INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW IN CONTEMPORARY ARMED CONFLICTS: CHALLENGES, DILEMMAS AND PROSPECTS

by

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ABSTRACT

This study examines the relationship between international humanitarian law (IHL) and international human rights law (IHRL) in the protection of civilians during armed conflict. Despite the existence of comprehensive international legal frameworks designed to safeguard human dignity, contemporary armed conflicts continue to result in widespread violations of human rights and humanitarian norms. The study explores the extent to which IHL and IHRL complement one another in addressing the needs of civilian populations affected by armed conflict, with emphasis on prolonged conflicts involving state and non-state actors.

The research adopts a qualitative doctrinal legal methodology based on the analysis of primary and secondary sources, including international treaties, legislation, case law, academic literature, reports of international organisations, and policy documents. Attention is given to the Geneva Conventions of 1949, international human rights instruments, and relevant jurisprudence concerning the protection of civilians.

The findings reveal that although IHL and IHRL share the common objective of protecting human dignity, challenges remain regarding their implementation and enforcement in contemporary conflicts. Factors such as the involvement of non-state armed groups, prolonged humanitarian crises, displacement, sexual violence, and the politicisation of international law continue to undermine civilian protection. The study further finds that sanctions, accountability mechanisms, and enhanced dissemination of IHL can contribute to improving compliance with international legal obligations.

The study concludes that a complementary application of IHL and IHRL is essential for ensuring effective protection of civilians during armed conflict. It recommends strengthened international cooperation, improved enforcement mechanisms, and greater emphasis on education and training in humanitarian law to enhance compliance and accountability.

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CHAPTER 1

INTRODUCTION TO THIS STUDY

1.1 Introduction

The daily realities of armed conflicts around the world have not changed. Although international humanitarian law (IHL) and international human rights law (IHRL) have been developed with the objectives of protecting human beings and their dignity, there are still many challenges to this day that do not enjoy the protection of these laws and human rights treaties.[1] Therefore, contemporary armed conflicts present a range of complex challenges for both IHL and IHRL.[2] These legal frameworks are designed to protect individuals and uphold certain principles during times of armed conflict, but their application and effectiveness are greatly compromised in the face of modern conflict dynamics.[3]

Civilians bear the impact of armed conflicts and have remained the primary victims of violations of IHL committed by both state parties and non-state armed groups.[4] Deliberate attacks on civilians, the forced displacement of civilian populations and the destruction of infrastructure vital to the civilian population and that of civilian property are just some examples of prohibited acts that have been perpetrated repeatedly.[5] Civilians are also the victims of violations of the law such as murder, forced disappearance, torture, cruel treatment and outrages upon personal dignity, rape and other forms of sexual violence.[6] Persons detained in armed conflicts have been deprived of their basic rights, including inadequate conditions and treatment while in

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1 International Committee of the Red Cross. (1949). *Geneva Conventions of 12 August 1949.*

2 Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar Publishing 2019) 325–330.

3 United Nations (UN), 'International Humanitarian Law and Challenges of Armed Conflicts' (2007) 89 (867) IRRC 719, 757.

4 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, arts 48 and 51.

5 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (ICRC 2024) 7–12.

6 UN, 'International Humanitarian Law and Challenges of Armed Conflicts' 757.

detention, a lack of procedural safeguards aimed at preventing arbitrary detention and the right to a fair trial.[7] Medical personnel and humanitarian workers have also been the targets of IHL violations.[8] In many instances, humanitarian organisations have been prevented from carrying out their activities or hampered in their efforts to do so effectively. This has further aggravated the plight of those whom they are meant to assist and protect.[9]

While the suffering inflicted during war has not changed, the past several years has been characterised by a growing public awareness of IHL and its basic rules – and of acts that constitute violations of those rules.[10] The heightened interest in and awareness of IHL should be welcomed and encouraged, bearing in mind the fact that knowledge of any body of rules is a prerequisite of their better implementation.[11] Moreover, the 1949 Geneva Conventions have now become universal, rendering the treaties legally binding on all countries in the world.[12] Nevertheless, states have on occasion denied the applicability of IHL to certain situations, even though the facts on the ground have clearly indicated that an armed conflict was taking place.[13] In other instances, states have attempted to broaden the scope of the application of IHL to include situations that could not, based on the facts, be classified as armed conflicts.[14] Apart from controversies over the question of how to qualify a situation of violence in legal terms, there have also been what can only be called opportunistic misinterpretations of certain time-tested specific legal rules.[15] The tendency by some actors to point to alleged violations by others, without showing any willingness to acknowledge ongoing violations of their own, has also been detrimental to the proper application of the law.[16]

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7 Sassòli, *Principles of International Law.*

8 UN, 'International Humanitarian Law and Challenges of Armed Conflicts' 757.

9 UN, 'International Humanitarian Law and Challenges of Armed Conflicts' 757.

10 Sassòli, *Principles of International Law.*

11 Protocol Additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I), arts 48 and 51.

12 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (31st International Conference of the Red Cross and Red Crescent, Geneva 2011) 7, 8.

13 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (n 1) 8.

14 Sassòli, *Principles of International Law.*

15 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I, Rules* (Cambridge University Press 2005) xxxv–xxxvii.

16 Sassòli, *Principles of International Law.*

The politicisation of IHL defeats the very purpose of this body of rules because its primary beneficiaries are civilians and people who are wounded.[17] This means that the supposed beneficiaries do not enjoy the complete use of the rights enshrined in IHL and HRL because of the politicisation of these bodies of rules.[18] The structure of IHL is based on the idea that certain categories of individuals must be spared the effects of violence as far as possible regardless of the side to which they happen to belong and irrespective of the justification given for armed conflict.[19] The non-application or selective application of IHL or the misinterpretation of its rules for domestic or other political purposes, can have a direct effect on the lives and livelihoods of those who are not or are no longer waging war.[20] Such a fragmented approach to IHL contradicts the essential IHL principle of humanity, which must apply equally to all victims of armed conflict if it is to retain its inherent meaning.[21] Parties to armed conflicts often lose sight of the fact that, in accordance with the very logic of IHL, politicised and otherwise skewed interpretations of the law can rarely, if ever, have an impact on the opposing side alone.[22] It is often just a question of time before one's own country's civilians and captured combatants are exposed to the malicious effects of reciprocal politicisation or deliberate misinterpretation by the adversary.[23]

1.2 Problem Statement

The problem that the research intends to respond to is the impact, challenges and dilemmas which the armed conflict inflicts on civilians, especially women and children, affected by armed conflict. Many contemporary conflicts involve non-state armed groups which may not be bound by the same international legal obligations as state

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17 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (30th International Conference of the Red Cross and Red Crescent, Geneva 2007) 4.

18 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (31st International Conference of the Red Cross and Red Crescent, Geneva 2011) 8.

19 Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, Cambridge University Press 2016) 17–19.

20 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (n 1) 4.

21 UN, 'International Humanitarian Law and Challenges of Armed Conflicts' 757.

22 UN, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (2007) *ICRC* 1, 68.

23 UN, 'International Humanitarian Law and Challenges of Armed Conflicts' 757.

actors, and this creates challenges in enforcing IHL and HRL standards on these armed groups and also in holding them accountable for violations.

Among other measures, the UN strives to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[24] However, in many modern conflicts, a significant power imbalance exists between the parties involved, with one side being a powerful state militia and the other consisting of non-state actors. This imbalance has often led to disproportionate harm being inflicted on civilians and created challenges in applying the principle of distinction. The use of advanced technology, including drones and cyberwarfare, creates new challenges in applying IHL and HRL. For example, the distinction between civilian and military objects becomes blurred when cyberattacks target critical infrastructure.[25]

Often, these conflicts involve multiple external actors, either directly or indirectly, which can complicate the application of IHL and HRL further.[26] The actions of foreign states and entities in conflict zones can have serious humanitarian consequences.[27] Armed conflicts disproportionately affect vulnerable groups such as women, children and displaced persons.[28] Ensuring their protection and desponding to their specific needs remains a challenge and matters of sexual exploitation and abuse become rife in those places.[29]

Armed conflicts affect the lives of millions of civilians. Serious violations of international humanitarian and human rights law are common in many armed conflicts. In certain circumstances, these violations constitute genocide, war crimes or crimes against humanity.[30] The recent conflicts in Ukraine–Russia, Palestine–Israel and many other

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24 UN Charter, 1945, 3.

