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*Jean d'Aspremont*[*]

# The Performative Resilience of International Humanitarian Law in a Time of Discursive Amnesia

## Abstract

This article starts by diagnosing the discursive amnesia that came to surround international humanitarian law in contemporary public discourse in 2023–2025. While violations of IHL have proliferated, the legal categories that render warfare legible—civilian, combatant, proportionality, distinction—have been systematically evacuated from political and media narratives. It is submitted here that this silence is as dangerous as the violations themselves, as it condemns international humanitarian law's prescriptions to oblivion. The article identifies five plausible causes of this discursive amnesia: intra-norm competition with the legal rules on genocide, complexity in asymmetric conflicts, the narrative monopoly of *jus ad bellum* discourse, critical discomforts with the colonial and gendered histories of international humanitarian law, and the emergence of zones of incriticability. Against this diagnosis, the article argues that international humanitarian law has lost none of its performative lustre, which can be tapped and mobilized through sustained, institutionally-backed articulation of its core categories. The article concludes with an invitation to mobilize the performativity of international humanitarian law across legal, educational, operational, and communicative registers.

## Key words

international humanitarian law, discursive amnesia, performativity of law, jus in bello, distinction and proportionality, public discourse and media narratives.

[*] *Professor of International Law, Sciences Po Law School and University of Manchester.*

This article is about international humanitarian law. Yet unlike most scholarly interventions on international humanitarian law, it does not attempt to resolve doctrinal controversies concerning distinction, proportionality, or direct participation in hostilities, nor does it rehearse the contours of the Geneva Conventions, the Additional Protocols, the Rome Statute, or the Hague Regulations in a comprehensive manner. Likewise, it does not aim to provide a systematic treatise or a casebook account of the conduct of hostilities, nor to settle enduring debates between *jus ad bellum* and *jus in bello*, nor to measure compliance through empirical inventories of violations. Its purpose is different. Rather, it advances a diagnosis of the discursive amnesia surrounding international humanitarian law, identifies plausible causes of this forgetfulness, defends a thesis about the need to tap into the performative force of international humanitarian law's categories, and proposes a praxis to enhance the performativity of international humanitarian law in a time of discursive amnesia.

The structure of this article is as follows. Section 1 sets out the diagnosis, describing the silence surrounding international humanitarian law in contemporary discourse and contrasting this silence with the omnipresence of *jus ad bellum* categories. Section 2 explores plausible causes of the discursive retreat of international humanitarian law, including intra-norm competition, complexity in asymmetric conflicts, the monopolization of narrative by self-defence, critical discomforts associated with coloniality and masculinity in the law, and the emergence of zones of incriticability. Section 3 advances a philosophical claim about hope grounded in the performativity of international humanitarian law. Section 4 outlines concrete suggestions to reactivate international humanitarian law's discursive presence in public, political, and legal registers. The article closes with concluding remarks on how the return of international humanitarian law to the discursive spotlight would simultaneously facilitate the activation of the underused mechanisms of universal jurisdiction that it provides.

## 1. The Diagnosis: Silence, Amnesia, and the Spectrality of International Humanitarian Law

Recent years have been saturated with images and reports of civilians killed or maimed, schools demolished, hospitals reduced to rubble, journalists targeted, and populations starved. Yet the striking feature in 2023–2025 is that such harms are increasingly narrated without the grammar of international humanitarian law. The categories that render war legible—civilian, combatant, protected object, indiscriminate attack, proportionality, feasible precautions – are absent from public speech or media reports, let alone from the official positions of armies' spokespersons.[1] In fact, military spokespeople com-

[1] On the role of media in shaping discourse on legal categories in times of armed conflict, see gen. Kamel, 2024, Unpublished PhD thesis, (on file with the author).

monly justify operations in terms of counter-terrorism and self-defence while omitting reference to the relevant prescriptions of international humanitarian law.[2] By the same token, government leaders invoke security and sovereignty without engaging *jus in bello* constraints. Likewise, media platforms amplify narratives of threat and extremism, and algorithms privilege emotive content over legal analysis.[3] This silence annuls the norms and categories of international humanitarian law, diminishing its capacity to shape public judgement and name the intolerable. It could be said that such silence is more dangerous than violation. Indeed, violation presupposes a norm and invites reaffirmation, contestation, and accountability. Silence condemns the norm to oblivion, thereby stifling the possibility of its violation. This silence is what is described here as discursive amnesia.

