹ Establishing a direct relationship between the military activity causing the harm and the environmental degradation is extremely difficult in the complicated conflict environments that result from the stressors of climate change. Causation and attribution requirements, as well as the *mens rea* and proportionality requirements, therefore, limit the ICC's ability to respond to environmental damage that is linked to climate-related conflict.

Examples of these limitations are highlighted by regional examples in the Asia-Pacific. It is in regions of conflict and abundance that environmental degradation can be caused by the combination of militarisation, extraction, a lack of regulation, and local insecurity. Papua New Guinea and other resource-dependent settings illustrate how deforestation, mining-related harm, and conflict pressures can overlap without necessarily producing clearly prosecutable IHL violations.⁵² In South Asia, water resource disputes and environmentally destructive mining activities intersect with the dynamics of conflict and cause both deepening grievances and displacement.⁵³ These harms are, however, frequently outside clear IHL violations, as they can be very serious from environmental or human rights points of view, but they are not easily prosecutable violations of IHL in terms of attack, military necessity, proportionality,

⁵¹ Frédéric Mégret, "The Problem of an International Environmental Criminal Law", *European Journal of International Law*, Vol. 20, 2011, p. 307.

⁵² United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (UNEP 2019).

⁵³ Xuanxuan Wang, Buli Cui, and Yaning Chen, et. al., "Dynamic Processes of Water Conflicts and Their Coupling with Water Crises in Asia's Transboundary River Basins", *Ecological Indicators*, Vol. 172, No. 113325, 2025.

or protected objects. Regional examples therefore reveal the difficulty of translating complex ecological harm into enforceable IHL claims.⁵⁴

Expanding Interpretation of “War Crimes”

Legal discussions have highlighted numerous gaps in the existing body of law with respect to the treatment of war crimes and environmental harm. The concept of 'ecocide' is relevant here but needs to be placed appropriately. Ecocide is not defined as a crime under IHL at present and is not recognised as an independent crime under the Rome Statute. It is more commonly recognised as a more comprehensive international criminal law reform proposal which expresses concerns about the current accountability for extreme environmental degradation. Recent ideas, such as those championed by independent expert commissions, envision ecocide as an international crime on its own, and it does not necessarily have to occur in the presence of an armed conflict to take place. This is unlike traditional war crimes under the IHL that are subject to a nexus to armed conflict. Although the damage to the environment due to armed conflict might be covered by the current provisions of the IHL, the more general concept of ecocide aims at curbing the devastating and extensive environmental degradation regardless of whether the conflict is present or not. Accordingly, the study will consider ecocide in three ways: firstly, as evidence of perceived inadequacies in the current environmental war-crimes framework; secondly, as a potential proposal for reform of international criminal law; and finally, as a reminder that not all environmental damage is or should be

⁵⁴ Iryna Rekrut, “Environmental Destruction in Conflict: Broadening Accountability in War”, 2025, available at: <https://blogs.icrc.org/law-and-policy/2025/03/20/environmental-destruction-in-conflict-broadening-accountability-in-war/>.

deemed to be a war crime that can be addressed through IHL.⁵⁵ Proponents of Ecocide argue that IHL is inadequate to capture the scale and severity of environmental destruction occurring in contemporary armed conflict, especially as climate change contributes to environmental destruction.⁵⁶ The push for Ecocide recognition indicates heightened dissatisfaction with the existing war crimes framework's inability to address cumulative and climate-related environmental damage.⁵⁷ Generally, Ecocide is defined as "unlawful, wanton acts committed with knowledge of a high probability that such acts will result in serious and long-term damage to the environment on a widespread basis."⁵⁸ This proposed formulation is important since it moves away from the limited wartime proportionality framework and places responsibility for reckless or wanton environmental damage.⁵⁹

Nevertheless, the growing attention given to ecocide in international legal and policy discussions suggests a major shift in how we view environmental destruction. In contrast to considering the environment as merely an object incidentally affected by war, the new conceptualisation positions the environment as a separately

⁵⁵ V. Elia, "Ecocide to Effectively Stimulate the Integration of International Environmental and Criminal Laws", *Asian Journal of International Law*, Vol. 16, No. 1, 2026, pp. 1–12; Stop Ecocide International, "Ghana: National Crime of Ecocide Proposed in State-mandated Constitutional Review", 2025, available at: <https://www.stopecocide.org/bn-2025/ghana-national-crime-of-ecocide-proposed-in-state-mandated-constitutional-review>; Austin Jenish, "Explainer: What Is Ecocide and How Is It Treated in International and Domestic Law?", 2025, available at: <https://earth.org/explainer-what-is-ecocide-and-how-is-it-treated-in-international-and-domestic-law/>.

⁵⁶ Cymie R Payne, "Defining Environmental Damage as a War Crime", *Transnational Environmental Law*, Vol. 7, 2018, p. 175.

⁵⁷ Danuta Palarczyk, "Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment", *Crim Law Forum*, Vol. 34, 2023, pp. 147–207.

