

KIGALI INDEPENDENT UNIVERSITY ULK

SCHOOL OF LAW

DEPARTMENT OF LAW



Legal Analysis on the Protection of Civilians during non-international armed conflicts.

CASE STUDY: Democratic Republic of Congo and the March 23 Movement (M23)

Dissertation submitted in partial fulfilment of the requirements of the award of a bachelor's degree in Law (LLB)

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Kigali, May 2024

DECLARATION

I, **David MUTSINZI**, hereby declare that this research work titled: “**Legal Analysis on the Protection of Civilians during non-international armed conflicts, case study of Democratic Republic of Congo and The March 23 Movement (M23)**” has not been submitted anywhere for any award and has not been presented in any other University or higher learning Institution in Rwanda or abroad.

I further declare that this dissertation is the result of my own research and references to the work of other researchers and academicians have been indicated in the footnotes and bibliography.

David MUTSINZI

Date..... /...../2024

Signature:

APPROVAL

I, **Lecturer Emmanuel NKUNDUKOZERA**, authorize **David MUTSINZI** to submit this final dissertation on the topic of: **“Legal Analysis on the Protection of Civilians during non-international armed conflicts, case study of Democratic Republic of Congo and The March 23 Movement (M23)”** in his partial fulfillment of the requirements for the award of bachelor’s degree in Law (LLB).

Supervisor: **Lecturer Emmanuel NKUNDUKOZERA**

Signature:

Date:

DEDICATION

To Jesus Christ my stronghold;

To my entire family;

To my friends;

To all my Classmates.

ACKNOWLEDGEMENTS

Completing this dissertation has been a challenging yet rewarding journey, and I am deeply grateful for the support and guidance I have received along the way.

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David MUTSINZI

LIST OF ACRONYMS AND ABBREVIATIONS

- I. ANSAs: Armed Non-State Actors.
- II. AP: Additional Protocol.
- III. Art. : Article.
- IV. CABAC: Children Affected by Armed Conflict.
- V. CERD: Committee on the Elimination of Racial Discrimination.
- VI. e.g.: For example.
- VII. CRC: Convention on the Rights of the Child.
- VIII. GC: General Counsel.
- IX. i.e. : in other words.
- X. GP: Geneva Protocol.
- XI. IAC: International Armed Conflict.
- XII. ICC: International Criminal Court.
- XIII. ICRC: International committee of Red Cross.
- XIV. ICTR: International Criminal Tribunal for Rwanda.
- XV. ICTY: International Criminal Tribunal for the former Yugoslavia.
- XVI. IHFFC: International Humanitarian Fact-Finding Commission.
- XVII. IHL: International Humanitarian Law.
- XVIII. IHRL: International Human Right Law.
- XIX. M23: The March 23 Movement.
- XX. MRM: Monitoring and Reporting Mechanism.
- XXI. MRV: Measurement, Reporting and Verification.
- XXII. NGOs: Non –Governmental Organizations.
- XXIII. NIAC: Non- International Armed Conflict.
- XXIV. NSAs: National Security Agency.

- XXV. P.: Page.
- XXVI. Para: Paragraph.
- XXVII. POC: Protection of Civilians.
- XXVIII. POW: Prisoners of War.
- XXIX. U.S.A: United States of America.
- XXX. UN: United Nations.
- XXXI. UDHR: Universal Declaration of Human Rights.

TABLE OF CONTENTS

DECLARATION	2
APPROVAL	3
DEDICATION	4
ACKNOWLEDGEMENTS	5
LIST OF ACRONYMS AND ABBREVIATIONS	6
1. GENERAL INTRODUCTION	11
2. BACKGROUND OF THE STUDY	11
3. PROBLEM STATEMENT	13
4. RESEARCH QUESTIONS RESEARCH	15
5. RESEARCH HYPOTHESES	15
6. RESEARCH OBJECTIVES	15
6.1 The general objective	15
6.2 The specific objectives	15
7.1 CHOICE OF THE STUDY	16
7.2 SIGNIFICANCE OF THE STUDY	16
8. SCOPE OF THE STUDY	16
8.1 In domain	16
8.2 In space	16
8.3 In time	16
9. RESEARCH METHODOLOGY AND TECHNIQUES	16
9.1 Research Techniques	17
9.2. Research Methods	17
10. STRUCTURE OF THE STUDY	17
CHAPTER ONE: CONCEPTUAL AND THEORETICAL FRAMEWORK	18
I.1. Conceptual framework	18
1.1.1. Protected Person	18
1.1.2. Other protected persons	20
1.1.3. Civilians	25
1.1.4. Non Combatants	28
1.1.5. Armed conflict	29
1.1.6. Non-international armed conflict	30
1.1.7. International armed conflict	31
1.1.8. International human rights law	32

1.1.9. International Humanitarian law.....	35
1.2. Theoretical framework	36
1.2.1. Evolution of civilian protection under non- international armed conflict	36
1.2.2. Protected rights	37
1.2.3. Protection of civilians under international humanitarian law	39
CHAPTER 2: CRITICAL ANALYSIS ON THE LEGAL PROTECTION OF CIVILIANS IN NON-INTERNATIONAL ARMED CONFLICT	40
2.1. Lack of clear definition of Protection of civilian (PoC)	40
2.2 Limitations and obstacles of PoC in non-international armed conflict.....	42
2.2.1 States obstacles in protection of civilians in NIAC.....	44
2.2.2 Non-compliance by non-state armed group.....	47
2.3. Less true with respect to IHL.....	48
2.4. The lack of effective enforcement mechanisms and monitoring body	50
2.5 limits on Complaints Procedures of violation.....	51
2.6. Lack of a robust, wide-ranging and detailed legal framework to facilitate the protection of civilians.....	53
2.7. Case Laws	54
2.7.1. Bosco Ntaganda’s Case.....	54
2.7.2. Germain Katanga’s Case.....	55
2.8 Principles and Doctrines	55
2.8.1 Principles	55
2.8.1.1 Principle of Distinction	55
2.8.1.2 Principle of Proportionality	56
2.8.2 Doctrines	56
2.8.2.1 Doctrine of Command Responsibility	56
2.8.2.2 Doctrine of Necessity and Proportionality in Use of Force	56
CHAPTER 3: MEASURE FOR EFFECTIVE PROTECTION OF CIVILIANS DURING NON-INTERNATIONAL ARMED CONFLICT	56
3.1. International protection of civilians in non-international armed conflict by IHL.....	57
3.2. Promoting Non-State Compliance with Humanitarian norms.	58
3.3. Monitoring compliance with Humanitarian norms.....	60
3.4. State responsibility in protection of civilians during non-international armed conflict.....	61
3.4.1. State responsibility before non-international armed conflict.....	62
3.4.2. State responsibility after non-international armed conflict	62
3.5. Respect to IHL: effective enforcement of IHL and Implementation	63

3.6. Measures to be taken during peacetime.....	64
3.7. Individual complaint procedure directly to ICC.....	66
CONCLUSION AND RECOMMENDATION.....	66
4.1. Conclusion	66
4.2. Recommendations to Democratic Republic of Congo and other peacekeepers such as United Nations, African Union and others.	67
REFERENCES (BIBLIOGRAPHY).....	68
Legal Instruments	68
Books	68
Internet Sources	75

1. GENERAL INTRODUCTION

The present introduction focuses on the background of the study, problem statement, the scope, the significance, the research methodology, the objective and structure of the work.

2. BACKGROUND OF THE STUDY

Over the past 60 years, civilians have been the main victims of war. Protecting civilians during armed conflict is therefore a cornerstone of International Humanitarian Law (IHL). This protection extends to their property. International Humanitarian Law (IHL) also protects particularly vulnerable civilian groups such as women, children and displaced persons.

According to the typology of armed conflicts in international humanitarian law (IHL), two types of conflicts exist: international armed conflicts and non-international armed conflicts. Applicable conventional IHL, and to a lesser extent customary IHL, varies depending on each situation. If non-international armed conflicts are today, by far more numerous than international armed conflict is still quantitatively as well as qualitatively more substantial.¹ From a humanitarian point of view, the victims of non-international armed conflicts should be protected by the same rules as victims of international armed conflicts. They face similar problems and need similar protection. Indeed, in both situations, fighters and civilians are arrested and detained by the enemy civilians are forcibly displaced; they have to flee, or the places where they live fall under enemy control.

Attacks are launched against towns and villages; food supplies need to transit through front lines, and the same weapons are used. Furthermore, the application of different rules for protection in international and in non-international armed conflicts obliges humanitarian players and victims to classify the conflict before those rules can be invoked. This can be theoretically difficult and is always politically delicate. To classify a conflict may imply assessing questions of jus ad bellum (Right to war). For instance, in war of secession, for humanitarian actor to invoke the law of non-international armed conflicts implies that the secession is not (yet) successful, which is not acceptable for the secessionist authorities fighting for independence. On the other hand, to invoke the law of international armed conflicts implies that the secessionists are separate state, which is not acceptable for the central authorities. However, states in the international law they have made,

¹ Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*, 102(913), 287-334.

have never agreed to treat international armed conflicts equally. Indeed, wars between states have until recently been considered a legitimate form of international relations and the use of force between states is still not totally prohibited today.² Conversely, the monopoly on the legitimate use of force within its boundaries is inherent the concept of the modern state, which precludes groups within that state from waging war against other factions or the government.

On the one hand, the protection of civilians of international armed conflicts must necessarily be guaranteed through rules of international law. Such rules have long been accepted by states, even by those, which have the most absolutist concept of their sovereignty. States have traditionally accepted that soldiers killing enemy soldiers on the battlefield may not be punished for their mere participation: in other words, they have a right to participate in the hostilities.

On the other hand, the law of non-international armed conflict is more recent. States have for long time considered such conflicts as internal affairs governed by domestic law, and no state is ready to accept that its citizens would wage war against their own government. In other words, no government would renounce in advance the right to punish its own citizens for their participation in a rebellion. Such renunciation, however, is the essence of combatant status as defined in the law of international armed conflicts.³

Today, there is a general tendency to reduce the difference between IHL applicable in international and in non-international armed conflicts. The jurisprudence of international criminal tribunals, the influence of human rights and even some treaty rules adopted by States have moved the law of non-international armed conflicts closer to the law of international armed conflicts, and it has even been suggested in some quarters that the difference be eliminated altogether. In many fields where the treaty rules still differ, this convergence has been rationalized by claiming that under customary international law the differences between the two categories of conflict have gradually disappeared.

The ICRC study on customary International Humanitarian Law comes, after ten years of research, to the conclusion that 136 (and arguably even 141) out of 161 rules of customary humanitarian

² Matthews, H. (2013). The interaction between international human rights law and international humanitarian law: seeking the most effective protection for civilians in non-international armed conflicts. *The International Journal of Human Rights*, 17(5-6), 633-645.

³ Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.

law, many of which are based on rules of protocol I applicable as a treaty to international armed conflicts, apply equally to non-international armed conflicts.

The choice of this topic entitled the protection of civilians during non-international armed conflict is rooted in the belief that a study of this kind could help in the reinforcement of the protection of civilians as they are vulnerable by analyzing the challenges faced in the implementation of international legal instrument there, to and constitute the fulfilment of academic requirements which require that a student prepare and present dissertation for the ward of Bachelor's degree.⁴

3. PROBLEM STATEMENT

Protection of civilians (PoC) is a theme that is high on the policy agenda of the international community. This is well illustrated by the activity of the United Nations (UN) Security Council in 2016. The Security Council held an open debate on this topic in January, was briefed on attacks on medical facilities and personnel in armed conflict as part of its PoC agenda in May, held a ministerial level open debate on PoC in peace operations in June, and in September was briefed on measures to prevent attacks on health care in armed conflict as a follow-up from the resolution adopted after its May meeting. However, PoC is a priority issue not only for the Security Council, but also for States, international organizations, non-governmental organizations and civil society.

Both books published by Oxford University Press, Oxford, 2016. These book reviews were written in a personal capacity. They do not necessarily reflect the views of the Ministry of Foreign Affairs or of any other part of the government of the Netherlands. The expression protection of civilians may appear simple and easy to understand, but in fact, its meaning can differ depending on who the interlocutor is. As the editors of Protection of Civilians write in their introduction, the concept remains unclear and confusion persists regarding the legal framework that applies to it.

In such a case, the primarily victims of the war are the civilians, this may cause the society to demise. The proposed definition reads: Protection of civilians' is the act of protecting civilians from violence and minimizing harm toward those not directly participating in hostilities, in

⁴ X, "Civilian_ ICRC" <https://www.icrc.org/en/war-and-law/protected-persons/civilians#:~:text=Over%20the%20past%2060%20years,women%2C%20children%20and%20displaced%20persons>. Accessed on 27th July 2023

conflict situations. Such acts are undertaken pursuant to the rights and responsibilities of national authorities, belligerents, and the international community, and are governed by a legal framework of positive and negative obligations based on the UN Charter, IHL, IHRL, and refugee law.⁵

Traditionally, non-international armed conflicts (or, to use an outdated term, civil wars) were considered as purely internal matters for States, in which no international law provisions applied. This view was radically modified with the adoption of Article 3 common to the four Geneva Conventions of 1949. For the first time the society of States agreed on a set of minimal guarantees to be respected during non-international armed conflicts.

Unlike violence between the armed forces of States, not every act of violence within a State (even if directed at security forces) constitutes an armed conflict. The threshold of violence needed for the IHL of non-international armed conflicts to apply is therefore higher than for international armed conflicts. In spite of the extreme importance of defining this lower threshold below which IHL does not apply at all, Article 3 does not offer a clear definition of the notion of non-international armed conflict.

The growth of humanitarian action in the 1990s had an important impact on concepts and practices of civilian protection. However, the main problem is the lack of precision in defining the concept of PoC. IHRL goes beyond commitment to physical protection and offers a reminder for governments, armed groups and individuals of existing accountability for their actions before a court of law. The latter point is arguably less true with respect to IHL, at least as far as States and non-State armed groups are concerned (in contrast to individual criminal responsibility). As Williamson explains, the lack of effective enforcement mechanisms is a weakness of that body of law.⁶

Unlike many human rights conventions, there is no provision for the creation of a strong monitoring body or complaints procedures. On the other hand, as conclusion the IHL doesn't provides a robust, wide-ranging and detailed legal framework to facilitate the protection of civilians in non-international armed conflicts.

⁵ Article 3, 1949 UN Charter

⁶ Näsström, D. (2023). The international stance on the protection of life during armed conflict.

4. RESEARCH QUESTIONS RESEARCH

- I. To what extent do in full protect civilians in Non-international armed conflict?
- II. What are mechanisms to be adopted towards effective protection of civilians in non-international armed conflict?

5. RESEARCH HYPOTHESES

After a number of questions were asked, the following are provisional related answers:

1. In non-international armed conflicts, the extent to which international law protects civilians varies. While principles like distinction, proportionality, and humanity aim to safeguard civilians, enforcement can be challenging due to the nature of such conflicts, often involving non-state actors and limited oversight

2. Some mechanisms for effective protection of civilians in non-international armed conflict including: Strengthening Legal Frameworks, Prevention and Early Warning Systems, Peacekeeping and Peacebuilding, Humanitarian Assistance, Civilian Protection Measures, Accountability and Justice, Community Engagement and Capacity Building requires collaboration between governments, international organizations, civil society groups, and local communities to ensure comprehensive protection for civilians in non-international armed conflict.

6. RESEARCH OBJECTIVES

The present study has two objectives, which are general objective and specific objective.

6.1 The general objective

The general objective of this work is to access the extent of the protection of civilians in non-international armed conflict.

6.2 The specific objectives

In terms of specific objectives, the present research aims determining,

- I. To determine whether the protective measures for civilians are adequate,
- II. Analyzing the effects of not protecting civilians in non-international armed conflict.
- III. To critically analyses major reasons of violating civilian's protection in non-international armed conflict.