This discursive amnesia surrounding international humanitarian law in 2023–2025 is clearest when juxtaposed with the saturation of discourse by *jus ad bellum* categories. States invoke self-defence instantly and insistently, leveraging Article 51 of the United Nations Charter, and its accompanying elastic narratives of necessity and proportionality. Public audiences encounter arguments about the legality of resort to force far more frequently than discussions of feasible precautions, the rule against indiscriminate attacks, or the protection of medical units, cultural objects, and journalists.[4] The discursive dominance of self-defence persists even where claims are controversial or untenable. Self-defence crowds out international humanitarian law's concurrent and independent constraints.

A further diagnostic element is the relabelling of civilians as terrorists. Contemporary narratives in some contexts collapse the distinction between combatants and civilians, treating entire communities as hostile actors. This change of register shifts the analysis from conduct-of-hostilities rules to a criminal law vocabulary of threat and guilt, thereby dissolving protections associated with civilian status. The effect is the normalization of sieges, starvation tactics, and strikes in dense urban areas without visible proportionality assessments or precautionary measures.[5] Such cancellation by counter-terrorism is not new, but by 2025 it has reached its paroxysm, becoming the default discursive frame. The result is that international humanitarian law is no longer even mentioned or invoked: it becomes a spectre haunting discourse.

It must be acknowledged that a few authoritative bodies have intervened to reinsert international humanitarian law into public vocabulary. The International Court of Justice's 2024 provisional measures order in *South Africa v. Israel* emphasized that all par-

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2 See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Articles 51–57; Dinstein, 2016, pp. 88–120.

3 Zuboff, 2019, pp. 354–40 on platform power; Sontag, 2003, 67–88 on imagery and spectatorship.

4 Gray, 2018, pp. 97–132; Ruys, 2010, pp. 137–179.

5 International Committee of the Red Cross (ICRC), 2020, pp. 7–29; Dörmann, 2003, pp. 152–188.

ties to the conflict are bound by international humanitarian law.[6] Its 2024 advisory opinion on *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* reaffirmed the applicability of the Fourth Geneva Convention (1949), recognized the customary status of elements of the Hague Regulations (1907), and articulated occupation duties relating to administration, population transfer, resource exploitation, and restraint.[7] Experts on the ground, and especially those of the International Committee of the Red Cross, have continued to recall their operational guidance referring to humanitarian constraints.[8] These interventions demonstrate that international humanitarian law remains legally alive and institutionally voiced. Yet the paradox persists. While courts and humanitarian experts speak the language of international humanitarian law, political and media discourse too often does not.

If the diagnosis made here is confirmed, then the situation is stark. A rule lives not only in treaties and case law but in the discourse that names and invokes it. While transgression of the rule can paradoxically reassert it, discursive amnesia, it is argued here, is the rule's death sentence.

## 2. The Causes: Plausible Explanations for Discursive Amnesia

Although making a causal claim require humility,[9] this section sketches some possible explanations for the discursive amnesia diagnosed above. Intra-norm competition constitutes a first explanation. Categories with singular symbolic gravity, notably genocide, may have eclipsed international humanitarian law's ordinary rules in public debate. The turn to the genocide vocabulary may also have been ignited by the compromissory clause of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Article IX)**,** which enables immediate state-to-state litigation, and by the juridical apparatus around genocide—including incitement, conspiracy, and complicity.[10]

Asymmetry and the multidimensionality of conflicts may add further pressure in favour of the discursive amnesia described above. As is well known, contemporary conflicts often feature non-state armed groups, hybrid entities, and irregular tactics. Status determination is difficult, participation intermittent, uniforms rare, attribution porous, and

6 ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order on Provisional Measures, 26 January 2024, para. 78; para. 85.

7 ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, paras. 93–141; Benvenisti, 2012, pp. 5–37; Roberts, 2006, pp. 580–585.