⁵⁸ Stop Ecocide Foundation, *Proposed Definition of Ecocide* (2021).

⁵⁹ Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002).

protected interest closely tied to both human security and human survival.⁶⁰ This shift links environmental protection more directly with civilian protection, public health, and long-term peace. This does not mean that ecocide should collapse into IHL. Instead, it is an example of how IHL can complement international environmental law and international criminal law to offer a more coherent response to environmental harm.

Jurisprudence on environmental war crimes remains limited, which indicates the need for doctrinal development. The lack of sustained judicial treatment of environmental harm by international courts and tribunals has contributed to this perception of marginalising environmental destruction, despite the devastating humanitarian implications.⁶¹ Ecological damage has been given a less systematic focus —the focus has been on direct damage to human persons and on the killing or destruction of civilian objects in international criminal practice. The marginalisation of environmental destruction in climate-related conflicts will likely be compounded by the fact that environmental degradation exists before, during, and after armed violence.⁶²

Strengthening accountability in the Asia-Pacific does not necessarily require immediate treaty reform. In the absence of political and institutional opportunities, more practical avenues may be: clearer domestic implementation of IHL obligations;

⁶⁰ United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (UNEP 2019).

⁶¹ Michael Bothe, Carl Bruch, and Jordan Diamond, “International Law Protecting the Environment during Armed Conflict”, *International Review of the Red Cross*, Vol. 82, 2010, p. 569.

⁶² Michael Bothe, Carl Bruch, Jordan Diamond, et. al., “International Law Protecting the Environment during Armed Conflict: Gaps and Opportunities”, *International Review of the Red Cross*, Vol. 92, No. 879, 2010, pp. 569–92.

strengthening environmental-crime legislation; soft-law instruments at the regional level; incorporating environmental protection into military manuals; and judicial reasoning that considers the harm to the environment as directly linked to civilian protection.⁶³ In the Asia-Pacific, where treaty reform may face political resistance, customary law development, regional soft-law instruments, domestic implementation, and military practice may offer more practical pathways for improving environmental accountability.

Climate Displacement and Civilian Protection Gaps in IHL

Climate-related displacement highlights one of IHL's most important structural limits. Unlike IHRL, which always applies, and refugee law, which protects persons fleeing persecution, IHL is only applicable in cases of armed conflict. Consequently, populations displaced mainly by environmental causes, including slow-onset climate processes, often fall outside IHL's protective framework. This is not necessarily a doctrinal failure of IHL; rather, climate-related displacement often occurs in a gray area between legal frameworks. The regulation of displacement in the context of armed conflict is a concern of IHL, whereas other forms of climate-induced displacement must be addressed through refugee law, human rights law, disaster law, migration governance, regional agreements, and domestic protection systems.⁶⁴ In conflict-prone areas, displacement may result from the interaction of climate change, violence, poor governance, and poverty.

⁶³ International Committee of the Red Cross, *The Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

⁶⁴ Prince Kumar, "Bridging the Gap: The Critical Challenge of Implementing IHL", *The Law Institute*, 6 December 2025, available at: <https://thelaw.institute/application-of-ihl/implementing-international-humanitarian-law-challenges/>; United Nations High Commissioner for Refugees, *Climate Change and Disaster Displacement* (UNHCR 2020).

As a result, many affected persons may fall outside IHL unless their displacement is sufficiently connected to an armed conflict.⁶⁵

The question then becomes: What protection does IHL offer when climate-related displacement is coupled with a conflict, and where are the protection gaps when climate-driven displacement is not caused by hostilities or when it does not take place in a legally recognised armed conflict? This section examines how IHL views protected persons, identifies structural civilian protection gaps under IHL, and considers these challenges through the lens of the Asia-Pacific region. Although climate-induced displacement is increasingly prevalent, humanitarian responses often remain organised around categories such as “conflict displacement,” “disaster displacement,” “refugee movement,” and “irregular migration.” But the reality of the communities affected may cut across these categories. The legal challenge is that IHL applies only during armed conflict and does not establish a general status for persons displaced by climate change.

Who Is a Protected Person?

Civilians affected by armed conflict are a central concern of IHL. According to the Geneva Conventions and Additional Protocols, civilians are generally defined negatively as persons who are not members of the armed forces.⁶⁶ IHL also protects certain specific classes of people, such as POWs, the injured and sick, and displaced persons within conflict zones.⁶⁷ However, these protections only

⁶⁵ International Committee of the Red Cross, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People's Lives* (ICRC 2020).

⁶⁶ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287 (adopted 12 August 1949, entered into force 21 October 1950), Art. 4.

⁶⁷ *Ibid.*

apply when there is an armed conflict.⁶⁸ This threshold is central because a person may be highly vulnerable, displaced, or in need of humanitarian assistance, yet fall outside IHL unless the situation involves armed conflict and the person has a sufficient connection to it. IHL traditionally treats civilians as separate from combatants and regulates the conduct of parties to armed conflict. Climate-related displacement complicates this framework, in part because it does not alter the definition of a civilian, but in part because many climate-displaced persons are not displaced by actions that IHL regulates.