25 K Watkin, 'Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict' 98 [2004] AJIL 1, 34.

26 Clapham A, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006).

27 Clapham A, *Human Rights Obligations of Non-State Actors.*

28 Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War* (Martinus Nijhoff Publishers 2005) 1–20.

29 United Nations Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General* UN Doc S/2024/292 (2024).

30 UN, *International Legal Protection of Human Rights in Armed Conflict*, [2011] 1.

countries experiencing similar conflicts are perfect examples. These conflicts have caused extreme civilian harm and have left millions without access to food, water and other essential supplies and their human rights are violated.[31]

The continuing current problems that are informing this research are mostly driven by extreme poverty,[32] the displacement of women and children, the erosion of social welfare, sexual exploitation and the abuse of power.[33] Because many contemporary conflicts are characterised by a lack of clear frontlines and the involvement of multiple armed groups with different agendas, adherence to IHL principles is rendered difficult.[34]

In times of war, women are often left to take care of children and other dependants on their own and under extremely difficult circumstances. In addition, they are particularly exposed to the risk of sexual violence and abuse by weapon-bearers or organised criminal groups.[35] IHL therefore emphasises that women must be 'especially protected against any attack on their honour, against rape, enforced prostitution or any form of indecent assault'.[36] In 2013, a UN investigation declared sexual exploitation and abuse (SEA) 'the most significant risk to UN peacekeeping missions, above and beyond other key risks including protection of civilians'.[37] The former Secretary-General Ban Ki-moon asserted that 'a single substantiated case of SEA involving UN personnel is one case too many'. Yet civilian and military personnel associated with peacekeeping operations (PKOs) continue to perpetrate SEA, despite the development of policy frameworks designed to prevent it and hold perpetrators accountable. SEA by interveners has been dealt with largely as an issue of principle. When peacekeepers abuse local populations, they undermine the principles that underpin their

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31 Office of the United Nations High Commissioner for Human Rights, 'Civilian Harm and Rights Violations Intensify in Ukraine Four Years After Invasion, UN Human Rights Monitors Say' (16 February 2026) https://ukraine.un.org/en/310297-civilian-harm-and-rights-violations-intensify-ukraine-four-years-after-invasion-un-human accessed 5 June 2026.

32 Westendorf and Searle, 'Sexual Exploitation and Abuse in Peace Operations' 365.

33 United Nations Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General* UN Doc S/2024/292 (2024).

34 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (n 1) 8.

35 UN, *International Legal Protection of Human Rights in Armed Conflict 3.*

36 N Melzer, 'International Humanitarian Law: A Comprehensive Introduction' [2022] ICRC 226, 360.

37 J Westendorf and L Searle, 'Sexual Exploitation and Abuse in Peace Operations' [2017] IA 365-387.

deployment.[38]

1.3 Research Questions

The following research questions are intended to be responded to; they range from several challenges and dilemmas that the UN fails to deal with according to its purpose and founding principles as outlined in Article 1 of the UN charter:

(a) What strategies can be employed to address the issue of civilian casualties effectively and to minimise the harm to non-combatants in contemporary armed conflicts?
(b) What are the key obstacles to and opportunities for holding individuals accountable for war crimes and human rights abuses committed during armed conflicts?
(c) Are the sanctions imposed on states that violate the international HRL and IHL always sufficient and in proportion to the harm inflicted?
(d) How can diplomatic efforts and international cooperation be leveraged to enhance the prospects for resolving contemporary armed conflicts?
(e) What are the social, economic and political factors that contribute to the perpetuation of armed conflicts and how can they be resolved to promote sustainable peace?
(f) What are the prospects of long-term stability and post-conflict reconstruction in the areas affected by contemporary armed conflicts?

1.4 Aim of this Research

The aim of this research is to analyse critically those strategies that can be employed effectively in minimising harm to non-combatants by reviewing the key obstacles to and opportunities for holding individuals accountable for war crimes, including human rights abuses. Furthermore, it aims constructively to analyse the proportionality between the sanctions imposed on states that violate the international HRL, and the

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38 Westendorf and Searle, ‘Sexual Exploitation and Abuse in Peace Operations’ 368.

harm inflicted by them. The research also included the diplomatic efforts undertaken to promote sustainable peace as far as international cooperation is concerned, including the social, economic and political factors that contribute to the perpetuation of armed conflicts. It did this by analysing the prospects for long-term stability and post-conflict reconstruction in the areas affected by the armed conflict.

1.5 Literature Review

Any well-intentioned law will fail to fulfil its purpose if it cannot be implemented effectively and international law currently lacks effective implementation mechanisms. According to Kadam, it would be incorrect to put an entire body of international law in one basket and label it as weak law with ineffective implementation mechanisms simply because many areas of international law are meticulously respected by states even in the absence of sanctions.[39]

In a nutshell, Nils described the purpose of IHL as being to protect the victims of armed conflicts and to regulate hostilities based on a balance between military necessity and humanity. It was also said that IHL must be distinguished from legal frameworks that may apply in parallel to it but which have different objectives and purposes; these include the UN Charter, the law of neutrality, HRL and international criminal law.[40] The belligerents should meet their humanitarian obligations in all circumstances, regardless of the enemy's conduct and of the nature or origin of the conflict. Although IHL is today one of the most densely codified and ratified branches of international law, its rules can also be derived from custom and general principles of law. However, recent political, social, economic and technological developments pose fresh challenges to the fundamental achievements and faithful implementation of IHL.[41]

In an article titled 'A Short History of International Humanitarian Law' Alexandra stated that

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39 U Kadash, 'Implementation of International Humanitarian Law: Problems and Prospects' [2002] ISIL YB Int'l Human & Refugee Law 175.

40 Melzer, 'International Humanitarian Law' 16.

41 Melzer, 'International Humanitarian Law' 16.

> for the first part of the 20th century, legal commentators perceived the humanitarian principles of the rules of war as one thread, and often a weaker thread, of the law of war.[42]

Generally, humanitarian law has well-developed and -articulated norms and rules for the regulation of armed conflicts;[43] however, these rules and principles do not stop the pain and suffering of civilians and non-combatants. It is always easier to secure compliance with a law in a centralised society like the one that exists within a state and so in the contemporary decentralised international community there are several hurdles in implementing IHL and HRL.[44] The International Committee of the Red Cross (ICRC) views the main cause of suffering during armed conflicts and of violations of IHL as being the failure to implement existing norms, whether owing to an absence of political will or to another reason, rather than a lack of rules or their inadequacy.[45]

IHL is specifically designed to apply in situations of armed conflict. Belligerents therefore cannot justify failure to respect IHL by invoking the harsh nature of armed conflict; they must comply with their humanitarian obligations in all circumstances. This also means that IHL is equally binding on all parties to an armed conflict, irrespective of their motivations or of the nature or origin of the conflict. A state exercising its right to self-defence or rightfully trying to restore law and order within its territory must be as careful to comply with IHL as an aggressor state or a non-state armed group which has resorted to force in violation of international or national law, respectively. The belligerents must respect IHL even if it is violated by their adversary. Equally, belligerent reprisals are permitted only under extremely strict conditions and may never be directed against persons or objects entitled to humanitarian protection.[46]