8 ICRC, 2009, pp. 1–85.

9 Hume, 1739, see Book I, Part III, Section XIV on causal reasoning.

10 Schabas, 2009, pp. 7–52; Akhavan, 2012, pp. 1–24.

thresholds for non-international armed conflicts contested.[11] The international humanitarian law framework can address such multilayeredness,[12] yet the interplay with human rights law introduces additional layers that can be misread as contradictions rather than complementarity.[13] Urban warfare intensifies these challenges, especially in proportionality assessments and precautions.[14] In such conditions, media and political speech default to communicatively simple frames like security, threat, and terror that displace international humanitarian law vocabulary precisely where it is most needed.

As was already alluded to, the narrative monopoly of self-defence and of *jus ad bellum* categories can also explain the discursive retreat of international humanitarian law. In particular, one witnesses a collapse of the classical distinction between *jus ad bellum* and *jus in bello*,[15] whereby self-defence claims come as a blank cheque that forecloses discussion of targeting, status, and precautions dear to international humanitarian law. The resonance of self-defence even seems to be communicatively irresistible,[16] even as preventive and punitive expansions have been sharply criticized.[17] The result is a narrative monopoly that drives *jus in bello* out of the frame.

Mention must also be made here of the critical discomforts that have long affected international humanitarian law, especially in terms of coloniality and gender critique. It has been shown that the genealogy of international humanitarian law passes through imperial hierarchies,[18] wars of national liberation were often criminalized rather than governed as armed conflicts,[19] and humanitarian narratives have often come close to reproducing colonial frames.[20] It has likewise been demonstrated that the protection offered by international humanitarian law has often been gendered, limiting the visibility of certain harms for decades, despite later jurisprudence recognizing sexual violence as war crimes and crimes against humanity.[21] These legacies may have generated hesitation to invoke international humanitarian law as a universal grammar.

11 Kleffner, 2015, pp. 197–200.

12 Sassòli, 2024, pp. 146–175 on precautions.

13 Milanovic, 2014, pp. 505–510; Droege, 2007, pp. 146–151.

14 ICRC, 2020, pp. 7–29; Dinstein, 2016, pp. 88–120.

15 Greenwood, 1983, pp. 219–224.

16 Gray, 2018, pp. 97–132; Ruys, 2010, pp. 137–179.

17 O'Connell, 2002, pp. 1–10; Corten, 2010, pp. 429–471.

18 Anghie, 2004, pp. 196–230.

19 Abi-Saab, 1979, pp. 356–362.

20 Orford, 2003, pp. 1–24.

21 ICTY, Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Appeals Judgment, 12 June 2002, paras. 128–137; ICC, Elements of Crimes, 2011, Article 8, pp. 17–22; Charlesworth & Chinkin, 2000, pp. 266–305; Gardam and Jarvis, 2001, pp. 13–42; Copelon, 2000, pp. 217–220.

Finally, the rise of what I have called elsewhere zones of incriticability[22]—those discursive spaces where legal categories deemed too critical are banned or reappropriated—may have further contributed to the suppression of international humanitarian law. In and around such zones of incriticability, legal terms are euphemized to justify violence; critics are accused of bias; universities sanction legal language; platforms derank it or drown it in algorithmic noise.[23] One of the victims caught in the barbed wire of these new zones of incriticability has been international humanitarian law.

## 3. The Hope: Performativity, Naming, and Governance Through Words

The discursive amnesia described and tentatively explained above is certainly not the end of the story. This section argues that international humanitarian law can be brought back from this discursive brink by resuscitating its performativity through the repeated, institutionalized act of naming that turns words into actualities.[24] Performativity, as understood in this section, is not a metaphor. It is a practice with mechanics. Legal categories are not descriptive labels affixed after the fact; they are tools that organize perception and decision. To call a person a civilian is to reconfigure the target-identification workflow; to call an attack indiscriminate is to close operational options; to call a conduct a grave breach is to trigger non-derogable duties to search for and prosecute. Such speech acts always carry world-making force that, in turn, comes to prescribe subsequent behaviour.[25] Courts, prosecutors, armed forces, scholars, and media supply precisely those mouths. The key is to remove the blanketing counter-terrorism frame and reintroduce international humanitarian law's grammar as the default language of the intolerable.