Many people and communities displaced by rising sea levels, droughts, and extreme weather events do not fall within the traditional definitions used in IHL. Some climate migrants move gradually or in anticipation of future harm, and many cross international borders without moving into areas of armed conflict. Therefore, these individuals will generally not meet the legal definition of a civilian affected by armed conflict⁶⁹ Climate migration throws the event-based and conflict-based conceptualisation of IHL into relief, revealing its limitations in the gradual and anticipatory nature of this kind of movement.

The difference between refugees, IDPs, and climate change migrants demonstrates the existing gap between these groups. Refugees are defined and protected by international refugee law based on persecution or a well-founded fear of persecution.⁷⁰ Therefore, any harm caused by climate change would only fall into the

⁶⁸ *Ibid.*

⁶⁹ Romina Edith Pezzot, "IHL in the Era of Climate Change: The Application of the UN Climate Change Regime to Belligerent Occupations", *International Review of the Red Cross*, Vol. 105, No. 923, 2023, pp. 1071–1091.

⁷⁰ Convention Relating to the Status of Refugees, 189 UNTS 137 (adopted 28 July 1951, entered into force 22 April 1954), Art. 1A (2).

refugee category if there is an element of persecution involved.⁷¹ IDPs can receive some level of protection under IHL and some soft-law instruments, such as the UN Guiding Principles on internal displacement.⁷² However, IHL protection applies only when displacement is sufficiently connected to armed conflict.⁷³ Climate migrants therefore occupy a difficult legal position: they may face serious harm but do not have a specific, legally binding international status equivalent to refugee status and are not automatically protected by IHL.

Table 2: Comparative Legal Protection of Civilians, IDPs, Refugees, and Climate Migrants

Category	Applicable Legal Framework	Nature of Protection	Key Protection Gap
Civilians affected by armed conflict⁷⁴	IHL (Geneva Conventions, Additional Protocols)	Protection against attack, Humane Treatment, Protection of Civilian Objects	Protection applies only when displacement is directly linked to armed conflict

⁷¹ UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2020).

⁷² UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add. 2 (1998).

⁷³ International Committee of the Red Cross, *Commentary on the Geneva Conventions of 1949* (ICRC 2016).

⁷⁴ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287 (adopted 12 August 1949, entered into force 21 October 1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted 8 June 1977, entered into force 7 December 1978), Arts. 48-52.

IDPs⁷⁵	IHL (during conflict) and UN Guiding Principles on Internal Displacement	Protection from forced displacement, access to humanitarian assistance	Limited Enforceability; Weak Protection for climate-driven, slow-onset displacement
Refugees⁷⁶	1951 Refugee Convention and 1967 Protocol	Protection from refoulement, legal status, basic rights	Climate harm does not qualify as persecution under the existing definition
Climate Migrants	No binding international legal framework	Case-specific humanitarian responses without legal status	Legal invisibility; no formal status or Enforcement Protection

Source: The Geneva Conventions (1949), the UN Guiding Principles on Internal Displacement (1998), the 1951 Refugee Convention, and Reports on Climate Displacement from the UNHCR and ICRC were compiled by the authors.

Structural Blind Spot

Climate-displaced populations experience structural protection gaps, not just definitional ones. While IHL assumes that harm results from actions during armed conflict, with responsibility resting with parties to the conflict, climate displacement results from a build-up of climate

⁷⁵ UN General Assembly, *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2 (1998); International Committee of the Red Cross, *Internally Displaced Persons, and International Humanitarian Law* (ICRC 2016).

⁷⁶ Convention Relating to the Status of Refugees, 189 UNTS 137 (adopted 28 July 1951, entered into force 22 April 1954); Protocol Relating to the Status of Refugees, 606 UNTS 267 (adopted 31 January 1967, entered into force 4 October 1967).

stressors, ongoing state inaction, and multiple cross-border impacts, which makes it hard under current IHL rules and standards to establish a direct line of legal responsibility. Because climate migration is multi-causal, it is not easily captured by IHL's model of attribution, obligations, and conduct connected to hostilities.

A particularly significant blind spot concerns a slow-onset climate event. Drought, agricultural salinisation, and sea-level rise gradually erode the ability of people to sustain their livelihoods and remain in their homes, leading to voluntary or forced movement over an extended period.⁷⁷ Populations affected by slow-onset climate events may have lived in areas previously or currently embroiled in conflicts or have suffered from political instability; however, the ultimate cause of their displacement may not be directly attributable to any military action. As such, IHL does not guide how to protect these populations or hold any responsible parties accountable where there has been displacement due to the interaction of climate stress and insecurity, as opposed to direct hostility.⁷⁸ The mismatch is twofold: IHL is triggered by armed conflict and governs behaviour during armed conflict, while climate displacement can build up over a period of time before, during, and after armed conflict.