IV. To identify measures and actions that can be taken to strengthen and improve the response to the protection needs of civilians in non-international armed conflict.

7.1 CHOICE OF THE STUDY

This legal research covered multiple interest namely: personal interest, social interest and academic interest as well. As a law student, I am practically interested in conducting this research as to acknowledge the protection of civilians in internal wars. This would have sharpened my mind as well as practical knowledge. Students, researchers and others who would wish to witness the protection of Civilians during internal wars will use this study and it would be the social interest. This legal research is going to be conducted for partial fulfillment of Academic Requirements and the award of Bachelor's Degree in law.

7.2 SIGNIFICANCE OF THE STUDY

This research had a general influence to all the people especially the students in the domain of law and people whose rights are violated and those who are willing to conduct and use the laws in general. This research would Cause a major impact on the way rights of civilians are protected by the fact that it will provide the measures and mechanisms towards their protection in particular.

8. SCOPE OF THE STUDY

This work is limited in domain, space and in time.

8.1 In domain

This work frames with international humanitarian law,

8.2 In space

It has been conducted worldwide.

8.3 In time

it covers the period from 1949 till 2024 as the year of completion of the present research by the fact that it is when the Geneva conventions and it's additional protocols came into force.

9. RESEARCH METHODOLOGY AND TECHNIQUES

This research used different techniques and methods from its beginning up its completion. As anything to happen, have to follow methods and techniques.

9.1 Research Techniques

9.1.1. Documentary technique

This technique concerns the reading done to collect data such as national and international texts of law (legislation), books in the library, journal, articles, electronic sources, reports, newspaper, etc. available on the legal separation.

9.2. Research Methods

9.2.1. Analytical method

As this method is a generic process combining the power of the Scientific Method with the use of formal process to solve any type of problem, this method helped to analyze the information and data from different documents.

9.2.2. Comparative method (comparative protection in IAC and NIAC)

Comparative method is a method of law comparison. It is a method of study of differences in the protection of civilians during international armed conflict and in non-international armed conflict.

10. STRUCTURE OF THE STUDY

This work is actually introduced by general introduction, followed by of three (3) chapters that include the following; the first chapter is about the conceptual and the theoretical framework of the entire dissertation, the second chapter was based on the critical analysis on the legal protection of civilians in internal war. Chapter 3 proposed the measures and mechanisms, which can be taken towards protecting civilians in internal wars; and the last one is the conclusion and recommendations.

CHAPTER ONE: CONCEPTUAL AND THEORETICAL FRAMEWORK

In the framework of this chapter as to facilitate the reader to better understand easily some key concepts and analyze the issue related the protection of civilians in internal war. A particular accent is going to be made on the conceptual and major definition applied. In that case, this chapter analyses the general consideration on the protection of civilians in non- international armed conflict like definitions of key concept, civilians and related concept and so on.

I.1. Conceptual framework

In this section, the present research has started by providing and defining terms that have been qualified as being key concepts to the research topic, as found below

1.1.1. Protected Person

The term "protected persons", which only applies to international armed conflicts, refers to specific protections afforded to people who have fallen into the hands of or are under the control of the adversary. These protections cover both civilians and combatants. There are four categories of protected persons: wounded and sick; and shipwrecked; prisoners of war; medicinal personnel, chaplain and civilians in occupied territory or in territory of the enemy.

The persons who do not enjoy protection under the first three Geneva Conventions fall within the scope of application of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, provided that the requirements of Article 4 are satisfied."

Civilian persons under the Third Geneva Convention are defined by their exclusion with respect to the armed forces. Any person who is not a combatant is considered a civilian as defined under Article 4(A)(1), (2), (3) and (6) of the Third Geneva Convention as well as under Article 43 of Additional Protocol I. In case of doubt, the person shall be considered by the party to the conflict or the occupying power to be a civilian."⁷

Article 4(1) of the Fourth Geneva Convention defines as protected persons those persons —who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or

⁷ Bosch, S. J. (2012). The combatant status of non-State actors in international armed conflicts, in light of the notion of direct participation in hostilities: an analysis of relief workers, journalists, voluntary human shields, private-military and security contractors, and under-aged child soldiers recruited into non-State organized armed groups (Doctoral dissertation).

occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Thus, those protected are, first, civilians in enemy or occupied territory or in a combat zone, who are not nationals of the belligerent State in power in whose hands they find themselves, or who are stateless persons. Moreover, the scholars have taken a teleological approach to Article 4, finding that the decisive criterion for determining the status of a protected person is allegiance to a party in the conflict.⁸

Thus, in the context of armed inter-ethnic conflicts, allegiances may depend more on ethnic identity than on nationality. The Appeals Chamber of international court of justice has determined that —the nationality of the victims should not be determined on the basis of formal national characterizations, but rather upon an analysis of the substantial relations, taking into consideration the different ethnicity of the victims and the perpetrator, and their bonds with the foreign intervening State." Both civilians who were in the territory prior to the outbreak of the conflict or the occupation and those who arrived later enjoy the protections conferred by the Fourth Geneva Convention. Moreover, the expression in the power of has a very broad meaning, which exceeds the bounds of direct authority. Thus, the mere fact of being in the territory of a Party to the conflict or in occupied territory implies that one is in the power or hands of the Occupying Power."

Article 4(A) of the Third Geneva Convention extends protection to prisoners of war, that is, to persons who have fallen into the power of the enemy and are members of one of the six categories defined in that article."⁹

The protection granted to prisoners of war (POW) under the Third Geneva Convention commences from the time they fall into the power of the enemy and terminates at the time of their final release and repatriation. The expression —fall into the power covers not merely those cases where the persons mentioned in Article 4(A) of the Third Geneva Convention have been captured during combat but also the situation where —soldiers became prisoners without fighting, for example following a surrender."¹⁰

⁸ Bissonnette, C. M. (2016). The definition of civilians in non-international armed conflicts: the perspective of armed groups. *Journal of International Humanitarian Legal Studies*, 7(1), 129-155.

⁹ Akande, D. (2012). Classification of armed conflicts: relevant legal concepts. *International Law and the Classification of Conflicts* (OUP 2012) chapter, 3.

¹⁰ Jacques, M. (2012). *Armed conflict and displacement: The protection of refugees and displaced persons under international humanitarian law* (Vol. 95). Cambridge University Press.

1.1.2. Other protected persons

1.1.2.1. United Nations and humanitarian assistance personnel

Attacking United Nations or humanitarian assistance personnel is forbidden, unless they are taking an active (direct) part in hostilities. United Nations and humanitarian assistance personnel are entitled to special respect. They should be given all available support when performing their duties. United Nations military personnel enjoy civilian status so long as such personnel do not actively (directly) participate in hostilities.

1.1.2.2 Special protection of Women

The specific needs of women for protection, health, and assistance during armed conflict must be respected. The Rule is drawn primarily from Additional Protocol I, Article 76. In addition to the prohibition of sexual violence against women (see Rule 1.2.4), including forced pregnancy, women are entitled to special protection in maternity cases. In addition, it is forbidden to carry out the death penalty against pregnant women and caregivers of young children.¹¹

1.1.2.3. Special protection of Children

Children affected by armed conflict are entitled to special respect and protection. Children under the age of 18 may not participate actively in hostilities.

Article 4.3 of Additional Protocol II requires that children shall be provided with the care and aid they require. It also lays down a number of particular requirements on which this commentary is based. Whenever necessary for their protection, children must be evacuated temporarily from the area of hostilities to a safer place within the country in keeping with the wishes of their parents or guardians. Steps should be taken to facilitate the reunion of temporarily separated families. Children are entitled to education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care. Sentencing a person to death for an offence committed when that person was under the age of 18 is forbidden.

¹¹ Gade, E. K. (2010). Defining the non-combatant: How do we determine who is worthy of protection in violent conflict?. *Journal of Military Ethics*, 9(3), 219-242.

Children under the age of 18 may not participate actively in hostilities, even if they volunteer to do so.¹²

Active participation in hostilities includes such activities as gathering information, transmitting orders, transporting ammunition and food, sabotage, and engaging in combat. As to the age restriction, Article 4.3(c) Additional Protocol II requires that children who have not attained the age of 15 years shall not be allowed to take part in hostilities. The age limit was increased to 18 by the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which addresses both international and non-international armed conflict. Although not necessarily reflective of customary law, the undesirability of children participating in conflict is generally recognized.

Today, when new forms of warfare are being developed and belligerents are adopting new combat strategies, children are increasingly affected by conflicts. Far from being spared the horrors of war, children are often placed at the very heart of current conflicts, and become one of its main victims, not only because they form a large part of the civilian population but also because of their extreme vulnerability.¹³

Conflict can wound children, both physically and mentally, for life. They are often helpless witnesses of atrocities committed against members of their families. Far too many children are still killed, wounded or mutilated by anti-personnel mines, torn from their familiar surroundings, separated from their families, detained or imprisoned, forced to flee and to seek refuge in another area or country, left to fall back on their own resources, deprived of their roots and, sometimes, even of their very identity. Evidence shows that children need even greater care and protection if they have experienced violence, suffering and trauma generated by armed conflict. This concern has been reflected in numerous statements or declarations in international forums and resolutions adopted in the framework of International Conferences of the Red Cross and Red Crescent.

In this manner, the 26th International Conference reaffirmed the absolute necessity to take all measures to guarantee that children enjoy the protection and assistance to which they are entitled

¹² Proy, C. The Classification of Civilians as Human Shields: a Means to Justify Violence?.

¹³ Landefeld, S. (2023). The Changing Significance of Nationality for the Protection of Civilians in the Hands of a Party to an International Armed Conflict. *Journal of Conflict and Security Law*, krad005.

under national and international law. For its part, the Movement adopted, in 1995, the Plan of Action concerning Children in Armed Conflict (CABAC) (Council of Delegates, Resolution 5).

The death penalty prohibition is found in GP ii, art. 6.4. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict Art.1 and 2.

Legal provisions do exist both in terms of general and special protection, which benefit children. For the most part, these provisions are adequate and must be promoted. It is, therefore, less the search for new instruments than the true implementation and respect for these measures that needs to be reinforced. First and foremost, it is essential that politicians and those bearing arms be made familiar with, and made to apply, humanitarian law. In a world where an ever-greater number of civilians and, by consequence, children affected by conflicts and other forms of violence, it has also become necessary to sensitive a wider population to the principles of humanitarian conduct, as enshrined in humanitarian law.¹⁴

The international community must therefore mobilize itself and contribute more effectively to ensure that children benefit from all provisions and measures aimed at securing their protection and assistance. It is equally important that children are able, at all times, to have access to education and recreational activities. In all cultures, education in the home, in society and at school plays a central role in passing on modes of behavior and attitudes.¹⁵

1.1.2.4. Persons whose liberty has been restricted

Any person interned or detained for reasons related to the hostilities must be treated humanely, and information about his or her status and location should be made available to his or her family. This Rule is based on Article 5 of Additional Protocol II. It should be noted that it only applies to those detained for reasons related to the armed conflict. The principle of the human treatment of detainees requires, as a minimum, observation of the following standards. Detainees shall be:

- I. Provided with adequate food and drinking water and safeguarded as regards health, hygiene, the rigors of the climate and dangers caused by military operations;
- II. Allowed to receive individual or collective relief;

¹⁴ Landefeld, S. (2023). The Changing Significance of Nationality for the Protection of Civilians in the Hands of a Party to an International Armed Conflict. *Journal of Conflict and Security Law*, krad005.

¹⁵ Salman, H. A., Ismail, S. M., & Nordin, R. (2023). Prisoners Of War: Classification And Legal Protection Under International Humanitarian Law. *UUM Journal of Legal Studies (UUMJLS)*, 14(2), 677-708.

- III. Allowed to practice their religion; and,
- IV. Provided with acceptable working conditions, if made to work.
- V. Provided with shelter when in need.
- VI. Protected from being tortured.

Common Article 3 to the Geneva Conventions also requires the humane treatment of those who are detained, although it does not set forth specific requirements. Families have a right to know the fate of their relatives. Neither armed groups nor armed forces are allowed to bring about the disappearance of any person who has been arrested or otherwise detained (with the intention of removing them from the protection of the law for a prolonged period). This prohibition extends to refusal to acknowledge deprivation of freedom or give information on the fate or whereabouts of such persons.

1.1.2.5. Internally displaced persons

Internally displaced persons are entitled to special protection. Internally displaced persons are those who have had to leave their homes in order to avoid the effects of hostilities, other violence, human rights violations, or natural or man-made disasters (civil attacks, terrorism,...), but who remain within their own country. Internally displaced persons who participate actively (directly) in hostilities become fighters, and, resultantly, lose their protection under this Rule.¹⁶ Internally displaced persons are civilians and entitled to all the general protections provided for civilians in this Manual. As a result of the unique circumstances of internally displaced persons, the following specific protections apply:

- I. Attacks against their camps or settlements are forbidden;
- II. Should internment be deemed absolutely necessary; they must not be subjected to harsher conditions of internment than other civilians;
- III. Withholding information from them regarding the fate and whereabouts of missing relatives is forbidden;
- IV. Cooperation with authorities or international organizations attempting to establish the fate and whereabouts of internally displaced persons reported missing is required; and

¹⁶ Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*, 102(913), 287-334.

- V. Families that are separated by displacement should be allowed to reunite as quickly as possible.

1.1.2.6. Refugees

Refugees may not be expelled or involuntarily returned to the frontiers of a territory where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. Those who have committed serious crimes, whether under international or domestic law, are excluded from protection as refugees. Refugees are persons who have left their country of origin owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and are outside the country of their nationality. The principle expressed in this Rule is known as non-refoulement. It reflects customary international law. The principle (non-refoulement) guarantees that no one should be re-turned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.¹⁷

1.1.2.7. Journalists

Journalists engaged in their professional activities enjoy civilian status, even when they accompany fighters, unless they take an active (direct) part in hostilities.

Journalists who perform their professional duties during non-intentional armed conflict retain their civilian status in the same way as those in international armed conflict. This Rule is drawn from the 1951 Refugee Convention, which remains applicable during non-international armed conflict. GPI, art. 79.

Status is not detrimentally affected when they accompany fighters. However, should journalists take an active (direct) part in hostilities, they become fighters themselves, and thus are not entitled to civilian protection. Individual self-defense by journalists does not amount to active (direct) participation in hostilities.¹⁸

¹⁷ Onuora-Oguno, A. (2014). Migration, Refugees, Asylum and Uprooted Peoples' Rights. The Sage Handbook of Human Rights, 1, 253-266.

¹⁸ Kibreab, G. (2003). Citizenship rights and repatriation of refugees. International Migration Review, 37(1), 24-73.

1.1.2.8. Medical personnel and chaplain

Medical and religious personnel (chaplain). Attacking medical and religious personnel is forbidden, unless they are taking an active (direct) part in hostilities. Medical and religious personnel must not be required to perform tasks other than appropriate medical and religious duties. They must be given all available assistance when performing their duties. This Rule derives from Additional Protocol II, Articles 9 and 10.

The term medical personnel includes those civilian or military individuals who are permanently or temporarily assigned by a party to the conflict exclusively to medical purposes, to the operation or administration of medical units; or to the operation or administration of medical transports.¹⁹

The term religious personnel refers to individuals who are exclusively engaged in spiritual work and attached to armed groups or armed forces, medical operations, or civil defense functions.

The Red Cross or Red Crescent emblem should be displayed by medical and religious personnel, medical units and premises, and on medical transports. However, the failure to display an emblem does not deprive such persons and objects of their protection.²⁰

1.1.3. Civilians

In international humanitarian law (IHL), civilians (non-combatants) are those who are not entitled to use weapons in defense or to injure an adversary. Persons who cannot be classified as combatants are thus to be considered as civilians.