This performative perspective clarifies why *jus ad bellum* has crowded out *jus in bello* in public speech. J*us ad bellum* lends itself to grand, constitutional storylines—self-defence, sovereignty, existential threat—that are communicatively sticky.[26] In contrast, the conduct-of-hostilities rules demand granularity: status determination, anticipated military advantage, feasible precautions, cancellation or suspension when expected harm is excessive. But being granular should not mean being inaudible. Granular legal categories can be made loud if they are scripted for the public sphere and translated into a civic idiom without losing precision: civilians must be protected; indiscriminate attacks are prohibited; feasible precautions are mandatory; occupation imposes duties of adminis-

22 d'Aspremont, 2025, (forthcoming).

23 Douzinas, 2000, pp. 159–182; Brown, 2006, pp. 78–114; Zuboff, 2019, pp. 354–401.

24 L. Austin, 1962, pp. 12–38; Searle, 1969, pp. 16–31; Searle, 1995, pp. 27–53; Butler, 1997, pp. 3–13.

25 L. Austin, 1962, pp. 12–38; R. Searle, 1995, pp. 27–53; Butler, 1997, pp. 3–13.

26 Gray, 2018, pp. 97–132; Ruys, 2010, pp. 137–179.

tration and restraint.[27] These are not slogans; they are legal operators. Each is a lever that, when pulled publicly and persistently, moves institutions.

Three pathways illustrate how performativity helps one travel from word to world. First, institutional activation: when a highly visible court states in a provisional measures order that "all parties" are bound by international humanitarian law, it does more than recite doctrine; it scripts press conferences, rewrites diplomatic talking points, and signals to operational lawyers what will be asked in court tomorrow.[28] Advisory opinions that detail occupation duties recalibrate media narratives and bureaucratic memoranda.[29] Prosecutorial filings that charge war crimes in precise international humanitarian law terms educate publics about what proportionality means in urban combat.[30] Second, operational codification: rules of engagement that build in presumptions of civilian status, structured proportionality worksheets, and pre-/post-strike cancellation reviews embed words into checklists.[31] When public affairs officers brief those same words—distinction, precautions, protected objects—they prime journalists to ask the right questions, a dynamic documented in studies of conflict reporting and media frames.[32] Third, accountability expansion: naming complicity moves the centre of gravity. By repeatedly articulating that aiding or assisting grave breaches engages responsibility, the law shifts attention from the single trigger-puller to the supply chains and decision architectures that enable unlawful harm.[33] Universal jurisdiction mechanisms operationalize this widened accountability and, when activated, reinsert international humanitarian law into diplomatic and media agendas.[34]

Mobilizing the performativity of international humanitarian law also provides a path beyond the dark pedigrees (colonial legacies, gendered blind spots, etc.) that have rightly dogged this body of law. One possible answer to these compelling charges against inter-

27 Benvenisti, 2012, pp. 5–37 on duties of administration and restraint; Roberts & Guelff (eds.), 2000, pp. 3–43 on core protections.

28 ICJ, South Africa v. Israel, Order on Provisional Measures, 26 January 2024, paras. 78, 85.

29 ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, paras. 93–141.

30 Schabas, 2016, pp. 207–265 on Article 8; Akhavan, 1998, pp. 230–236 on public pedagogy through prosecutions

31 Sassòli & Elgar, 2023, pp. 146–175 on precautions; Boothby, 2012, pp. 97–138; Gill & Fleck (eds.), 2015, pp. 367–403 on targeting processes and ROE.

32 Livingstone & Lewis, 2019, pp. 12–37 on editorial protocols; Sontag, 2003, pp. 67–88 on imagery, spectatorship, and responsibility.

33 International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 16; Aust, 2011, pp. 1–20 on the concept and consequences of complicity; Corten, 'La 2011, pp. 60–67.

34 Reydams, 2003, pp. 51–89 on state practice; Ryngaert, 2015, pp. 103–129 on universal jurisdiction; Langer, 2011, pp. 6–12; 20–28 on political mediation of legal pathways.

national humanitarian law is not silence but rescripting. In that respect, feminist and postcolonial interventions have shown that naming and reappropriation can transform the legal field itself: sexual violence gained legal visibility because it was named, codified, and prosecuted,[35] and occupation law has been stripped of civilizing rhetoric and regrounded in concrete duties through scholarship and judicial elaboration.[36] Critical accounts of coloniality and feminist analysis continue to demonstrate how international humanitarian law should be articulated to avoid reproducing hierarchies while retaining world-making traction.[37]

