

Humanity Under Fire: Why abandoning the Geneva Conventions and fundamental principles of international humanitarian law would be a legal, political, military, and ethical catastrophe

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1. Introduction: The Stakes of Disregarding the Geneva Conventions

The question of disregarding the Geneva Conventions raises issues far broader than its purely legal dimension, which we shall examine along the following lines:

- Is it legally admissible?
- Is it politically advisable?
- Is it militarily advantageous?
- Is it ethically acceptable?

Contemporary international humanitarian law (IHL) is the moving balance between two dynamic forces: the requirements of humanity and military necessity.

Following September 11, 2001, influential figures in political and military circles began asserting that the Geneva Conventions of August 12, 1949, the cornerstone of IHL, were obsolete and incompatible with the demands of the new “global war on terror.” Even more troubling, some argued that the Conventions are not only outdated but also an active impediment to effective counterterrorism. These arguments deserve a systematic, multidisciplinary rebuttal, and the case against them is compelling on every level. Disregarding the Conventions would be legally inadmissible, politically unwise, militarily counterproductive, and ethically unacceptable. The four Geneva Conventions, ratified by every State on earth, are far more than just a diplomatic achievement. They embody the accumulated wisdom of centuries of humanitarian tradition, distilled through the most painful wartime experiences humanity has endured. They are not merely positive law; they reflect a hard-won balance between military necessity and the fundamental demands of humanity. This balance serves the interests of all parties to a conflict and is something the world would abandon at its peril.

To understand what is truly at stake, the Geneva Conventions must be placed in their proper historical context. Contemporary IHL did not emerge from the deliberations of philosophers or the wishful thinking of naive idealists. Rather, it was forged, painfully and incrementally, from the crucible of real warfare. The story begins at the Battle of Solferino in 1859. The sight of tens of thousands of wounded soldiers left to die on the Lombardy battlefield without care or shelter moved Henry Dunant to launch the movement that produced the First Geneva Convention of 1864. From that modest ten-article instrument, which protected only the military wounded in land warfare, the law has grown through a series of shocks to the conscience of nations.

Each successive catastrophe generated new legal codifications. The devastation of the First World War produced the protections for prisoners of war in 1929. The genocide and total war of the Second World War resulted in the four Conventions of 1949, which extended protection to entire civilian populations for the first time. The Vietnam War and the decolonization struggles in Africa demonstrated the urgent need for rules in internal conflicts. This produced the Additional Protocols of 1977. More recently, the worldwide campaign against antipersonnel landmines culminated in the 1997 Ottawa Convention. The long struggle to end impunity for the gravest atrocities resulted in the 1998 Rome Statute of the International Criminal Court. Each of these milestones came at an enormous human cost. This is precisely what makes this body of law so difficult to dismiss, and so dangerous to discard.

2. The Legal Argument: Why Disregarding the Conventions Is Inadmissible

The legal case for the Geneva Conventions is overwhelming. All four of the 1949 Conventions have been universally ratified by 196 States, making them some of the most widely accepted instruments of international law. Most of their provisions have acquired the status of customary international law. Scholarly authorities confirm this customary character. The International Court of Justice (ICJ) has repeatedly affirmed this, most notably in the Nicaragua case. In that case, the Court ruled that Common Article 3 reflects “elementary considerations of humanity” that are binding on all parties, regardless of the nature of the conflict.

Beyond their customary status, key provisions of the Conventions are recognized as *jus cogens*, or peremptory norms of general international law from which no derogation is permitted. Article 60(5) of the Vienna Convention on the Law of Treaties explicitly exempts IHL from the rule of reciprocity. This means that one party’s violations do not release the other party from its obligations. Common Article 1 obligates all States parties to respect the Conventions and to “ensure respect” for them “in all circumstances”, a collective responsibility confirmed by the ICJ as customary international law.

Abandoning the Conventions would mean surrendering the principle of universal jurisdiction over grave breaches, or war crimes, and would undermine the legal foundation of the International Criminal Tribunals for the former Yugoslavia and Rwanda. These tribunals set a precedent by applying IHL to non-international armed conflicts. Abandoning the Conventions would eliminate the valuable mechanism of “special agreements” between belligerents and non-state actors. The ICRC successfully negotiated such agreements in the Spanish Civil War, Afghanistan, the former Yugoslavia, and Somalia, enabling humanitarian access, prisoner visits, and protected zones. Furthermore, it would discard the Conventions’ explicit anti-terrorism provisions. Article 33 of the Fourth Convention prohibits collective punishment and terrorism against protected persons, and Article 51 of Additional Protocol I prohibits acts or threats of violence primarily designed to spread terror among the civilian population.

