

KIGALI INDEPENDENT UNIVERSITY ULK

DEPARTEMENT OF LAW

SCHOOL OF LAW

P.O.BOX 2280 Kigali

**CRITICAL ANALYSIS OF THE RIGHTS OF CIVILIANS
ENGAGED IN COMBATS DURING ARMED
CONFLICTS UNDER INTERNATIONAL
HUMANITARIAN LAW**

A Dissertation submitted in partial fulfillment of the
academic requirements for the award of Bachelor's
Degree.

By

ROGER ALOLI MICHELLE ASHLEY

SUPERVISOR: Lecturer NKUNDUKOZERA Emmanuel

Kigali, September 2024

DECLARATION

I, ROGER ALOLI MICHELLE ASHLEY declare that this thesis entitled “Critical analysis of the rights of civilians engaged in combats during armed conflicts under international humanitarian law” submitted in fulfillment of the requirements for the award of Bachelor in Law at Kigali independent university (ULK), is wholly my own work. Where scholars work has been used, references have provided. In this regard, I declare this work as original mine.

The dissertation has not been submitted for qualifications at any other academic institution.

ROGER ALOLI MICHELLE ASHLEY

Signature.....

Date.....

APPROVAL

This is to certify that the work contained in the thesis entitled “Critical analysis of the rights of civilians engaged in combats during armed conflicts under international humanitarian law” submitted by ROGER ALOLI MICHELLE ASHLEY for the partial fulfillment award of bachelor’s degree in Law. This project has been submitted with my authority as the university supervisor.

This research has been submitted with my approval as the Kigali independent university (ULK)

SUPERVISOR: Lecturer NKUNDUKOZERA Emmanuel

Sign.....

Date.....

DEDICATION

I first thank Almighty God, who has supported and helped me over the past three years.

I also want to thank my wonderful parents and my brothers for their support and their love despite the distance.

Finally, I want to thank my friends, both near and far, who encouraged me throughout this journey.

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To all the above, named person and others who I could not mention, I am truly grateful for your support!

May God bless you!

ROGER ALOLI MICHELLE ASHLEY

LIST OF ABBREVIATIONS AND ACRONYMS

CIL: Customary International Law

DPH: Directly Participated in Hostilities

ECCC: Extraordinary Chambers in the Courts of Cambodia

HR: Human Rights

HRW :Human Rights Watch

ICC: International Criminal Court

ICRC: The International Committee of the Red Cross

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

IHL: International Humanitarian Law

NGO :Non-Governmental Organizations

POW: Prisoner of war

PTSD: Post-Traumatic Stress Disorder

UN: United Nations

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1. GENERAL INTRODUCTION

International humanitarian law, also known as the law of war, is a crucial field of international law that governs armed conflicts between states and, more recently, between states and informal groups and individuals.¹ It aims to regulate the legality of justifications for war (*jus ad bellum*)² and the conduct during wartime (*jus in bello*).³ This body of law protects individuals not involved in the conflict, such as civilians, medical personnel, prisoners of war, and the injured, and prohibits combatants from using weapons or tactics that cause unnecessary harm to their adversaries.

International Humanitarian Law also establishes a clear distinction between civilians and combatants during armed conflicts. Civilians are generally protected from the effects of hostilities and cannot be directly targeted. However, the line between civilian and combatant can become blurred when civilians directly participate in combat.

The question of the status of civilians engaged in hostilities, which represent an ethic issue, still not established and clear under international humanitarian law can lead to a confusion in their new role and rights during armed conflicts.

The analysis of the rights of civilians engaged in combats during armed conflicts involves the examination of legal framework governing the rights of civilians engaged, the principles of distinctions and the principle of proportionality.

This dissertation seeks to undertake a comprehensive analysis of the rights and protections afforded to civilians involved in combat situations during armed conflicts through the acknowledgment of the fundamental principles of international humanitarian law and the critical analysis of the existing distinctions between civilians and combatants.

¹ The recognition of non-state conflicts started with the inclusion of Common Article 3 in the Geneva Conventions of 1949, which applied to non-international armed conflicts. The 1977 Additional Protocols, particularly Protocol II, which specifically addressed protections in conflicts involving non-state armed groups, further expanded this recognition. The Rome Statute of 1998, establishing the International Criminal Court (ICC), reinforced this by allowing for the prosecution of war crimes in both international and non-international armed conflicts, including those involving non-state actors.

² **Jus ad bellum** (law on the use of force) refers to the conditions under which States may resort to war or to the use of armed force in general while **Jus in Bello** is considered as the law that governs the way in which warfare is conducted. The difference between these two terms is in essence that **jus ad bellum** is about the "right to war," while **jus in bello** is about "right conduct in war."

³ <https://www.icrc.org/en/document/what-ihl> accessed on April 2024

Through a nuanced examination of the complexities surrounding civilian engagement in warfare and the implications for their legal status and protections, the present study shed light on the evolving landscape of humanitarian law and the challenges posed by the changing nature of armed conflicts.

1.1 Background of the study

In ancient and medieval times, the distinction between combatants and civilians was often blurred, and civilians frequently suffered during conflicts without specific legal protections.⁴ In this time, warfare was often regulated by unwritten customs and traditions, and were the most concerned by combatants.⁵

Historically, The Lieber Code of 1863 is a cornerstone in the matter of the modern codifications of the laws of war and was issued during the American Civil War ⁶. Consisting of 157 provisions that deal with a wide range of legal issues ⁷ and addressed the legal status of civilians who took up arms against the enemy, stating that they could be treated as lawful combatants or as war rebels depending on the circumstances.⁸

In 1874, the Brussels Declaration ⁹proposed international agreement further developed the rules around civilians participating in hostilities, distinguishing between lawful combatants ¹⁰and unlawful "francs-tiers" ¹¹(irregular forces).

The Hague Regulations of 1899 and 1907 are international treaties built on previous efforts, establishing the principle of distinction between combatants and civilians, and stating that the civilian population must be spared from the effects of hostilities.

The Geneva convention the additional protocol I established that civilians who directly participated during hostilities lost their protection against military attack and become lawful target, they can regain their protection when they stop to be active.

⁴Professor Grunawalt J. (1998), *The Law of Military Operations: Liber Amicorum* (Vol.72) Michael N. Schmitt (Editor) p. 44

⁵ Idem p. 43

⁶ [IHL Treaties - Lieber Code, 1863 \(icrc.org\)](https://www.icrc.org/ihl-treaties-lieber-code-1863)

⁷ [The "Lieber Code" – the First Modern Codification of the Laws of War | In Custodia Legis \(loc.gov\)](https://www.loc.gov/rr/ah/law/lawofwar/lieber.html)

⁸Article 82 of Lieber code

⁹ The historical Brussels Declaration of 1874, established under Czar Alexander II of Russia, was an early attempt to codify international humanitarian law regarding the conduct of warfare and treatment of prisoners.

¹⁰ Article IX and X OF THE BRUSSELS DECLARATION OF 1874

¹¹ The term "francs-tireurs" refers to irregular military fighters, particularly those who operate outside the formal structures of the army during wartime.

Throughout history, civilians have contributed to the general war effort, for example by producing and supplying weapons, equipment, food, and shelter, or by offering political and financial support. These activities have typically been conducted far from the battlefield. Traditionally, very few civilians have been involved in actual combat.

1.2. Interest of the study

The study of the rights of civilians engaged in combat during armed conflicts under international humanitarian law is a paramount importance in the realm of human rights, international law, and conflict resolution. This topic holds significant interest for several key reasons:

- For the protections civilians from the danger of military operations in the purpose of be sure that they are not targeted unless they directly participate in the hostilities;
- To understand and gain acknowledge on the rights of civilians who are engaged in combats;
- The study of the rights of civilians engaged in combat helps to ensure accountability and justice for violations of international humanitarian law.

Overall, the critical analyze of rights of civilians engaged in combats during armed conflicts is a crucial area of inquiry for scholars, practitioners, and policy makers interested in international humanitarian law, human rights, and the rule of law.

1.2.1 Personal Interest

As an individual conducting a critical analyze on the rights of civilians engaged in combats during armed conflict my personal interest lies first in the clear understanding of main principles of international humanitarian law which are: the principle of distinction, the principle of proportionality and the principle of precautions.

Second, exploring the subject on the rights of civilians engaged in combats during armed conflict allows me to dig into the complexities of the blurred limitation and distinction existing between civilians engaged and combatants. I am eager to examine the legal frameworks, mechanisms, and principles that govern the implementation of the principle of international humanitarian law in this case and understand how the distinction conflict impact the rules established by international humanitarian law.

Overall, my personal interest in this subject stem from a desire to deepen my understanding of the complexities surrounding the status of civilians engaged in combats and their rights but also to contribute to the ongoing efforts to strengthen international humanitarian law and ensure that civilians have enjoy the rights and the protection that they need during armed conflict.

1.2.2 Academic Interest

The study of the critical analysis on the rights of civilians engaged in combats during armed conflicts presents several compelling academic interests. Some of these include the profound impact it has on shaping international humanitarian law and human rights protections. In fact, by critical analyzing of these rights contribute to enhancing the legal framework that safeguards civilians in conflict zones, promoting accountability and protection for vulnerable populations.

This study of this subject not only advances the clear understanding of the complexities of armed conflicts but also aids in developing policies and practices that prioritize the safety and well-being of civilians amidst the chaos of war.

Additionally, the discussion around the critical analysis of the rights of civilians engaged in combat during armed conflicts, are essential for looking for the legal aspects that govern the protection of individuals in the midst of war. The analysis involves examining the complex mechanisms of laws and regulations that aim to safeguard the rights and well-being of civilians in conflict zones. It includes an exploration of international humanitarian law and human rights law, focusing on the responsibilities of different actors involved in armed conflicts as combats for instance.

Furthermore, when we are studying these legal frameworks, we attempt to improve the protection mechanisms for civilians engaged in the combats, ensuring that their fundamental rights are respected and upheld.

This critical analysis plays a vital role in shaping policies and practices that prioritize the safety and dignity of civilians in the middle of the chaos of armed conflicts.

1.2.3 Scientific Interest

The study of the critical analysis of the rights of civilians engaged in combats during armed conflicts holds significant scientific interest due to some factors.

First, examining the rights of civilians engaged in combats contributes to the advancement of legal theory by exploring the complexities of international humanitarian law and its relationship with the rights of civilians engaged in the hostilities.

It offers an opportunity to explore new perspectives, theories, and conceptual frameworks that can enhance our understanding of how legal systems interact and evolve.

Second, the topic gives opportunities to employ various methodological approaches, such as comparative legal analysis, doctrinal legal research, qualitative and quantitative data analysis, and case studies. Exploring these methodologies enables researchers to develop robust research designs, apply rigorous analytical frameworks, and draw valid conclusions.¹²

1.3. Delimitation of the study

The scope of the study on critical analysis of the rights civilian engaged in combat during armed conflicts under international humanitarian law encompasses several key aspects and are delimited in space, domain, and time.

1.3.1. Delimitation in Space

The delimitation in space of this study will be worldwide because the problem armed conflicts do not concern especially a certain place in the world and we have the capacity to find civilians engaged in combat in situation of armed conflicts.

1.3.2. Delimitation in Domain

This research has as delimitation in domain the International Humanitarian Law by reason of the rights of civilians engaged in combat is under its jurisdiction.