According to Article 4 of Geneva Convention IV, the persons protected by the Convention (i.e. civilians) are those persons who at a given moment and in any manner whatsoever find themselves in the hands of a Party to a conflict or of an Occupying Power of which they are not nationals. A civilian is defined as a person who is not in the military. A child is an example of a civilian.

The definition that "any person who is not a member of armed forces is considered to be a civilian" and that "the civilian population comprises all persons who are civilians" was included in the draft of Additional Protocol II.

¹⁹ Odom, J. G. (2002). Beyond Arm Bands and Arms Banned: Chaplains, Armed Conflict, and the Law. *Naval L. Rev.*, 49, 1.

²⁰ Holterhus, T. P. (2019). Targeting the Islamic State's Religious Personnel Under International Humanitarian Law. *Yearbook of International Humanitarian Law*, Volume 20, 2017, 199-228.

The first part of this definition was amended to read that "a civilian is anyone who is not a member of the armed forces or of an organized armed group" and both parts were adopted by consensus in Committee III of the Diplomatic Conference leading to the adoption of the Additional Protocols. However, this definition was dropped at the last moment of the conference as part of a package aimed at the adoption of a simplified text. As a result, Additional Protocol II does not contain a definition of civilians or the civilian population even though these terms are used in several provisions.

It can be argued that the terms "dissident armed forces or other organized armed groups, under responsible command" in Article 1 of Additional Protocol II inferentially recognized the essential conditions of armed forces, as they apply in international armed conflict (see Rule 4 of customary IHL), and that it follows that civilians are all persons who are not members of such forces or groups. Subsequent treaties, applicable to non-international armed conflicts, have similarly used the terms civilians and civilian population without defining them.²¹ While State armed forces are not considered civilians, practice is not clear as to whether members of armed opposition groups are civilians subject to Rule 6 on loss of protection from attack in case of direct participation or whether members of such groups are liable to attack as such, independently of the operation of Rule 6.²² Although the military manual of Colombia defines the term civilians as those who do not participate directly in military hostilities (internal conflict, international conflict), most manuals define civilians in Article 50(1) of Additional Protocol I Art.4 of Geneva convention negatively with respect to combatants and armed forces and are silent on the status of members of armed opposition groups.

International humanitarian law protects a wide range of people and objects during armed conflict. The Geneva Conventions and their Additional Protocols protect the sick, wounded and shipwrecked not taking part in hostilities, prisoners of war and other detained persons, as well as civilians and civilian objects.

The Geneva Conventions have their origin in the experiences of Henry Dunant at the battle of Solferino in 1859. He was horrified by the neglect of the sick and wounded on the battlefield, and

²¹ Mapako, K. Z. (2020). Jurisprudence, Refinement and Interpretation of International Humanitarian law in Non International Armed Conflict: A Study of Mali and South Sudan. *CIFILE Journal of International Law*, 1(2), 24-32.

²² Schmitt, M. N. (2012). The status of opposition fighters in a non-international armed conflict. In *Israel Yearbook on Human Rights*, Volume 42 (2012) (pp. 27-53). Brill Nijhoff.

with four colleagues organized the diplomatic conference that led to the adoption of the First Geneva Convention in 1864.

The principles established then influenced the treaties that followed thereby creating the body of international humanitarian law that exists today. At the core of these principles was the idea of protected persons and objects.

The First Convention concerned itself primarily with the care of the sick and wounded on the battlefield. The medical services helping them were to be protected from attack and respected as neutral personnel assisting the sick and wounded without discrimination. The convention established the red cross emblem to be used to identify and protect medical personnel from attack. States committed themselves to respect the emblem and those protected by it. The emblem also protects medical equipment, such as vehicles and medical buildings as long as they are not being used for military purposes.²³

Between the two World Wars, the conventions were extended to cover prisoners of war. These were protected against inhumane or degrading treatment. IHL now contains detailed rules on the treatment of prisoners of war and others detained as result of an armed conflict. The consolidated Geneva Conventions of 1949 extended specific protection to civilians, who had suffered extensively during World War II, often from deliberated targeting. Protection to civilians, especially against the effects of hostilities, was also developed through the adoption of the Additional Protocols in 1977.

Parties to a conflict are prohibited to target civilians and required to take all feasible precautions to avoid attacks that result in civilian casualties. They are also required to avoid defensive measures that put civilians in danger. Civilians may not be used as protective shields or forcibly displaced. Unnecessary attacks on their means of livelihood such as farms, housing, transport and health facilities, are forbidden.²⁴

²³ X, "Persons protected under IHL" <https://www.icrc.org/en/doc/war-and-law/protected-persons/overview-protected-persons.htm#:~:text=The%20Geneva%20Conventions%20have%20their,First%20Geneva%20Convention%20in%201864>. Accessed on 20th August 2023

²⁴ Schmitt, M. N. (2012). The status of opposition fighters in a non-international armed conflict. In Israel Yearbook on Human Rights, Volume 42 (2012) (pp. 27-53). Brill Nijhoff.

IHL also mentions specific groups among civilians such as women, who are protected from sexual abuse, and children, whose special needs must be taken into account by combatants. In some situations, the distinction between peaceful civilians and those directly participating hostilities has caused problems. This is one of many areas of IHL where the ICRC is working with experts to bring about greater clarity, and as a result, greater respect for the rules. IHL protects refugees, internally displaced people and those who have gone missing as a result of armed conflict.

It also protects humanitarian workers such as ICRC staff and the personnel of individual Red Cross or Red Crescent Societies. These organizations also benefit from the use of the Red Cross, Red Crescent or red crystal protective emblems recognized by the Geneva Conventions.²⁵

1.1.4. Non Combatants

Non-combatant is a term of art in the law of war and international humanitarian law to refer to civilians who are not taking a direct part in hostilities; persons, such as combat medics and military chaplains, who are members of the belligerent armed forces but are protected because of their specific duties (as currently described in Protocol I of the Geneva Conventions, adopted in June 1977); combatants who are placed hors de combat; and neutral persons, such as peacekeepers, who are not involved in fighting for one of the belligerents involved in a war. This particular status was first recognized under the Geneva Conventions with the First Geneva Convention of 1864.

Field/combat medics are trained to provide medical care in an operational or combat environment. They provide frontline trauma and medical care to deployed personnel. They care for those suffering from disease as well as those injured in combat. In addition to being prepared to work in combat, these health professionals are often trained in health concerns related to specific conditions, such as those encountered during diving or flight operations.²⁶

1.1.4.1. Wounded, sick or shipwrecked

Attacking or otherwise harming the wounded, sick, or shipwrecked is forbidden. The wounded, sick, or shipwrecked must be searched for, collected, and protected against pillage and ill treatment

²⁵ Mapako, K. Z. (2020). Jurisprudence, Refinement and Interpretation of International Humanitarian law in Non International Armed Conflict: A Study of Mali and South Sudan. *CIFILE Journal of International Law*, 1(2), 24-32.

²⁶ Daud, A. A., Irwansyah, H. A., & Yunus, A. (2021). International Law and the War on Terrorism: Assessing Citizen Becoming Combatant for Terrorist Group. Pt. 2 *J. Legal Ethical & Regul. Issues*, 24, 1.

whenever circumstances permit. The wounded, sick or shipwrecked must be treated humanely and cared for with minimum delay.

This Rule is drawn from primarily from Common Article 3(2) of the Geneva Conventions and Additional Protocol II, Articles 7 and 8. The wounded and sick are persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, newborn babies, and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility. Shipwrecked persons are persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility.²⁷

The wounded, sick, and shipwrecked must be searched for, collected, and protected against pillage and ill treatment whenever the circumstances permit. Such efforts must be conducted without adverse distinction or delay, particularly after an engagement. Wounded, sick, and shipwrecked must also receive, to the fullest extent possible, the medical care and attention that their condition requires. Pursuant to Article 9 of Additional Protocol II, priority in the treatment of the wounded and sick may only be based on medical grounds.²⁸

1.1.5. Armed conflict

An armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year. Armed conflicts within States are political conflicts involving citizens fighting for internal change. Some are secessionist movements, generally spearheaded by a group of people, more often than not a minority within a community, who take up arms to fight for the establishment of either an autonomous entity within an existing state or an entirely new and independent state of their own. Such struggles have taken place recently in Asia and Europe.²⁹

²⁷ Additional Protocol II

²⁸ Denber, R., & Goldman, R. K. (1992). Bloodshed in the Caucasus: escalation of the armed conflict in Nagorno Karabakh (Vol. 1245). Human Rights Watch.

²⁹ Bartusevičius, H., & Gleditsch, K. S. (2019). A two-stage approach to civil conflict: Contested incompatibilities and armed violence. *International Organization*, 73(1), 225-248.

Such conflicts have been relatively uncommon in Africa, although issues related to ethnic identity are an important factor in African politics. However, Eritrea declared independence from Ethiopia and several military actions on a large scale followed. In Europe, between 1991 and 1992 Slovenia, Croatia and Bosnia and Herzegovina seceded from Yugoslavia after short or prolonged war, while the Former Yugoslav Republic of Macedonia did so peacefully. Barring these and East Timor, the break-up of States as a result of secessionist movements has been rare.

Further, civilians are not only vulnerable or possibly targeted in explicit war situations. Situations of internal conflict, such as an uprising against the government, can create equally dangerous situations and more isolated acts of violence can as well. The areas, in which civilians could be in danger, are very diverse, broad and difficult to define. It is important to understand to what extent the civilians are protected. Civilians are to be protected all over the world because they are innocent bystanders to conflict and violence that is not of their making. This research, however, will focus on the protection of war civilians, civilians in armed conflict, only. The definition of an armed conflict will define who is considered as war civilian.³⁰

1.1.6. Non-international armed conflict

A non-international armed conflict (NIAC) or civil war as it used to be called in the past is an armed conflict that occurs within the territory of a particular state, between government armed forces and organized armed groups, or between such groups fighting each other. It is also often called internal armed conflict, as opposed to an international armed conflict involving at least two states. NIACs constitute the oldest form of armed conflicts and have become, since the end of the Cold War, more pervasive and more lethal than international armed conflicts. Conflicts since the late 20th century in Cambodia, the former Yugoslavia, and Rwanda, as well as the ongoing ones in the Democratic Republic of the Congo, Libya, Yemen, Ukraine, and Syria, are just a few illustrations of the pervasive character of NIACs. International law has, for a long period of time, considered NIAC as a purely intrastate matter despite its external reverberations.³¹

³⁰ X, "Wounded, sick and shipwrecked protected under international humanitarian law"
<https://www.icrc.org/en/doc/war-and-law/protected-persons/wounded-sick-shipwrecked/overview-wounded-protected-persons.htm> Accessed on 29th August 2023

³¹ Milanovic, M., & Hadzi-Vidanovic, V. (2012). A taxonomy of armed conflict. RESEARCH HANDBOOK ON INTERNATIONAL CONFLICT AND SECURITY LAW, Nigel White, Christian Henderson, eds., Edward Elgar.

However, this stance has evolved following the adoption of the four Geneva Conventions in 1949. The latter codify a corpus of customary rules, commonly known as *jus in bello*, which regulate the conduct of hostilities in the context of armed conflict by restraining the use by the warring parties of certain means and methods of warfare. Article 3 of each of the four Geneva Conventions introduces NIAC as armed conflict not of an international character, the victims of which must be subjected to the minimum standards of protection. In 1977 the Geneva Conventions of 1949 were supplemented by two protocols, which operate a clear distinction between international armed conflict (Additional Protocol I) and NIAC (Additional Protocol II or AP II). AP II defines humanitarian law rules that govern hostilities in internal conflicts.

Such rules, together with other relevant treaty provisions and humanitarian principles, constitute the corpus of the *jus in bello* regulating the conduct of NIACs. A number of internal conflicts that erupted in various countries in the beginning of the 1990s have given ad hoc international tribunals, especially the 1993 International Criminal Tribunal for the Former Yugoslavia (ICTY) and the 1994 International Criminal Tribunal for Rwanda (ICTR), the opportunity not only to outline the nature and delimit the frontiers of NIACs, but also to set the conditions under which individual criminal liability may arise as a result of the crimes committed in the context of such conflicts.³²

1.1.7. International armed conflict

An international armed conflict is an armed conflict between two or more states. Common Article 2 to the four 1949 Geneva Conventions provides that they apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. Rather than 'war', the Geneva Conventions use the term 'armed conflict' to highlight that the determination whether an armed conflict exists within the meaning of Common Article 2 depends on the prevailing circumstances, not the subjective views of the parties to the conflict. Similarly, the lawfulness of the resort to armed force under *jus ad bellum* does not have any impact on the determination whether or not an international armed conflict exists. It is, however, unclear if any intervention or any problem between states, in which armed violence is involved, suffices for making international

³² Jayasekera, K. (2015). Identification of Non-State Armed Groups in Non-International Armed Conflicts: A Legal Analysis.

humanitarian law applicable. There are two views on the necessary intensity of the armed intervention.³³

A first theory is called the first-shot theory and implies that every single event, which involves armed force by a state, leads to the application of international humanitarian law. According to this view, all border clashes, singular abduction cases, military strikes, etc. will induce a large number of rules theoretically controlling the armed actions. Following a second theory, only armed violence of certain intensity renders international humanitarian law applicable. The difference between both theories is important and according to the Handbook of International Humanitarian Law, edited by Dieter Fleck, the legal gap and uncertainty that would rise in the case of a border clash if one would opt for the second theory is not desirable. Nevertheless, there is no definition of armed conflict available and the necessity of a threshold of intensity remains disputed.³⁴

1.1.8. International human rights law

International human rights law is reflected, inter alia, in the Universal Declaration of Human Rights (UDHR), as well as in a number of international human rights treaties and in customary international law.³⁵

There is a growing body of subject-specific treaties and protocols as well as various regional treaties on the protection of human rights and fundamental freedoms. Moreover, resolutions adopted by the General Assembly, the Security Council and the Human Rights Council, case law by treaty bodies and reports of human rights special procedures, declarations, guiding principles and other soft law instruments contribute to clarifying, crystallizing and providing principled guidance on human rights norms and standards, even if they do not contain legally binding obligations per se, except those that constitute rules of international custom.

International human rights law is not limited to the rights enumerated in treaties, but also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty. Many of the rights set out in the Universal

³³ Watts, S. (2012). Status of government forces in non-international armed conflict. *International Law Studies*, 88.

³⁴ Graham, D. E. (2012). Defining non-international armed conflict: a historically difficult task. *International Law Studies*, 88(1), 5.

³⁵ Hannum, H. (1995). The status of the Universal Declaration of Human Rights in national and international law. *Ga. J. Int'l & Comp. L.*, 25, 287.

Declaration of Human Rights are widely regarded to have this character. Furthermore, some rights are recognized as having a special status as peremptory norms of customary international law (*ius cogens*), which means that no derogation is admissible under any circumstance and that they prevail, in particular, over 39, for example, resolution 60/147, by which the General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and in which it emphasized their customary nature when it indicated that the resolution did not entail new international or domestic legal obligations but identified mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law.³⁶

The Human Rights Committee's observations in its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, and in its general comment No. 29 (2001)—that some rights in the International Covenant on Civil and Political Rights also reflect norms of customary international law.

Other international obligations. The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's draft articles on State responsibility. Similarly, the Human Rights Committee has indicated that provisions in the International Covenant on Civil and Political Rights that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations. The Committee added that a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny

³⁶ Von Bernstorff, J. (2008). The changing fortunes of the Universal Declaration of Human Rights: Genesis and symbolic dimensions of the turn to rights in international law. *European Journal of International Law*, 19(5), 903-924.

to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language.³⁷

Moreover, while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be. The Committee, in line with article 4 of the Covenant, has also reiterated that certain rights contained in the Covenant cannot be subject to derogation, including article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e., the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion) The Committee on the Elimination of Racial Draft articles on responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session in 2001, reproduced in Yearbook of the International Law Commission, 2001, vol. II, Part II (United Nations publication, Sales No. E.04.V.17 (Part 2)). 42 General comment No. 24 (1994), para. 8.