A 2015 independent review of SEA perpetrated by peacekeepers in the Central African Republic (CAR) asserted that ‘when peacekeepers exploit the vulnerability of the people they have been sent to protect, it is a fundamental betrayal of trust’. And when

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42 A Alexandra, ‘A Short History of International Humanitarian Law’ 26 (2015) EJIL 109,138.
43 Melzer, ‘International Humanitarian Law’ 16.
44 Kadash, ‘Implementation of Humanitarian Law’ 175.
45 International Committee of the Red Cross (ICRC), International Humanitarian Law and the Challenges of Contemporary Armed Conflicts (2007) 7.
46 Melzer, ‘International Humanitarian Law’ 17.

the international community fails to care for the victims or to hold the perpetrators to account, that betrayal is compounded.[47] Responses have centred on calling for peacekeepers and aid workers to uphold UN principles more rigidly and policies have focused on pre-deployment training and accountability mechanisms in PKOs, but these have not reduced the incidence of SEA.[48]

The UN General Assembly adopted Resolution 75/321 on 2 September 2021 expressing its grave concern at incidents of SEA perpetrated against vulnerable populations and directing the Secretary-General to extend remedial and preventive measures to all PKOs and humanitarian operations, to ensure that reporting and investigative procedures are in place and to maintain data on SEA. It encouraged all UN bodies and NGOs to do the same.[49] The Secretary-General consequently issued a bulletin on Special Measures for Protection from Sexual Exploitation and Abuse which put in place a zero-tolerance policy on SEA for all UN staff and outlined the duties of mission leadership in holding perpetrators accountable, including by referring cases to national authorities for criminal prosecution.[50] It also mandated that all non-UN entities or individuals working in cooperation with the UN accept and implement those standards.[51] This was a cornerstone of SEA policy development, and it reinforced the mandate laid out in UN Security Council Resolution 1325 for interveners to protect women from post-conflict sexual and gender-based violence (SGBV).[52]

While the literature on peacekeeping has mostly focused on whether peacekeeping actually keeps the peace, few studies have systematically dealt with the question of what explains variations in the unintended consequences of peacekeeping, such as SEA. The literature on SEA in peacekeeping is dominated by policy reports and case studies that suggest factors associated with SEA or the discussion of legal challenges, but no comparative empirical tests exist of the relationship between various potential risk factors and SEA reports. Such systematic analyses of SEA are needed in part because the UN Security Council Resolution 1325 on Women, Peace and Security

47 Westendorf and Searle, ‘Sexual Exploitation and Abuse in Peace Operations’ 367.
48 Westendorf and Searle, ‘Sexual Exploitation and Abuse in Peace Operations’ 367.
49 UN, ‘Action on Sexual Abuse and Exploitation’ 2021 1–3.
50 UN Bulletin, ‘Special Measures for Protection from Sexual Exploitation and Abuse’ 2003.
51 UN Bulletin, ‘Special Measures for Protection from Sexual Exploitation and Abuse’ 2003.
52 Westendorf and Searle, ‘Sexual Exploitation and Abuse in Peace Operations’ 367.

demands greater inclusion of women in all parts of peacebuilding. SEA by peacekeepers is likely to undermine this goal and potentially also have detrimental effects on the success of peace operations more broadly.[53]

Among other challenges and dilemmas facing the effective implementation of IHL, such as a lack of accountability, ability to ensure compliance; however, Murphy speaks about the way of dealing with prisoners of war and states that it is not a new one.[54] The issue has assumed significant contemporary relevance because of developments in Iraq and Afghanistan. The rights of prisoners or detainees during armed conflict are governed by the Law of Armed Conflict (formerly referred to as the Laws of War) or what is probably better known today as IHL.[55] There is an obligation on all states and armed forces to ensure that IHL is upheld. This entails being responsible for disseminating information and educating populations, but especially members of armed forces, regarding the principles of IHL.[56] This branch of international law has always come under pressure during armed conflict and the current conflicts taking place in Iraq and Afghanistan are no exception.[57] IHL not only protects civilians from the effects of hostilities; it also prohibits or restricts means and methods of warfare that are considered to inflict unnecessary suffering or superfluous injury on combatants.[58] As early as 1868, the St Petersburg Declaration recognised

> [t]hat the only legitimate object during war is to weaken the military forces of the enemy; That for this purpose it is sufficient to disable the greatest possible number of men; That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable; That the employment of such arms would, therefore, be contrary to the laws of humanity.[59]

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53 N Ragnhild and C Siri, 'Sexual Exploitation and Abuse by Peacekeepers' [2013] PRIO 511–534.

54 R Murphy, 'Contemporary Challenges to the Implementation of International Humanitarian Law' 3 (2000) JSTOR 99, 114.

55 P Rowe, 'Is There a Right to Detain Civilians by Foreign Armed Forces During a Non-International Armed Conflict?' (2012) 61(3) *International and Comparative Law Quarterly* 697–721.

56 P Rowe, 'Is There a Right to Detain Civilians by Foreign Armed Forces During a Non-International Armed Conflict?' 712.

57 Murphy, 'Contemporary Challenges to the Implementation of International Humanitarian Law' 99.

58 Murphy, 'Contemporary Challenges to the Implementation of International Humanitarian Law' 102.

59 Melzer, 'International Humanitarian Law' 18.

In promoting economic, social and cultural rights while observing the challenges and opportunities in international HRL, Runtunuwu and Tjahyadi argue that protecting economic, social and cultural institutions is a responsibility of humanitarian law and IHL.[60]

Even though one of the most fundamental rules of IHL is that all persons who have fallen under the power of the enemy are entitled to humane treatment regardless of their status and previous function or activities, it is difficult to implement this rule.[61] Accordingly, common Article 3 of Geneva Conventions, which is considered to reflect a customary 'minimum yardstick' for protection that is binding in any armed conflict, states:

> Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.[62]

Although IHL expressly permits parties to a conflict to 'take such measures of control and security in regard to persons under their control as may be necessary as a result of the war', the entitlement to humane treatment is absolute and applies not only to persons deprived of their liberty, but also, more generally, to the inhabitants of territories under enemy control.[63] The principles of IHL are laid down; with effective implementation they may be applied entirely to all states.

A major part of IHL is contained in the four Geneva Conventions of 1949 that have been adopted by all nations in the world. The Conventions have been expanded on and supplemented by two further agreements, namely, the Additional Protocols of 1977, relating to the protection of victims of armed conflicts and the 2005 Additional Protocol III, relating to the adoption of an additional distinctive emblem. These

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60 Y Runtunuwu and I Tjahyadi, 'Promoting Economic, Social, and Cultural Rights: Challenges and Opportunities in International Human Rights Law' 3 (2023) EJLHR 158, 165.

61 Melzer, 'International Humanitarian Law' 20.

62 Article 3 of Geneva Conventions: 'Conflicts not of an International Character' 1949, 91.

63 Melzer, 'International Humanitarian Law' 20.

conventions provide for specific rules that safeguard combatants or members of armed forces who are wounded, sick or shipwrecked, prisoners of war and civilians, and also medical personnel, military chaplains and civilian support workers of the military.[64]

In 1977, two protocols supplementary to the Geneva conventions were adopted by an international diplomatic conference to give greater protection to the victims of both international and internal armed conflicts. Protocol I expands protection for both civilian populations and military and civilian medical workers in international armed conflicts. Protocol II elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars. It does not apply to internal disturbances such as riots, demonstrations and isolated acts of violence. Protocol II expands on and complements the non-international protections contained in Article 3 common to all four Geneva Conventions of 1949.[65]

1.6 Research Methodology

This research adopts a qualitative doctrinal legal research methodology. Doctrinal legal research focuses on the systematic analysis and interpretation of legal principles, rules, legislation, treaties, case law, and scholarly literature. The methodology is particularly suitable for examining the relationship between IHL) and IHRL, as well as assessing the effectiveness of existing legal frameworks in protecting human rights during armed conflicts.