¹² Glenn, H. P. (2007), *Legal Traditions of the World: Sustainable Diversity in Law*, Oxford University Press

1.3.3. Delimitation in Time

The delimitation in time of this study is from 1863 to this date.

This date of starting is mentioned here because it is the dates of the Lieber Code was issued and mention the right of civilians engaged in combats during armed conflicts.

1.4 Problem statement

The problem state in this study is to analyze and evaluate the issue of the rights of engaged civilians during armed conflicts in the context of international humanitarian law.

There is an on-going debate around the definition of combatants and the extent to which civilians can be considered combatants. In fact, the definition provides by the additional protocols of the Geneva Convention limited combatants to members of national armed forces or organized groups placed under the effective control of those forces excluding civilians in the status of combatants and illegitimated them to enjoy the special regime protection that the status of combatants gives¹³. In results, civilians engaged in combats are not considered as combatants but lose the protection due to the status of civilians set up. Furthermore, the question of the definition of combatant is important not only in the matter of determining the level of protection they must receive under international humanitarian law ¹⁴ but also in their rights. The Guidance provides by ICRC to interpret the term directly participated in the hostilities cause an ethical dilemma.

Because of the first problematic, the question of the proportionality of the attack civilians engaged in combats could have. Because, civilians are protected of military operation during armed conflicts ¹⁵ which is not the case of combatant who are in the first line during the hostilities, they are also trained for it. It creates a challenging situation since civilians are usually not as well-equipped or trained as regular combatants, making them more vulnerable in conflicts. Besides we must admit that the protection of civilians engaged in combat must be a significant concern in the discussion.

¹³ <http://www.doctorswithoutborders.org/who-we-are/books-about-msf/practical-guide-humanitarian-law> accessed on May 2024

¹⁵ <https://www.icrc.org/en/document/protected-persons/civilians-protected-international-humanitarian-law> accessed on May 2024

The protection loss for civilians engaged in hostilities is temporary, lasting only while they are directly participating. Determining this timeframe is challenging and can lead to debates about whether civilians are lawfully targeted at specific.

The meaning of the terms ‘‘direct participation in hostilities’’ lack of precision and could be easily be an issue when we considered a civilian status. It is a fundamental principle of the rule of law that laws should be known, predictable, and as clear as possible.

This principle is essential for ensuring that individuals and entities can understand their legal rights and obligations, and can predict the consequences of their actions.¹⁶ Judging a case involving such an unclear could be challenging.

1.5. Research questions

1. What are the challenges faces by the right of civilians engaged in combats during armed conflicts?
2. What are the mechanisms to protect the rights of civilians engaged in combats during armed conflicts?

1.6 Hypotheses

1. This study will reveal the challenges that faces the rights of civilians engaged in combats during armed conflicts.
2. The study will also provide both legal and institutional mechanisms to protect the rights of civilians engaged in combats during armed conflicts.

1.7 Research objectives

The present study is composed of general and specific objectives.

1.7.1 General objective

The study highlights how international humanitarian law protects civilians engaged in combats during armed conflicts. The study explains also what is international humanitarian law and its functioning.

¹⁶ <https://www.ruleoflaw.org.au/principles/law-is-known-and-accessible/> accessed on May 2024

1.7.2 Specific objectives

This study helps to understand:

1. The existing international humanitarian law frameworks that govern the rights of civilians during armed conflicts. This includes an analysis of treaties such as the Geneva Conventions and their Additional Protocols, which specifically address the protections afforded to civilians who directly participated in hostilities.
2. The role of different mechanisms in the protection of the rights of civilians engaged in combats.

1.8. Research techniques and methodology

This part deals with the different techniques and methodology use in this study.

1.8.1 Techniques

In a law bachelor the different techniques which could be used are not exhaustive. For this study we have only use one of them.

1.8.1.1 Documentary techniques

Documentary research is a type of research method that involves the systematic investigation and analysis of existing documents or records.¹⁷ This technique is represented the basis technique for legal research. The technique is used in this present study because it required investigation and analysis document such as laws, conventions, doctrine, and general principles of law.

1.8.2. Methodology

The present study uses different types of method as historical method, analytical method, synthetic method, and exegetic method

¹⁷ <https://researchmethod.net/documentary-research/> accessed on 6/08/2024

1.8.2.1. Historical Method

Historical methods which is the method enables to better understand and interpret past events or facts in order to better understand current events and foresee the future perspectives help us in this study to understand the origin and historical backgrounds of international humanitarian law.

1.8.2.2 Analytical method

Through its characteristic of analyze this method help the deep examination of this dissertation and played a critical role in equivalence and risk assessment and management of the data. This will help in establishment of specific product with acceptance criteria and stable result. It will help also to attain the intended purpose.

1.8.2.3 Synthetic method

This method is useful to collect the relevant and necessary data and information to remain with them of the purpose of the study.

1.8.2.4 Exegetic method

Being the most used and inescapable method in law the exegetic method is used in this study to explain the legal text and conventions concerning the rights of civilians engaged in combats during armed conflicts under international humanitarian law.

1.9 Subdivision of the study

A part from General introduction, the present study has Chapter one conceptual and theoretical framework, chapter two entitled Challenges on rights of civilians engaged in combats during armed conflicts and finally Chapter three which is entitled Mechanisms to address the issues of the rights of civilians engaged in combats during armed conflicts. It has been ended by General conclusion and a recommendation.

CHAPTER I: CONCEPTUAL AND THEORITICAL FRAMEWORK

Introduction

The main purpose of a conceptual framework is to improve the quality of a research study. It achieves this purpose by identifying important information and notion directly link to the subject and by providing a clear roadmap for researchers to study¹⁸.

Theoretical framework is the structure that supports and describes a theory ¹⁹ which helps to provide a base to conduct a study.

In general, conceptual, and theoretical framework are essential for researches because they robust the content of the study.

For the present study, starting with conceptual and theoretical framework would help to understand the key-concept, theories and literature review concerning the subject of the rights of civilians engaged in combats during armed conflict.

I.1. Conceptual Framework

This section aims to identify and classify the different concept which would be useful for our study.

I.1.1 Civilians

Civilians are considered as individuals, which are not a part of the armed forces. They are protecting and cannot be attack in any circumstances and they do not have the right to be actor in hostilities. Civilians are vulnerable and are the main victims during armed conflicts.

Geneva Conventions and its Additional Protocols are useful in the matter of the promotion of the rights of civilians. In fact, the article 3 of the Geneva Convention fourth related on the different prohibition treatment for people who do not participate in the hostilities.

¹⁸ <https://dovetail.com/research/conceptual-framework> accessed on may 2024

¹⁹ <https://researcher.life/blog/article/what-is-a-theoretical-framework-how-to-write-it/> accessed on may 2024

This article ensures that even in internal conflicts, a minimum standard of humane treatment is provided to all persons, this includes members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, etc. It serves as a cornerstone for humanitarian protections in such conflicts.

Other article as the article 27 of the same agreement, stipulates that civilians shall be treated humanely and protected against all acts of violence or threats thereof, as well as against insults and public curiosity. Women should be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault. This article underscores the importance of maintaining the dignity and humane treatment of civilians, even those who may have participated in hostilities. It reinforces the need for humane treatment under all circumstances.

Additionally, the Geneva Convention ensure to civilians in Article 49 of the Fourth Geneva Convention the prohibition of any forcible transfer or deportation during armed conflict from occupied territory, with limited exceptions.

In its article 68, the Geneva Convention fourth addresses the prosecution and punishment of protected persons (civilians) in occupied territories. In fact, the death penalty can only be imposed for espionage, serious acts of sabotage against the military installations of the occupying power, or intentional offenses causing the death of one or more persons, provided that such offenses were punishable by death under the law of the occupied territory before the occupation began and sentences must be pronounced by a regularly constituted court affording all the judicial guarantees recognized as indispensable by civilized peoples. This article ensures that even in situations where civilians have committed serious offense they still enjoy of the right to fair trial and regulated the imposition of the death penalties at for only serious reasons.

In Additional Protocol I of 1977, the articles 51, 57, and 75 relate sets out the general protection of the civilian population against the effects of hostilities

For instance, the Article 75 fundamental guarantees are provided for all persons in the power of a party to the conflict, including the prohibition of violence, torture, and other forms of mistreatment. This article ensures that civilians are not subjected to unlawfully acts at any time and any place. This protects their dignity and humanity during armed conflict.

1.1.2. Civilian objects

Civilian object is any object, which is not a military objective. IHL prohibits attacks against the civilian objects. Civilian objects shall not be the object of attack and attacks shall strictly be limited to military objectives.²⁰

In case of doubt whether an object which is normally dedicated to civilian purposes e. g. place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

It is prohibited to destroy or attack objects indispensable to the survival of the civilian population e.g foodstuffs, crops, livestock, drinking water. It is prohibited to use starvation as method of warfare.

1.2.3. Civilians population

The draft of Additional Protocol II includes the definitions of civilian population by referring as "any person who is not a member of armed forces is considered to be a civilian" and "the civilian population comprises all persons who are civilians."

The Committee III of the Diplomatic Conference adopted both parts of the amended definition by consensus, with the first part now reading, "A civilian is anyone who is not a member of the armed forces or of an organized armed group." This amendment led to the adoption of the Additional Protocols.

1.2.4. Combatants

According to the definitions provided by the Geneva Conventions and their first 1977 Additional Protocols, combatants are members of national armed forces or organized groups placed under the effective control of those forces. In a simpler way, combatants are persons who are authorized to use force in situations of armed conflicts²¹.

As a result, they cannot be prosecuted because of their participation the hostilities. Perhaps, a combatant who enjoy the right of immunity during armed conflicts could be prosecuted for acts that are against the international humanitarian law.

²⁰ Art.46 para 2 Hague

²¹ [Doctors without borders | The Practical Guide to Humanitarian Law \(guide-humanitarian-law.org\)](https://www.doctorswithoutborders.org/en/our-work/advocacy-and-policy/the-practical-guide-to-humanitarian-law)

These acts include war crimes, crimes against humanity, or acts of genocide²². Also acts that violate the principles of distinction and proportionality, such as intentionally targeting civilians or civilian objects, or causing excessive harm to civilians or civilian objects. For instance, the blockade of cities, such as Aleppo, which resulted in starvation and lack of medical supplies for civilians, demonstrates a violation of IHL principles. Such tactics can be seen as collective punishment, disproportionately affecting the civilian population while failing to achieve legitimate military objectives.

I.1.4.1 Combatants under International Humanitarian Law

In international humanitarian law, the term 'combatant' in international armed conflicts refers to members of the armed forces of a party to the conflict (except medical and religious personnel) who are entitled to take a direct part in hostilities.

They are obliged to distinguish themselves from civilians because of the fundamental principle of international humanitarian law known as the principle of distinction²³. This principle appears in codified form for international armed conflict in Article 48 of the 1977 Additional Protocol I to the 1949 Geneva Conventions: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”²⁴

Distinction was set to facilitate the distinction between civilians and combatants during the hostilities but also between civilian’s objects (which are also protected under international humanitarian law) and military objectives.

Combatants differentiate themselves by various means as with uniforms and insignia for instance Russian Armed Forces, which wear various camouflage patterns, such as the pixelated EMR (Russian Digital Flora), or the older BDU-style uniforms. Their insignia include shoulder patches with unit designations and branch of service.