Discrimination, in its Statement on racial discrimination and measures to combat terrorism, has confirmed that the prohibition of racial discrimination is a norm of *ius cogens*.³⁸

The jurisprudence of the International Court of Justice, which the Court's Statute recognizes as a subsidiary means for the determination of rules of law, is increasingly referring to States' human rights obligations in situations of armed conflict. These decisions have provided further clarification on issues such as the continuous application of international human rights law in situations of armed conflict.

In the context of the implementation of human rights obligations, the human rights treaty bodies established to monitor the implementation of core human rights treaties, such as the Human Rights

³⁷ H. Durant "Wikipedia.org" https://en.wikipedia.org/wiki/Henry_Dunant Accessed on 30th August 2023

³⁸ Åhrén, M. (2024). The relevance of the UN Declaration on the Rights of Indigenous Peoples to vibrant, viable and sustainable Sámi communities. In *The Significance of Sámi Rights* (pp. 5-21). Routledge.

Committee or the Committee on Economic, Social and Cultural Rights, regularly provide general comments, which interpret and clarify the content and extent of particular norms, principles and obligations contained in the relevant human rights conventions.³⁹

1.1.9. International Humanitarian law

International humanitarian law is a set of rules that seek to limit the effects of armed conflict on people, including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and restrictions on the means and the methods of warfare.

International humanitarian law protects persons and a number of places and things. Prevent the use of means and methods of warfare and humanitarian law sets out basic legal safeguards for the protection of civilians.⁴⁰

International humanitarian law limits the use of violence in armed conflicts to spare those who do not or who no longer directly participate in hostilities, while at the same time limiting the violence to the extent necessary to weaken the military potential of the enemy. Both in limiting the violence and in regulating International humanitarian law limits the use of violence in armed conflicts to spare those who do not or who no longer directly participate in hostilities, while at the same time limiting the violence to the extent necessary to weaken the military potential of the enemy. Both in limiting the violence and in regulating the treatment of persons affected by armed conflict in other respects, international humanitarian law strikes a balance between humanity and military necessity. While on the face of it, the rules of international human rights law and international humanitarian law are very different, their substance is very similar and both protect individuals in similar ways. The most important substantive difference is that the protection of international

³⁹ Dei-Tutu, S., & Atuguba, R. A. (2023). The Domestication of International Law in African Settings: Seven Normative Options in Ghana. *ICL Journal*, (0).

⁴⁰ Sjöberg, A. K., & Balci, M. (2023). In Their Shoes: Health Care in Armed Conflict from the Perspective of a Non-State Armed Actor. *Dædalus*, 152(2), 103-124.

humanitarian law is largely based on distinctions in particular between civilians and combatant's unknown in international human rights law.⁴¹

1.2. Theoretical framework

Through different legal texts and the contribution of the doctrine, we are now discussing the theoretical framework needed for the topic we are discussing.

1.2.1. Evolution of civilian protection under non- international armed conflict

Differentiating both international and non-international armed conflict, we have to understand that the protection of civilians is violated both internationally and domestically. Non-international armed conflicts also referred to as internal armed conflicts represent the vast majority of armed conflicts in today's world.⁴² Generally, they take place within the boundaries of a State and comprise of armed conflict between a State and armed groups or among armed groups that do not operate under the State's authority. However, it does not include internal disturbances like riots, civil strife or acts of the like nature. The primary and most important difference between an international and a non-international armed conflict is due to the actors who take part in them.

Traditionally, international armed conflicts are fought between the States, which is not the case in non-international armed conflicts. Development of law regulating non-international armed conflicts grew in a slower pace compared to that of international armed conflict. States were reluctant for any kind of regulation due to a perception that it would constitute a violation of its sovereignty and interference in its domestic affairs.

There was minimum regulation of non-international armed conflict until 1990s. By the time of conclusion of Article 3, which is common to the four Geneva Conventions, till 1949, international law regulated only those non-international armed conflicts which were reaching the level of belligerency or insurgency, while others, though few in number were regulated on an ad hoc basis. A broader category of these conflicts were regulated in the period between 1949 and early 1990s. In this time, The Hague Convention for the Protection of Cultural Property and Additional Protocol II to the Geneva Conventions, 1949 came into being. However, in this period, under the customary

⁴¹ de Koningh, I. (2023). Consolidating International Humanitarian Law and International Human Rights Law: Protection from Gender-Based Violence Against Women in Non-International Armed Conflict. *Netherlands International Law Review*, 1-34.

⁴² Tsagourias, N., & Morrison, A. (2023). *International humanitarian law: cases, materials and commentary*. Cambridge University Press.

law, the situation was more uncertain. In other words, there is an international armed conflict whenever there is a resort to armed force between states, regardless of the intensity of such force. In contrast, for a non-international armed conflict to exist, two cumulative criteria must be fulfilled. First, there must be protracted armed violence in the sense that a certain threshold of armed violence has been reached in terms of intensity. Second, at least one side to the conflict is an organized armed group.⁴³ The distinction between international and non-international armed conflict is thus based on two factors:

The structure and status of the parties involved is different. International armed conflicts involve sovereign states. In contrast, non-international armed conflicts involve states and organized armed groups.

The threshold of the intensity of violence is different. The level of violence required to trigger an international armed conflict is significantly lower than that necessary to constitute a non-international armed conflict.

The criteria of the threshold of violence and the degree of organization of the armed group distinguish situations of non-international armed conflicts from situations of internal disturbances, riots, terrorism, or high criminality that are not subject to international humanitarian law. If the threshold or organization criteria are not fulfilled, the situation does not amount to a non-international armed conflict. From a humanitarian law perspective, there is no other category of armed conflict. From the above content civilians are currently protected by international conventions whether domestic or international as it is portrayed by the Geneva Convention and as it is stipulated in the first chapter.⁴⁴

1.2.2. Protected rights

International humanitarian law is traditionally formulated in terms of objective rules of conduct for States and armed groups, while international human rights law is expressed in terms of

⁴³ X, "Birth of an idea: the founding of the International Committee of the Red Cross and of the International Red Cross and Red Crescent Movement: from Solferino to the original Geneva Convention (1859–1864)" <https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/abs/birth-of-an-idea-the-founding-of-the-international-committee-of-the-red-cross-and-of-the-international-red-cross-and-red-crescent-movement-from-solferino-to-the-original-geneva-convention-18591864/1546E3971BC5FAB62F31D6BEDE98DCD6> Accessed on 2nd September 2023

⁴⁴ Tsagourias, N., & Morrison, A. (2023). *International humanitarian law: cases, materials and commentary*. Cambridge University Press.

subjective rights of the individual vis-à-vis the State. Today, an increasing number of rules of international humanitarian law, in particular fundamental guarantees for all persons in the power of a party to a conflict and rules of international humanitarian law in non-international armed conflict, are formulated in terms of subjective rights, e.g., the right of persons whose liberty has been restricted to receive individual or collective relief or the right of families to know the fate of their relatives.⁴⁵ Conversely, subjective rights have been translated by United Nations General Assembly resolutions into rules of conduct for State officials. For instance, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide an authoritative interpretation of the principles authorities must respect when using force in order not to infringe the right to life, and they direct, inter alia, law enforcement officials to give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.⁴⁶

When comparing norms of international human rights law and international humanitarian law, it becomes apparent that the latter protects only some human rights and only to the extent that they are particularly endangered by armed conflicts, and is not, as such, incompatible with the very existence of an armed conflict. Thus, the right to social security, the right to free elections, freedom of thought or the right to self-determination are not covered by international humanitarian law. In a number of situations, its rules could be, on the limited issues they deal with, more adapted to the specific problems arising in armed conflicts. Moreover, while the rules of international humanitarian law on the treatment of persons who are in the power of the enemy may be understood as implementing their human rights, taking military necessity and the peculiarities of armed conflicts into account, certain rules on the conduct of hostilities deal with issues not addressed by human rights, e.g., who may directly participate in hostilities and how such persons

⁴⁵ Arvidsson, M., & Sjöstedt, B. (2023). Ordering Human–Other Relationships: International Humanitarian Law and Ecologies of Armed Conflicts in the Anthropocene. In *The Routledge Handbook of International Law and Anthropocentrism*. Taylor & Francis.

⁴⁶ X, "Geneva Convention" <https://www.history.com/topics/world-war-ii/geneva-convention> Accessed on 4th August 2023

must distinguish themselves from the civilian population, or the rights and identification of medical personnel.

International humanitarian law provides for the protection of a number of civil and political rights (e.g., the right to life of enemies placed hors de combat or judicial guarantees), economic, social and cultural rights (e.g., the right to health and the right to food) and group rights (e.g., the right to a healthy environment). This is particularly evident concerning the wounded and the sick, who must be respected, protected, collected and cared for.⁴⁷

1.2.3. Protection of civilians under international humanitarian law

General protective principles and the protection of civilians are part of the jus in bello or IHL, which comprises a set of rules designed to regulate the treatment of the individual civilian or military, wounded or active' in armed conflicts. IHL applies the principle of distinction and hence protects combatants and civilians differently.

During world war II, and in many of the conflicts since, civilians have been the main victims of armed conflict, civilians have always suffered in war, but the brutal impact of world war II, which included mass extermination, indiscriminate, took a high toll of civilian's life. The response of the international community was the fourth Geneva Convention adopted in 1949. IHL provides that civilians under the power of enemy forces must be treated humanely in all circumstances, without any adverse distinction. They must be protected against all forms of violence and degrading treatment including murder and torture.⁴⁸

Moreover, in case of prosecution, they are entitled to a fair trial affording all essential judicial guarantees. As I wrote above, IHL applies the principle distinction and hence protects combatants and civilians differently. This is of importance when analyzing the protection of civilians, which will be outlined in the following section. Additionally, IHL recognizes persons attached to the armed forces as a special group of protected persons. It is important to note that next to IHL, human

⁴⁷ Borelli, S., & Laufer, H. (2022). Protection of individuals hors de combat: convergence of international humanitarian law and international human rights law. In *Human Rights in War* (pp. 309-343). Singapore: Springer Nature Singapore.

⁴⁸ Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.

rights law is also applicable to armed conflicts, even though most provisions can be derogated from during war and have inherent limitations.⁴⁹

CHAPTER 2: CRITICAL ANALYSIS ON THE LEGAL PROTECTION OF CIVILIANS IN NON-INTERNATIONAL ARMED CONFLICT

Protection for the civilian population is a basic element of humanitarian law: civilians and all those not taking part in the fighting must on no account be attacked and must be spared and protected. This chapter will focus on critical analysis on the protection of civilians in internal war. This chapter is totally the heart of this research as it the one which cover all the aspects and issues that pushed me to actually conduct this research.

2.1. Lack of clear definition of Protection of civilian (PoC)

As pointed out in the problem statement of this research, the threshold of violence needed for the IHL of non-international armed conflicts to apply is therefore higher than for international armed conflicts. In spite of the extreme importance of defining this lower threshold below which IHL does not apply at all, the main problem is the lack of precision in defining the civilian protection. In non-international armed conflicts, official governmental armed forces are opposed to dissident groups in the national armed forces or other non-state armed groups. The status of combatant is not recognized by the law of non-international armed conflicts to members of these non-state armed groups. Indeed, this would challenge the monopoly on the use of force entrusted to the State by both national and international law.⁵⁰

The members of such armed groups, therefore, have a hybrid status. They are considered by national law as civilian criminals because of their use of force. International humanitarian law, however, is silent on the issue of their status. At the moment, it treats them by default as civilians taking part in hostilities.

⁴⁹ Escorihuela, A. L. (2010). Humanitarian Law and Human Rights Law: The Politics of Distinction. Mich. St. U. Coll. LJ Int'l L., 19, 299.

⁵⁰ Piątkowski, M. (2016). HUMAN RIGHT PROTECTION AND RIGHT TO LIFE IN ARMED CONFLICT—ON THE CROSSROAD BETWEEN THE HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW. INTERDISCIPLINARY APPROACH TO LAW IN MODERN SOCIAL CONTEXT, 227.

International humanitarian law has taken note of the difficulty of distinguishing combatants from the civilian population both in terms of the law and in practice, not only in non-international armed conflicts but also in certain types of international armed conflicts.⁵¹

In international armed conflicts, civilians may take part in popular uprisings or resistance movements, particularly in occupied territories. In internal armed conflicts, guerrilla movements and non-state armed groups may maintain close links with the civilian population, particularly in the parts of the national territory controlled by them. The two Additional Protocols of 1977 took account of this change in methods of warfare to provide better protection for combatants and civilians in both types of armed conflict. The two Protocols expanded the definition of combatant by opening it up to members of national liberation movements.

The Additional Protocols provided for the specific case of civilians who take a direct part in hostilities in both types of armed conflict (API Arts. 45.1, 51.3; APII Art. 13.3). They confirm that such people retain their civilian status and do not lose the protection that international humanitarian law provides for civilians, except during the period of direct participation in hostilities.⁵²

They also increased the guarantees applicable to people who do not or no longer participate in hostilities contained in Common Article 3 to the four Geneva Conventions (API Art. 75, APII Art. 4). The change is directly aligned with the objective of the Additional Protocols to strengthen the protection of victims of armed conflict alongside and complementary to the traditional principle of distinguishing between civilians and combatants.

In so doing, IHL reaffirms that armed conflict consists of two categories only, each of which is exclusive of the other, namely civilians and combatants. Against this background, the use by some States of a third category composed of —unlawful combatants does not fill the supposed legal void in the law of armed conflict but, on the contrary, contributes to creating it. IHL also excludes any challenge to the protection of civilians based on accusations of support for non-state armed groups or indirect participation in hostilities.⁵³

⁵¹ Farer, T. (1971). Humanitarian Law and Armed Conflicts: Toward the Definition of International Armed Conflict. *Colum. L. Rev.*, 71, 37.

⁵² Art 45, AP I

⁵³ Mullerson, R. (1997). International humanitarian law in internal conflicts. *J. Armed Conflict L.*, 2, 109.

The wording of common Article 3 indicates that it applies to all persons taking no active part in the hostilities, without any adverse distinction. It contains no limitation requiring a person taking no active part in hostilities to be in the power of the enemy in order to be protected under the article. It is logical that civilians should enjoy the protection of common Article 3 regardless of whose power they are in. In practice, it is often impossible in non-international armed conflict to determine whether members of the general population not actively participating in hostilities are affiliated with one or other Party to the conflict.

Unlike usually in international armed conflict, objective criteria such as nationality cannot be resorted to. Limiting protection under common Article 3 to persons affiliated or perceived to be affiliated with the opposing Party is therefore difficult to reconcile with the protective purpose of common Article 3.⁵⁴

2.2 Limitations and obstacles of PoC in non-international armed conflict

The protection of civilians in conflict situations is a key challenge for blue berets across the world. Many of today's armed conflicts have become fragmented and complex, with many different groups fighting each other. Complexity also arises when protracted crises overlap with conflicts and/or when a natural disaster strikes a country that already suffers from conflict. Most of today's armed conflicts are non-international, and humanitarian activities are sometimes denied because they are perceived as a threat to state sovereignty, the issue of access for humanitarian actors becomes acute when the state is unwilling or unable to live up fully to its legal responsibility to ensure the basic needs of affected populations in times of armed conflict, The interplay of IHL rules and human rights standards on the use of force is less clear in NIAC for a range of reasons, only some of which will be briefly mentioned here.⁵⁵ The first is the existence and operation of the Lex specialis principle in NIAC. While, as already mentioned, IHL applicable in IAC provides a range of rules on the conduct of hostilities, the general lack of corresponding treaty rules in NIAC

⁵⁴ Higgins, N. (2004). The Application of International Humanitarian Law to Wars of National Liberation. *Journal of humanitarian Assistance*, 1-90.