3. The Political Argument: Why Disregarding the Conventions Is Inadvisable

Disregarding the Conventions would squander more than seventy-five years of painstaking diplomacy and advocacy aimed at integrating humanitarian standards into international relations. The 1949 Conventions emerged alongside the UN Charter (1945), the Universal Declaration of Human Rights (1948) and the Genocide Convention (1948). These legal instruments are direct responses to the genocides and total wars of the first half of the twentieth century. The survivors pushed for the adoption of international instruments to avoid the repetition of such tragedies. Many governments, international and regional organizations, as well as civil society, especially international humanitarian organizations and human rights NGOs, strove for decades to guarantee a better respect of these instruments.

Discarding the Conventions would represent more than just a legal setback, it would mark a regression of civilization. Before the progressive universalization of humanitarian norms, restraints in warfare applied only within recognized groups, such as the same tribe, the same nation, or civilization. Wars waged against those deemed outside the group were conducted without mercy or limits. The painstaking achievement of IHL was precisely to break down this logic, establishing a single universal standard of humanity that applies regardless of the identity, nationality, or beliefs of the parties to a conflict. Abandoning the Conventions would be to invite the return of that older, darker order.

The consequences would be immediate and catastrophic. Without the restraints imposed by the Conventions, nothing would stand between civilian populations and the full force of armed conflict. Attacks on civilian persons and civilian objects, which are already too frequent under the existing legal framework, would no longer be checked by international law. Hospitals, ambulances, and medical personnel, whose protection has been a cornerstone of humanitarian law since 1864, would lose their special status. Humanitarian workers attempting to deliver food, shelter, and medical care to those affected by conflict would have no legal protection. The result would be not merely more suffering, but suffering without limit, without recourse, and without remedy.

The political costs extend further. The Conventions provide an indispensable framework for maintaining minimal dialogue, even during wartime. Prisoner exchanges, ICRC monitoring visits, family notifications, relief convoys, and negotiated ceasefires all depend on the Conventions' infrastructure. When prisoners are visited, identified, and repatriated, conditions are created for lasting peace. The reconciliations between Germany and the USSR, as well as between the US and Vietnam, were both deeply shaped by how prisoners were treated. The first U.S. Ambassador to Hanoi was a former prisoner of war.

Conversely, violations of the Conventions cause cascading political damage. They provoke refugee and internally displaced person (IDPs) crises, as most forced displacement is caused directly by IHL violations. They generate unsolvable political disputes over missing persons and unrepatriated prisoners. They invite retaliatory escalation. Violations provide justification or pretext for foreign armed intervention, as demonstrated in Iraq, Somalia, Bosnia, Kosovo,

and Libya. Violations also fuel terrorism. As Madeleine Albright observed, suicide bombing stems from the despair and humiliation of populations who feel they have no recourse. The Geneva Conventions serve as a means of countering radicalization as well as providing humanitarian protection because they limit the dehumanization of conflict.

4. The Military Argument: Why Disregarding the Conventions Is Counterproductive

The post-9/11 argument for “enhanced interrogation” and relaxed rules of engagement implicitly asserts that disregarding the Conventions provides a military advantage. IHL was not created by academics or idealists. Rather, it was developed with constant input from military professionals who recognized its value to military self-interest. The first convention protects one’s own wounded, the second protects shipwrecked individuals, the third protects prisoners of war, and the fourth protects civilians, which may include one’s own nationals, in occupied territories. Compliance with the Conventions is integral to military discipline. History shows that troops who are given license to commit atrocities tend to turn their violence against their own civilian populations and even their own commanders. Veterans coming back home often experience severe problems within their families and communities, partly because of lack of limitations while they were engaged in combat.