²² [Doctors without borders | The Practical Guide to Humanitarian Law \(guide-humanitarian-law.org\)](https://www.doctorswithoutborders.org/en/about-us/press-releases/2019/08/20190822-the-practical-guide-to-humanitarian-law)

²³ <https://guide-humanitarian-law.org/content/article/3/combatants/> accessed on august 2024

²⁴ Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 48., Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter GC III]

Combatant distinguishes themselves also by carrying arms openly and by their behavior with the way, they are active in the hostilities.

A combatant has also the obligation to abide by international humanitarian law. This includes the respect for civilians and civilian objects, proportionality and precautions in attack, prohibition of indiscriminate attacks and compliance with rules on means and methods of warfare.

They can be prosecuted for violate the international humanitarian law and for crime as genocide, crime against humanity and war crimes.

International Criminal Court, Hybrid Courts as Special Court for Sierra Leone and military court have jurisdiction depending of the subject matter over cases involving combatants.

I.1.4.2 Prisoners of war and hors combats

For combatant, which are no longer a part of the hostilities, International Humanitarian provides that in the case combatants fall into the hands of their adversaries, they are considered 'prisoners of war'.

They still enjoy the right of human treatment ²⁵ it means any kind of discrimination, torture; violence, cruel treatment, and deprivation are prohibited. They must receive medical attention depending of their condition.

The third Geneva Convention provides a wide range of protection for prisoners of war. Art.4 of the third Geneva Convention provides POWs belonging to one of the following categories who have fallen into the power of the enemy;

- Members of the armed forces to a party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;
- Members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power;
- Members who accompany the armed forces without actually being members thereof such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or services responsible for the welfare of the

²⁵ Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 art. 16

- armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card;
- Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favorable treatment under any other provisions of Int. law;
 - Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units provided they carry arms openly and respect the laws and customs of war.

POWs cannot be prosecuted for taking a direct part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under IHL.

POWs must be treated humanely in all circumstances. They are protected against any act of violence, as well as against intimidation, insults and public curiosity; Any unlawful act or omission causing death or seriously endangering the health of a prisoner of war is prohibited; No prisoner of war may be subjected to physical mutilation or to medical or scientific experiments not justified by his or her medical, dental or hospital treatment and carried out in his or her interest.

Prisoners of war are subject to the laws, regulations and orders in force in the armed forces of the detaining power. IHL also defines minimum conditions of detention covering such as accommodation, food, clothing, hygiene and medical care²⁶.

A combatant is considered as 'hors de combat' when they can participate in the hostilities in reason of an injury²⁷. Hors de combat is a French term whose literal meaning is 'out of the fight', this term describes combatants who have been captured or wounded or who are sick or shipwrecked, or who have laid down their arms or surrendered, and thus are no longer in a position to fight²⁸. They enjoy the same rights that prisoners of war.

²⁶ Art. 4 third Geneva convention of 1949

²⁷ [Cambridge Dictionary](#)

²⁸ Ibidem. 6

The main difference between these two statuses is the fact that prisoners of war are the combatants which fall into the hands of the enemies during the hostilities while hors combat means that either combatant have surrender themselves by choice (by surrendering) or by circumstances (being incapacitated by wounds or sickness).

I.1.5 Civilians engaged in combats

Civilians who directly participate in hostilities²⁹ during an armed conflict are individuals who are not members of the armed forces or organized armed groups but engage in combat activities. Persons participate directly in hostilities when they carry out acts, which aim to support one party to the conflict by directly causing harm to another party, either directly inflicting death, injury, or destruction, or by directly harming the enemy's military operations or capacity.³⁰ Direct participation in hostilities means acts civilians that are likely to adversely affect the military operations or military capacity of a party to the conflict. This can include acts of violence, gathering intelligence, or using weapons. When civilians engage in such activities, they lose their protection from attack during the time they are participating directly in hostilities.

Nowadays, the percentage of civilian participation in hostilities has increased and has become a phenomenon of significant concern.

I.1.5.1 Rights of civilians engaged in combats

Civilians engaged in combats, as all individuals, enjoy human rights articulated by international human rights instruments and customary law. In situations of armed conflict, they enjoy the same rights as civilians except in the matter of losing their protection from military attack during their participation.

While the Geneva conventions themselves do not explicitly mention, "civilians engaged in combats," the Additional Protocols do provide guidance on this issue. Additional Protocol I (1977) to the Geneva Conventions, specifically Article 51(3), stipulates that "civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities."

²⁹ For the need of the study Civilians engaged in combats could be refer as Civilians who directly participate in hostilities.

³⁰ [Direct participation in hostilities: questions & answers- ICRC available on https://www.icrc.org/en/article/direct-participation-hostilities-questions-answers](https://www.icrc.org/en/article/direct-participation-hostilities-questions-answers) accessed on 05/09/2024

This provision clarifies that civilians lose their protection against attacks if they directly engage in combat activities, but only for the duration of their direct participation. Similarly, Additional Protocol II (1977), which applies to non-international armed conflicts, contains a parallel provision in Article 13(3): "Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities." Both protocols emphasize the temporary nature of the loss of protection, thereby aiming to balance the need to protect civilians with the realities of armed conflict. These provisions underscore the importance of the principle of distinction, which requires a clear separation between civilians and combatants to minimize harm to civilian populations during hostilities. This paragraph integrates the relevant articles and explains their significance in the context of protecting civilians who directly participate in hostilities.

They can be prosecuted for some crimes as war crimes, genocide, crimes against humanity or terrorism.

I.1.5.2. International Humanitarian law

International Humanitarian Law seeks to limit the humanitarian impact of armed conflicts by establishing rules and principles derived from treaties like the Geneva Conventions and customary international law³¹. IHL protects civilians, medical and religious personnel, and cultural property, while also addressing the challenges posed by non-state actors, urban warfare, and technological advances. Enforcement mechanisms include national implementation, the International Criminal Court, and ad hoc tribunals, though ensuring accountability remains a significant challenge.

The principles of distinction, proportionality, and necessity are fundamental in international humanitarian law; they govern the conduct of hostilities during armed conflict.

The principle of distinction requires parties to an armed conflict to differentiate between combatants and civilians, as well as between military objectives and civilian objects³². This principle is articulated in Article 48 of Additional Protocol I to the Geneva Conventions,

³¹ European Commission "International Humanitarian Law" available on <https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law> last accessed on 04/09/2024

³² Diakonia International Humanitarian Law Centre, "The principle of distinction" available at <https://www.diakonia.se/ihl/resources/international-humanitarian-law/principle-of-distinction-protection-of-people-and-objects/> accessed on 06/09/2024

which states that parties must "at all times distinguish between the civilian population and combatants" and between civilian objects and military objectives. It means that during armed conflicts, only military objectives could be targeted and civilians and civilians' objectives are protected under IHL.

The principle of proportionality requires a balance to be struck between military necessity and the protection of civilians during armed conflicts. ³³This principle is articulated in Article 51(5)(b) of Additional Protocol I prohibits indiscriminate attacks "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

Then, the principle of necessity allows for the use of force only when it is essential to achieve a legitimate military objective. This principle is closely related to military necessity, which permits the use of force to achieve a military advantage but does not allow for unnecessary suffering or destruction.

I.1.5.3. International Human Rights Law

IHRL is a set of international rules established by treaty or custom on the basis of which the individuals and groups can expect or claim certain behavior or benefits from governments³⁴. International human rights law constitutes the final set of formal standards that can be applied to the conflict from the international level.

Human Rights are rights that human beings have of being human regardless of their sex, colour, race, age, language, nature, origin, class, religion, political beliefs and other status.³⁵

IHRL aims are expressly based on universal respect for human rights. An important function of IHRL is to enable individuals and groups take positive action to redress against their internationally recognized rights.

³³ EUR-Lex (europa.eu] "[Principle of proportionality](https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html)" -) available at <https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html> accessed on 06/09/2024

³⁴ OHCHR "International Human Rights Law" available at <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed on 06/09/2024

³⁵ idem

Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights such as the right to life, freedom of expression and equality before the law, social, cultural and economic rights such as the right to work and the right to education.

The protection of the civilian population during armed conflicts is deeply rooted in fundamental human rights provisions. Central to these protections is the principle of human dignity, which underscores the inherent worth of every individual. Equally vital is the principle of non-discrimination, ensuring that all civilians, regardless of race, gender, or other status, receive equal protection under the law. The right to life, liberty, and security of person is paramount, safeguarding civilians from unlawful harm or deprivation of freedom. Additionally, the prohibition of slavery or servitude and the prohibition of torture or cruel, inhuman, or degrading treatment or punishment further reinforce the commitment to preserving the integrity and well-being of civilian populations in conflict situations.

I.1.5.4. Universal declaration of human rights

The Universal declaration of human rights plays a huge role in the matter of human rights and in our case in the matter of civilians who are directly participated in the hostilities even if it does not mention them, it ensures that all individuals are treated humanely and with dignity and this regardless of their involvement in hostilities.

I.1.5.5. Relationship between IHRL and IHL

IHL and IHRL are complementary and both strive to protect the lives, health and dignity of individuals. They both share the goal of preserving the dignity and humanity of all.

Over the years, the General Assembly, the Commission of Human Rights and more recently, the Human Rights Council have considered that, in armed conflicts, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict.³⁶ Although different in scope, IHRL and IHL offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the conflict.

³⁶ United Nations Human Rights “INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT” https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf accessed on 06/09/2024

Both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection. The two bodies of law, IHRL and IHL are considered to be complementary sources of obligations in situations of armed conflicts.

I.1.5.6. The guidance of ICRC

The International Committee of the Red Cross provides detailed guidance on the concept of direct participation in hostilities³⁷. Even though this guidance is crucial in understanding the legal status and protections afforded to civilians who engage in combat activities during armed conflicts, it do not have a universal recognition because is not met the goal of international humanitarian law which seeks to reason accommodation of both military necessity and humanitarian concerns. The guidance is unrealistic for military operation in the case where it can be difficult for militaries and armed groups to distinguish civilians and civilians who directly participated in the hostilities.³⁸

The ICRC defines direct participation in hostilities as acts of war which, by their nature or purpose, are intended to cause actual harm to the enemy's personnel or matériel. The guidance acknowledges three criteria in the matter of the act qualified as direct.

First, the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, inflict death, injury, or destruction on persons or objects protected against direct attack. Additionally, there must be a direct causal link between the act and the harm likely to result from it and the act must be specifically designed to support a party to the conflict by directly causing harm to the enemy.

The guidance also specify that the loss of protection is temporary and limited to the duration of their direct participation. Once the individual ceases to engage in hostile acts, they regain their protected status as civilians.

³⁷ ICRC, "Direct participation in hostilities under international humanitarian law" available at <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0990.pdf> accessed on 06/09/2024

³⁸ EJIL: Talk! "[Clearing the Fog of War? The ICRC's Interpretive Guidance on Direct Participation in Hostilities](https://www.ejiltalk.org/clearing-the-fog-of-war-the-icrcs-interpretive-guidance-on-direct-participation-in-hostilities)" <https://www.ejiltalk.org/clearing-the-fog-of-war-the-icrcs-interpretive-guidance-on-direct-participation-in-hostilities>

1.1.6. Human treatment

Human treatment refers to the way you are showing kindness, care, and sympathy towards others, especially those who are vulnerable or suffering³⁹. It involves dealing with or behaving towards someone in a way that respects their human dignity and avoids causing them undue distress or harm.