⁵⁵ Akhmedov, N., Shalkarova, I., Egorov, A., & Egorov, I. (2023). Topical issues of the use of peacekeeping operations in modern realities, including the military and police component: A case study of the UN and regional organizations. *International Journal of Police Science & Management*, 14613557231206706.

has led some to argue that there is no *lex specialis* in NIAC and that human rights law fills the gap. This position, it is submitted, is not borne out by facts.⁵⁶

The great majority of IHL rules on the conduct of hostilities are customary in nature and are applicable regardless of conflict classification, as determined by the ICRC's 2005 Customary Law Study. Relevant IHL thus exists. The issue of who may be targeted under IHL, i.e. how to interpret the rule that civilians are protected from direct attack unless and for such time as they take a direct part in hostilities remains the subject of much legal debate, particularly as regards situations of NIAC. The ICRC expressed its views on the subject with the issuance, in 2009, of an Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL (see further below). It should be recalled, however, that the Guidance deals with direct participation in hostilities under an IHL lens only, without prejudice to other bodies of law - particularly human rights law - that may concurrently be applicable in a given situation.

International and regional jurisprudence is not uniform in its approach to the relationship between IHL and human rights, particularly in respect of the scope of protection of the right to life in NIAC. Most cases have dealt with violations of the right to life of civilians in which application of either IHL or human rights law would have essentially produced the same result. Courts have yet to conclusively address the interplay of IHL and human rights law involving the targeting and killing of persons who were directly participating in hostilities.

Last, but not means least, is the issue of the legal framework applicable to the use of force by non-state armed groups. What has been said above in relation to the (non)applicability of human rights law to organized armed groups is equally valid in this area and will not be repeated.

What can essentially be concluded from the above is that the use of lethal force by states in NIAC requires a fact-specific analysis of the interplay of the relevant IHL and human rights rules. For states, the legal result reached will depend on the treaties they are party to, customary law, and of course the relevant provisions of domestic law. It is also evident that in NIAC as well as in IAC state armed forces must be trained to distinguish and switch between a war-fighting and a law enforcement situation and be provided with clear rules of engagement on the use of force. As

⁵⁶ Kjeksrud, S. (2019). Using force to protect civilians. A comparative analysis of United Nations military protection operations.

regards non-state armed groups, they are clearly legally bound by the relevant IHL rules. The ICRC plans to further explore the challenges surrounding the interface of IHL and human rights law rules on the use of force in situations of armed conflict.

According to Paul Williams, associate professor at George Washington University, for many civilian protection is the very essence of peacekeeping. But protecting civilians in non-international armed conflict especially Africa war zones raises huge challenges. These, William says that in *Enhancing Civilian Protection in peace operations: Insights from Africa*, Include the need to devise effective systems of information gathering and analysis to detect patterns of atrocities and the development of strategies and operational approaches for protection from physical violence.⁵⁷

2.2.1 States obstacles in protection of civilians in NIAC

The protection of civilians is not solely the responsibility of UN peace operations. States bear the primary responsibility to protect civilians, and peacekeepers are not a substitute for political engagement to tackle root causes of conflict and violence.

Civilians have increasingly become the victims of armed conflict. States always have the primary responsibility to protect their populations. Peacekeepers first role is to support governments to uphold their protection responsibilities through advice, technical and logistical support and capacity building, states meet a lot of obstacles while protecting civilians in non-international armed conflicts and they are going to be discussed below.

According to treaty and customary IHL applicable in non-international armed conflict, civilians enjoy protection against direct attack unless and for such time as they take a direct part in hostilities. Civilians directly participating in hostilities do not cease to be part of the civilian population, but their protection against direct attack is temporarily suspended. The phrase unless and for such time clarifies that such suspension of protection lasts exactly as long as the corresponding civilian engagement in direct participation in hostilities. This necessarily entails

⁵⁷ Milburn, R. (2023). OPERATIONAL RISKS AND OPPORTUNITIES FROM CLIMATE CHANGE ON WESTERN MILITARIES' CONSERVATION ACTIVITIES. *Climate Change, Conflict and (In) Security: Hot War*, 251.

that civilians lose and regain protection against direct attack in parallel with the intervals of their engagement in direct participation in hostilities (so-called revolving door of civilian protection).⁵⁸

The revolving door of civilian protection is an integral part, not a malfunction, of IHL. It prevents attacks on civilians who do not, at the time, represent a military threat. In contrast to members of organized armed groups, whose continuous function it is to conduct hostilities on behalf of a party to the conflict, the behavior of individual civilians depends on a multitude of constantly changing circumstances and, therefore, is very difficult to anticipate. Even the fact that a civilian has repeatedly taken a direct part in hostilities, either voluntarily or under pressure, does not allow a reliable prediction as to future conduct. As the concept of direct participation in hostilities refers to specific hostile acts, IHL restores the civilian's protection against direct attack each time his or her engagement in a hostile act ends. Until the civilian in question again engages in a specific act of direct participation in hostilities, the use of force against him or her must comply with the standards of law enforcement or individual self-defense.

Although the mechanism of the revolving door of protection may make it more difficult for the opposing armed forces or organized armed groups to respond effectively to the direct participation of civilians in hostilities, it remains necessary to protect the civilian population from erroneous or arbitrary attack and must be acceptable for the operating forces or groups as long as such participation occurs on a merely spontaneous, unorganized or sporadic basis.⁵⁹

One of the main practical problems caused by various degrees of civilian participation in hostilities is that of doubt as to the identity of the adversary. For example, in many counterinsurgency operations, armed forces are constantly confronted with individuals adopting a more or less hostile attitude. The difficulty for such forces is to distinguish reliably between members of organized armed groups belonging to an opposing party to the conflict, civilians directly participating in hostilities on a spontaneous, sporadic, or unorganized basis, and civilians who may or may not be providing support to the adversary, but who do not, at the time, directly participate in hostilities or when mixed with rebels. To avoid the erroneous or arbitrary targeting of civilians entitled to

⁵⁸ Hultman, L. (2013). UN peace operations and protection of civilians: Cheap talk or norm implementation?. *Journal of Peace Research*, 50(1), 59-73.

⁵⁹ Hunt, C. T., & Bellamy, A. J. (2011). Mainstreaming the responsibility to protect in peace operations. *Civil Wars*, 13(01), 1-20.

protection against direct attack, there must be clarity as to the precautions to be taken and the presumptions to be observed in situations of doubt.⁶⁰

In practice, civilian direct or indirectly participation in hostilities, is likely to entail significant confusion and uncertainty in the implementation of the principle of distinction. In order to avoid the erroneous or arbitrary targeting of civilians entitled to protection against direct attack, it is therefore of particular importance that all feasible precautions be taken in determining whether a person is a civilian and, if so, whether he or she is directly participating in hostilities. In case of doubt, the person in question must be presumed to be protected against direct attack.

In the case concerning the events at La Tablada in Argentina, the Inter-American Commission on Human Rights held that civilians who directly take part in fighting, whether singly or as members of a group, thereby become legitimate military targets but only for such time as they actively participate in combat.

To the extent that members of armed opposition groups can be considered civilians (see commentary to Rule 5), this rule appears to create an imbalance between such groups and governmental armed forces. Application of this rule would imply that an attack on members of armed opposition groups is only lawful for "such time as they take a direct part in hostilities" while an attack on members of governmental armed forces would be lawful at any time. Such imbalance would not exist if members of armed opposition groups were, due to their membership, either considered to be continuously taking a direct part in hostilities or not considered to be civilians.

It is clear that the lawfulness of an attack on a civilian depends on what exactly constitutes direct participation in hostilities and, related thereto, when direct participation begins and when it ends. As explained below, the meaning of direct participation in hostilities has not yet been clarified. It should be noted, however, that whatever meaning is given to these terms, immunity from attack does not imply immunity from arrest and prosecution.⁶¹

⁶⁰ Morris, T. (2023). The Language of the Protection of Civilians Mandate and the Primary Responsibility of the State: A Legal Norm for Peace and Security. *Journal of International Humanitarian Legal Studies*, 1(aop), 1-28.

⁶¹ Hunt, C. T., & Zimmerman, S. (2019). Twenty Years of the Protection of Civilians in UN Peace Operations: Progress Problems and Prospects. *Journal of international peacekeeping*, 23(1-2), 50-81.

2.2.2 Non-compliance by non-state armed group

The status of non-state armed groups in humanitarian law is greatly influenced by the legal and political asymmetry that exists between them and States.

The law of non-international armed conflicts does not recognize either the status of combatants to members of non-state armed groups, or the rights attached to it, i.e. prisoner of war status. This refusal expressed by States means that those groups remain subject to domestic law, which considers them as criminals because they have taken up arms against the State. This results in a legal unbalance unfavorable to the imposition of reciprocal obligations under humanitarian law. States are tempted to use all necessary material, military and judicial means at their disposal to maintain or restore public order.⁶²

Under international humanitarian law, members of non-state armed groups paradoxically belong to the category of civilians. But they lose most of the protection attached to this status at least the protection against direct attack while they directly participate in hostilities. However, the non-recognition of the combatant status does not release non

state armed groups from respecting IHL as parties to the conflict. Moreover, this does not deprive them from certain protections provided by IHL for persons hors de combat (infra).

In addition, warring factions have increasingly denied civilian populations access to humanitarian relief. They defend their actions by appealing to the principle of national sovereignty. Within their national boundaries these warring parties block relief convoys, obstruct ambulances, invade hospitals, destroy clinics, and harass and terrorise national and international medical and other humanitarian relief workers. In these circumstances the assumption in international humanitarian law that civilians would be protected simply by establishing their distinct non-military character seems outdistanced by recent changes in warfare and thus fundamentally flawed. In the absence of alternative credible and effective enforcement mechanisms, it would seem that the international community can offer little help to civilian populations targeted in today's wars.

Non-State groups might also deny the applicability of humanitarian law by refusing to recognize a body of law created by States, or by claiming that they cannot be bound by obligations ratified

⁶² X, "The practical guide to humanitarian Law" <https://guide-humanitarian-law.org/content/article/3/non-state-armed-groups/> Accessed on 15th August 2023

by the government against whom they are fighting. In such cases, the law will seldom be a relevant frame of reference, especially for groups whose actions are shaped by a strong ideology. In many non-international armed conflicts, bearers of arms with little or no training in IHL are directly involved in the fighting.⁶³

This ignorance of the law significantly impedes efforts to increase respect for IHL and to regulate the behavior of the parties to conflicts. Indeed, there is little likelihood that a body of law will be observed unless those whose duty it is to respect and apply it are instructed and trained to respect its obligations. There is a steady belief that non-state armed groups are unwilling to respect IHL because they did not participate in its codification, and because this law was drafted by States against which they are in conflict. Nonetheless this idea does not take into account the diversity and heterogeneity of those groups and their often very prosaic preoccupations. In addition, When civilians flee a conflict zone, rules of IHL that are intended to spare civilians from the this is a good indication that the effects of hostilities help prevent forced displacement. It warring parties are indifferent to is often the violation of these rules that cause civilians to their rights under IHL or, worse, are flee their homes and become displaced. deliberately targeting them.

As conclusion I can't forget to talk about the lack of means/resource by non-government against civilian protection, the majority of current UN peacekeeping operations do not have mission-wide strategies that address protection of civilians, either as a day-to-day plan to utilize mission assets to reduce violence and threats to civilians, or to respond to crises. Some missions have begun to develop tools and strategies, but mainly they are being conceived and elaborated on an ad hoc basis. The United Nations has recognized the need for better information and intelligence, specifically in relation to the protection of civilians, yet various and inconsistent models exist in the field.⁶⁴

2.3. Less true with respect to IHL

A successful and effective implementation of international humanitarian law (IHL) is not only assessed by the capability to apply its rules and principles when confronted with situations of

⁶³ Labuda, P. I. (2020). With or against the state? Reconciling the protection of civilians and host-state support in UN peacekeeping. International Peace Institute.

⁶⁴ Guerrero, G., & Rhodes, S. D. (2022). HUMAN RIGHTS AND THE PROTECTION OF CIVILIANS IN UN PEACE OPERATIONS. *Revista Política y Estrategia*, (140), 147-167.

armed conflict, but it is also contingent upon the will to look back on the events that shaped this branch of international law in the course of history.

Recent developments in Mali, the Arab Spring uprisings, the persisting civil war in Syria and the endless crisis situation in Afghanistan are constant reminders of the need to focus on strengthening compliance with IHL, without forgetting the weaknesses in the existing mechanisms for the implementation and dissemination of norms and principles of humanitarian law.⁶⁵ What is of fundamental importance is that all actors, who have a specific role to play in increasing the respect for IHL, continue to perform their respective tasks and find ways of expanding and intensifying the protective reach of this body of norms. This is the primary responsibility of States and non-state parties to armed conflicts, and it is also supported by the United Nations, regional and other International Organizations, ICRC, National Red Cross and Red Crescent Societies, NGOs, civil society, media and other actors involved.

Jointly organized, as is the tradition, with the International Committee of the Red Cross, the 36th Round Table provided a prestigious forum and a special occasion for addressing the complex challenges raised by the respect for IHL and for trying to identify appropriate responses.

Its work focused on several main thematic areas including: the observance of IHL in recent conflicts; the respect of IHL through training and dissemination; the challenge of IHL compliance and the lessons on IHL compliance from other systems of international law; the implementation of IHL after the end of an armed conflict.⁶⁶

Training and dissemination of IHL, core activities of the Sanremo Institute, remain a key legal and practical prerequisite for IHL compliance. Progress in this field has been made but still much remains to be done especially with regards to the means and mechanisms of dissemination, which have to deal with an increasing level of complexity. However, one of the priorities is still to ensure that awareness of IHL and of the humanitarian consequences of disrespect for IHL is integrated

⁶⁵ Sassòli, M. (2007). The implementation of international humanitarian law: current and inherent challenges. *Yearbook of International Humanitarian Law*, 10, 45-73.

⁶⁶ Kelley, M. (2013). Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare.

by the parties in a way that will produce concrete results in the field. What is clear is that, overall for IHL, the main problem is not the lack of rules but the lack of respect for the existing law.⁶⁷

Regarding the completely distinct question of why such law is, should be, or is not respected in contemporary conflicts, law can only provide a small part of the answer, which is discussed elsewhere in this book under implementation. The main part of the answer can by definition not be provided by law. As Frédéric Maurice, an International Committee of the Red Cross delegate wrote a few months before he was killed on 19 May 1992 in Sarajevo by those who did not want that assistance be brought through the lines to the civilian population there, as prescribed by International Humanitarian Law.

2.4. The lack of effective enforcement mechanisms and monitoring body

As identified by the ICRC in its 2015 IHL Challenges report, better respect for IHL is the main challenge the international community is facing nowadays. Having in place effective compliance mechanisms that can supervise the conduct of the parties to the conflict and in case of violations, facilitate the restoration of respect for IHL is therefore key. The treaty-based mechanisms under the Geneva Conventions and other specialized treaties within the IHL framework cannot undertake this task on their own, particularly during NIAC. With certain exceptions, the specialized IHL treaties such as the Ottawa.

Convention or the Convention on Certain Conventional Weapons, do not provide for a robust system of treaty monitoring and their mechanisms only address compliance by the states parties. In the case of the Geneva Conventions, the practice of the IHFFC is limited to exclusively rely on it to supervise compliance by parties to NIAC.⁶⁸

In a perfect world, we could just focus on states' obligations under IHL and monitor their implementation through mechanisms that only address states. However, this is not a perfect world and armed groups are a reality that we have to acknowledge and take into account when addressing matters related to compliance with IHL. The lack of political will at least in the context of the GCs impedes the strengthening of the existing compliance system and the adoption of a new one, let

⁶⁷ Sarwar, T. B. (2012). Challenges for Implementing International Humanitarian Law (IHL) in the Contemporary Landscape. *Policy*, 94(888), 4.