The research is primarily based on an extensive review of both primary and secondary sources. Primary sources include international treaties and conventions, domestic legislation, judicial decisions, and other relevant legal instruments governing armed conflict and human rights protection. Emphasis is placed on the Geneva Conventions of 1949 and their Additional Protocols, international human rights treaties, and relevant jurisprudence from international and domestic courts.

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64 American Red Cross, 'Summary of the Geneva Conventions of 1949 and their Additional Protocols' [2011] 1, 33.

65 American Red Cross, 'Summary of the Geneva Conventions of 1949 and their Additional Protocols' 5–6.

Secondary sources comprise academic textbooks, peer-reviewed journal articles, conference papers, policy documents, reports published by international organisations, and other scholarly publications. These sources were consulted to provide critical analysis, contextual understanding, and scholarly perspectives on the challenges associated with the implementation and enforcement of IHL and IHRL.

In addition to traditional legal sources, the research draws on qualitative information obtained from reports issued by international organisations, government publications, reputable newspapers, magazines, and online publications. These materials were used to examine contemporary armed conflicts and to assess the practical implications of legal norms in real-world situations.

During the initial stages of the research, a comprehensive review of documented incidents of human rights violations and breaches of IHL was undertaken. This review assisted in developing a thorough understanding of the political, social, cultural, and humanitarian contexts within which such violations occur. Attention was given to contemporary conflicts and their impact on vulnerable populations, including women, children, detainees, and displaced persons.

The collected information was analysed through a qualitative content analysis approach. This involved identifying recurring themes, legal challenges, and areas of overlap and tension between IHL and IHRL. The analysis further evaluated the adequacy of existing legal mechanisms in addressing human rights violations during armed conflict and explored possible measures to enhance compliance with international legal obligations.

The methodology employed in this study therefore combines doctrinal legal research with qualitative analysis of contemporary literature and conflict-related reports, enabling a comprehensive examination of the protection of human rights during armed conflict within both legal and practical contexts.

1.7 Rationale of the Study/Hypothesis

It is important to highlight the challenges and dilemmas faced during the contemporary armed conflicts around the world. This research focused on the main reasons for the impracticability of implementing the principles without impartiality with particular reference to the conflicts in Israel, the Ukraine, the DRC and the atrocities suffered in African states, among other issues. The significance of IHL and HRL in these conflicts is of utmost importance, including the constitutions of the states involved. The research considered cases of SEA where the UN has declared zero tolerance of all aspects of SEA. The world is evolving, technologies are being enhanced, and an armed conflict today is different from an armed conflict tomorrow. Among other things and for these reasons, this research needs to be conducted.

The UN states that 'International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all'.[66] This statement seems to be powerful and, if implemented correctly, the world's armed conflicts would not have so many refugees and people displaced and lacking the necessities for survival.

The political actors are very important in these armed conflicts. Since we are living in a world that is evolving, the consequences of not conducting this could be stagnation despite there being policies in place to guide states in armed conflict contexts.

1.8 Chapter Outline

The research is outlined in five chapters, which critically assess the facts relevant to the topic.

(a) **Chapter one** of the research has introduced and provided the background to this study.
(b) **Chapter two** discusses the conceptual framework underpinning the study. This includes the definition of the key concepts which are relevant to the research. In this chapter, the key concepts dealt with include the effective implementation

66 UN, *International Legal Protection of Human Rights in Armed Conflict* 1.

of IHL principles, the importance of member states versus non-member states so far as adherence to the rules is concerned, and other basic concepts such as the deliberate violation of human rights during armed conflict.

(c) **Chapter three** examines the needs of civilian populations in increasingly drawn-out conflicts. Also, it considers the prospects of improving, enhancing and increasing respect for IHL through the engagement of armed non-state actors, together with the role of sanctions. The role of the Geneva conventions and their additional protocols is critically analysed with respect to IHL during external and internal armed conflicts.

(d) **Chapter four** deals with the matter of human rights violations during humanitarian crises that arise from armed conflict.

(e) **Chapter five** contains the conclusions and recommendations.

CHAPTER 2

THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN ARMED CONFLICT: RIGHTS AND GOVERNING LAWS

2.1 Introduction

This chapter examines the connection between international humanitarian law (IHL), which regulates conduct during armed conflict and international human rights law (IHRL), which primarily focused on safeguarding human rights in peacetime while also dealing with specific duties during armed conflicts. The objective of this chapter is to explore the way in which these two legal frameworks engage with one another, considering that certain regulations have been designed specifically to manage their interaction.

It is widely understood that both areas of law focus on safeguarding individuals in times of armed conflict. However, IHRL during such situations primarily emphasises the protection of fundamental human rights. In addition, it regulates the way IHL is implemented to confirm that the justifications for the conflict are fulfilled, thereby preventing breaches of these regulations. A key enquiry may arise regarding the applicability of IHRL during armed conflict: for instance, can it override the principles of IHL? Or, conversely, in what circumstances does IHL take precedence over IHRL?[1]

2.1.1 Background and Significance

Traditionally, human societies seeking to avoid conflicts saw the need to agree on norms and rules to guide certain activities to ensure that violent acts remain within certain limits in the course of armed conflict.[2] States historically aimed to establish

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1 E Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* (2023) 143.

2 WH Parks, *Air War and the Law of War* in *The Conduct of Hostilities in International Humanitarian Law* (2023) 576.

limitations of means in the conduct of hostilities to ensure some protection from the ravages of armed conflict, which normally affects lives and property. The objective was, and still is, to reduce the suffering of victims of war and to possibly protect and preserve other people's property and the environment in the event of war.

It is important to highlight those traditional wars that were short in duration, fought between states' armies. When these conflicts were over, differentiating between what happened during the war and violations was easy. Nowadays, international structures have adapted their resources to longer armed conflicts that are typified by internal and international aspects and a myriad of irregular forces.[3] Prokhorenko provides that the intersection of International Humanitarian Law and International Human Rights Law seems to be at its peak with the growth of these long-lasting international armed conflicts or internal disturbances. Therefore, it is then essential to establish an appropriate balance that takes into consideration the fundamental purposes of both IHL and IHRL so that neither ignores its origins, purposes and constituents during an enforcement operation in protected areas.[4]

2.2 Conceptual Framework

The conceptual framework of this chapter is born out of four significant trends that have transformed the nature of armed conflict in recent years. Pandey confirm that the first of these is the decay in the existing inter-state paradigm of armed conflict and the emergence in its place of intra-state and often non-international, armed conflict as the dominant form of physical conflict.[5] The second is the enormous increase in global cross-border flows of information, capital and trade, and the corresponding decline in the degree of formal censorial controls exercised by intergovernmental institutions and agencies over the national policies and practices of sovereign states.[6] The third is the

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3 M Hili, *Investigating Engagements between International Police Agencies and Non-state Actors in Peace and Stability Operations* (2024).

4 A Prokhorenko and others, 'Interaction of IHRL and IHL in the Field Human Rights Promotion: International Standards and National Dimension' (2022) 55 Informatologia 42, 48.

5 N Pandey, 'A Study of Contemporary Non-international Armed Conflicts and Applicability of International Humanitarian Law: Issues and Challenges' (DPhil thesis, Maharaja Sayajirao University of Baroda 2020) 7.