The application of IHL becomes more complicated when population movement occurs across national boundaries. When a population moves across an international border due to climate stress, IHL protections diminish significantly because they are territory- or conflict-specific.⁷⁹ Additionally, for populations who have become

⁷⁷ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, AR6, Cambridge University Press, 2022.

⁷⁸ Cymie R Payne, "Climate Change, Armed Conflict and International Law", *Journal of International Humanitarian Legal Studies*, Vol. 7, 2021, p. 1.

⁷⁹ *Ibid.*

stateless or lost their nationality due to their territory being rendered uninhabitable, the issues are heightened. Individuals experiencing these compounded vulnerabilities may receive little effective protection under IHL and may not clearly qualify for protection under international refugee law.⁸⁰ This indicates that refugee law, human rights law, migration law, statelessness law, and regional cooperation are more central to climate displacement than IHL itself.

The Rohingya crisis is an example of this intersection of displacement, statelessness, and environmental vulnerability.⁸¹ While the overwhelming reason for Rohingya displacement has been violence and persecution, many of the humanitarian risks and long-term protection solutions are now being exacerbated by climate stress in camps and surrounding regions.⁸² It is used to demonstrate how conflict-induced displacement and statelessness can be exacerbated by the environmental and climate vulnerability of stateless people following the displacement event. This demonstrates the need for greater coordination between IHL, refugee law, IHRL, statelessness law, and disaster-risk frameworks.

Asia-Pacific Focus

The Asia-Pacific is particularly vulnerable to climate-induced displacement because of its geography, population density, and reliance on climate-sensitive livelihoods. The small island developing states in the Pacific are facing existential threats from rising sea levels

⁸⁰ Convention Relating to the Status of Refugees, 189 UNTS 137 (adopted 28 July 1951, entered into force 22 April 1954).

⁸¹ Rajbir Singh Dalal and Vinay Yadav, “The Rohingya Crisis: A Humanitarian Disaster and Its Impact on South Asia’s Geopolitics”, *Journal of Research in Humanities and Social Science*, Vol. 13, No. 1, 2025, pp. 140–143.

⁸² United Nations High Commissioner for Refugees, *Rohingya Refugee Emergency* (UNHCR Situation Reports 2020).

and coastal erosion, as well as from severe weather events.⁸³ Whole communities are at risk of being uprooted permanently, and this situation poses an unprecedented array of legal issues regarding statehood, nationality, and civilian protection. Because IHL is focused on armed conflict, it offers little guidance for those who have been displaced by environmental harm caused by climate-related disasters as opposed to armed conflict.⁸⁴ The Pacific Islands therefore demonstrate the outer limits of IHL: the harms are severe, but they are not usually caused by armed conflict. Their legal issues are therefore addressed more directly through climate law, human rights law, the law of the sea, migration arrangements, and regional protection frameworks.

In South Asia, climate-related displacement can often intersect with the factors that cause conflict.⁸⁵ Large-scale internal population displacement in Bangladesh from floods, cyclones, and drought has resulted in increased migration to urban areas and to border areas. Competition over limited land, water, and jobs in those areas may contribute to social tension and localised violence, particularly in areas that are already considered fragile.⁸⁶ Such tension does not, however, automatically trigger IHL. Displaced populations do not fall within IHL protections unless the violence reaches the required level of intensity and organisation. This is why Bangladesh is analytically important: it shows how climate stress may generate insecurity and humanitarian need while remaining legally outside IHL.

⁸³ United Nations Economic and Social Commission for Asia and the Pacific, *Climate Change and Migration in the Pacific* (UNESCAP 2020).

⁸⁴ International Committee of the Red Cross, *When Rain Turns to Dust* (ICRC 2020).

⁸⁵ Asian Development Bank, *Climate Change, Migration and Adaptation in Asia and the Pacific* (Asian Development Bank 2012).

⁸⁶ United Nations Office for the Coordination of Humanitarian Affairs, *Bangladesh: Climate Change and Displacement* (UNOCHA 2019).

The Bangladesh–India border areas are another example of the difficulties associated with climate change-related dislocation.⁸⁷ Climate-induced movement across national borders can create humanitarian needs without clear legal recourse, particularly where border responses are securitised.⁸⁸ Displaced persons may be treated primarily as “irregular” migrants rather than as persons requiring humanitarian protection, thus exposing them to potential detention, forced repatriation, and exploitation.⁸⁹ The problem is not only IHL’s limited reach, but also the absence of a clear protection framework for people whose movement is triggered by climate stress, but who are neither refugees nor persons displaced by armed violence.

In general, the Asia-Pacific analysis highlights that climate displacement should not be artificially forced into IHL. Rather, IHL should be used judiciously where displacement has a strong linkage to armed conflict, and other legal regimes should be strengthened to deal with displacement arising from climate and environmental harm. This approach respects IHL’s doctrinal limits while recognising the humanitarian consequences of climate-induced mobility.