⁶⁸ Sassoli, M., Issar, Y., von Arnould, A., Matz-Lück, N., & Odendahl, K. (2015). Challenges to International Humanitarian Law. *100 Years of Peace through Law: Past and Future*, 181-235.

alone the establishment of a mechanism that can monitor compliance by all parties to a NIAC, states and armed groups alike. In light of the above, a complementary approach to overseeing compliance with IHL norms during NIAC is the way forward.⁶⁹

The co-existence of formal and informal mechanisms with different mandates enables the monitoring of respect for IHL by all parties to a NIAC. In addition, their interaction ensures that recommendations issued in the framework of other mechanisms are taken into account and brought to the attention of the party concerned. For instance, the reports of the Secretary-General on children and armed conflict recommend the enactment of legislation implementing the CRC and the ratification of the Optional Protocol (para. 103, 146), and vice versa, the CRC Committee also recommends the cooperation of the state party with the MRM (, para. 15, para. 46). The latter as well as Geneva Call also monitor armed groups' compliance with international norms relevant to the protection of children in armed conflict. Because of that, Geneva Call developed a policy of strategic complementarity⁶⁴(pg. 30) with the goal of avoiding overlaps with other actors involved in the same thematic area. The value of the non-treaty based mechanisms to monitor respect for IHL in NIAC should be not underestimated; on the contrary, this type of mechanisms should be expanded to cover additional thematic areas, complement the formal monitoring system and ensure that armed groups' implementation of IHL during NIAC can be supervised. A positive development in this direction concerns the launch in 2018 of a new Deed of Commitment on the protection of healthcare in armed conflict by Geneva Call.⁷⁰

2.5 limits on Complaints Procedures of violation

Currently, no judicial or quasi-judicial mechanisms exist with the explicit competence to consider complaints of individuals claiming to be victims of violations of international humanitarian law. The International Committee of the Red Cross (ICRC) cannot fulfil this role as it has neither the means, the purpose nor the mandate to make enforceable judicial determinations with regard to claims of individuals alleging to be victims of such violations. Instead, it operates mainly through confidential discussions with governments.⁷¹ Likewise, criminal prosecutions of individual

⁶⁹ Martinovic, M. A. (2016). *The Challenges of Asymmetric Warfare. Enhancing Compliance with International Humanitarian Law by Organized Armed Groups*. Anchor Academic Publishing.

⁷⁰ X, "How does law protect in war" <https://casebook.icrc.org/law/non-international-armed-conflict> Accessed on 1st October 2023

⁷¹ Martinovic, M. A. (2016). *The Challenges of Asymmetric Warfare. Enhancing Compliance with International Humanitarian Law by Organized Armed Groups*. Anchor Academic Publishing.

perpetrators before national or international courts, while contributing significantly to improving the implementation of humanitarian law, cannot and should not be the only answer to violations of the law.

For one thing, the future International Criminal Court (ICC) will only consider the most serious violations of humanitarian law, leaving numerous other violations uninvestigated. Moreover, criminal prosecutions are concerned with individuals rather than parties to the conflict. The acts that are labelled as international crimes, however, find their basis in the collectivity.⁷² Crimes are unlikely to be prevented nor will compliance with their prohibition be significantly improved through criminal prosecution of individuals alone. Similarly, while the ICC may, either upon request or on its own motion, afford reparations to victims of war crimes, these are reparations afforded within the individual responsibility framework of the ICC. The Court may make an order directly against a convicted person rather than against a state or entity.

The legal issues that arise in the context of the possible establishment of an individual complaints procedure for violations of international humanitarian law, a proposal launched at The Hague Appeal for Peace in 1999. It examines such a proposal in the light of recent practice of human rights bodies, which suggests that the latter are not the most adequate means to improve supervision of compliance with international humanitarian law. The article argues that a separate body should be established and concentrates on the competence *ratione materiae* (subject matter) of such a body, the conceptualization of the legal basis for individual complaints, non-state actors as respondents of complaints and applicable reparations for violations of international humanitarian law.⁷³

Lastly, monitoring compliance with humanitarian norms is vital. Yet, most verification mechanisms addressing the conduct of armed non-State rarely appear in multilateral treaties, and even when they do, are weak and not applied in practice. While most IHL and human rights treaties only address the conduct of states, neither Additional Protocol II nor Common Article 3 have any provisions for regulating the monitoring, reporting and verification (MRV) of non-State group

⁷² Gieseken, H. O., & Murphy, V. The protection of the natural environment under international humanitarian law: The ICRC's 2020 Guidelines. *International Review of the Red Cross*, 1-28.

⁷³ Hassan, S. A. M., & Ali, S. A. M. (2023). Limitations On Warfare Methods: A Brief Examination Under International Humanitarian Law. *Journal of Advances in Humanities Research*, 2(4), 1-19.

behaviors. It is therefore necessary that better mechanisms for these practices be developed.⁷⁴ For example, Geneva Call's Deeds of Commitment utilize a three-pronged system including:

self-reporting, third-party monitoring, and field missions to proactively regulate compliance with groups who have pledged not to use anti-personnel land mines. In practice, 38 out of 41 signatories of the Deed of Commitment Banning AP Mines have succeeded to abide by their self-reporting obligation. Creating a sense of ownership and personal accountability is invaluable to the ultimate success of IHL, and the work of engagement organizations such as Geneva Call is essential to furthering compliance with non-State actors typically not given a voice in international discourse.

2.6. Lack of a robust, wide-ranging and detailed legal framework to facilitate the protection of civilians

Lack of compliance with IHL is probably the greatest current challenge to this framework of international rules. A body of law, no matter how robust, cannot fulfil its function if it is not or is only inadequately respected on the ground. Over the years, great strides have periodically been made to adapt and update the normative content of IHL. What has remained absent, however, is the corresponding development of mechanisms to strengthen compliance with it. In recognition of this, the ICRC and Switzerland facilitated unprecedented consultations among States focused specifically on improving the efficiency of mechanisms of compliance.⁷⁵

Insufficient respect for applicable rules is the principal cause of suffering during armed conflicts. Between 2012 and 2015, the ICRC and the Swiss government undertook a major consultation process on how to improve compliance with international humanitarian law (IHL) by developing stronger international mechanisms.⁷⁶

Unfortunately, IHL continues to be violated frequently by both States and non-State armed groups. If IHL was better respected, there would be less suffering. At present, for example, IHL lacks effective means of identifying, preventing and halting violations while they are occurring. The

⁷⁴ Sassòli, M. (2019). Respect of the law. In *International Humanitarian Law* (pp. 68-167). Edward Elgar Publishing.

⁷⁵ Cassimatis, A. E. (2007). International humanitarian law, international human rights law, and fragmentation of international law. *International & Comparative Law Quarterly*, 56(3), 623-639.

⁷⁶ Lamp, N. (2011). Conceptions of war and paradigms of compliance: The 'new war' challenge to international humanitarian law. *Journal of Conflict & Security Law*, 16(2), 225-262.

mechanisms within IHL that do exist are rarely, if ever used. Moreover, they are only applicable in international armed conflict, whereas the majority of conflicts are now non-international.

2.7. Case Laws

The Democratic Republic of the Congo (DRC) has experienced prolonged periods of NIACs involving multiple armed groups such as M23 and government forces. Here are some notable case laws and judicial decisions that pertain to NIACs, especially in the background of the DRC:

2.7.1. Bosco Ntaganda's Case

Former Deputy Chief of Staff and commander of operations of the Forces Patriotiques pour la Libération du Congo (FPLC). Arrest warrants: 22 August 2006 - unsealed on 28 April 2008; second warrant: 13 July 2012

Charges: 13 counts of war crimes and 5 counts of crimes against humanity allegedly committed in 2002-2003 in the Ituri district of the DRC. Declared guilty on 8 July 2019.

On 8 July 2019, ICC Trial Chamber VI found Bosco Ntaganda guilty, beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity, committed in Ituri, DRC, in 2002-2003. On 7 November 2019, Bosco Ntaganda was sentenced to a total of 30 years of imprisonment. The time he spent in ICC detention - from 22 March 2013 to 7 November 2019 - will be deducted from this sentence.

On 30 March 2021, the ICC Appeals Chamber confirmed the conviction and the sentence in this case. These two decisions are now final.

Next steps: On 8 March 2021, Trial Chamber VI delivered its Order on Reparations to victims against Mr Ntaganda. The Defence of Mr Ntaganda and the Legal Representative of one of the two groups of victims appealed the order. On 12 September 2022, the Appeals Chamber issued its judgment in the appeals and remanded several issues for the Trial Chamber to issue a new reparations order. On 14 July 2023, Trial Chamber II delivered an Addendum to the Reparations Order of 8 March 2021. Following this Addendum, the Chamber will rule on all aspects of the Draft Implementation Plan that do not require further submissions from the ICC Trust Fund for Victims or the parties.

On 14 December 2022, Mr Ntaganda was transferred to the Kingdom of Belgium to serve his sentence of imprisonment at the Leuze-en-Hainaut prison.⁷⁷⁷⁸

2.7.2. Germain Katanga's Case

Alleged commander of the Force de résistance patriotique en Ituri (FRPI) at time of arrest warrant.

Arrest warrant: 2 July 2007 - Unsealed on 15 October 2007

Charges: Found guilty, as an accessory, of one count of crime against humanity: murder; and four counts of war crimes: murder, attacking a civilian population, destruction of property and pillaging, committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the DRC. Case also involved charges against Mathieu Ngudjolo Chui but the 2 cases were severed on 21 November 2012. Mathieu Ngudjolo Chui was acquitted on 18 December 2012.

Found guilty, on 7 March 2014, as an accessory to one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the DRC. The judgment is final, as both the Defence and Prosecution withdrew their appeals on 25 June 2014. Sentenced to a total of 12 years' imprisonment; time spent in detention at the ICC – between 18 September 2007 and 23 May 2014.

2.8 Principles and Doctrines

The protection of civilians in non-international armed conflicts (NIACs), such as those in the Democratic Republic of Congo (DRC), is governed by several key principles and doctrines under international humanitarian law (IHL).

2.8.1 Principles

2.8.1.1 Principle of Distinction

This principle mandates that parties to a conflict must always distinguish between combatants and civilians. Attacks may only be directed against combatants and military objectives, and not against civilians or civilian objects.⁷⁹

⁷⁷ https://www.icc-cpi.int/cases?field_defendant_t=684;

⁷⁸ <https://www.icc-cpi.int/drc/ntaganda>;

⁷⁹ Article 13 of Additional Protocol II to the Geneva Conventions of 1949

2.8.1.2 Principle of Proportionality

Even when attacks are directed against legitimate military targets, they must not be disproportionate. This means that the anticipated military advantage must not be outweighed by the expected harm to civilians and civilian property.⁸⁰

2.8.2 Doctrines

2.8.2.1 Doctrine of Command Responsibility

This doctrine holds military commanders and other superiors responsible for war crimes committed by their subordinates if they knew or should have known about the crimes and failed to prevent them or punish the perpetrators.⁸¹

2.8.2.2 Doctrine of Necessity and Proportionality in Use of Force

This doctrine restricts the use of force to what is necessary to achieve a legitimate military objective and ensures that such force is proportionate to the threat posed. It aims to minimize harm to civilians and civilian objects.⁸²

CHAPTER 3: MEASURE FOR EFFECTIVE PROTECTION OF CIVILIANS DURING NON-INTERNATIONAL ARMED CONFLICT

The present chapter dealt with available mechanisms including legal and institutional mechanisms.

This chapter emphasizes that states have the primary responsibility and duty to prevent and protect their population from harm. Again, it focuses on state's obligations with respect to protecting civilians against atrocity means. This chapter also shows how rights of civilians should be respected in internal armed conflict as it was seen that civilians are directly or indirectly the first victims of internal armed conflicts. This chapter also aims to analyze the International organization like UN strategies in face of massive violation of human rights that occur during non-international armed conflict this will help to propose solution to be addressed to put an end to those violations.

⁸⁰ Article 51(5)(b) of Additional Protocol I

⁸¹ Rome Statute Article 28

⁸² <https://ihl-databases.icrc.org/en/customary-ihl/v1>;

3.1. International protection of civilians in non-international armed conflict by IHL

In international Humanitarian law contains notions on protecting civilians from mass killing caused by armed conflict. IHL regulates the means and methods of warfare and seeks to limit the effects of armed conflict on people, they have specified legal protection of persons who do not, or who no longer, take part in hostilities appeared with the adoption of the Geneva Conventions of 12 August 1949 which was later reinforced in the 2 additional protocols of 1977. To protect the life, dignity, health and safety of civilians and other noncombatants are one of the cornerstones of IHL duties and it is their duty to protect people from violation. The problem is that this provision is of common Art.3 do not provide effective protection to civilians during military operations in internal armed conflict. According to Gardam who believes that the failure to distinguish between civilians and combatants is contrary to the requirement of common Art.3.⁸³

The best way to protect civilians and their property in non-international armed conflict is the distinguish of civilian populations and the combatants and protecting civilians properties by distinguish it from military object, creation of a protocol to specify who is a civilian in non-international armed conflict so as to compliment common Art.3. Though discriminate attacks against civilian population and civilian's object are prohibited, the reality of contemporary armed conflicts shows that those rules are violated daily, either by state forces or by non-state armed groups.⁸⁴

The issue of protection of victims of such conflict has been raised several times as in modern internal warfare, civilians are highly exposed to effect of hostilities but in this situation, they would not be covered by conventions. And the conventions put a big focus on inter-states armed conflict in general forgetting mass killing and violations occurred in these kinds of conflicts. As Gersters and Meyer comment: the most striking problem of humanitarian law today is its general lack of applicability. Have occurred. In the past fifteen years, several internal and international armed conflict. However, in almost every case at least one of the parties to the conflict did not consider international humanitarian law to be applicable. So the rebels should fulfill some

⁸³ Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*, 102(913), 287-334.

⁸⁴ Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.

conditions like to prove that they have effective control over some part of territory, civil commotion should reach a certain degree of intensity and duration.

3.2. Promoting Non-State Compliance with Humanitarian norms.

Regardless of if, when, or how IHL should be revised, some key findings over the years have been identified as good practices to furthering compliance with existing IHL.

Contrary to decisions made by governments such as the U.S., it is argued here that central to assuring compliance with humanitarian norms by violent non-State actors is comprehensive, active engagement irrespective of any criteria which might preclude a group from lawful interaction with State actors. Activities aiming to incorporate non-State actors in the decision making process, which ultimately give them a sense of ownership and accountability for the humanitarian rules under which they must function during armed conflict, are crucial to the successful implementation of IHL.⁸⁵ According to the Geneva Academy for International Humanitarian Law, A variety of mechanisms exist for ANSAs [Armed non-State Actors] to commit to respecting international norms, such as unilateral declarations, special agreements, Memoranda of Understanding, Ground Rules⁶, Action Plans, or deeds of commitment; and these methods must be unequivocally pursued by outside actors capable of helping non-State groups attain compliance. There are many organizations that regularly engage with armed non-State groups, including, but not limited to: The ICRC, Geneva Call, Human Rights Watch, Amnesty International, and the Centre for Humanitarian Dialogue; and the activities of each should be regarded as indispensable toward furthering compliance with IHL.⁸⁶

First, it must be acknowledged that the very task of disseminating the rules of IHL to armed non-State actors is a challenging prerequisite for its understanding and ultimate application. Indeed, an important step in enhancing compliance with international norms is to ensure that the relevant ANSA is aware of its obligations under international law. In some cases, for example, such groups have not been aware of the prohibition on child recruitment and the potential individual liability.

⁸⁵ Schmitt, M. N., & Schmitt, M. N. (2012). Military necessity and humanity in international humanitarian law: preserving the delicate balance. *Essays on Law and War at the Fault Lines*, 89-129.