6 Pandey, 'A Study of Contemporary Non-International Armed Conflicts and Applicability of International Humanitarian Law'.

increasing numerical preponderance of non-state actors, global financial, commercial and military corporations and the corresponding growth of extra-national or external loyalties over and above the traditional, and now increasingly hollow, allegiance of the individuals concerned to the sovereign state entities into which they were involuntarily born.[7] The final trend is the rise of an international human rights system that is empowered and morally obliged to enforce precepts said to derive from a foundational concept of humanity that identifies each individual exercising personhood under extant international legal systems as inherently and equally endowed with the essential rights and responsibilities of human beings.[8]

2.2.1 Definition of International Humanitarian Law

Hirsch is of the opinion that international law has evolved in the context of the relations of one state to another. Following the devastation of the Second World War, the international community wanted to govern behaviours during conflict.[9] The establishment of the International Committee of the Red Cross by the Geneva Conventions was a major step in this direction. The drafters of the Geneva Convention themselves recognised that

> whether or not the humanitarian rules of the regulations in some of their aspects are best suited to accomplish these objects or could be reinforced by other rules of a more positive character which at present appeared to exist only in the domain of human rights law remained unresolved.

This quotation signifies the close relationship that is perceived to exist between humanitarian law and human rights law. Indeed, such a close relationship is based on the goals of both laws, making them closely intertwined.[10]

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7 M Żakowska, 'The Roots of Armed Conflicts: Multilevel Security Perspective' *Security and Defence Quarterly* (Poland 2020) 53.

8 L Helfer, 'Populism and International Human Rights Institutions: A Survival Guide' in GL Neuman (ed), *Human Rights in a Time of Populism: Challenges and Responses* (Duke University 2020).

9 F Hirsch, *Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (Oxford University Press 2020) 7.

10 J Hathaway, 'The Rights of Refugees under International Law' in *The Rights of Refugees under International Law* (2 edn, Cambridge University Press 2021).

IHL is defined by Kwakwa as the subset of public international law which specifically addresses the question of the means and methods of waging war and the treatment of victims of armed conflict.[11] This being the case, IHL is that part of international law which embodies the principles and laws specifically designed to meet the exigencies of the conduct of war. Where the Hague Law is strictly limited to the practices of war, the Law of Geneva and its related conventions are those relating to the Law of Humanity. IHRL, in contrast, underscores the protection of the human being during peacetime. Both laws have the same goal: respect and protection of the human person; but the protection is to be invoked in different circumstances. Owing to this difference in objectives, certain states have argued that they must be looked at obtusely and not in complement. It is the belief of this researcher that the apparent likelihood of contradictory results of the application and subsequent interpretation of the rules of both laws could make it seem that these laws are conflicting, thereby causing the difficulty of harmonising them. However, both laws contain related concepts and derive from common intentions. This is similar to civil law and criminal law in municipal law.[12]

2.2.3 Definition of International Human Rights Law

IHRL is a body of law designed to protect the human person and humankind beyond the control of the state. It is founded upon the belief that the individual has intrinsic worth, immeasurable yet describable, and can best advance his or her own potential in a living environment that respects the worth of every other human person. Its provisions are rules of conduct intended to safeguard the inherent human dignity of the person, which is the very source of individual and collective inspiration, social progress and peace.[13] They reflect the fundamental values that are indispensable to the dignity, liberty and equality of all human beings and the bedrock upon which commitment to justice, peace and freedom must rest.[14] IHRL includes human rights provisions ensuring that both the citizens of the state and those under the authority of

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11 E Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application* (Kluwer 1992) 140.

12 B Ramcharan, *The Concept and Present Status of the International Protection of Human Rights: Forty Years after the Universal Declaration* (Martinus Nijhoff 2021) 247.

13 R Smith, *International Human Rights Law* (8 edn, OUP 2022) 9.

14 Chadwick, *Self-determination* 144.

the state are correctly governed, comporting with the standard of conduct set by the international community, which comprises mainly state parties and becomes customs.[15] It complements domestic law when the latter is weak, so that increased protection from domestic repression due to the weakness of the domestic government can then be secured.[16]

2.2.3 Key Principles and Concepts in International Humanitarian Law and International Human Rights Law

Militarily, an armed conflict is the armed struggle between the armed forces of at least two states or one state and a well-organised individual, group or organisation that is financially and organisationally supported and equipped to engage in further fighting, regardless of whether there has been a declaration of war.[17] Under international humanitarian law, only members of the armed group who take up arms and engage in combat operations against foreign occupying forces are considered a party to the armed conflict and are governed by the four Geneva Conventions and Additional Protocol I.[18] Even in the modern use of force, it is recognised that combat against an organised armed group in the context of the Geneva Conventions is an international armed conflict.[19] The group, from which it is located and can effectively inherit certain rights to engage in situations not of an international character, will be considered through its special missions: a high-level operation in a non-international armed conflict, which can participate in such situations only once, occurs according to Additional Protocol II, faced with a strong relative premise that the organisation controls a part of the terrain.[20] The four Geneva Conventions require the protection of the sick and wounded and civilians, with no such requirement in designing the structures to explain their behaviour in accordance with the four Geneva Conventions in relation to their interaction with the provisions of the Geneva Code.[21] A non-

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15. A Berkes, *International Human Rights Law beyond State Territorial Control* (Cambridge 2021).
16. D Leon and C Larratt-Smith, 'Leveraging Weakness into Strength: How Neo-patrimonial oil-producing Countries Survive Economic Crises' [2022] J International Relations and Development 1046, 1047.
17 Kwakwa, *The International Law of Armed Conflict* 141.
18 Kwakwa, *The International Law of Armed Conflict* 141.
19 Kwakwa, *The International Law of Armed Conflict* 141.
20 Kwakwa, *The International Law of Armed Conflict* 141.
21 Kwakwa, *The International Law of Armed Conflict* 141.

signatory party to the optional protocol's obligations will not be affected by these provisions, particularly the investigation and referral mechanism, but it remains legally tied to IHL owing to important peremptory rules and is considered inert or prohibited in particular sustainable development goals,[22] including the principle of non-discrimination and the right to life for all persons, strictly forbidden to admit illegal structures to the four Geneva Conventions and the establishment of the alleged project must be consistent with this conclusion.[23]

2.3 Historical Development of International Humanitarian Law and International Human Rights Law

Since the 19th century, there has been a gradual development of two interrelated but separate branches of law.[24] The first, IHL, restricts the right of states to adopt certain means and methods of warfare and also seeks to protect the individual in respect of life and health during and in connection with armed conflict.[25] The second, IHRL, seeks to protect the individual's most fundamental rights, including, inter alia, the right to life and the physical integrity of the person.[26] However, they have obvious overlapping areas, particularly when, within the framework of an internal conflict, internal measures seem completely contrary to the principles established in the respective systems. In other words, it deals with cases where internal measures against government opponents cannot agree with the standards of protection in peacetime or in armed conflict against external enemies.

As a logical consequence of these societal changes, political thinking reacted against the use of unlimited force by creating codes of conduct in waging war, placing some restraints which form the nascent legal stage of what is now generally called IHL or the laws of war.[27] The works of a philosopher and statesman of the sixteenth century first codified these broadly accepted norms into what he called 'the law of nations'.[28]

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22 Kwakwa, *The International Law of Armed Conflict* 141
23 Kwakwa, *The International Law of Armed Conflict* 141.
24 Kwakwa, *The International Law of Armed Conflict* 141.
25 Kwakwa, *The International Law of Armed Conflict* 141.
26 G Le Moli, 'The Human Rights Committee, Environmental Protection and the Right to Life' (2020) ICLQ 736, 740.
27 Chadwick, *Self-determination* 144.
28 Chadwick, *Self-determination 144.*

The aims of this work and later followers were in no way to imply that such conflict resolution or arbitration should not be needed at all or that all manner of procedures should not be applied.[29] Handling and settling conflicts were a way of creating good neighbourly relations between states, engendering mutual trust and avoiding future conflicts.[30] The concept became formalised in the form of the organisation known as Protestant Reformation??? in 1517. It was written that 'power', in reference to the use of military force, depended on justice, and not vice versa.[31] States have much less power over each other if at least some minimal regulations are applied. International law should be sufficiently obligatory and respected.[32] The first concept of the Association of Civilised Nations was then created.[33]