Under international humanitarian law, humane treatment is a fundamental principle that requires all parties to an armed conflict to treat humanely persons who are not, or no longer, taking direct part in hostilities. State practice establishes human treatment is set as a norm of customary international law applicable in both international and non-international armed conflicts.⁴⁰

Agreement as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment set to this perspective, which prevents and eradicate the acts of torture or any kind of action, which could cause physical or mental suffering to people in both international and non-international armed conflicts.

Inhuman or degrading treatment can include serious physical assault, harsh detention conditions, physical/psychological abuse, or credible threats of torture.

1.1.7. Discrimination

Discrimination is the act of treating people differently on the ground of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social, or other status⁴¹.

1.1.8. Armed conflict

Armed conflict is armed confrontation between the armed forces of States, or between governmental authorities and organized armed groups or between such groups within a State.

³⁹ Cambridge Dictionary

⁴⁰ [Customary IHL - Rule 87. Humane Treatment \(icrc.org\) available at https://casebook.icrc.org/a_to_z/glossary/humane-treatment](https://casebook.icrc.org/a_to_z/glossary/humane-treatment) last accessed 05/09/2024

⁴¹ [Equality and Non-discrimination - Social Protection and Human Rights \(socialprotection-humanrights.org\)](https://www.socialprotection-humanrights.org/)

1.1.9. Crimes

A Crime is the intentional commission of an act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under criminal law.

Most countries have enacted a criminal code in which all of the criminal law can be found, though English law—the source of many other criminal-law systems—remains uncodified.⁴²

1.1.10. Crimes of Genocide

In the name of "cleaning" or "purifying," genocide has frequently occurred. Murderers claim that they are attempting to eliminate undesirable individuals or they want to eradicate evil ideas and religious beliefs.

The United Nations defines genocide in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948. According to Article II of the Convention, genocide consists of any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting conditions of life calculated to bring about the group's physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group

The Convention emphasizes the necessity of proving the intent to destroy the group, which is a critical aspect of classifying acts as genocide. This intent can be challenging to establish, particularly in historical contexts. Additionally, the Convention obligates signatory states to prevent and punish genocide, highlighting the international community's responsibility in addressing such crimes.

Genocide is a very specific crime under international law but proving genocide legally is challenging due to the requirement of demonstrating the intention of perpetrators.

⁴² <https://www.britannica.com/topic/crime-law> last accessed on 7 august 2024

It is apparent that the crime has constituent elements as follows:

- It is a criminal act;
- It is committed with intent to destroy in whole or in part;
- It is aimed at a particular group as such.⁴³

Article 1 of the convention on the prevention and punishment of the crime of genocide states that "the contracting parties whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish)⁴⁴

1.1.11. War crimes

War crimes are defined as serious violations of international humanitarian law that incur individual criminal responsibility⁴⁵. These violations can occur during both international and non-international armed conflicts. The legal framework for defining war crimes is primarily established by the Geneva Conventions and the Rome Statute of the International Criminal Court (ICC).⁴⁶

According to the Rome statute of ICC, war crimes means grave breaches of the Geneva Convention of 12th August 1949, namely, any of the following acts against persons or property protected under the provision of the relevant Geneva Convention.

- Willful killing
- Torture on inhuman treatment, including biological experiments.
- Willful causing great suffering or serious injury to body or health.
- Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully.
- Compelling a prisoner-of-war or other protected person to serve in the forces of a hostile power.

⁴³ United Nations, Department of Public Information (DPI), the UN and cons: 1993-1996, vol.X, UN Blue Book, Series p.570

⁴⁴ See. Convention on the prevention and punishment of the crime of genocide (1948).

⁴⁵ https://elearning.un.org/CONT/GEN/CS/UNHR_V3/Module_01/story.pdf accessed on august 2024

⁴⁶ The Rome Statute of the ICC, defines war crimes in Article 8. It lists serious violations of the Geneva Conventions, including willful killing, torture, inhuman treatment, and extensive destruction of property not justified by military necessity

- Willfully depriving a prisoner-of-war or other protected person of the rights of fair and regular trial.
- Unlawful deportation or transfer or unlawful confinement.
- Taking of hostages⁴⁷

The context of the action is also a subject matter, in fact as indicated war crimes is only on a context of war. Additionally, war crimes require a demonstration of intent. For example, intentional attacks against civilian populations or the use of prohibited methods of warfare can be prosecuted as war crimes, particularly when part of a larger plan or policy

1.1.12. Crimes against humanity

Crimes against humanity are serious offenses committed as part of a widespread or systematic attack directed against a civilian population, regardless of their nationality. They include acts such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, national, ethnic, cultural, religious or gender grounds, and other inhumane acts causing great suffering.⁴⁸

According to Rome statute art. 7

For the purpose of the statute, Crimes against humanity means any of the following acts when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

- Murder
- Extermination
- Enslavement
- Torture
- Deportation or forcible transfer of population.
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.
- Rape, Sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

⁴⁷Art.8 ICC Statute

⁴⁸ [Crime against humanity | International Law, Genocide & War Crimes | Britannica](https://www.britannica.com/topic/crime-against-humanity) available on <https://www.britannica.com/topic/crime-against-humanity> last accessed 05/09/2024

- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.
- Enforced disappearance of persons.
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.⁴⁹

1.1.13. Hostilities

In the legal context, "hostilities" refers to acts of armed conflict or warfare between parties, typically states or organized groups. The term encompasses a range of military actions, including combat operations, attacks, and other forms of violence that occur during an armed conflict.

Under international humanitarian law, the term “hostilities” is used to describe the conditions that trigger the application of legal protections for individuals and groups affected by armed conflict. This includes the Geneva Conventions, which establish rules for the conduct of hostilities and the protection of non-combatants.

1.1.14. Armed conflicts

An armed conflict can be defined as a dispute involving the use of armed force between two or more parties.⁵⁰ The determination of armed conflict varies depending on whether the hostilities are international or internal. An armed conflict exists whenever there is a resort to armed forces between states or protracted armed violence between governmental authorities and organized armed groups or between such groups or between such groups within a state.

⁵¹ Armed conflict exists whenever there is a resort to armed forces between States or protracted armed violence between governmental authorities and organized groups or between such groups within a State.⁵²

Armed conflicts are of two different types, which include; International armed conflict and non-international armed conflict.

⁴⁹ Robertson G. (1999), Crimes against Humanity (the struggle for global justice) QC pg.498.

⁵⁰ Glossary of Humanitarian affairs, United Nations, New York, 2003, p.7.

⁵¹ See Case law, Prosecutor V. Dusko Tadic case decision of 2 October 1995.

⁵² , Prosecutor V. Dusko Tadic ,(case no. IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal Jurisdiction, 2 October 1995, Para. 70; see also Prosecutor v. Rutaganda, (Case No. ICTR-96-3-T), Judgment : Sentence, 6 December, paras 92-95.

The ICRC classifies armed conflicts as international or non-international under international humanitarian law⁵³.

An IAC exists when there is an armed confrontation between two or more states. It can also arise in cases of military occupation or wars of national liberation⁵⁴ while A NIAC is an armed confrontation between a state and an organized armed group, or between such groups within a state. The violence must reach a certain level of intensity and the non-state group must have a degree of organization⁵⁵. An example of a NIAC is the Syrian Civil War, which began in 2011 and involves the Syrian government fighting against various opposition groups, including both organized armed groups and non-state actors.

1.1.15. Humanitarian assistance

The goal of humanitarian assistance is to guarantee that each person's rights are fully respected. Restoring civilians' living conditions to a respectable level is the primary goal.

Individuals providing humanitarian aid, as well as their transportation and supplies, must be recognized and safeguarded. They will not be the target of violent crimes or attacks.

1.2.3.17. Child soldiers

A person under the age of eighteen who is enlisted in the armed forces or who is just taking part in combat is considered a child soldier.⁵⁶

In some cultures, children are regarded as adults when they turn 14 or 15. Therefore, in his own culture, a fifteen-year-old who joins an armed group can be regarded as an adult soldier. The current international law in effect sets a minimum age of 15 years for both army recruitment and combat participation. Nonetheless, the age of adulthood is set at 18 by the International Convention on the Rights of the Child.

⁵³ [How is "Armed Conflict" defined in IHL? | ICRC](#)

⁵⁴ The invasion of Russian in Ukraine is a good example of recent international armed conflicts as Russia launched a large-scale military attack on Ukraine in February 2022, marking the beginning of an ongoing armed conflict between the two countries. The violence has reached a high level of intensity, with significant casualties and destruction on both sides.

⁵⁵ <https://www.oxfordbibliographies.com/display/document/> last accessed on august 2024

⁵⁶ Humanium:" Child Soldiers", available at <https://www.humanium.org/en/child-soldier>, accessed on 05/09/2024

Additional Protocols I and II, the Statute of the International Criminal Court and of the Special Court for Sierra Leone put the minimum age for recruitment in armed forces or armed groups at 15, as does the Convention on the Rights of the Child. Upon ratification of the Convention on the Rights of the Child, Colombia, Netherlands, Spain and Uruguay expressed their disagreement with the age-limit (15) for the recruitment of children set by the Convention, favouring 18 years instead. At the 27th International Conference of the Red Cross and Red Crescent in 1999, Canada, Denmark, Finland, Guinea, Iceland, Mexico, Mozambique, Norway, South Africa, Sweden, Switzerland, Thailand and Uruguay pledged support to raise the age-limit for recruitment to 18 years.⁵⁷

A child soldier is more than just a person who actively engages in combat as a member of an armed group. A child soldier may be enlisted in an armed group to work as a cook, carrier, guard, spy, messenger, bodyguard, sex slave, or mine detector; they are not required to wear uniforms or carry weapons.

Youngsters are chosen for recruitment because they are easier to control, more submissive, and more malleable than adults. Additionally, children have a lower sense of danger and have a harder time distinguishing between "absence" and "death."

Children are easy targets for recruitment by armed groups when factors like poverty, discrimination, lack of access to education or training, and vulnerability are combined.

For information on children who are abandoned, alone, or raised in a challenging home situation, see It seems like a solution to their issues, and joining an armed group is a safer option than dealing with these issues head-on. Children can also be influenced by ideology, community identity, and revenge.

Children "cost less" for armed groups to target because it costs less to recruit, train, and arm them than it does to arm adults.

Furthermore, children are typically enlisted in civil wars nowadays, which are protracted and result in significant casualties. Children thus take the place of adults who are killed in battle.

⁵⁷ [Customary IHL - Rule 136. Recruitment of Child Soldiers \(icrc.org\)](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule136) available on <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule136> accessed on 05/09/2024

1.1.16. Geneva Convention and its additional protocol

The Geneva Conventions and their Additional Protocols are international treaties that contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).

The two Additional Protocols to the Geneva Conventions, adopted in 1977, were a response to the increasing number of armed conflicts that occurred after the adoption of the original Geneva Conventions in 1949.

1.1.1.7 Detention

Detention refers to the act of confining an individual against their will, typically under the authority of a state or a non-state actor. It encompasses various forms, including imprisonment, custody, or confinement, especially while awaiting trial or for security reasons. Detention can be temporary or prolonged, and it is often associated with legal processes, though it can also occur arbitrarily, violating human rights standards

Detained civilians are protected against arbitrary deprivation of liberty. This means that their detention must be lawful, necessary, and proportionate, and they have the right to challenge the legality of their detention.

Under the Fourth Geneva Convention, detained civilians must be treated humanely. This includes protection against violence, torture, cruel treatment, and degrading treatment. They should not be subjected to any form of physical or mental abuse.