⁸⁶ Jansen, S. L. H. (2022). *Part of the Solution: Exploring Armed Non-State Actor Commitment to and Compliance with an Anti-Personnel Landmine Ban* (Doctoral dissertation, Carleton University).

In considering a solution to this issue, Marco Sassòli advocates for the negotiation of a simple, two page code of conduct specifically tailored for armed groups, helping to simplify the over 500 articles of The Geneva Conventions and Additional Protocols which are arguably far too complex for the purpose of furthering understanding and observance in urgent times of armed conflict. By giving armed groups a simple outline of the rules of IHL, the potential for acceptance and perceived advantages for complying are enhanced.⁸⁷

The adoption of a code of conduct by an armed non-State group is evidence of its intention to ensure military discipline while respecting local culture and the civilian population, while remaining in compliance with international norms, ensuring that the group assumes responsibility for adoption, dissemination, and implementation of applicable norms.

In addition, non-state armed groups could be provided with advisory services by impartial organizations such as the ICRC in order to more fully develop comprehension of responsibility and accountability in warfare. While such a service currently exists for States, it should also be available for non-State armed groups as a tool for reducing violations. Moreover, providing information to military commanders rather than political representatives is indispensable to furthering compliance with humanitarian norms, as there is often disconnect between political and diplomatic relations and the realities of combat. Other methods include disseminating information to populations that are difficult to access through public broadcasts or television exposés, educating individuals on their rights and responsibilities under the law.⁸⁸

A second step for furthering compliance with humanitarian norms is by engaging non state actors in informal discussions and conventions. Correspondingly, it is essential that humanitarian groups that engage in dialogue with non-State groups are open to truly hearing and considering their concerns and grievances. It is unproductive to just simply hand over a pamphlet and expect a violent armed group to automatically adhere to the contents mediation and genuine discourse are essential. Geneva Call is an impartial and neutral NGO that is dedicated to engaging armed non-State actors towards compliance with the norms of IHL by focusing on NSAs that operate outside effective State control through employing contracts called Deeds of Commitment. These treaty

⁸⁷ Baj, G. (2022). International Legal Personality And Accountability Of Armed Non-State Actors Through Their Self-Regulation (Doctoral dissertation, Université Côte d'Azur; Università degli studi di Milano-Bicocca).

⁸⁸ X, "Non-international armed conflict" https://casebook.icrc.org/a_to_z/glossary/non-international-armed-conflict Accessed 12th October 2023

like instruments, by which the armed non-State actor formally pledges to respect humanitarian norms is meant to mirror the texts of international treaties which these NSAs cannot legally sign. Areas in which Geneva Call specifically works to further the observance of IHL norms concern landmines, children, and gender issues.⁸⁹ One of the main advantages of Geneva Call is that it is solely a humanitarian dialogue organization, and does not serve the purpose of providing humanitarian aid. This is a benefit because representatives of an organization like ICRC are often faced with the decision of giving in to norms of non-compliance by a non-State actor, in order to provide aid to a population in need.

3.3. Monitoring compliance with Humanitarian norms.

In a perfect world, we could just focus on states' obligations under IHL and monitor their implementation through mechanisms that only address states. However, this is not a perfect world and armed groups are a reality that we have to acknowledge and take into account when addressing matters related to compliance with IHL. The lack of political will at least in the context of the GCs impedes the strengthening of the existing compliance system and the adoption of a new one, let alone the establishment of a mechanism that can monitor compliance by all parties to a NIAC, states and armed groups alike. In light of the above, a complementary approach to overseeing compliance with IHL norms during NIAC is the way forward.

The co-existence of formal and informal mechanisms with different mandates enables the monitoring of respect for IHL by all parties to a NIAC. In addition, their interaction ensures that recommendations issued in the framework of other mechanisms are taken into account and brought to the attention of the party concerned. For instance, the reports of the Secretary-General on children and armed conflict recommend the enactment of legislation implementing the CRC and the ratification of the Optional Protocol (, para. 103, 146), and vice versa, the CRC Committee also recommends the cooperation of the state party with the MRM (para. 15, para. 46).⁹⁰ The latter as well as Geneva Call also monitor armed groups' compliance with international norms relevant to the protection of children in armed conflict. Because of that, Geneva Call developed a policy of

⁸⁹ Abdou, M. (2022). International law and the territorial controls of non-state armed groups in Yemen and Libya (2011-2015) (Doctoral dissertation, University of Warwick).

⁹⁰ Khan, B. U., & Nasrullah, N. M. (2019). Implementation of International Humanitarian Law and the Current Challenges. In *Revisiting the Geneva Conventions: 1949-2019* (pp. 262-299). Brill Nijhoff.

strategic complementarity' (pg. 30) with the goal of avoiding overlaps with other actors involved in the same thematic area. The value of the non-treaty based mechanisms to monitor respect for IHL in NIAC should be not underestimated; on the contrary, this type of mechanisms should be expanded to cover additional thematic areas, complement the formal monitoring system and ensure that armed groups' implementation of IHL during NIAC can be supervised. A positive development in this direction concerns the launch in 2018 of a new Deed of Commitment on the protection of healthcare in armed conflict by Geneva Call.

Based on the above analysis, all possible avenues including the existing formal compliance mechanisms within the IHL and international human rights law framework, non-traditional mechanisms as well as mandates and organizations with capacity to address both states and non-state actors should be put into use to monitor and ensure compliance with IHL. The road to effectively monitoring compliance with IHL during NIAC is that of complementarity.⁹¹

3.4. State responsibility in protection of civilians during non-international armed conflict

International humanitarian law provides a number of obligations that trigger the international responsibility of States in case of violations. This responsibility differs from the individual responsibility of State agents, even when they act under orders.

State responsibility for failing to respect obligations under IHL can be triggered in front of the International Court of Justice by non-governments suffering damages related to such violations and can lead to compensation. State failure to prosecute perpetrators of war crimes, crimes against humanity, and genocide at the national level may in certain circumstances trigger the competence of the International Criminal Court. Indeed, the Court's jurisdiction over a situation is established by the State ratification of the ICC Statute or by a binding decision of the United Nations Security Council, when this State is unwilling or unable to prosecute alleged offenders (Art. 17 of ICC Statute). The state has responsibility of protection of civilians before and after a non-international armed conflict.⁹²

⁹¹ Adebayo, A. (2023). International Security and The Protection of Human Rights: Examining The Intervention of International Law in Quelling Civil Unrest. Available at SSRN 4599105.

⁹² Gibney, M., Tomasevski, K., & Vedsted-Hansen, J. (1999). Transnational state responsibility for violations of human rights. *Harv. Hum. Rts. J.*, 12, 267.

3.4.1. State responsibility before non-international armed conflict

States are under the obligation to enact any legislation necessary to provide effective criminal sanctions for persons committing, or ordering to be committed, any of the grave breaches (GCI Art. 49, GCII Art. 50, GCIII Art. 129, and GCIV Art. 146). States are under the obligation to disseminate the text of humanitarian law conventions widely among their armed forces and civilians (GCI Art. 47; GCII Art. 48; GCIII Art. 127; GCIV Art. 144; API Arts. 83.1, and APII Art. 19). For instance, they should include the rules and regulations of humanitarian law in their military regulations, instructions for armed forces, and code of military discipline, and they must ensure that their commanders know the rules. State has another responsibility of codifying IHL against POC .

State also has responsibility of creating institutions so as to monitor implementation of IHL, establishment of law protecting civilian on domestic level. And also to evaluate the violation of IHL at national level. Least but not last creation of bodies in military to monitor and provide awareness of IHL to soldiers⁹³.

3.4.2. State responsibility after non-international armed conflict

States are under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons before their own courts (GCI Art. 49, GCII Art. 50, GCIII Art. 129, GCIV Art. 146, and API Art. 86). This is regardless of the nationality of the accused, who may be a member of their own armed forces.

States also are responsible for all acts committed by members of their armed forces. Furthermore, if a State violates humanitarian law, it may be held accountable and be compelled to pay compensation (API Art. 91). Political and military authorities have the obligation to take all necessary measures to ensure that the obligations foreseen by humanitarian law are respected (GCI Art. 49; GCII Art. 50; GCIII Art. 129; GCIV Art. 146; and API Arts. 80.1, 86, and 87). states have responsibility to investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. Finally, States have

⁹³ Art. 49, Geneva Convention II

responsibility to make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects.⁹⁴

Mentioning the state's responsibility after an armed conflict I can't leave without talking about amnesty I suggest remove of amnesty, amnesty for violations committed during the conflict can become a key condition for obtaining a ceasefire or peace process, raising challenging questions as to the extent to which the granting of amnesty is compatible with humanitarian law requirements of accountability and the rights of victims.⁹⁵

To conclude I would like to say that a lot of war crimes remain unpunished because of barrier of impunity, state should be held responsible in case it committed impunity. However, the primary responsibility for enforcement of humanitarian law rests with national authorities. The jurisdiction of the ICC is intended to come into play only when a national judicial system is genuinely unable or unwilling to act in relation to individuals over whom they would normally have jurisdiction. To benefit from this principle of complementarity, States will need to have adequate legislation enabling them to prosecute war criminals.

3.5. Respect to IHL: effective enforcement of IHL and Implementation

The duty to enforce this respect exists on two levels. On a national level, States must incorporate the provisions of international humanitarian law into their domestic legislation and ensure that national penal sanctions exist, in case someone commits a violation. On the international level, States must take action if another State commits a violation, because the respect for humanitarian law is crucial to maintaining the international public order that all States must defend.

This respect and accountability are not based only on mechanisms for punishing violations. Because the damage caused by such violations is irreparable, this respect must be implemented before the need for punishment arises. The enforcement of humanitarian law therefore also rests on the creation of distinct spheres of responsibility for all participants in situations of tension or

⁹⁴ Roht-Arriaza, N. (1990). State responsibility to investigate and prosecute grave human rights violations in international law. *Calif. L. Rev.*, 78, 449.

⁹⁵ McCorquodale, R., & Simons, P. (2007). Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law. *The Modern Law Review*, 70(4), 598-625.

conflict, whether they are States, organizations, or individuals. These may include, in particular, States Parties to the Conventions, parties to the conflict, combatants, and relief organizations.⁹⁶

Furthermore, it is important to note that all States or parties to a conflict are held accountable under humanitarian law, even if an adverse or party violates its rules. The obligation to respect humanitarian law is not, in fact, tied to reciprocal levels of commitment (GCI–IV Common Arts. 1, 2).⁹⁷ It remains applicable even in situations in which one or more parties to a conflict are not party to the Conventions, for instance, or in cases in which they represent non-state entities or authorities that the adversary does not recognize.⁹⁸

The obligation to respect humanitarian law creates responsibilities for the different national authorities. However, if they fail to meet these obligations, the possibility of judicial recourse is not automatic. In case of grave breaches of the Geneva Conventions, international humanitarian law foresees penal sanctions based on the principle of universal jurisdiction and through the International Criminal Court.

In case of other violations of the Conventions, judicial recourse may exist at national levels, but these are not specified in the Conventions, and the recourse will therefore depend on each different national system of justice.⁹⁹

3.6. Measures to be taken during peacetime

Just as the preparations for the military and economic aspects of a possible armed conflict are made in peacetime, so must the groundwork for the humanitarian aspects, in particular respect for IHL, be laid before war breaks out. Soldiers whatever their rank or responsibilities need to be properly instructed in peacetime, i.e. not only by informing them of and explaining the rules but also by integrating the latter into routine training and man oeuvres in order to instill automatic reflexes. Without such training, the often very detailed rules of IHL regulating the various

⁹⁶ Addison, C. H. L., & Koh, H. (2017). How is international human rights law enforced?. In *International Law of Human Rights* (pp. 241-262). Routledge.

⁹⁷ Droege, C. (2007). The interplay between international humanitarian law and international human rights law in situations of armed conflict. *Israel Law Review*, 40(2), 310-355.

⁹⁸ X, "The practical Humanitarian Law" <https://guide-humanitarian-law.org/content/article/3/non-international-armed-conflict-niac/> Accessed on 15th October 2023

⁹⁹ Provost, R. (2002). *International human rights and humanitarian law* (Vol. 22). Cambridge University Press.

problems appearing in armed conflicts and their delicate interplay with International Human Rights Law will never be respected in armed conflicts.¹⁰⁰

Similarly, the whole population must have a basic understanding of IHL in order to realize that even in armed conflicts, certain rules apply independently of who is right and who is wrong, protecting even the worst enemy. Once an armed conflict, with all the hatred it feeds on and stirs, has broken out, it is often too late to teach this message. Thus, police forces, civil servants, politicians, diplomats, judges, lawyers, journalists, students who will fulfil those tasks in the future, and the public at large must know the limits constraining everyone's actions in armed conflicts, the rights everyone may claim in armed conflicts, and how international and national news about armed conflicts has to be written, read and treated from a humanitarian perspective.¹⁰¹

Preparatory measures also include translating IHL instruments into national languages. Furthermore, if a constitutional system requires rules of international treaties to be transformed by national legislation into the law of the land for those rules to be applicable, such legislation must obviously already be adopted in peacetime.

In every constitutional system, moreover, implementing legislation is necessary to enable the national law enforcement system to apply the many non-self-executing rules of IHL. Owing not only to the length of any legislative process and the other priorities pressing upon a parliament when a war breaks out but also because courts have to be able to sanction war crimes in foreign conflicts and the misuses of the emblem in peacetime, such legislation must be adopted as soon as the State becomes a party to the relevant instrument.¹⁰²

¹⁰⁰ Dehbi, F., & Martin-Ortega, O. (2023). An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective. *Regulation & Governance*.

¹⁰¹ Tsagourias, N., & Morrison, A. (2023). *International humanitarian law: cases, materials and commentary*. Cambridge University Press.

¹⁰² Adams, R., & Loideáin, N. N. (2019). Addressing indirect discrimination and gender stereotypes in AI virtual personal assistants: the role of international human rights law. *Cambridge International Law Journal*, 8(2), 241-257.

3.7. Individual complaint procedure directly to ICC

Without individual complaint mechanism some crimes will be left unpunished, Establishment of individual complaint directly to ICC will facilitate in investigation so that the victim's right is obeyed.

But to be more adequate the ICC may establish some rules or condition to follow an example, the complainant must establish that he or she has been a personal victim of the violation. It is not sufficient to establish that a law or policy amounts to a violation if the complainant has not been personally affected by it.¹⁰³

CONCLUSION AND RECOMMENDATION

4.1. Conclusion

From a humanitarian point of view, the victims of non-international armed conflicts should be protected by the same rules as the victims of international armed conflicts. They face similar problems and need similar protection. Conclusively the lack of effective enforcement of IHL and other applicable rules remained the main impediment to protecting civilians in times of internal armed conflict. To build acceptance, establish dialogue and play its humanitarian role effectively, the ICRC must continue to be and be seen to be neutral and independent.

Neutral and independent humanitarian action had a clear added value for the protection of civilians in times of internal armed conflict and that was essential to avoid misperceptions that political, military and humanitarian actors and impunity could only be filled by combined action by the parties to conflict by individual states concerned, by the international community by United Nations agencies, peacekeeping and peace support missions. In this regard, Lisosky's and Henrichsen's proposal for increased and improved advocacy, mitigation and education appears to be a promising solutions

¹⁰³ Khan, M. A., Fayaz, M., & Khan, U. N. (2022). Liability of the Private Military Companies for Violations of International Humanitarian Law. *Journal of Law & Social Studies (JLSS)*, 4(2), 247-251.

4.2. Recommendations to Democratic Republic of Congo and other peacekeepers such as United Nations, African Union and others.

The first suggestion is the creation of a universal, coherent and comprehensive awareness and education campaign. This should be led collectively by NGOs, news outlets, scholars and practitioners to educate governments, militaries and society about the civilian protection, its and establishment of laws at domestic level. Although this will certainly not eliminate all casualties, and especially not those that are deliberate, it will reduce incidental ones and those that occur due to misunderstandings or lack of awareness on IHL and their legal protections.