2.3.1 Origins and Evolution of International Humanitarian Law

The laws that regulate the conduct of states in warfare and conflict or, more overwhelmingly, in internal conflict are deeply rooted in the principles that go back to the dawn of history.[34] Ambitiously, they aim to mitigate the worst effects of such periods of chaos, violence and destruction and, ironically, to render those periods more bearable for all involved.[35] In exploring the rules of IHL and IHRL in armed conflict and the relationship between them, an understanding of the latter's roots in and its development from early custom and national military law is necessary, which will be covered here.[36]

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29 Chadwick, *Self-determination* 144.
30 Chadwick, *Self-determination* 144.
31 F Hertz, *Nationality in History and Politics: A Psychology and Sociology of National Sentiment and Nationalism* (2022 Routledge).
32 Hertz, *Nationality in History and Politics.*
33 Hertz, *Nationality in History and Politics*.
34 P Kelly, *Conflict, War and Revolution: The Problem of Politics in International Political Thought* (LSE Press 2022).
35 O Richmond, 'Liberal Peace and Its Critiques' in *The Palgrave Encyclopaedia of Peace and Conflict Studies (*2022) 720.
36 Smith, *International Human Rights Law* 9.

2.3.2 Origins and Evolution of International Human Rights Law

The link between international law of human rights and international humanitarian law, in particular during armed conflicts, has been the main focus of legal attention over the years.[37] Much of the existing work has concentrated, inter alia, on the protection of fundamental human rights in situations of armed conflict.[38] Notably, there are considerable differences between IHL and IHRL in terms of their origins, scope of application and governing legal documents; but with the evolution of international law, it is no longer an easy task to discuss either without involving various branches of international law.[39] To begin to understand the relationship between these areas of law, it is necessary to explore the historical development of both and what led to the adoption of these rules. Thus, in this section, the origins and early development of IHL and IHRL is briefly explored.

IHL and, to a certain extent, some elements of human rights law have not entirely developed simultaneously as we know them today, bearing in mind that most of the norms were established only in the second part of the twentieth century.[40] For many centuries, conventional mutual hostilities, rules of war and other customs and treaty rules either allowed gross human rights violations in situations of armed conflict or indeed protected only some victims of war to the exclusion of others (e.g., lawful vs unlawful combatants; the protection of civilians against arbitrary treatment prior to becoming prisoners of war).[41] However, there has always been a need for the establishment of certain obligations, protection and standards to protect humans, but such did not always depend on the relationship between the subjects of international law.[42] Individually, religious laws, known as the laws and customs of war, were the first attempts adopted by humankind which imposed an ethical obligation of protection on

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37 Kwakwa, *The International Law of Armed Conflict* 140.

38 R Van Steenberghe, 'The Impacts of Human Rights Law on the Regulation of Armed Conflict: A Coherency-Based Approach to Dealing with both the "Interpretation" and "Application" Processes' (2022) 104 International Review of the Red Cross https://www.cambridge.org/core/journals (accessed 17 October 2024).

39 Fleck D, *The Handbook of International Humanitarian Law* (2 edn, Oxford 2021) 627.

40 M Salinas and C Baudet, 'The Challenges of Agriculture: Feeding the World of Tomorrow, on a Transitioning and Endangered Earth'' (2020) 13 OIDA Int J Sustainable Development 21, 37.

41 G Solis, 'The Law of Armed Conflict: International Humanitarian Law in War' (Cambridge 2021) http://www.question58.com/uploads/1/3/2/9/13292750/ (accessed 17 October 2024).

42 D Kretzmer and E Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (Kluwer 2021).

individuals as religious subjects.[43] However, this undertaking was not efficiently monitored, controlled or even properly sanctioned.

2.3.3 Key Milestones in the Development of International Humanitarian Law and International Human Rights Law

In the past few years, scholars have been marking the growth of IHRL and its implementation in domestic societies as remarkable. The increase in its norms has both helped to inspire and has been inspired by the flourishing of human rights education, the multiplication of domestic and international bodies responsible for implementing IHRL, the unanimous election of reformist leadership in most of these bodies and the establishment of international courts and commissions at the global and regional levels.[44] If the development of IHRL has been perceived as remarkable, the same cannot be said about IHL. This does not mean that IHL law has not been rapidly developing features, but rather that the rapid development referred to is of a different kind. It has been driven by: (a) the exponential growth of armed conflicts of every scale, unabashedly ignoring the numerous keys to peace that the international community has devised; (b) the increasingly frequent and flagrant abuses of the most basic principles of IHL; and last but not least, (c) the immense human suffering, material and emotional, caused by these two realities.[45]

2.4 Legal Frameworks of International Humanitarian Law and International Human Rights Law

International humanitarian law and IHRL can best be thought of as twin branches in the wider corpus of international law which, together with other subfields such as international criminal law, collectively uphold and vindicate the fundamental protection of human life.[46] These rapidly evolving and path-forging bodies of law collectively enable the international legal community to confront the pernicious and destructive

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43 L Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Martinus Nijhoff 2021) 41.

44 K Mahoney and P Mahoney (eds), *Human Rights in the 21st Century: A Global Challenge* (Martinus Nijhoff 2023).

45 M Leonard, *The Age of Unpeace: How Connectivity Causes Conflict* (Penguin 2021) 102.

46 Chadwick, *Self-determination* 142.

consequences of widespread violence while the vision of equality, dignity and shared responsibility for human rights is achieved.[47] Their ultimate goal is the service of the entire human community. The four Geneva Conventions adopted for the sole purpose of protecting persons who are not or are no longer taking part in hostilities must apply to the fullest extent of their provisions as laid out in Article 3 common to the fourth Geneva Conventions. They must apply, no matter how those determinations have emerged or, indeed, in whatever form or manner their disharmonious nature as it reflects fundamental rights and norms may assert itself.[48] Indeed, the credit that associates detention with IHRL – and justifiably so – respects their supreme governing position within the corpus of international law.

2.4.1 Geneva Conventions and Additional Protocols

Parties to an armed conflict are required to respect the Geneva Conventions and Additional Protocols. Through these treaties, the concept of international armed conflict is established for the purposes of providing protection to a wider group of persons:

- Geneva Conventions III provides for the humane treatment of persons taking part in an armed conflict;
- Geneva Conventions IV deals with the protection of civilians in time of war, and
- Additional Protocol I covers the protection of all victims of armed conflicts and specifically grants relief from the impact of hostilities to wounded, sick and shipwrecked persons, prisoners of war and civilians.

Additional Protocol II largely restates the rules enshrined in Common Article 3 but extends them to non-international armed conflict. These treaties are unique, because while IHL was originally applicable to an international armed conflict typified by hostilities between two states, subsequently they have applied irrespective of the cause of conflict.[49]

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47 H Krieger, A Peters and L Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford 2020).

48 W Solf, 'Protection of Civilians against the Effects of Hostilities under Customary International Law and under Protocol' (1986) 1 AJIL 116, 117.

49 Chadwick, *Self-determination* 145.

Today, these treaties apply if there is violence between two groups within a single state that is considered to be an armed conflict; that is, IHL also applies in NIAC. It should be noted that should violence in an NIAC reach a certain level of severity, AP II humanitarian law treaties also apply severe de facto limitations to the power of the territorial state to comply with all its human rights obligations owing to the prevalence of the required rules in IHL.[50] The Additional Protocols are studied separately from the Geneva Conventions because a direct conflict exists only between the provisions of Additional Protocol I and those of ICCPR.