Toward a Reformed IHL for the Anthropocene

Reform can only be undertaken with caution to avoid undermining the doctrinal coherence of IHL. Instead of proposing a wholesale expansion of IHL into areas it was not designed to cover, this article argues for a limited and complementary reform approach. IHL should

⁸⁷ Devangana Gupta, Pankaj Kumar and Naoyuki Okano, “Climate-Induced Migration in India and Bangladesh: A Systematic Review of Drivers, Impacts, and Adaptation Mechanisms”, *Climate*, Vol. 13, No. 81, 2025.

⁸⁸ UN High Commissioner for Refugees, *Protection Challenges in Mixed Migration Contexts in South Asia* (UNHCR 2021).

⁸⁹ International Organisation for Migration, *Climate Change and Migration in South Asia* (IOM 2020).

be firmly grounded in the context of armed conflict, and more responsive to the environmental and climate conditions in which contemporary conflicts are fought. Against this background, climate-related conflict is better understood as requiring a coordinated framework drawing on IHL, IHRL, environmental law, refugee law, migration law, and international criminal law.⁹⁰ As the preceding sections have shown, while IHL is effective in regulating conduct during armed conflict, it does not adequately address the current effects of climate change, including climate-related violence, environmental degradation, and climate-related displacement. These do not all constitute doctrinal failures of IHL. Instead, they demonstrate that the boundaries of a conflict-specific legal regime become apparent when climate harm extends across peacetime, conflict, and post-conflict settings. These issues highlight a fundamental disconnect between IHL and an evolving world termed the Anthropocene, a period when human activity has significant effects on the Earth's environment and systems.⁹¹ Instead, it outlines three narrower avenues for reform: interpretive development of IHL principles concerning proportionality, precautions, military necessity, and environmental protection; coordination between IHL and human rights, environmental, refugee, migration, and criminal law; and regional and domestic mechanisms that can translate existing obligations into practice in the Asia-Pacific and other climate-sensitive regions.

⁹⁰ H. Duffy, et al., "Trials and Tribulations: Co-Applicability of IHL and Human Rights in an Age of Adjudication", in *Law Applicable to Armed Conflict*. Cambridge: Cambridge University Press (Max Planck Trialogues), 2020, pp. 15–105.

⁹¹ Paul J. Crutzen, "Geology of Mankind", *Nature*, Vol. 415, 2002, p. 23.

Emerging Norms and Proposals

Legal and advocacy groups increasingly support recognising “ecocide” as a new category of international crime to address severe environmental damage.⁹² While definitions of ecocide vary, it can generally be interpreted to mean that there has been serious environmental damage that is widespread, long-term, or severe enough to threaten human life or ecosystem stability.⁹³ Advocacy by expert panels, civil society groups, and states has increased pressure to reconsider how international law responds to severe environmental harm. But ecocide needs to be carefully placed. Currently, it is neither a general principle of IHL nor an independent crime under the Rome Statute. It is more commonly known as a proposal in international criminal law, which could operate alongside IHL where environmental destruction occurs during armed conflict, but could also be used outside of armed conflict if it is adopted in the future. This distinction is important because traditional war crimes require a nexus to armed conflict, whereas proposed definitions of ecocide are generally designed to address severe environmental destruction whether hostilities exist.

Recognition of ecocide in international criminal law would mark a shift in how international law understands environmental harm.⁹⁴ Rather than focusing only on physical civilian suffering during armed conflict, this broader understanding of harm acknowledges that the environment is an integral part of both civilian protection and

⁹² Rachel Killean and Damien Short, “A Critical Defence of the Crime of Ecocide”, *Environmental Politics*, 2025.

⁹³ Stop Ecocide Foundation, *Proposed Definition of Ecocide* (Independent Expert Panel, 2021).

⁹⁴ Cymie R Payne, “Defining Environmental Damage as a War Crime”, *Transnational Environmental Law*, Vol. 7, 2018, p. 175.

the maintenance of peace over a prolonged period. In many cases where conflict risks are shaped by climate change, there may have been significant environmental damage before the beginning of hostilities, as well as the continuation of significant environmental damage for many years after the armed conflict has ended.⁹⁵ Ecocide is therefore relevant to this article in three respects: First, it is a way of expressing a dissatisfaction with the existing environmental war crimes provisions in international law; second, it presents an alternative path for reform in international law (outside IHL); and third, it emphasises that environmental destruction is a humanitarian matter and not just an issue of environmental damage.⁹⁶ The practical implication is not that climate change should become a new trigger for IHL application. Rather, in situations of armed conflict, climate vulnerability should be taken into account when considering the foreseeable harm to civilians, proportionality, precautions in attack, military necessity, and the protection of objects indispensable to civilian survival.⁹⁷ This approach does not require rewriting existing treaties; rather, it requires interpretive practice that treats climate vulnerability as a legally relevant contextual factor where armed conflict already exists.⁹⁸

⁹⁵ Michael Bothe, Carl Bruch and Jordan Diamond, "International Law Protecting the Environment during Armed Conflict", *International Review of the Red Cross*, Vol. 82, 2010, p. 569.