Crucially, performativity is iterative and cumulative. One headline that says "indiscriminate attack" instead of "security incident" changes little; fifty headlines over six months alter the normative expectations of audiences. One spokesperson who explains "feasible precautions" might be ignored; a dozen across different theatres sets a new professional norm. One court order can be dismissed as hortatory; a sequence of orders, arrests, and judgements builds a memory palace of constraint. This is why repetition matters and why platform dynamics must be confronted: algorithmic curation tends to privilege emotive threat narratives over legal analysis, but strategic, coordinated articulation can make legal vocabulary travel.[38] Performativity is not merely reputational. Words alter travel plans, procurement choices, weapons selection, and target lists. When the category "grave breach" is in the air, itineraries are redrawn; when the word "civilian" is in the briefing, the no-strike list grows; when "feasible precautions" is repeated, additional surveillance, warnings, and timing adjustments are budgeted into operations.[39]

Mobilizing the performativity of international humanitarian law is thus a program for action that is urgently needed in a time of discursive amnesia. It tells us to build a chain: from classroom to newsroom to courtroom to command room, each link repeating the same grammar with the same clarity. It tells us to confront the terrorism frame not by debating it on its own terms but by changing the language of the conversation: whatever the *jus ad bellum* story, *jus in bello* constraints apply in full, to all parties, at all times.[40] It tells us to refuse the false choice between critique and protection: we can

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35 ICTY, Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Appeals Judgment, 12 June 2002, paras. 128–137; ICC, Elements of Crimes, 2011, Article 8.

36 Benvenisti, 2012, pp. 5–37; Roberts, 2006, pp. 580–585 on the risks of transformative narratives.

37 Anghie, 2004, pp. 196–230 on colonial genealogy; Orford, 2003, pp. 1–24; Charlesworth & Chinkin, 2000, pp. 266–305 on armed conflict; Gardam & Jarvis, 2001, pp. 13–42; Mutua, 2001, pp. 201–210.

38 Zuboff, 2019, pp. 354–401 on platform power and attention economies.

39 Sassòli & Elgar, 2023, pp. 146–175; Boothby, 2012, pp. 97–138; Gill & Fleck (eds.), 2015, pp. 367–403.

40 Greenwood, 1983, pp. 219–224 on the foundational separation; Gray, 2018, pp. 97–132; Corten, 2010, pp. 429–471 on critique of expansions.

speak a decolonized, de-gendered international humanitarian law.[41] And it tells us that the opposite of silence is not noise; it is articulation—precise, disciplined, relentless articulation—supported by institutional loudspeakers such as courts, advisory opinions, prosecutorial filings, and ICRC guidance.[42]

If violation can still provoke reaffirmation, discursive amnesia is the enemy to defeat. The antidote is naming, again and again, until international humanitarian law categories become unavoidable—until they are no longer spectral but the very air of public judgement. When these words are spoken by the right institutions and repeated persistently by everyone, they do not merely describe: they govern.

## 4. The Action Plan: Praxis for Foregrounding International Humanitarian Law in Discourse

To transform the diagnosis into the remedy mentioned at the end of the previous section, the imperative is to embed international humanitarian law's vocabulary across institutions, communication, education, and operations—and to do so with repetition, clarity, and authority. Legal activation must become routine: complaints, filings, and public statements should foreground conduct-of-hostilities rules—distinction, proportionality, feasible precautions—alongside any atrocity framing, with explicit reference to grave breaches and war crimes under the Rome Statute of the International Criminal Court, 1998, Article 8, and the grave-breaches obligations in Geneva Conventions I–IV, 1949. Universal jurisdiction should be mobilized deliberately, coordinating offices across jurisdictions to track travel, gather evidence, and prioritize suspects in ways that reinsert international humanitarian law into the news cycle and diplomatic calculus.[43] Strategic litigation should widen the aperture beyond direct perpetrators to command responsibility, enabling structures, and corporate facilitation where legal bases exist, translating complicity into a living constraint.[44]

Institutional strategy should harness courts and prosecutors as loudspeakers. High-profile orders and advisory opinions ought to include clear *jus in bello* reminders appli-

41 Anghie, 2004, pp. 196–230; Charlesworth & Chinkin, 2000, pp. 266–305; Gardam & Jarvis, 2001, pp. 13–42.

42 ICJ, South Africa v. Israel, Order on Provisional Measures, 26 January 2024, paras. 78, 85; ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, paras. 93–141; ICRC, 2009, pp. 1–85.