2.4.2 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly on 10 December 1948 as a common standard of achievement for all peoples and all nations.[51] While it is not a binding treaty, it is considered by the international community as the recognised foundation of IHRL.[52] It is the basis of customary international law and the bedrock of international human rights.[53] The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of all forms of Racial Discrimination, to name but a few, have their roots embedded in the principles enunciated in the UDHR.[54]

The UDHR, often referred to as the Magna Carta of humanity and the cornerstone of modern IHRL, enshrines the 30 fundamental human rights and freedoms that persons throughout the world, if not all living beings enshrined in its Preamble, are entitled to.[55] These are inalienable rights inherent in every human being despite their race, sex, language, religion or political conviction. The respect for and observance of the UDHR

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50 Solf, 'Protection of Civilians against the Effects of Hostilities under Customary International Law and under Protocol' 120.

51 Ramcharan, *The Concept and Present Status of the International Protection of Human Rights* 136.

52 Ramcharan, *The Concept and Present Status of the International Protection of Human Rights* 137.

53 S Faisal, M Khan and Y Tayyaba, 'The Bedrock of Conflict: Understanding General Principles in the Law of War' (2023) 2 IJCISS 628, 629.

54 B Ramcharan, *Africa and the Universality of Human Rights* (Brill 2022) 38.

55 E Akani, 'The United Nations (UN) and Human Rights: Challenges and Prospects' (2020) 14 AJPSIR 91, 94.

embodies the essence of human dignity, which is the spirit that inspires it in the Preamble.[56] IHL subscribes to these universal values, and its principles complement the UDHR. Common Article 3 of the 1949 Geneva Conventions embodies some of these principles, such as the prohibition of offences against the personal dignity of the wounded and the sick. The spirit of the UDHR and other human rights treaties protects the vulnerable in armed conflict and, like the role as guardian of IHL, they also act as the custodians of the UDHR.[57]

2.4.3 International Covenant on Civil and Political Rights

Solis argues that, next to the European Convention on Human Rights (ECHR), the Covenant in this respect is more beneficial to the debate because it offers clear guarantees of the procedural standards applicable in times of armed conflict.[58] Unlike the European Convention on Human Rights, the drafters of the International Covenant on Civil and Political Rights had in mind the situation of public emergency serving as a test of reality of the idea of a temporary derogation by laying down a set of criteria justifying the limitations on the duties imposed by procedural standards, in addition to those justifying the right to derogate in particular.[59] Respecting as it does the principle of legality, there is absolutely no doubt that the Covenant is the governing law of some procedural guarantees that limit the power of the state in instances of emergency and public order and therefore that also limit the power of an international organisation acting in its place.[60]

It is also of particular interest to this debate regarding the relevant case law dealing with international or multinational military operations. The specific part of the Covenant of interest in this 'negative/exhaustive' debate is that which envisages the minimum guarantees in the event of a declared public emergency that threatens the life of a

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56 G Alfredsson and A Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff 2023).

57 F Adegalu and T Mitchell, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level in South Africa' in *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years on* (Brill Nijhoff 2024).

58 Solis, 'The Law of Armed Conflict'.

59 E Richardson and C Devine, 'Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic under the International Covenant on Civil and Political Rights' (2020) 42 MJIL 104, 121.

60 Richardson and Devine, 'Emergencies End Eventually' 132.

nation – this within the meaning of the Covenant in a manner that is 'absolute' and applies *sub utramque partem*, that is, to both of the parties to the conflict.[61] In particular, even though, in times of emergency, Article 4 of the Covenant allows derogation from the guarantees provided by the prohibition of derogation offered by Article 4, if 'strictly required by the exigencies of the situation' and without distinctions based on, inter alia, 'armed conflict', under international law one still has to prove that such derogation is required and how much is strictly or absolutely required.[62]

2.5 Interplay between International Humanitarian Law and International Human Rights Law

The two main international legal frameworks for the legal protection of human beings, namely, IHL and IHRL, both deal with the issue of their applicability in specific situations. This is to be expected because, in view of their nature, IHL and IHRL are historically distinguished by different rationales. They differ not only in their scope of applicability, but also in the kinds of person and act they cover. However, whenever an armed conflict exists, there is an unavoidable conflict between the rights guaranteed by IHL and IHRL at some specific points in time and also between their scope of applicability.[63] Regardless of such conflict, though, their coexistence and applicability apply/operate in parallel: neither IHL nor IHRL was meant to be applied in exclusive compartments and they are seen as specialised rules.[64] It is also important to note that the coexistence and overlap of these rules can result in complementary rather conflicting outcomes, which both sets of rules aim to achieve for the best protection of the actual victims.

Recent years have seen notable developments in the debate on the relationship between IHL and IHRL. Such developments have been the result of many factors, including, but not limited to, the contemporary context of the 'new' wars in which both humanitarian and human rights abuses are committed; parallel developments in

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61 Richardson and Devine, 'Emergencies End Eventually' 115.
62 Richardson and Devine, 'Emergencies End Eventually' 123.
63 B Saul, 'From Conflict to Complementarity: Reconciling International Counterterrorism Law and International Humanitarian Law' (2021) 103 IRRC 10, 45.
64 Saul, 'From Conflict to Complementarity' 15.

international law governing the conduct of hostilities and human rights, and an increasing focus by United Nations human rights bodies and experts on humanitarian law matters.[65]

2.5.1 Complementarity and Overlap

There is general consensus that IHL is the law which applies to and governs hostilities, whereas IHL and IHRL are equally applicable during other periods, such as during occupation and armed conflict short of an armed conflict, or in relation to the specific protection and treatment of certain protected persons.[66] Significant overlap exists between both branches of international law, in particular since the primary aim of both IHL and IHRL is to protect the rights and freedoms of individuals. Both IHL and IHRL impose positive and negative duties on the parties involved in and affected by an armed conflict and both require that the developed rules should be applied and interpreted in conjunction with one another where necessary. The distinction is rather a function of mandate and function than of a strict dividing line based on temporal or territorial considerations. In this regard, the application of either branch of international law depends on previous legal classification, namely, whether hostilities are international or non-international and whether certain provisions of the Geneva Conventions are present or absent.[67]

A comparative approach demonstrates that the two legal systems mirror each other. Both branches require reciprocal respect when applied in conjunction since IHL is generally *lex specialis* compared to ordinary human rights law, a hierarchically superior branch of international law that imposes derogations and compatibility duties on other human rights treaties and provisions.[68] This complementarity approach means that IHRL is able to slide down the hierarchy and become a body of subsidiary rules and standards.

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65 Solis, 'The Law of Armed Conflict'.
66 Chadwick, *Self-determination* 145.
67 Kwakwa, *The International Law of Armed Conflict* 140.
68 A Müller, 'Social Rights in Armed Conflict Situations' in Binder and Others (eds), *Research Handbook on International Law and Social Rights* (Edward Elgar 2020).

2.5.2 Challenges and Dilemmas in Applying Both Legal Regimes

The main problems that can arise when the practical application of both human rights A and humanitarian law is examined during armed conflict concern the conflict of norms and the confusion that such potential applicability may raise, in addition to the conflict of interests between the individual and the community as a whole.[69] This potential conflict of norms, where the rights of individuals during the time of armed conflict are affected, may create confusion and hence an obstacle to issuing the correct and proper legal institute. Indeed, there are situations in which several rules of IHL and IHRL may be applicable concurrently to the same set of facts, which demands that the norm which ought to be applied be questioned.[70] The dilemma could arise, for instance, where a state invokes the fact that quasi-military groups fail to distinguish themselves from the civilian population and make use of and co-inhabit schools, hospitals or places of worship in order to argue against the application of IHRL so as to justify certain belligerent acts.[71]

Even if a thorough method could be inferred from the relevant regulations, problems persist mainly regarding the objectives designated for their execution, the potential impacts they may have and the institutional significance of simultaneously applying two frequently opposing legal systems that could also be harmful to each other.[72] It is unclear why the provisions of IHL in relation to international armed conflicts can be less restrictive during a state of war than some provisions of human rights agreements. When regulating any given type of relationship, it is necessary to exert considerable care to ensure that the regulatory arrangements are consistent and coherent and that they co-ordinate with each other.[73] Ultimately, governments, international organisations and the ICRC have a duty to control the internecine legal warfare between the two approaches.[74] The increasing need for the law to be applied, particularly for the complete regulation and legal assessment of contemporary