1.2. Theoretical framework

The present section aims to explain the different theoretical framework related to this study.

1.2.1. Human Rights

Human rights are inalienable which means human which are all entitled to these rights cannot lose them, because they are linked to the very fact of human existence, they are inherent to all human beings⁵⁸ and derives from natural rights theories.⁵⁹

These rights are considered universal, meaning they apply equally to all people, irrespective of nationality, ethnicity, gender, religion, or other characteristics and preserve human dignity. It encompasses civil and political rights as the right to life, but also economic, social, and cultural rights as the right to education and health), and collective rights for instance the rights of indigenous peoples.

It is primarily the responsibility of states to respect, protect, and fulfill human rights within their jurisdictions but some international organization as the United Nations work to promote human rights by providing guidance, assistance monitoring and backup.⁶⁰

1.2.2. Human Behavior

Human behavior is the potential and expressed capacity for physical, mental, and social activity during the phases of human life.

The link between human behavior are tied in the when law influence the behavior of human in how they act and what they do and how they do it and law must also consider human behavior to be sure that the law enforcers respect the moral culture and principle of where they are implemented and depend on it to be clearly approve this explain the heterogeneous of the law because depending on where you located the law differ from another place because of the difference in the population.

Theories such as social learning theory or attachment theory may inform studies on human behavior during armed conflicts by helping them to understand how civilians engage in combat and the implications for their rights to a better efficiency.

⁵⁸ [What are human rights? - Manual for Human Rights Education with Young people \(coe.int\)](#)

⁵⁹ Natural rights theory is a philosophical approach that holds that certain rights, such as life, liberty, and property, are inherent to all human beings and are not granted by the state or society. One of the most well-known proponents of natural rights theory is John Locke (1632-1704) an English philosopher. See <https://politicalscienceblog.com/john-lockes-natural-rights-theory> for more information

⁶⁰ [Gerald-Neuman_HRP-19_001.pdf \(harvard.edu\)](#)

1.3. Partial conclusion

International humanitarian is the branch of the law, which set the rules of war. It extremely important to understand its role in the protection of civilians, which could be victims in warfare.

IHL is also governs by fundamentals principles which include the principle of distinction which to differentiate combatants and non-combatant in the middle of a war by this fact non-combatants are guarantee to not suffer if it is possible from act that combatant. MThe active participation of civilians during armed conflicts pose a significant challenge under international humanitarian law. They are referred as unlawful combatants and contribute to the confusion during armed conflict, also understanding the complexities of IHL and its application in contemporary conflicts is essential for promoting the safety and dignity of civilians in times of war. The international community must remain vigilant in enforcing these laws, ensuring that all parties to a conflict adhere to their obligations under IHL, and striving to protect the most vulnerable members of society amidst the chaos of armed conflict.

In our study, we focus on the rights of civilians who are engaged in combats during armed conflicts under international humanitarian law.

CHAPTER II: CHALLENGES ON RIGHTS OF CIVILIANS ENGAGED IN COMBATS DURING ARMED CONFLICTS

Introduction

International humanitarian law is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, directly, or actively participating in hostilities, and imposes limits on the means and methods of warfare⁶¹ by establishing a legal according to this purpose.

These objectives have significant challenges when goes to civilians engaged in combats during armed conflicts. The lack of clarification about their status and the different rights related to them contribute significantly in this matter. In this context, rights of civilians engaged in combats during armed conflicts can give rise to various challenges, as the ambiguity of the law in regarded of civilians engaged during armed conflicts which related to legal and practical areas.

This chapter deals with challenges faces by the right of civilians engaged in combats during armed conflicts, analyses cases laws relate to, and explore doctrines and general principles of law according to them.

II.2. The ambiguity of the definition of the term “direct participation in the hostilities”

The term “direct participation in the hostilities” addressed in the article 51(3) of Additional Protocol I to the Geneva convention states "Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.". But this article does not stipulate the meaning and scope of the terms and is not defined in any way in the Geneva convention or its additional protocol. The term does not also have any universal definition where the international community could refer to. This unclarity can lead to different interpretation by states and non-state actors, complicating the enforcement of international humanitarian law.

⁶¹ [What is international humanitarian law? | International Committee of the Red Cross \(icrc.org\)](#)

We observe the consequences related to this issues.

In fact, the ambiguity of the definition of the term “direct participation in the hostilities” cause a heterogeneous way to practices the rule because the different possibility of interpretations means a whole different implementation and generate the uniformity of the international law system.

Also, the creation of a legal uncertainty for military commanders, policymakers, and legal advisors are part of the consequences of the problem of ambiguity. As a matter of fact, the misinterpretation, and hinder effective decision-making on the battlefield which violated IHL rules is caused by a hesitancy to act or, conversely, in actions that inadvertently.

Moreover, States and individuals may justify actions based on their own interpretations of the law. This facts complicates efforts to hold perpetrators accountable for war crimes or violations of human rights causing accountability issues which could be in favor of perpetrators. Additionally, the ambiguity in its application can undermine trust and cooperation between parties involved in armed conflicts and erodes public trust in the law's ability to protect civilians.

II.3. The issues relating to the loss of protection

As already said above, civilians which directly participated in the hostilities lost immediately their rights of protection against military attacks and become a target until they stop their activities. The nonexistence of any regulation on this matter rise some question related to its implementation.

II.3.1. Confusion on the temporary loss of protection

The temporary loss of protection by civilians engaged creates a legal ambiguity. In fact, the temporary characteristic of this rule of international humanitarian law makes it difficult when we address the problem in the determination of the exact legal moment of when civilians are legally considered as a target or not ⁶². The question of the time this protection privilege is regain has also to be considered. For instance, if a civilian decides to prepare an attack against any military forces at which times of this operation, he/she loses his/ her protection?

⁶² [IHL and Civilian Participation in Hostilities | Harvard Humanitarian Initiative](#)

Is it in the time of planification, orchestration or at the beginning of the attack? After the attack, does this civilian regain protection immediately disengaging, or is there a period during which they can still be targeted?

II.3.2. The targeting issues

The main consequences of the loss of protection are that civilians who directly participated in the hostilities become a lawful target and can be subject to military attacks.

The question of the proportionality stays uncertain and could cause an issue in the ethical matter because if civilians are protected under IHL is for a reason.

They are, in fact, considered incapable and/or vulnerable against any attack. The fact that they participated does not change this assertion. Even if some civilians can be trained for military attack it is rarely the case.

Also, the issue in the fact that civilians do not include this fact and referred on the proportionality of the attack, civilians can be victims of excessive or indiscriminate force against if even if their actions do not rise to the level of direct participation and ensuring accountability for such violations is challenging, particularly in conflict zones with limited oversight and monitoring mechanisms.

II.4. Conflict of legal status and prosecution

The legal status of civilians engaged in combats during armed conflicts is challenging in the matter of the procedure for prosecution but also in detention matter.

II.4.1 Prosecution

As civilians engaged in combats do not acquire the status of combatants, they do not enjoy also the same rights as combatants including the privilege of the immunity from prosecution for lawful acts of war. Indeed, they can be prosecuted under domestic criminal law for their participation in the hostilities even if the actions themselves are not considered under international humanitarian law as unlawful acts for combatants.⁶³

⁶³ Leonard Chinasaokwu Opara, 2018, Rethinking Existing Detention Laws and Policies in Non International Armed Conflicts under International Humanitarian Law, Nelson Mandela University, p.66

II.4.2. Lack of protection in detention

Under Geneva Convention, civilians engaged do not enjoy the protection that combatant have when they have captured. This could potentially lead to inadequate treatment and lack of due process rights.⁶⁴

II.5. No universal treaty to protect the rights of civilians engaged during armed conflicts

The absence of a universal treaty specifically designed to protect the rights of civilians during armed conflicts presents significant challenges in ensuring their safety and dignity. The existing frameworks, such as international humanitarian law and international human rights law, provide some protections, but their effectiveness is often hindered by the lack of a cohesive, universally accepted legal instrument.

Current treaties, such as the Geneva Conventions, primarily address the conduct of hostilities and the treatment of combatants and prisoners of war, while civilian protections are often secondary. This can result in civilians being inadequately protected in situations where they are not considered part of the conflict.

II.4. Lack of means of distinction between civilians and civilians engaged in combats

The requirement to combatants to distinguish themselves during conflict came from the principle of distinction. Under IHL, this principle has for purpose to avoid any confusion between combatants and civilians.

In parallel, civilians engaged in combats as non-official combatant do not have the same obligation and make the distinction between civilians who still have the right of protection and civilians engaged in combats who do not benefit of this right must be challenging.

This Lack of distinction of civilians and civilians engaged in combats could have serious consequences. In fact, civilians may not receive the full protections afforded to them under the Fourth Geneva Convention⁶⁵. For instance, if civilians are suspected of engaging in hostile activities, the occupying power may be able to deny them certain rights, such as communication rights, if deemed necessary for security reasons.

⁶⁴ idem

⁶⁵ [Taking Distinction to the Next Level: Accountability for Fighters' Failure to Distinguish Themselves from Civilians \(valpo.edu\)](#)

This could potentially lead to inadequate treatment or lack of due process for these civilians⁶⁶ but also increase the danger to the civilian population because this "civilianization of armed conflicts" makes it very difficult for lawful combatants to distinguish between civilians and hostile actors, putting the civilian population at greater risk.

II.6. the question of the property protection

The protection of civilians during armed conflict is therefore a cornerstone of international humanitarian law. This protection extends to their public and private property. IHL also identifies and protects particularly vulnerable civilian groups such as women, children and the displaced.⁶⁷

II.7. Complication in the access of humanitarian aid and assistance

Humanitarian organizations, international bodies, and independent monitors frequently face restricted access to conflict areas, limiting their ability to gather evidence and provide oversight. The participation of civilians in the hostilities could reduce or stop humanitarian aid operation by the instability of the field.

Indeed, the involvement of civilians in hostilities greatly increases the security risks for humanitarian workers trying to access and operate in these areas. The fear of being attacks, kidnaps, and other threats against aid workers become more prevalent.

Knowing this fact, civilians engaged in the hostilities are in constant rights and privilege for humanitarian aid and assistance are jeopardizes by the fact that most of the time the place where they are unsafety, it affects the quality of humanitarian care can get but also the delivery of humanitarian aid.

Furthermore, humanitarian aid could be used as diversion by the parties engaged in the hostilities. In fact, when civilians are directly participating in the hostilities, there is a higher risk that humanitarian aid and resources could be diverted and misused by armed groups for military purposes rather than reaching the intended beneficiaries.

⁶⁶ Under the article 5 of the fourth Geneva convention, the occupying power may deny the right to enjoy some rights and privilege as the right of communication if they suspect individuals to actively participated in the hostilities if they judge that it can "be prejudicial to the security of such State."

⁶⁷ [Civilians protected under international humanitarian law - ICRC](#)

Additionally, humanitarian organizations may face difficult ethical choices about whether and how to provide aid in situations where civilians are actively participating in hostilities, as this could be seen as indirectly supporting unlawful acts.

II.8. Social ostracism and PTSD

The social aspect of their participation in the hostilities must not be neglected and their actions have a social impact in the aftermath.