⁹⁶ United Nations Security Council, *Maintenance of International Peace, and Security: Climate Change*, UN Doc S/PV.8451 (25 January 2019); Valerie Hase, Daniela Mahl and Mike S. Schäfer, et al., "Climate Change in News Media across the Globe: An Automated Analysis of Issue Attention and Themes in Climate Change Coverage in 10 Countries (2006–2018)", *Global Environmental Change*, Vol. 70, 2021.

⁹⁷ International Committee of the Red Cross, *The Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

⁹⁸ Vienna Convention on the Law of Treaties, 1155 UNTS 331 (adopted 23 May 1969, entered into force 27 January 1980), Art. 31.

Integrating Human Rights and Environmental Law

Greater collaboration between IHL and other bodies of law is necessary. The most effective reform will be enhanced coordination of the existing regimes rather than a single unified legal regime for different harms arising at different stages.⁹⁹ IHL, IHRL, and international environmental law have traditionally been treated as separate areas, but this separation is increasingly inadequate for complex humanitarian crises involving climate stress, displacement, environmental degradation, and armed conflict.

IHRL contributes principles of dignity, equality, non-discrimination, access to necessities, and state obligations to protect life, health, housing, water, food, and the environment. These principles can help bridge the protection gaps identified above, particularly where climate-related displacement or environmental harm falls outside the strict scope of IHL.¹⁰⁰ IHRL is not restricted to armed-conflict situations, but is applicable in peacetime and during armed conflict, albeit subject to derogations, limitations, and considerations about the relationship between *lex specialis* and *lex generalis*. This is particularly relevant when climate-induced damage has been felt before the start of armed conflict, or even after the armed conflict is over.

Recent developments in the UN human rights system recognise the relationship between climate change and the enjoyment of human

⁹⁹ International Court of Justice, *Legality of the Threat, or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226 (25).

¹⁰⁰ Dinah Shelton, "Normative Hierarchy in International Law", *American Journal of International Law*, Vol. 100, 2006, p. 291.

rights.¹⁰¹ Recognition of the human right to a clean, healthy, and sustainable environment reflects growing consensus that environmental harm directly affects life, health, water, and food.¹⁰² Together with IHL, these principles can enhance the protection of civilians in conflict-affected and climate-vulnerable environments. They should not, however, be used to blur IHL's doctrinal boundaries. Instead, they can inform the interpretation and application of IHL where both regimes are relevant. Human rights principles, including non-discrimination and basic living standards, can inform the treatment of climate-displaced persons in conflict-affected regions, especially where IHL's application is uncertain.¹⁰³

In addition, environmental law also complements this integrated approach by providing a preventive, precautionary, and intergenerational basis for military decision-making in climate-vulnerable regions.¹⁰⁴ In situations where military operations could lead to irreversible environmental effects with substantial humanitarian consequences, the precautionary principle, environmental impact assessment, and responsibilities for prevention can be used to inform decisions. Together, these regimes provide a more coherent framework for addressing climate-related harms that intersect with armed conflict.

¹⁰¹ UN Human Rights Council, *Human Rights and Climate Change*, UN Doc A/HRC/41/21 (2019).

¹⁰² UN General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, UN Doc A/RES/76/300 (28 July 2022).

¹⁰³ UN Office of the High Commissioner for Human Rights, *The Relationship between International Humanitarian Law and International Human Rights Law* (OHCHR Fact Sheet No 13).

¹⁰⁴ Rio Declaration on Environment and Development (1992), principles 3 and 15.

Regional Mechanisms and Soft Law

The region needs practical mechanisms to respond to the disproportionate impacts of climate change, including disaster risk, displacement, resource insecurity, and environmental degradation. Regional organisations and soft-law instruments cannot formally amend IHL, but can enhance its implementation, foster common standards, and adapt humanitarian and environmental protection principles to regional realities.¹⁰⁵ While there are very few binding regional treaties governing humanitarian law, regional forums increasingly recognise the relationship between climate change, security, and migration.¹⁰⁶

ASEAN has adopted declarations and frameworks that support disaster response, humanitarian assistance, and regional cooperation.¹⁰⁷ Although none of these have directly reformed IHL, they do demonstrate an increasing acknowledgement of the human risks posed by climate-related disasters.¹⁰⁸ The ASEAN mechanisms may be further enhanced through the inclusion of principles on civilian protection, humanitarian access, protection of essential infrastructure, and environmental risk reduction, in conflict-affected and disaster-prone areas that are compatible with IHL. Embedding compatible principles of IHL within these regional mechanisms could better prepare states to protect civilians in climate-affected and conflict-affected settings.