43 Reydams, 2003, pp. 51–89; Ryngaert, 2015, pp. 103–129; Langer, 2011, pp. 20–28.

44 Cassese, 2013, pp. 224–248; Clapham, 2006, pp. 205–241; Altwicker & Diggelmann, 2018, pp. 445–452.

cable to all parties, with accessible language that can travel across media ecosystems.[45] Prosecutorial filings should pair precise counts with narratives that explain, in plain terms, what it means to take feasible precautions, how proportionality is assessed, and why civilian presumptions matter.[46] Communication teams should adopt editorial protocols that centre international humanitarian law categories in press releases and briefings, thereby normalizing the vocabulary of protection and constraint.[47]

Communicative practice outside the courtroom is equally decisive. Newsrooms should train correspondents to identify and report international humanitarian law issues with checklists for distinction, proportionality, and precautions, recalibrating narratives of strikes, sieges, and urban operations towards legality rather than spectacle.[48] Public messaging should repeat simple frames—civilians must be protected; indiscriminate attacks are prohibited; feasible precautions are mandatory; occupation entails administration and restraint—across languages and platforms, with documents and commentary to backstop the narrative.[49] Above all, the message must decouple self-defence from conduct-of-hostilities, *jus ad bellum* from *jus in bello*.[50]

Education must carry this reform forward. Curricula should integrate feminist and postcolonial critiques at the core, not at the margins, rendering visible the genealogies that have long complicated invocation while equipping jurists to deploy international humanitarian law without reproducing colonial or patriarchal frames.[51] Pedagogy should be operational: modules on asymmetric conflict, status determination, urban targeting, drones, and cyber operations, paired with media literacy for algorithmic publics.[52] Simulations—public briefings, rapid legal memos, mock press conferences—should train students and practitioners to articulate constraints quickly and clearly.

Operational integration then closes the circle. Rules of engagement must codify presumptions of civilian status, feasible precautions in intelligence-poor environments, and structured pre- and post-strike proportionality assessments.[53] Internal auditing mechanisms should review targeting decisions against international humanitarian law check-

[45] ICJ, South Africa v. Israel, Order on Provisional Measures, 26 Jan. 2024, paras. 78, 85; ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, paras. 93–141.

[46] Schabas, 2016, pp. 207–265; Nouwen, 2013, pp. 69–103; deGuzman, 2012, pp. 10–18.

[47] Grossman, 2009, pp. 708–715.

[48] Livingstone & Lewis, 2019, pp. 12–37; Sontag, 2003, pp. 67–88.

[49] Roberts & Guelff (eds.), 2000, pp. 3–43; Benvenisti, 2012, pp. 5–37.

[50] Gray, 2018, pp. 97–132; Greenwood, 1983, pp. 219–236; Corten, 2010, pp. 429–471.

[51] Charlesworth & Chinkin, 2000, pp. 266–305; Gardam & Jarvis, 2001, pp. 13–42; Engle, 2004–2005, pp. 988–995; Heathcote, 2021, pp. 1–28.

[52] Sassòli, 2023, pp. 146–175; Ohlin, 2015, pp. 44–88; Schmitt, 2017, pp. 100–144; Zuboff, 2019, pp. 354–401; Cohen, 2019, pp. 211–259.

[53] ICRC, 2009, pp. 1–85; Dinstein, 2016, pp. 88–120; Boothby, 2012, pp. 97–138.

lists and publish transparent after-action summaries that reference the criteria applied.[54] Transparency is not a courtesy; it is performative governance that recalibrates incentives and builds public trust.

## 5. Concluding Remarks: Say It Until It Governs[55]

The foregoing may at times have sounded theoretical. Yet it has carried a practical charge throughout: it is a praxis, a theory of action. This theory of action begins with attention to courts, the loudspeakers that put words on things with authority—the "grosses gueules" that make norms audible. For once, courts have been there. They have been present. We must make use of them. It is enough, at first, to look at the trail blazed by the International Court of Justice. We do not always follow the Court's tepid pronouncements but on 26 January 2024 the Court resurrected international humanitarian law in the most watched order in its history, declaring in the Gaza case that all parties to the conflict are bound by international humanitarian law. The sentence was not strictly necessary to decide the measures; it was placed there because the Court knew the performative power of those words, and because words govern when spoken by the right mouth and repeated in the right forums.