II.8.1 Trauma

Civilians who participate in hostilities are often exposed to high levels of violence and stress, such as attacks or shelling, lead to significant psychological trauma. This can have long-term effects on their mental health and their ability to reintegrate into society post-conflict. In fact, civilians may develop post-traumatic stress disorder (PTSD), depression, anxiety, and other mental health issues. Research indicates that combatants, especially those on active duty, experience higher levels of mental health issues such as anxiety, depression, and insomnia. For instance, Ukrainian combatants in the regular army reported higher anxiety levels compared to those in reserve or voluntary defense forces. The study found that active duty members had mental health symptoms scores that were notably higher than their counterparts, suggesting a need for targeted mental health support for these individuals.

Civilians who directly participate in hostilities also face mental health challenges, often exacerbated by their circumstances. While they may lose protection under international humanitarian law during their participation, their mental health can be severely impacted by the stress of combat situations. Civilians in active combat areas or under occupation reported worse mental health outcomes, highlighting the psychological toll of being involved in hostilities, even sporadically

II.8.2. The ostracism effect

Ostracism is the action of intentionally not including someone in a social group or activity.⁶⁸

Civilians who directly participate in hostilities may be morally judged by their communities, especially if their actions are perceived as causing harm or violating ethical standards upheld

⁶⁸ [OSTRACISM | English meaning - Cambridge Dictionary](#)

by the community. It can lead to feelings of isolation, rejection, and loneliness. This can exacerbate existing stress and trauma from their participation in hostilities

When reintegrating into civilian life after participating in hostilities is already challenging. Ostracism adds an additional barrier, making it harder for individuals to rebuild their lives and contribute positively to their communities.

II.9. International Case laws

Along with treaties, international cases are some of the most important documents of international law. The primary source of international cases is the International Court of Justice, International Criminal Court, parts of the United Nations. Other sources of important international case law include the European Court of Justice, and European Court of Human Rights, African Court of Human Rights.

II.9.2. United States v. Salim Ahmed Hamdan

In the case of United States v. Salim Ahmed Hamdan before the U.S. Military Commission, Hamdan, who was a civilian and also the driver of Osama bin Laden ⁶⁹, was charged to have directly participated in hostilities against the United States.

In 2001, during the U.S. conflict with the Taliban, Hamdan was captured in Afghanistan by Afghan forces, handed over to the U.S. military and transferred to the U.S. detention facility at Guantanamo Bay, Cuba, one year later in June 2002. ⁷⁰

In 2004, Hamdan was formally charged by a U.S. Military Commission with conspiracy to commit attacks on civilians and civilian objects, murder by an unprivileged belligerent, destruction of property by an unprivileged belligerent, and terrorism.

The Military Commission found that Hamdan directly participated in hostilities by driving a vehicle containing surface-to-air missiles towards a battle between al-Qaeda/Taliban forces and the Northern Alliance. This caused him to lose his civilian protections under international humanitarian law.

⁶⁹He was the founder and first leader of the Islamist militant group al-Qaeda

⁷⁰United States v. Salim Ahmed Hamdan Civ.Action no. 04-1519(JR)

In 2008, a U.S. military jury convicted Hamdan of providing material support for terrorism, though he was acquitted on the charge of conspiracy. He was sentenced to 66 months imprisonment but credited with time served. Hamdan was transferred to Yemen in November 2008 to serve out the remainder of his sentence and was released in January 2009.

Hamdan's conviction was later overturned on appeal in 2012, with the Court of Appeals finding that material support for terrorism was not a war crime triable by military commission at the time of Hamdan's conduct.

So, in this case, the U.S. Military Commission determined that Hamdan's specific actions of transporting weapons to the battlefield constituted direct participation in hostilities, even though he was a civilian driver.

This stripped him of civilian immunity from attack and prosecution for war crimes. However, the ultimate conviction was overturned on appeal due to issues with the retroactive application of the law.

II.9.2 Prosecutor v. Galić (ICTY)

Stanislav Galić was a Bosnian Serb general who commanded the Sarajevo Romanija Corps of the Bosnian Serb Army during the siege of Sarajevo from 1992 to 1994. He was charged with crimes against humanity and violations of the laws or customs of war for the shelling and sniping campaign conducted against the civilian population of Sarajevo.⁷¹

The ICTY Trial Chamber found that some of the victims were civilians who were directly participating in hostilities at the time of the alleged attacks.

The Chamber held that civilians lose their protected status under international humanitarian law when they take a direct part in hostilities.

However, the Chamber emphasized that the assessment of whether a civilian was directly participating must be made on a case-by-case basis, considering the specific circumstances.

⁷¹ Prosecutor V. Dusko Tadic ,(case no. IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal Jurisdiction, 2 October 1995

The Trial Chamber relied on the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities, which outlines a three-part test:

- The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict.
- There must be a direct causal link between the act and the harm likely to result.
- The act must be specifically designed to directly cause the required threshold of harm.

The Trial Chamber also addressed the principle of proportionality, finding that indiscriminate attacks that do not distinguish between civilians and military targets can qualify as direct attacks on civilians.

Attacks that are disproportionate to the concrete and direct military advantage anticipated may also be considered indiscriminate.

The Galić case reaffirmed that civilians can lose their protected status if they directly participate in hostilities, but emphasized the need for a contextual, case-by-case analysis.

It also underscored the prohibition on indiscriminate attacks and the requirement to respect the principle of proportionality in military operations.

The case contributed to the development of international jurisprudence on the interpretation of "direct participation in hostilities" under international humanitarian law.

II.9.3. The Syrian Civil War

The Syrian Civil War, is an ongoing multi-sided armed conflict in Syria that began in 2011 with the Arab Spring protests against the rule of President Bashar al-Assad., has resulted in one of the most devastating humanitarian crises of the 21st century. The conflict has led to massive civilian casualties, widespread displacement, and severe violations of international humanitarian law.

The absence of a universal treaty specifically addressing the rights of civilians who directly participate in hostilities has exacerbated the challenges in protecting civilian lives and upholding international humanitarian law in this conflict.

First, the fluid nature of the conflict, with civilians frequently taking up arms either temporarily or for extended periods, has blurred the distinction between combatants and non-combatants.⁷² This ambiguity complicates the application of IHL and increases the risk of civilians being mistaken for legitimate military targets. Some reports from organizations like Human Rights Watch and Amnesty International have documented instances of indiscriminate attacks by various parties to the conflict, resulting in significant civilian casualties and damage to critical infrastructure.

Also, The Syrian Civil War has been marked by extensive urban warfare, particularly in densely populated cities such as Aleppo and Raqqa. The fighting in these urban environments has led to disproportionate harm to civilians, with heavy weaponry and explosives causing widespread destruction of homes, hospitals, schools, and other civilian facilities.

The UN Independent International Commission of Inquiry on the Syrian Arab Republic has reported that various parties to the conflict have conducted attacks against civilians and infrastructure that amount to war crimes, highlighting the severe impact of urban warfare on civilian populations.

In addition to the devastation caused by conventional warfare, the use of chemical weapons has raised significant concerns regarding violations of international humanitarian law (IHL). Multiple allegations of chemical weapon use against civilians have emerged, with the UN-OPCW Joint Investigative Mechanism attributing several attacks to the Syrian government, while ISIS has also been accused of employing chemical agents. These actions have resulted in substantial civilian suffering, particularly affecting vulnerable populations such as children and the elderly.

The implications of these factors are profound. The ambiguity surrounding combatant status, combined with the urban nature of the conflict and the use of chemical weapons, has contributed to a staggering civilian toll, with estimates suggesting that over 306,000 civilians have been killed since the conflict began.

⁷² Assad regime's violent crackdown, sectarian tensions, lack of viable alternatives, and the rise of extremist groups all contributed to civilians taking up arms during the Syrian Civil War.

Enforcing accountability for IHL violations has proven challenging due to the complex and multifaceted nature of the war. The absence of a universal treaty addressing the rights of civilians who directly participate in hostilities further complicates efforts to protect civilian lives and hold perpetrators accountable. Additionally, the ongoing violence and restrictions imposed by warring parties have severely hindered humanitarian access, leaving millions without essential aid. Civilians who engage in hostilities may face additional barriers to receiving assistance, as they are often viewed as combatants by opposing forces, exacerbating their vulnerability in an already dire situation.

2.The case of Yemen

Yemen, located on the southern tip of the Arabian Peninsula, has been embroiled in a devastating civil war since 2014. The conflict began when Houthi rebels, a Shiite group with ties to Iran, overthrew the internationally recognized government led by President Abdrabbuh Mansur Hadi. This uprising was fueled by widespread dissatisfaction with economic conditions and political corruption, exacerbated by the Arab Spring protests in 2011.

The situation escalated in 2015 when a Saudi-led coalition intervened militarily to restore Hadi's government, viewing the Houthis as a proxy for Iranian influence in the region. The war has led to a catastrophic humanitarian crisis, with millions facing famine, disease outbreaks, and displacement. The conflict is marked by complex local, regional, and international dynamics, involving various factions, including southern separatists and extremist groups like Al-Qaeda. Despite attempts at peace negotiations, the fighting continues, with significant implications for the civilian population, who bear the brunt of the violence and instability⁷³. The conflict has seen numerous violations of IHL, with significant implications for civilians:

Coalition have been accused of violating IHL principles, such as distinction, proportionality, and precaution. This includes indiscriminate attacks on civilians and civilian infrastructure, as well as the use of prohibited weapons. Reports indicate that both the Houthi forces and the Saudi-led coalition have conducted attacks that indiscriminately affect civilian populations. This includes airstrikes on markets, hospitals, and schools.

Also, various factions, particularly the Houthis, have been implicated in the recruitment of child soldiers, blurring the lines between combatants and civilians.

Despite calls for investigations into potential war crimes, progress towards accountability remains slow. The international community, especially weapons suppliers like the US, UK, and France, faces criticism for enabling the conflict. The conflict has exacerbated a severe humanitarian crisis, with millions displaced, widespread famine, and limited access to essential services and aid. Restrictions on humanitarian supplies and access have contributed to this catastrophe.

The participation of civilians in hostilities highlights the ambiguity in IHL regarding their legal status and protection. While civilians lose their protected status when directly participating, the definition of what constitutes direct participation is debated.

II.10. General principle of law

General principles of law consist of principles of fairness and justice that have universal application in legal systems around the world ⁷⁴.

II.10.1. Human dignity

Human dignity is a core tenet of IHL, emphasizing that all individuals, including civilians, must be treated with respect and humanity. Civilians who engage in hostilities lose their protection against direct attacks but should still be treated humanely if captured. This principle mandates that even those who have participated in hostilities retain certain rights and protections, such as protection from torture and inhumane treatment, reflecting the inherent dignity of all individuals, regardless of their actions during conflict.

II.10.2. Access to justice

Access to justice is crucial for ensuring accountability and protecting rights. Civilians who directly participate in hostilities may face criminal charges under national laws, but they also have the right to fair legal processes. If captured, they should be afforded access to legal representation and a fair trial.

⁷⁴ [General Principles of Law - International Legal Research Guide - Pritzker Legal Research Center at Northwestern Pritzker School of Law](#)

This access is vital not only for upholding individual rights but also for maintaining the rule of law in conflict situations, ensuring that justice is served without discrimination or bias.