¹⁰⁵ United Nations Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Disaster Report* (UNESCAP 2021).

¹⁰⁶ UN Development Programme, *Climate Security in Asia and the Pacific* (UNDP 2019).

¹⁰⁷ ASEAN, *ASEAN Agreement on Disaster Management and Emergency Response* (AADMER) (2005).

¹⁰⁸ ASEAN, *ASEAN Declaration on Climate Change* (2007).

Equally important, the Pacific Islands Forum has repeatedly identified climate change as a major threat to human security in its recent declarations, with particular concern for vulnerable populations.¹⁰⁹ But the Pacific Islands also illustrate the limits of IHL. Sea-level rise, loss of habitable land, relocation, and potential for loss of statehood and nationality are among the most serious threats to Pacific communities, but not a result of armed conflict. These challenges require legal responses grounded primarily in climate law, human rights law, migration arrangements, the law of the sea, and regional cooperation, rather than IHL alone.¹¹⁰

Similarly, National Humanitarian Law Committees in Asia-Pacific states can support the integration of climate-related issues into domestic law. These committees can incorporate environmental protection and climate-risk awareness into domestic IHL laws, military manuals, rules of engagement, operational planning, and training programmes, without waiting for the amendment of the treaties. Because these committees promote and support IHL implementation, they provide an important opportunity to incorporate environmental protection and climate-risk awareness into domestic practice.¹¹¹

Soft law serves a particularly important function, as it is non-binding but enables a process of normative development, regional experimentation, and gradual consensus-building. Soft-law mechanisms can offer a practical approach to enhancing environmental protection during armed conflict, where there is

¹⁰⁹ Pacific Islands Forum, *Boe Declaration on Regional Security* (2018).

¹¹⁰ Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (2022); Jane McAdam, "Regional Approaches to Climate-Induced Displacement in the Pacific", *International Journal of Refugee Law*, Vol. 29, 2017, p. 1.

¹¹¹ International Committee of the Red Cross, *Integrating the Environment into Military Operations* (ICRC Guidelines 2019).

limited political willingness to amend formal treaties. This can encompass regional guidance on military operations in climate-sensitive areas, guidelines on wartime environmental damage, model legislation and guidance for armed forces, and regional protocols for humanitarian assistance for climate-affected IDPs.

A new approach to IHL for the Anthropocene should then be modest, plural, and implementation-based. It should continue to apply IHL's armed conflict threshold but should also give due consideration to the impact of climate vulnerability and environmental effects in the interpretation of existing IHL rules when IHL applies. Complementary legal regimes and regional mechanisms should be used to address harms not covered by IHL at the same time. This approach preserves doctrinal coherence while recognising the changing climate context in which humanitarian protection and military operations increasingly occur.

Conclusion and Recommendations

The discussion in the study has shown that shortcomings identified are not simply gaps in legal protection but also express internal structural aspects of international law. Though necessary in regulating armed conflict, the threshold-based application of IHL necessarily rules out a broad category of climate-related harms that do not amount to organised armed violence. Simultaneously, the division of international law into various regimes poses difficulties when it comes to solving problems that intersect established legal categories. This is not always an issue with IHL. Instead, it is an indicator that IHL is a specialised branch of law that governs armed conflicts, while many of the harms that stem from climate change occur before conflict has evolved, after conflict has concluded, or beyond the threshold of armed conflict. It is important to identify these structural dynamics to

come up with responses that are not only legally sound but also practical.¹¹² This article has highlighted the increasing tension between IHL's threshold-based structure and the real-world complexity of climate-related violence. However, IHL developed around a more conventional paradigm of armed conflict; therefore, it continues to operate under that framework. Consequently, IHL is most effective in the regulation of the conduct of hostilities, and less so in the regulation of diffuse, cumulative, indirect, and slow-onset harms.

The analysis of IHL's traditional framework shows its limits in effectively addressing conflicts that involve or have been aggravated by climate stress and environmental issues. IHL is based upon very strict classifications of what a conflict is and subsequently has a very high threshold for what is appropriate for the application of the law to certain situations. Therefore, if a situation falls outside one of these classifications (the conflict is not officially recognised), IHL protection may not be triggered. This threshold should be maintained as a matter of doctrinal coherence, but this must be recognized, and its implications acknowledged: many communities facing humanitarian insecurity due to climate change could be outside IHL even if their humanitarian needs are extreme. Furthermore, despite the large potential humanitarian impact from environmental destruction, IHL contains environmental protections, but their enforcement remains limited. Where environmental harm is cumulative, indirect, or multi-causal, as opposed to immediate and obviously caused by a particular attack, accountability can be particularly difficult because of the high thresholds of certain provisions like Additional Protocol I Article 35(3)

¹¹² ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts", *International Review of the Red Cross*, Vol. 106, 2024, p. 1357.

and 55, as well as the evidentiary and mental element requirements of international criminal law.