Another is that the Security Council consider the establishment of arrangements addressing impunity and as appropriate for the truth and reconciliation during the crafting of peacekeeping mandates in particular where this response has been triggered by widespread and systematic violations of international humanitarian and human right law.

This study encourages the Security Council to establish a more regular cooperation with regional organizations and arrangements to ensure informed decision making, the integration of additional resources and the use of their comparative advantages. Such cooperation should include the establishment of a regular regional reporting mechanism and briefings for the Security Council. Future high- level consultations between the United Nations and regional organizations will provide a welcome opportunity to further develop cooperation on strengthening the protection of civilians in armed conflict.

REFERENCES (BIBLIOGRAPHY)

Legal Instruments

1. UN Charter
2. Additional Protocol II ,Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
3. Geneva Convention II related to protection of civilians (adopted 12th August,1949 entered into force 21st October ,1950)

Books

1. Näsström, D. (2023). The international stance on the protection of life during armed conflict.
2. Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*.
3. Matthews, H. (2013). The interaction between international human rights law and international humanitarian law: seeking the most effective protection for civilians in non-international armed conflicts. *The International Journal of Human Rights*.
4. Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.
5. Bosch, S. J. (2012). The combatant status of non-State actors in international armed conflicts, in light of the notion of direct participation in hostilities: an analysis of relief workers, journalists, voluntary human shields, private-military and security contractors, and under-aged child soldiers recruited into non-State organized armed groups (Doctoral dissertation).
6. Bissonnette, C. M. (2016). The definition of civilians in non-international armed conflicts: the perspective of armed groups. *Journal of International Humanitarian Legal Studies*.
7. Akande, D. (2012). Classification of armed conflicts: relevant legal concepts. *International Law and the Classification of Conflicts* (OUP 2012) chapter, 3.
8. Jacques, M. (2012). *Armed conflict and displacement: The protection of refugees and displaced persons under international humanitarian law* (Vol. 95). Cambridge University Press.

9. Gade, E. K. (2010). Defining the non-combatant: How do we determine who is worthy of protection in violent conflict?. *Journal of Military Ethics*.
10. Proy, C. The Classification of Civilians as Human Shields: a Means to Justify Violence?.
11. Landefeld, S. (2023). The Changing Significance of Nationality for the Protection of Civilians in the Hands of a Party to an International Armed Conflict. *Journal of Conflict and Security Law*, krad005.
12. Jacques, M. (2012). *Armed conflict and displacement: The protection of refugees and displaced persons under international humanitarian law* (Vol. 95). Cambridge University Press.
13. Gade, E. K. (2010). Defining the non-combatant: How do we determine who is worthy of protection in violent conflict?. *Journal of Military Ethics*.
14. Proy, C. The Classification of Civilians as Human Shields: a Means to Justify Violence?.
15. Landefeld, S. (2023). The Changing Significance of Nationality for the Protection of Civilians in the Hands of a Party to an International Armed Conflict. *Journal of Conflict and Security Law*, krad005.
16. Salman, H. A., Ismail, S. M., & Nordin, R. (2023). Prisoners Of War: Classification And Legal Protection Under International Humanitarian Law. *UUM Journal of Legal Studies (UUMJLS)*..
17. Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*.
18. Onuora-Oguno, A. (2014). *Migration, Refugees, Asylum and Uprooted Peoples' Rights*. The Sage Handbook of Human Rights.
19. Kibreab, G. (2003). Citizenship rights and repatriation of refugees. *International Migration Review*.
20. Odom, J. G. (2002). Beyond Arm Bands and Arms Banned: Chaplains, Armed Conflict, and the Law. *Naval L. Rev*.
21. Holterhus, T. P. (2019). Targeting the Islamic State's Religious Personnel Under International Humanitarian Law. *Yearbook of International Humanitarian Law*, Volume 20, 2017.

22. Mapako, K. Z. (2020). Jurisprudence, Refinement and Interpretation of International Humanitarian law in Non International Armed Conflict: A Study of Mali and South Sudan. CIFILE Journal of International Law.
23. Schmitt, M. N. (2012). The status of opposition fighters in a non-international armed conflict. In Israel Yearbook on Human Rights, Volume 42 (2012) (pp. 27-53). Brill Nijhoff
24. Mapako, K. Z. (2020). Jurisprudence, Refinement and Interpretation of International Humanitarian law in Non International Armed Conflict: A Study of Mali and South Sudan. CIFILE Journal of International Law.
25. Daud, A. A., Irwansyah, H. A., & Yunus, A. (2021). International Law and the War on Terrorism: Assessing Citizen Becoming Combatant for Terrorist Group. Pt. 2 J. Legal Ethical & Regul. Isses.
26. Denber, R., & Goldman, R. K. (1992). Bloodshed in the Caucasus: escalation of the armed conflict in Nagorno Karabakh (Vol. 1245). Human Rights Watch.
27. Bartusevičius, H., & Gleditsch, K. S. (2019). A two-stage approach to civil conflict: Contested incompatibilities and armed violence. International Organization.
28. Milanovic, M., & Hadzi-Vidanovic, V. (2012). A taxonomy of armed conflict. RESEARCH HANDBOOK ON INTERNATIONAL CONFLICT AND SECURITY LAW, Nigel White, Christian Henderson, eds., Edward Elgar.
29. Jayasekera, K. (2015). Identification of Non-State Armed Groups in Non-International Armed Conflicts: A Legal Analysis Watts, S. (2012). Status of government forces in non-international armed conflict. International Law Studies.
30. Graham, D. E. (2012). Defining non-international armed conflict: a historically difficult task. International Law Studies.
31. Hannum, H. (1995). The status of the Universal Declaration of Human Rights in national and international law. Ga. J. Int'l & Comp. L.

32. Von Bernstorff, J. (2008). The changing fortunes of the Universal Declaration of Human Rights: Genesis and symbolic dimensions of the turn to rights in international law. *European Journal of International Law*.
33. Åhrén, M. (2024). The relevance of the UN Declaration on the Rights of Indigenous Peoples to vibrant, viable and sustainable Sámi communities. In *The Significance of Sámi Rights* (pp. 5-21). Routledge.
34. Dei-Tutu, S., & Atuguba, R. A. (2023). The Domestication of International Law in African Settings: Seven Normative Options in Ghana. *ICL Journal*, (0).
35. Sjöberg, A. K., & Balci, M. (2023). In Their Shoes: Health Care in Armed Conflict from the Perspective of a Non-State Armed Actor. *Dædalus*.
36. de Koningh, I. (2023). Consolidating International Humanitarian Law and International Human Rights Law: Protection from Gender-Based Violence Against Women in Non-International Armed Conflict. *Netherlands International Law Review*.
37. Tsagourias, N., & Morrison, A. (2023). *International humanitarian law: cases, materials and commentary*. Cambridge University Press.
38. Arvidsson, M., & Sjöstedt, B. (2023). Ordering Human–Other Relationships: International Humanitarian Law and Ecologies of Armed Conflicts in the Anthropocene. In *The Routledge Handbook of International Law and Anthropocentrism*. Taylor & Francis.
39. Borelli, S., & Laufer, H. (2022). Protection of individuals hors de combat: convergence of international humanitarian law and international human rights law. In *Human Rights in War* (pp. 309-343). Singapore: Springer Nature Singapore.
40. Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.
41. Escorihuela, A. L. (2010). *Humanitarian Law and Human Rights Law: The Politics of Distinction*. Mich. St. U. Coll. LJ Int'l L.

42. Piątkowski, M. (2016). Human right protection and right to life in armed conflict—on the crossroad between the human rights law and international humanitarian law. Interdisciplinary approach to law in modern social context.
43. Farer, T. (1971). Humanitarian Law and Armed Conflicts: Toward the Definition of International Armed Conflict. *Colum. L. Rev.*
44. Mullerson, R. (1997). International humanitarian law in internal conflicts. *J. Armed Conflict L.*
45. Higgins, N. (2004). The Application of International Humanitarian Law to Wars of National Liberation. *Journal of humanitarian Assistance.*
46. Akhmedov, N., Shalkarova, I., Egorov, A., & Egorov, I. (2023). Topical issues of the use of peacekeeping operations in modern realities, including the military and police component: A case study of the UN and regional organizations. *International Journal of Police Science & Management*, 14613557231206706.
47. Kjeksrud, S. (2019). Using force to protect civilians. A comparative analysis of United Nations military protection operations.
48. Milburn, R. (2023). OPERATIONAL RISKS AND OPPORTUNITIES FROM CLIMATE CHANGE ON WESTERN MILITARIES' CONSERVATION ACTIVITIES. *Climate Change, Conflict and (In) Security: Hot War.*
49. Hultman, L. (2013). UN peace operations and protection of civilians: Cheap talk or norm implementation?. *Journal of Peace Research.*
50. Hunt, C. T., & Bellamy, A. J. (2011). Mainstreaming the responsibility to protect in peace operations. *Civil Wars.*
51. Morris, T. (2023). The Language of the Protection of Civilians Mandate and the Primary Responsibility of the State: A Legal Norm for Peace and Security. *Journal of International Humanitarian Legal Studies*, 1(aop).
52. Hunt, C. T., & Zimmerman, S. (2019). Twenty Years of the Protection of Civilians in UN Peace Operations: Progress Problems and Prospects. *Journal of international peacekeeping.*

53. Labuda, P. I. (2020). With or against the state? Reconciling the protection of civilians and host-state support in UN peacekeeping. International Peace Institute.
54. Guerrero, G., & Rhodes, S. D. (2022). HUMAN RIGHTS AND THE PROTECTION OF CIVILIANS IN UN PEACE OPERATIONS. *Revista Política y Estrategia*.
55. Sassòli, M. (2007). The implementation of international humanitarian law: current and inherent challenges. *Yearbook of International Humanitarian Law*.
56. Kelley, M. (2013). Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare.
57. Sarwar, T. B. (2012). Challenges for Implementing International Humanitarian Law (IHL) in the Contemporary Landscape. *Policy*.
58. Sassoli, M., Issar, Y., von Arnould, A., Matz-Lück, N., & Odendahl, K. (2015). Challenges to International Humanitarian Law. *100 Years of Peace through Law: Past and Future*.
59. Martinovic, M. A. (2016). *The Challenges of Asymmetric Warfare. Enhancing Compliance with International Humanitarian Law by Organized Armed Groups*. Anchor Academic Publishing.
60. Gieseken, H. O., & Murphy, V. The protection of the natural environment under international humanitarian law: The ICRC's 2020 Guidelines. *International Review of the Red Cross*.
61. Hassan, S. A. M., & Ali, S. A. M. (2023). Limitations On Warfare Methods: A Brief Examination Under International Humanitarian Law. *Journal of Advances in Humanities Research*.
62. Sassòli, M. (2019). Respect of the law. In *International Humanitarian Law* (pp. 68-167). Edward Elgar Publishing.
63. Cassimatis, A. E. (2007). International humanitarian law, international human rights law, and fragmentation of international law. *International & Comparative Law Quarterly*.
64. Lamp, N. (2011). Conceptions of war and paradigms of compliance: The 'new war' challenge to international humanitarian law. *Journal of Conflict & Security Law*.

65. Gisel, L., Rodenhäuser, T., & Dörmann, K. (2020). Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts. *International Review of the Red Cross*, 102(913).
66. Melzer, N., & Kuster, E. (2019). *International Humanitarian Law. A comprehensive introduction*. Geneva: International Committee of the Red Cross.
67. Schmitt, M. N., & Schmitt, M. N. (2012). *Military necessity and humanity in international humanitarian law: preserving the delicate balance. Essays on Law and War at the Fault Lines*.
68. Jansen, S. L. H. (2022). *Part of the Solution: Exploring Armed Non-State Actor Commitment to and Compliance with an Anti-Personnel Landmine Ban* (Doctoral dissertation, Carleton University).
69. Baj, G. (2022). *International Legal Personality And Accountability Of Armed Non-State Actors Through Their Self-Regulation* (Doctoral dissertation, Université Côte d'Azur; Università degli studi di Milano-Bicocca).
70. Abdou, M. (2022). *International law and the territorial controls of non-state armed groups in Yemen and Libya (2011-2015)* (Doctoral dissertation, University of Warwick).
71. Khan, B. U., & Nasrullah, N. M. (2019). *Implementation of International Humanitarian Law and the Current Challenges*. In *Revisiting the Geneva Conventions: 1949-2019* (pp. 262-299). Brill Nijhoff.
72. Adebayo, A. (2023). *International Security and The Protection of Human Rights: Examining The Intervention of International Law in Quelling Civil Unrest*. Available at SSRN 4599105.
73. Gibney, M., Tomasevski, K., & Vedsted-Hansen, J. (1999). Transnational state responsibility for violations of human rights. *Harv. Hum. Rts. J.*, 12, 267.
74. Roht-Arriaza, N. (1990). State responsibility to investigate and prosecute grave human rights violations in international law. *Calif. L. Rev.*
75. McCorquodale, R., & Simons, P. (2007). Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law. *The Modern Law Review*, 70(4).

76. Addison, C. H. L., & Koh, H. (2017). How is international human rights law enforced?. In *International Law of Human Rights* (pp. 241-262). Routledge.
77. Droege, C. (2007). The interplay between international humanitarian law and international human rights law in situations of armed conflict. *Israel Law Review*, 40(2).
78. Provost, R. (2002). *International human rights and humanitarian law* (Vol. 22). Cambridge University Press.
79. Dehbi, F., & Martin-Ortega, O. (2023). An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective. *Regulation & Governance*.
80. Tsagourias, N., & Morrison, A. (2023). *International humanitarian law: cases, materials and commentary*. Cambridge University Press.
81. Adams, R., & Loideáin, N. N. (2019). Addressing indirect discrimination and gender stereotypes in AI virtual personal assistants: the role of international human rights law. *Cambridge International Law Journal*, 8(2).
82. Khan, M. A., Fayaz, M., & Khan, U. N. (2022). Liability of the Private Military Companies for Violations of International Humanitarian Law. *Journal of Law & Social Studies (JLSS)*, 4(2).

Internet Sources

1. X, “Persons protected under IHL” <https://www.icrc.org/en/doc/war-and-law/protected-persons/overview-protected-persons.htm#:~:text=The%20Geneva%20Conventions%20have%20their,First%20Geneva%20Convention%20in%201864>. Accessed on 20th August 2023
2. X, “Wounded, sick and shipwrecked protected under international humanitarian law” <https://www.icrc.org/en/doc/war-and-law/protected-persons/wounded-sick-shipwrecked/overview-wounded-protected-persons.htm> Accessed on 29th August 2023
3. X, “Birth of an idea: the founding of the International Committee of the Red Cross and of the International Red Cross and Red Crescent Movement: from Solferino to the original Geneva Convention (1859–1864)” <https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/abs/birth-of-an-idea-the-founding-of-the-international-committee-of-the->

[red-cross-and-of-the-international-red-cross-and-red-crescent-movement-from-solferino-to-the-original-geneva-convention-18591864/1546E3971BC5FAB62F31D6BEDE98DCD6](https://www.history.com/topics/world-war-ii/geneva-convention)

Accessed on 2nd September 2023

4. X, “Geneva Convention” <https://www.history.com/topics/world-war-ii/geneva-convention>
Accessed on 4th August 2023
 5. X, “The practical guide to humanitarian Law” <https://guide-humanitarian-law.org/content/article/3/non-state-armed-groups/> Accessed on 15th August 2023
 6. X, “How does law protect in war” <https://casebook.icrc.org/law/non-international-armed-conflict> Accessed on 1st October 2023
 7. X, “Non-international armed conflict” https://casebook.icrc.org/a_to_z/glossary/non-international-armed-conflict Accessed 12th October 2023
- X, “The practical Humanitarian Law” <https://guide-humanitarian-law.org/content/article/3/non-international-armed-conflict-niac/>