Setting aside the Conventions makes enemy surrender less likely. If combatants fear torture or execution upon capture, they have no incentive to surrender. As Sun Tzu wrote in *The Art of War*, it is superior to capture the enemy rather than to destroy him. Disregarding the Conventions also damages the legitimacy and public image of military operations, which is a decisive strategic resource. For example, the French war in Algeria was not lost militarily, but rather due to domestic and international revulsion against torture. Similarly, the Vietnam War and various peacekeeping missions in Somalia and Rwanda were undermined by documented atrocities and mistreatment of prisoners. Any short-term tactical gain from disregarding the Conventions is vastly outweighed by the long-term strategic costs of alienating civilian populations, hardening resistance, and forfeiting the moral authority without which no military campaign can ultimately prevail on the home front, with allies, and in the eyes of the international community.

Disregarding the Conventions eliminates the standards protecting civilian infrastructure essential to survival, directly generating the relief, medical, and food needs that overwhelm both wartime operations and post-conflict reconstruction.

The question of nuclear weapons represents the most significant unresolved limitation of the Conventions. In its 1996 Advisory Opinion, the ICJ found no specific prohibition on nuclear weapons, but held unanimously that any use would be subject to the core principles of IHL: distinction between combatants and civilians, prohibition of unnecessary suffering, and proportionality. Since 1945, the ICRC has consistently argued that weapons of mass destruction are fundamentally incompatible with IHL. However, political constraints prevented this conclusion from being codified in the 1977 Protocols. This gap genuinely limits

the Conventions, but it argues for their development and clarification, not their abandonment.

5. The Ethical Argument: Why Disregarding the Conventions Is Unacceptable

The deepest argument for the Conventions is ethical. They are grounded in the Golden Rule (“do unto others as you would have them do unto you”), a principle found in every major civilization: Christian, Jewish, Islamic, Buddhist, Hindu, Confucian, Taoist, and indigenous African and Melanesian traditions, as well as the warrior codes of Bushido and European chivalry. This convergence is not coincidental. Every human community has developed some version of these restraints because unrestricted warfare is collectively suicidal. The Conventions universalize and codify what every tradition recognizes: even enemies have human dignity and cannot be treated as objects.

By abandoning the Conventions, one would undermine this universal ethical inheritance and destroy one’s cause by the very means used to defend it. Camus calls this the supreme political and moral self-contradiction: «Se battre pour une vérité en veillant à ne pas la tuer des armes mêmes dont on la défend», that is fighting for a truth without destroying it by the very means used to defend it. Democracies that torture, execute prisoners, or deliberately kill civilians in the name of freedom and security corrode the very values they claim to defend. The legitimacy of a military campaign, and ultimately, the political order it serves, hinges on adhering to the limits that distinguish it from the barbarism it opposes.

Violations of the Geneva Conventions can facilitate criminal activities in conflict and well beyond. Violations of the Geneva Conventions thus represent a serious threat to international security, at the regional level and world-wide.

6. Conclusion and Proposals

The Conventions do not need to be reinvented or renegotiated. The existing legal instruments are sufficient; what is lacking is political willpower and implementation. There are three concrete proposals. First, States should reaffirm the foundational humanitarian principles already codified in Common Articles 1 and 3, Article 75 of Additional Protocol I, and the Martens Clause (perhaps in a simplified declaratory instrument accessible to non-specialist audiences) including armed groups and militias. Second, systematic training and education in IHL must extend to not only regular military forces, but also to police, militias, armed non-state actors, and their trainers. This training should engage cultural, religious, and community leaders as partners and draw on local traditions to promote humanitarian principles. Third, existing legal mechanisms, such as universal jurisdiction, collective responsibility under Common Article 1, regional organizations, UN Security Council oversight, and domestic criminal prosecution, must be utilized more effectively and creatively.

The Geneva Conventions remain an instrument of practical advantage for all parties: Superpowers and small States, governments and insurgents, and regular armies and non-

state actors. Even in an asymmetric conflict, unilateral compliance is rational. Humanely treating surrendering enemies is less costly militarily than fighting to the last man. Respecting civilians reduces resistance and terrorism, and maintaining prisoner and wounded exchanges opens channels toward peace. The real threat to international security is not the Conventions themselves, but rather the culture of impunity that develops when they are disregarded without consequence. Rather than abandoning them, we must strengthen them across legal, political, military, ethical, and spiritual dimensions. Instead of undermining this vital body of rules, we must reinforce the fundamental principles of international humanitarian law at every level. The survival of hundreds of thousands of the wounded, sick, shipwrecked, prisoners of war, and civilians is at stake.