II.10.3 Right to a fair trial

The right to a fair trial is a fundamental human right that applies to all individuals, including those who have participated in hostilities. This right includes the presumption of innocence, the right to be informed of charges, and the right to an impartial tribunal. For civilians who have engaged in hostilities, ensuring a fair trial is essential to prevent arbitrary punishment and to uphold legal standards. It reinforces the principle that while their actions may have consequences, they are entitled to due process and legal protections

II.10.4. Principle of military necessity

The principle of military necessity is fundamental of International Humanitarian Law that allows parties to an armed conflict to use measures necessary to achieve a legitimate military objective, provided that such measures are not otherwise prohibited by IHL. This principle is particularly relevant when analyzing the rights of civilians who directly participate in hostilities.

In fact, the principle of military necessity acknowledges that winning the war or battle is a legitimate consideration under the laws of war. It permits armed forces to engage in conduct that may result in destruction and harm, as long as it is necessary to achieve a valid military purpose.

However, the principle of military necessity does not give armed forces unlimited freedom to ignore humanitarian considerations. It must be interpreted in the context of specific prohibitions and in accordance with other principles of IHL, such as the principles of distinction, proportionality, and humanity.

When civilians directly participate in hostilities, their actions may be considered a legitimate military target under the principle of necessity. This is because their direct involvement in the conflict poses a threat to the opposing party and undermines their military operations.

Moreover, the principle of necessity must be balanced against other principles, such as proportionality and humanity.

Even if an attack on a civilian directly participating in hostilities is necessary, it must not cause excessive collateral damage to civilians or civilian objects. The attacking party must also take feasible precautions to minimize harm to civilians and civilian objects.

II.10.5. Principle of humanity

The principle of humanity mandates that even in the midst of armed conflict, certain basic standards of humane treatment must be upheld. It prohibits acts that cause superfluous injury or unnecessary suffering and requires that all persons, including combatants, be treated humanely.

The principle of humanity serves as a counterbalance to the principle of military necessity, ensuring that the means and methods of warfare are not unlimited. It imposes restrictions on the conduct of hostilities and the treatment of persons in the power of the enemy, such as the wounded, sick, and prisoners of war.

When civilians directly participate in hostilities, their actions may be considered a legitimate military target under IHL. However, the principle of humanity still affords them certain rights and protections.

Even civilians who are directly participating in hostilities must be treated humanely and cannot be subjected to acts that cause superfluous injury or unnecessary suffering. They retain the right to be free from torture, cruel treatment, and outrages upon personal dignity.

Moreover, the principle of humanity requires that civilians who are hors de combat (out of combat) due to injury, sickness, or surrender be respected and protected. They must be provided with the necessary medical care and treated in a manner consistent with their human dignity.

The principle of human dignity is the foundation upon which IHL is built. It mandates that even in the midst of armed conflict, certain basic standards of humane treatment must be upheld. The principle prohibits acts that degrade or humiliate individuals and requires that all persons, including combatants, be treated with respect and dignity. The principle of human dignity serves as a counterbalance to the harsh realities of war.

It imposes restrictions on the conduct of hostilities and the treatment of persons in the power of the enemy, such as the wounded, sick, and prisoners of war. The principle ensures that even in the chaos of battle, certain universal values are upheld.

When civilians directly participate in hostilities, their actions may be considered a legitimate military target under IHL. However, the principle of human dignity still affords them certain rights and protections. Even civilians who are directly participating in hostilities must be treated humanely and with respect for their inherent worth and dignity. They retain the right to be free from torture, cruel treatment, and outrages upon personal dignity. Their participation in the conflict does not strip them of their fundamental human rights.

, the principle of human dignity requires that civilians who are hors de combat (out of combat) due to injury, sickness, or surrender be treated with the utmost respect and dignity. They must be provided with the necessary medical care and protected from any acts that degrade or humiliate them

II.11. Doctrine

In law, a doctrine refers to a principle established through past judicial decisions. It serves as a framework for interpreting laws and guiding future cases.⁷⁵

II.11.1. accountability and responsibility

Accountability refers to the obligation of individuals, particularly those in positions of power, to answer for their actions and decisions. This doctrine is crucial in ensuring that public officials and military leaders act within the bounds of the law and ethical standards. Accountability can take various forms, this including legal accountability which involves being subject to laws and regulations that govern conduct, including the possibility of legal consequences for violations.

Additionally, political accountability, this pertains to the responsibility of officials to their constituents and the mechanisms through which they can be held accountable, such as elections and public scrutiny. But also moral accountability relates to the ethical obligations of individuals to act in a manner that is just and fair, considering the impact of their actions on others.

⁷⁵ <https://www.law.cornell.edu/wex/doctrine> last accessed on 08/08/2024

The doctrine of responsibility complements accountability by emphasizing the moral and legal obligations that individuals and entities have towards others. It underscores the idea that individuals are responsible for their actions and decisions, particularly in the context of armed conflict. This includes individual, collective and State responsibility.

II.11. Partial conclusion

The rights related to civilians engaged are insufficient when it goes their protection during armed conflicts, prosecution but also the aftermath. The existence norms are whether not apply or ignored.

Necessary measures for the protection of civilians must be taken in peacetime and wartime. These measures are necessary to ensure that:

- Both civilians and the military personnel are familiar with the rules of humanitarian law;
- The structures, administrative arrangements and personnel required for compliance with the law are in place;
- Violations of humanitarian law are prevented, and punished when they do occur.

Such measures are essential to ensure that the law is truly respected. All States have a clear obligation to adopt and carry out measures implementing humanitarian law. These measures may need to be taken by one or more government ministries, the legislature, the courts, the armed forces, or other State bodies.

There may also be a role for professional and educational bodies, the National Red Cross or Red Crescent Society or other voluntary organizations.

Measures have also been taken at an international level to deal with violations of humanitarian law.

CHAPTER III: MECHANISMS TO ADDRESS THE ISSUES OF THE RIGHTS OF CIVILIANS ENGAGED IN COMBATS DURING ARMED CONFLICTS

Introduction

The issues of the rights of civilians engaged in combats during armed conflicts are crucial for the respect of human dignity but also to the improvement of the efficiency of Ihl in peacetime and wartime.

The set up of legal and institutional mechanism are important when we discuss on this precedent because they are the framework establishing the system to facilitate the enforcement of rights.

This chapter examines the legal and institutional frameworks designed to promote the rights of civilians engaged in combats during armed conflicts, and facilitate access to justice. By exploring the mechanisms established to overcome barriers, this chapter aims to highlight both successes and areas for improvement in advancing the rights of civilians engaged in combats during armed conflicts under international humanitarian law.

III.2 Legal Mechanisms

A legal system encompasses statutes, regulations, and case law, administered by various institutions designed to guide, interpret, and apply the law.⁷⁶

In this context, legal mechanism aims to relate the different legal way to promote the rights of civilians who directly participated in the hostilities.

III.2.1. International legal mechanisms

International legal mechanisms are frameworks and institutions designed to enforce and uphold international law.

III.2.1.1. International Criminal Court

Established by the Rome statute in 1998 the ICC is a permanent judicial body which has for objective to investigate, prosecute, and try individuals accused of genocide, war crimes, and

⁷⁶ [Legal System: Definition, Legal Framework and Rule of Law \(juristopedia.com\)](https://www.juristopedia.com/legal-system-definition-legal-framework-and-rule-of-law/)

crimes against humanity and to impose prison sentences upon individuals who are found guilty of such crimes. On July 1, 2002, after the requisite number of sixty countries ratified the agreement, the court began sittings and limited to crimes committed after its establishment. It is headquartered in the Netherlands at The Hague⁷⁷.

The creation of ICC marked a significant step in the development of international criminal law, providing a consistent legal framework for the prosecution of these crimes. ICC has the recognition of the international community and describes as important in a multinational framework to establish the rule of law and put an end to impunity⁷⁸ because it dedicated to promote accountability, and influence national and regional judicial systems.

ICC is complementary with national criminal jurisdiction meaning that cases which are recorded by ICC are mostly the one nation courts which has jurisdiction over the case do not have the capacity or the will to prosecute themselves.

As the jurisdiction of ICC is extended to individuals, regardless of their official capacity it has jurisdiction over states and non-states but also civilians who directly participate in hostilities if their actions are related to war crimes, crimes against humanity, or genocide.

For instance, the ICC issued arrest warrants for Sudanese President Omar al-Bashir and other officials for genocide, war crimes, and crimes against humanity committed in Darfur

Another example is ICC investigated the 2007-2008 post-election violence in Kenya, leading to charges against several high-profile individuals, although the cases were ultimately withdrawn or terminated

III.2.1.2 Ad hoc tribunal

The term "ad hoc" is a Latin phrase that translates to "for this" in English. It is used to describe something that is created or done for a specific, immediate purpose, often to address a particular issue or problem⁷⁹.

⁷⁷ [International Criminal Court \(ICC\) | Definition, History, Purpose, & Facts | Britannica](#)

⁷⁸ *the role of the International Criminal Court in a multilateral system that aims to end impunity and establish the rule of law Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/67/L.1, 19 September 2012.*

⁷⁹ [Définitions : ad hoc - Dictionnaire de français Larousse](#)

Ad hoc tribunals are temporary judicial bodies established to address specific legal issues, often related to serious crimes committed during particular conflicts or situations. These tribunals are typically established by international organizations, such as the United Nations, to prosecute war crimes, crimes against humanity, and genocide. There are several notable ad hoc tribunals, each with a unique mandate and jurisdiction.⁸⁰ Some of them are

- the International Criminal Tribunal for the Former Yugoslavia established in 1993 and created to prosecute serious crimes committed during the Yugoslav Wars, including genocide, war crimes, and crimes against humanity. It concluded its operations in December 2017 after completing its mandate;
- The International Criminal Tribunal for Rwanda formed in 1994 in response to the Rwandan genocide and aimed to prosecute those responsible for the mass killings. It completed its work in December 2015;
- The Special Court for Sierra Leone established in 2002, this court addressed crimes committed during the Sierra Leone Civil War. It concluded its operations in 2013;
- And the Extraordinary Chambers in the Courts of Cambodia created in 2006 to prosecute senior leaders of the Khmer Rouge for crimes committed during the Cambodian genocide, the ECCC is still operational, although its future is uncertain as it faces funding and jurisdictional challenges.

Ad hoc international tribunals have played a significant role in addressing war crimes and crimes against humanity, especially in contexts where national jurisdictions were unable or unwilling to prosecute these crimes. Two key examples are the International Criminal Tribunal for the former Yugoslavia⁸¹ and the International Criminal Tribunal for Rwanda.⁸²

They are established to prosecute individuals responsible for serious violations of international humanitarian law and human rights, such as genocide, war crimes, and crimes against humanity. These crimes often involve grave abuses against civilians, including mass killings, torture, sexual violence, and forced displacement.

⁸¹ *Prosecuted individuals for atrocities committed against civilians during the Yugoslav Wars, including mass executions, rape, and ethnic cleansing*

⁸² *Addressed the genocide in Rwanda, where civilians were targeted in mass killings, sexual violence, and other brutal acts.*

In the context of the ICTY, civilians who took up arms and committed crimes during the Yugoslav Wars were held accountable for violations.

They clarify legal standards, and uphold the rights of individuals involved in such cases. *How* Their work contributes to the development of international law, influences policy, and helps provide justice and recognition for victims of conflict-related crimes.

III.2.1.2 Customary International Law

Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation⁸³. For instance, the prohibition of torture or slavery are both part of CIL. The Derivation from states practices and international consensus ⁸⁴ made customary international law the representation of an essential component of the international legal system.