The Court's Advisory Opinion of 19 July 2024 also indicates the direction to follow. There, the Court reaffirmed that the Fourth Geneva Convention applies in the Occupied Palestinian Territory and that many of its rules are "fundamental to respect for the human person", constituting "intransgressible principles of customary international law"; it confirmed the customary status of the Hague Regulations and their binding effect; it underscored that Israel's obligations under international humanitarian law remain commensurate with the degree of effective control over Gaza, despite the withdrawal of physical military presence; and it spelled out, without euphemism, what occupation duty means: administer the territory for the benefit of the local population, do not transfer your civilian population into the occupied territory, do not confiscate land contrary to Articles 46, 52 and 55 of the Hague Regulations, do not exploit natural resources beyond the usufruct standard of Article 55, do not extend domestic law in violation of Article 43 of the Hague Regulations and Article 64 of Geneva IV, and do not forcibly transfer the local population in violation of Article 49(1).[56]

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54 Sassòli, 2023, pp. 146–175; Gill & Fleck, 2015, pp. 367–403.

55 The spoken style of the conclusion has been preserved.

56 ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, paras. 93–96, 105, 115–123, 124–133, 134–141, 142–147; Regulations annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, Articles 43, 46, 52, 55; Geneva Convention

It can be anticipated that, someday, we will have the example of the International Criminal Court. The Prosecutor has taken time, under pressure and in danger like anyone working for the Court. But the day the ICC renders judgment will be monumental for the performativity of international humanitarian law. The words of international humanitarian law will remake the world—not by symbolism but by activation of criminal categories that structure accountability and deterrence.[57]

The lesson from such judicial pronouncements is simple. International humanitarian law has not said its last word. It retains its performative potential to name things precisely. It still has all its words—civilian, protected object, indiscriminate attack, feasible precautions, grave breach—and those words will be made to govern. But this requires that everyone, students, scholars, practitioners, journalists, observers, commentators, policymakers, follow suit to revive those words, to invoke them, to repeat them. International humanitarian law needs to be made a constant referent of discourse by any user of that discourse.

At this final stage, allow a personal note. I spent twenty years tearing international humanitarian law apart. I have always been very critical of it: for it authorizes more than it constrains; for it legitimizes violence; for it bears colonial legacies; for it perpetuates some sort of phallocentrism; etc. Today, given the state of the world, the state of discourse, the glacial silence around (and the complicity with) the intolerable—international humanitarian law is close to all that we have left. The words of international humanitarian law, despite their defects, are possibly among our best tools for naming barbarity. Some want to reduce it to discursive amnesia. Do not let them.

The foregoing is not mere symbolism. Once we put words on acts, we can begin to act and confront the perpetrators. Naming is not only labelling. Naming is also putting into motion. Once we speak of "grave breaches", universal jurisdiction moves. The Geneva Conventions organize national obligations to search for and prosecute grave breaches irrespective of nationality. Nothing can be more concrete: travel plans change; holidays are cancelled; airport police finally do the work they should be doing; border alerts trigger; procurement choices adapt; reputational costs accrue, and accountability starts to kick in.[58]

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(IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Articles 49(1), 49(6), 64.

57 Rome Statute of the ICC, 1998, Article 8. See Schabas, 2016, pp. 207–265. See also ICC, Prosecutor v. Ahmad Al Faqi Al Mahdi, Judgment and Sentence, 27 September 2016, paras. 40–50.

58 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, Article 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, Article 50; Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, Article 129; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time

This is governance by words. That is why some seek to cast international humanitarian law into the *oubliettes* of discourse. The responsibility is ours: to name, and to name with precision; to lean on international humanitarian law's terms; to refuse ambiguity and discursive amnesia. By clearly designating violations, we begin to stop the unacceptable. By naming, we resist those who would silence international humanitarian law—those who hope to dissolve the rule in the din or the void. It belongs to each of us to carry this demand: to make the words of international humanitarian law heard wherever they are needed—on air, in chambers, in classrooms, and in commands. Speak the words of international humanitarian law until they become common sense again, until they are ubiquitous, until they are unavoidable—until they govern again, and until they prevent the bad guys from having it their way.

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