This study demonstrates that climate change displacement reveals deficiencies in the Civilian Protection Regime of IHL. People displaced by environmental harm are not automatically recognised as refugees or as victims of armed conflict, and these people will often experience the consequences of their ‘invisibility’ from existing legal definitions, especially in the Asia-Pacific region, where vulnerability to Climate Change is most pronounced. This invisibility manifests in the tangible form of people living in permanent displacement from low-lying Pacific Islands, or through the movement of people driven by Climate Change in regions such as the Borderlands of South Asia that are affected by armed conflict. However, the above examples should not be considered to be the same IHL issues. The displacement of Pacific Islanders gives rise to the major concerns of climate law, human rights law, migration law, statehood, nationality law, and regional protection arrangements. In contrast, South Asian Displacement illustrates the potential for the combination of climate stress with conflict risk, border securitisation, and localised violence not to trigger IHL conditions. These examples highlight that affected communities are living in a state of legal limbo, where they are not adequately protected by either humanitarian law or refugee law.

Climate Change must not be viewed as an external factor but as a key aspect of conflict in the modern world. The Anthropocene requires legal responses that can address diffuse, long-term, and interconnected harms to human security.

While this article seeks to demonstrate that comprehensive amendment of current IHL treaties is not required for reform and likely presents institutional and political obstacles, many of the

principles and concepts already established within IHL can provide a mode of evolution. The principles of distinction, proportionality, precautions in attack, military necessity, and humanity can be given a more climate-sensitive interpretation, as can their need to consider foreseeable environmental consequences and civilian dependence on a fragile environment. This approach would enhance the protection of non-combatants while meeting the normative stability of existing IHL.

Greater coordination between IHL, human rights law, and environmental law is essential. Human rights law contributes principles of dignity, equality, non-discrimination, and access to necessities, which can help address protection gaps affecting climate-displaced persons. Environmental Law will continue to play a major role in assisting with Military Planning and Operations when operating in climate-sensitive locations. International criminal law, such as discussion on the concept of ecocide, can also offer another avenue of accountability for high-level environmental devastation; ecocide is not an existing IHL rule, but a proposal for international criminal law reform. Taken together, these bodies of law offer a more comprehensive response to climate-related conflict and displacement without undermining the primary objectives of humanitarian law.

The Asia-Pacific region offers important opportunities for practical reform. Regional organisations, soft law instruments, and National Humanitarian Law Committees can significantly assist with incorporating climate-related considerations into IHL implementation. By revising military manuals, humanitarian processes, and establishing frameworks for regional collaboration, states can provide better protection for at-risk populations and additionally support the incremental development of global norms.

Specific frameworks of ASEAN disaster response and Pacific Islands Forum human-security initiatives, as well as domestic bodies for IHL implementation, can be given special attention in translating the general principles of humanitarian and environmental law into practice. Such mechanisms do not have the power to formally amend IHL, but they do have the potential to enhance compliance, ensure preparedness, and ensure regionally appropriate standards for climate-vulnerable and conflict-affected contexts.

On this basis, the study makes the following recommendations. Firstly, Environmental/Climate-risk assessment should be incorporated into military planning, targeting review, and operational training in times of armed conflict in climate-vulnerable areas, by states and military actors. Secondly, National Humanitarian Law Committees should revise their national implementation measures, military manuals, and training materials to incorporate protection of the natural environment and climate-sensitive civilian infrastructure. Thirdly, soft-law guidance should be created by regional organisations in Asia-Pacific in the context of humanitarian assistance, displacement, and environmental protection in the context of climate stress and conflict risk. Fourthly, policymakers must improve the linkages between IHL, human rights law, environmental law, refugee law, migration governance, and disaster-risk regimes—and avoid trying to shoehorn all climate-related harms into IHL. Fifthly, international criminal law debates on ecocide and environmental crimes should be worked out with due consideration to causation, attribution, *mens rea*, and the armed conflict connection. Lastly, there is a need to conduct more in-depth empirical case studies on Bangladesh, Myanmar, and other communities in the Asia-Pacific region to better understand when climate-induced harm does not constitute IHL and when it does.

IHL is in a critical position today. It needs to be responsive to the humanitarian realities of climate change, environmental degradation, and displacement if it is to have meaning and effectiveness. Yet, adaptation should not become a rule of general climate governance, as IHL. It should indicate the need to use IHL more carefully and contextually, in the context of armed conflict, and the use of complementary legal regimes for harms outside of IHL. Therefore, environmental damage and climate-related displacement are both central humanitarian issues, but appropriate legal frameworks must be used to address them. This study considers several scholarly works that are calling for a climate-responsive approach to IHL, especially in the Asia-Pacific area. Further studies are needed that collect empirical data on the connection between climate stress and armed violence, build on detailed regional case studies, and explore new legal practice and jurisprudence concerning climate-related environmental damage in times of war. Such coordination enables IHL to preserve its humanitarian function while working alongside other legal regimes in a climate-changing world.