In the context, customary international law has a significant place when we refer to the rights of civilians engaged in combats during armed conflicts. In fact, principles as the principle of distinction, proportionality or even the principle of precaution which have been discuss in the chapter one of this research ⁸⁵ are also a part of the fundamental principles which governs customary international humanitarian law.⁸⁶

Knowing this fact, we cannot ignore the importance of the contribution of customary international law in the rights of civilians engaged in combats during armed conflicts even if the interpretation and application of these principles can be complex and require ongoing development through state practice and international jurisprudence.

⁸³ [customary international law | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

⁸⁴ Historic of customary give some explame of custoary and how they are accepted as international and how internation consensus means

⁸⁵ See page 27 where the principles of are described as fundamental principles of IHL

III.2.2. National legal mechanisms

National legal mechanisms refer to the systems and structures within a country that are designed to implement, enforce, and uphold laws and regulations. It includes legislative bodies as parliament, judiciary and law enforcement bodies which refers to police.

In a matter of fact, states have different approaches to manage the implementation of law and regulation especially when concerning the enforcement of international treaties. The states are responsible to the way the treaties they are ratified are implement in the national legal system comprising treaty as Geneva convention and its additional protocol.

This inclusion allows then national courts to have jurisdiction over case relate to genocide, war crimes and crimes against humanity and other unlawful acts. It means that civilians who engage in hostilities may be prosecuted under national laws for acts such as murder, assault, or terrorism, depending on the nature of their actions and the applicable legal framework.

In the case of Rwanda, which has experienced significant conflict, including the 1994 genocide and shaped its legal and institutional approach to international humanitarian law. The Constitution of Rwanda (2003, revised in 2015) recognizes the supremacy of international treaties and agreements ratified by Rwanda. Article 190 explicitly states that upon publication in the Official Gazette, international treaties and agreements become part of Rwandan law.

Moreover, Rwanda has ratified the Geneva Conventions of 1949 and their Additional Protocols, which are key instruments in international humanitarian law. This ratification obligates Rwanda to adhere to the principles of IHL, including the protection of civilians. Rwanda is also a signatory to the Rome Statute of the International Criminal Court.

In the matter of penal code Rwanda incorporates provisions related to war crimes and crimes against humanity. It criminalizes actions that violate the protections afforded to civilians under IHL. Additionally the Military Penal Code and the Military Justice Code include specific provisions for the prosecution of military personnel who commit crimes against civilians during armed conflicts.

Rwanda also created national institutions, which aims to comply with IHL reglementation.

III.3. Institutional Mechanisms

Institutional mechanisms refer to the structures and systems established to implement, enforce, and oversee legal rules and principles. These mechanisms ensure that legal norms are applied consistently and effectively. They are various institutions which are related to the rights of civilians who are engaged in combats.

III.3.1. United nations

The chaos after the Second World War was the first motivation for the international community to create an organization which would have for purpose to prevent another same kind of atrocities and maintain peace around the world.

UN was founded in 1945 through the collective efforts of the Allied powers⁸⁷ during World War II, with significant contributions from leaders like Franklin D. Roosevelt, Winston Churchill, and Joseph Stalin.

The United Nations is significant institution in the matter of protecting the rights of civilians who directly participate in hostilities through the promotion and enforcement of international humanitarian law, international criminal justice, protection and assistance programs, advocacy, training, peacekeeping operations, conflict resolution, and legal and policy development. In fact, the action of UN for the implementation of different treaties which mention civilians engaged in combats as the Geneva convention and its Additional Protocols by actively promotes their principles and provisions through statements, resolutions, and campaigns that raise awareness among member states, armed forces, and the public has a significant role. UN Secretary-General acts as the depositary for the Geneva Conventions and attend also to encourage states to be member of this treaties.⁸⁸

Furthermore, various UN bodies, the Office of the High Commissioner for Human Rights for instance, monitor and report on compliance with IHL, including the treatment of civilians in armed conflicts. For the case of UN peacekeepers are often deployed with mandates that include the protection of civilians. They monitor and report on compliance with IHL, provide physical protection, and facilitate humanitarian assistance.

⁸⁷ The Allied Powers, also known as the Allies of World War II, were a coalition formed to oppose the Axis Powers, which included Germany, Italy, and Japan. Key members of the Allies included the United Kingdom, the Soviet Union, the United States, and China.

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III.3.2. International Committee of the Red Cross

The International Committee of the Red Cross is a humanitarian organization founded in 1863, dedicated to protecting and assisting victims of armed conflict and violence. It operates under the principles of neutrality, impartiality, and independence⁸⁹, allowing it to provide aid in situations where other organizations may be unable to operate due to political or security constraints.

The function of ICRC is first to provide essential services such as medical care, food, water, and shelter to those affected by armed conflicts, including civilians and combatants. In 2010 alone, it treated over 5.2 million people and facilitated communication between families separated by conflict.⁹⁰ Additionally, the organization advocates for the respect and implementation of IHL, which governs the conduct of armed conflicts and seeks to limit their effects. This includes educating military personnel and governments about their obligations under the Geneva Conventions.⁹¹ The International Committee of the Red Cross also produces a variety of written materials, including articles, statements, and reports, in the main purpose of promoting and inform about international humanitarian law, humanitarian action, and the protection of victims in armed conflict.

The ICRC focuses on protecting the rights and dignity of individuals, including those who directly participate in hostilities. It engages with armed groups and state actors to ensure that humanitarian principles are upheld during conflicts.

It concerns itself with the actions of weapon bearers and authorities pertaining to the civilian population, including assaults on and threats to the lives, security, and physical and moral integrity of persons. This applies to civilians who directly participated in hostilities.

It undertakes specific protection activities to benefit the civilian population and other affected persons not in detention, such as ICRC accompaniment, evacuation of persons at risk, and establishment of protected areas. These activities can help protect civilians who directly participated in hostilities.

⁸⁹ [ICRC | International Committee of the Red Cross](#)

⁹⁰ [International Committee of the Red Cross \(ICRC\) \(dfat.gov.au\)](#) page 2

⁹¹ *Ibidem.* p.2

As a neutral, impartial, and independent organization, the ICRC can reach those who need assistance when others cannot, providing humanitarian aid and upholding the rights of people affected by armed conflict.

III.3.3. Non-Governmental Organizations

Non-governmental organizations (NGOs) play a crucial role in addressing humanitarian crises and promoting development. Their contributions encompass various sectors and are vital for effective response and recovery efforts.

Non-governmental organizations (NGOs) like Human Rights Watch (HRW) and Amnesty International play a vital role in documenting abuses and advocating for remedies concerning civilians who directly participated in hostilities. Their contributions are significant in various aspects.

They, in fact, conduct thorough investigations into human rights violations and abuses during armed conflicts. They gather evidence through interviews, field research, and analysis of available data to document incidents involving civilians, including those who directly participated in hostilities. This documentation often includes detailed reports outlining specific cases of abuse, patterns of violence, and the impact on affected populations.

Organizations like HRW and Amnesty International utilize established methodologies for documenting war crimes and human rights abuses. This includes securing evidence, interviewing witnesses, and compiling data to create comprehensive reports that can be used for advocacy and legal action.

By documenting patterns of violence against civilians, these NGOs can demonstrate systemic issues, such as the deliberate targeting of non-combatants or the use of disproportionate force. This evidence is crucial for understanding the broader implications of conflict on civilian population.

NGOs often offer free or low-cost legal services to individuals who cannot afford representation. This is crucial in ensuring that marginalized populations, including those affected by conflict or systemic discrimination, have access to their legal rights.

Many NGOs conduct workshops and training sessions to educate communities about their legal rights and the legal system. This empowers individuals to advocate for themselves and seek justice when their rights are violated.

NGOs engage in advocacy efforts to influence legal and policy reforms that promote access to justice. They may work to change laws that disproportionately affect vulnerable populations or to establish legal frameworks that support human rights.

Partial conclusion

To ensure the implementation of the rights of civilians engaged in combats during armed conflict it is essential for international community to established institutional and legal mechanism, which would help to the protection of the rights of civilians, engaged during armed conflicts but also after.

Some of existing mechanism have been helpful for fill gaps observe during our research concerning the rights of civilians engaged during armed conflicts. They are international but also national.

General Conclusion

This research aims to critical examined the rights of civilians engaged in combats during armed conflicts. This matter is complex and important in our modern society.

By highlighting the international need to robust the different mechanism of the rights relating to civilians engaged in combats during armed conflicts and emphasize as well how urgent it become to act on this subject. The intricacy of modern warfare requires a new form of solution, which can be manifest by a multifaceted approach combining legal aspect and community-based strategies.

The protection of civilians engaged in combats during armed conflicts requires strengthening national and international legal frameworks, improving enforcement and accountability, and utilizing creative solutions.

The perspective of this research aims to contribute in a way to the ongoing discourse and efforts to address the humanitarian challenges posed by armed conflicts of our present society

The protection of civilians in armed conflict remains a fundamental concern of IHL. As conflicts continue to evolve, so must the strategies and mechanisms designed to uphold the rights and dignity of those caught in the crossfire.

Each actor in armed conflicts must enjoy rights and civilians engaged during armed conflicts are not exception.

Even though we may not be able to completely stop wars around the world, we can do our best to make sure they are governed by laws and regulations that are applied and respected. As lawyers, this is how we can make a difference and contribute to a better world. One important way to do this is to protect civilians engaged in combats during armed conflicts during armed conflicts.

Despite the different definitions, civilians are still civilians - they are human beings who deserve to enjoy their rights even during wars and conflicts. The existing mechanisms and laws are not enough and do not cover all the challenges. The issue is becoming more widespread in our modern society.

The most important thing is that civilians, who are not soldiers, have the same human rights as everyone else, even when there is a war going on.

The distinction between civilians and combatants in the laws of war must be strictly followed. People's basic rights and dignity do not disappear just because there is a conflict - in fact, governments have an even stronger duty to protect civilians during wars.

However, the current laws and systems are insufficient to deal with all the problems caused by modern wars. Legal experts and decision-makers need to work together to develop new laws that are suited to the changing nature of warfare. Lawyers have a crucial responsibility to make sure the laws of war are effective in protecting vulnerable people, not just empty promises on paper.

Recommendations

To efficiently conclude this academic research, it is essential to do some recommendations in the purpose to consider to highlight its practical implications.

For the research entitled critical analysis of the rights of civilians engaged in combat during armed conflicts, we suggest first that the international community (se plunge sur) determine a clearer definition and guidelines within international humanitarian law regarding the status and the protection of civilians who are engaged in combat by proposing an amendment of existing international treaties or by creating one in the purpose of addressing the ambiguities and increase protection.

Second, we suggest a better sensibilization of the matter with different actor of the war.

This can be done through:

- An adaptive training programs for military personnel to ensure they understand and respect the rights of civilians, including those who may have participated in hostilities.

- educational initiatives which would explain clearly to civilians in conflict zones about their rights and the legal implications and meaning of direct participation in hostilities.

Also, the improvements of monitoring bodies and accountability mechanisms is an important aspect. In this regard the establishment of independent bodies or the strengthening of existing ones to monitor and report on the treatment of civilians in conflict zones Wouk be helpful but also robust the accountability mechanism to investigate and prosecute violations of civilians' rights.

Third, we recommend for effective reintegration programs for civilians who participated in hostilities, focusing on psychological support, vocational training, and community reconciliation by empowering international support and funding for post-conflict recovery initiatives that prioritize the rights and well-being of affected civilians.

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