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69 Solis, ‘The Law of Armed Conflict’.
70 Kwakwa, *The International Law of Armed Conflict* 144.
71 M Sassòli, *International Humanitarian Law Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar, 2019) 231.
72 P De Cruze, *Comparative Law in a Changing World* (2 edn, Cavendish 2024) 812.
73 Solis, ‘The Law of Armed Conflict’.
74 E Camins, ‘Addressing Victim Suffering under Disarmament Law: Rights, Reparations and Humanising Trends in International Law’ in *Disarmament Law* (Routledge 2020) 3.

conflicts, adds to the urgency of this need.[75]

2.6 Human Rights in Armed Conflict

Human rights violations are widespread on a global scale and have taken on alarming proportions. More and more, we are seeing armed confrontations and violent internal strife that disrupt entire national societies. Moreover, current political and geopolitical configurations, such as the demand for self-determination and an increasingly explosive growth in regional disputes and wars, often combine to produce massive breaches of human rights.[76] This can be a given of international action, with international law casting as multidimensional a network of laws as possible aimed at assuring the observance of human rights and the establishment of a legal order guaranteeing the survival and welfare of individuals. This network includes both humanitarian law – the norms of which come to view once violence breaks out – and human rights law, which operates on a broader platform and must be pursued without distinction or discrimination, no matter the circumstances.[77]

2.6.1 Right to Life and Prohibition of Torture

An example that poses a nuanced question is the protection of the right to life in the context of the lethal use of force during law-enforcement operations in armed conflict. It is not entirely clear whether IHRL or IHL governs the conduct of a member of an armed group (1) who is not participating in the hostilities at the time but is aware that their group is about to launch an attack; and (2) who is giving directions to a person who is preparing to use lethal force; and (3) such person does not comply with a demand to surrender for questioning or to otherwise leave the zone of active hostilities before the attack starts.[78] State practice in relation to policing during armed conflict and legal discourse on the application of both IHL and IHRL to law-enforcement operations reveals that the general approach is to avoid complex legal questions by

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75 J Petrov, 'The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks? The Theory and Practice of Legislation' (2020) 8 SSJ 71, 92.

76 Mahoney and Mahoney (eds), *Human Rights in the 21st Century* 105.

77 Chadwick, *Self-determination* 144.

78 M Freeman and M Casij Peña, 'Negotiating with Organized Crime Groups' (2023) 105 IRRC 639, 645.

distinguishing between the policing functions of military and civilian police personnel.[79] This question has implications beyond the way a combatant's conduct is classified; it also touches on the conduct of the combatant in question and the behaviour of the national military of the coalition countries responsible for influencing such individuals in their support of the members of the non-state actor concerned.[80]

2.6.2 Right to Fair Trial and Due Process

The General Report on the 'Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts' emphasises that the right to a fair trial is one of the fundamental guarantees applicable during internal unrest and tensions.[81] The commentary on Article 75 of the Protocol Additional to the Geneva Conventions relates solely to persons accused of crimes in connection with the conflict. Furthermore, Article 75 provides a minimum standard for the protection of both the civilian and the military accused. Indeed, a violation of Article 75(4) can be considered wrongful, while violations of Article 75(4) of the Protocol Additional to the Geneva Conventions are a direct violation of IHL. It may also indirectly be considered a violation of the state's obligation to ensure fair trial procedures.

The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda has been a prime source of jurisprudential guidance with regard to many of the provisions contained in the Protocol Additional to the Geneva Conventions.[82] There is a significant degree of interaction between human rights law, humanitarian law and the Statute of the International Criminal Tribunal for the Former Yugoslavia.[83]

2.6.3 Protection of Civilians and Non-Discrimination

IHRL is both protective and governs during armed conflicts. States remain under an

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79 Kwakwa, *The International Law of Armed Conflict* 146.
80 Kwakwa, *The International Law of Armed Conflict* 144.
81 Kwakwa, *The International Law of Armed Conflict* 144.
82 Kwakwa, *The International Law of Armed Conflict* 144.
83 Kwakwa, *The International Law of Armed Conflict* 144.

obligation to protect fundamental rights and to prohibit discriminatory practices. The distinction between civilians and combatants, the distinction between civilian and military objectives, the principle of proportionality and the protection of people not actively participating in hostilities are all protected under both IHL and IHRL.[84] Humanitarian law is said to be more effective than human rights law in protecting civilians in non-international armed conflict.[85] The principle of non-discrimination must also be applied to armed conflict. Some treaties on humanitarian law specifically prohibit discrimination based on, among other factors, race, colour, culture or social origin in cases of occupation of that specific type of armed conflict. Non-discrimination and equal protection under the law for all are the cornerstones of IHRL and humanitarian law. There are, however, limitations on the duty to respect and to ensure respect for humanitarian law. The rights outlined in the European Convention, other than those wholly omitted, that are also protected by IHL are the right to life, the prohibition of slavery and forced labour, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, the freedoms of thought, conscience and religion, freedom of expression, the right to marry, the prohibition of discrimination, the right to the peaceful enjoyment of possessions, the right to education, the limitation of the use of restrictions on the rights that are guaranteed and the limitation on the application of the provisions of the Convention.[86]

International legal culture has often failed to appreciate fully the specific gender dimensions of human rights, particularly regarding IHRL.[87] This failure has also affected the development of certain rules of IHL that may have a bearing in times of armed conflict or occupation. Discrimination between men and women is prohibited under IHL and is protected because of the lists of individuals that IHL and IHRL protect.[88] IHL also sets out specific obligations with regard to ensuring that women and girls are not targeted simply because of their sex.[89] The conclusion emphasises that the rule which would better ensure that IHL applies to all armed conflicts is the

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84 Kwakwa, *The International Law of Armed Conflict* 147.
85 Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4 edn, Cambridge 2022) 1429.
86 Solis, 'The Law of Armed Conflict'.
87 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1429.
88 Kwakwa, *The International Law of Armed Conflict* 144.
89 Kwakwa, *The International Law of Armed Conflict* 144.

idea of simultaneous multi-causality. The interpretation which would ensure that the principles of IHRL tend to shape all the customary norms is the sentiment that acts of protection in times of international armed conflict are owed to all. The single most important rule or principle of IHL which would better ensure that all applicable norms are uniformly generated, applied in times of international conflict and form a custom continuum is gender mainstreaming.[90] The principle of protection is best served when the application of any legal principle to a situation is achieved, in this instance because of the special care that, until recently, has often not been well enough taken to investigate systematic violence against women and girls and then shape the most increased protection.[91]

2.7 Protection of Specific Groups

Armed conflicts, by their very nature, place civilians in a dangerous and survival-threatening environment. It is therefore of vital importance to ensure that they are protected, as far as possible, from the harmful effects of conflict. However, because wars are not only fought by governments, but also by a variety of state and non-state actors, several different legal regimes are involved in regulating their activities vis-à-vis the civilian population.[92] I have focused on some of those legal regimes, specifically the relationship between IHL and IHRL during periods of armed conflict. One area that calls for particularly close cooperation between both IHL and IHRL is the protection of certain groups in society, specifically children, women and prisoners of war and other detained persons.[93] Throughout history, certain categories of civilians who are particularly vulnerable during times of stress have attracted special attention from the international community.[94]

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90 Brooks R, 'Paradoxes of Professionalism: Rethinking Civil–Military Relations in the United States' (2020) 44 International Security 115, 142.

91 R Grose and others, 'Sexual and Reproductive Health Outcomes of Violence against Women and Girls in Lower-income Countries' (2021) 58 The J of Sex Research, 1, 3.

92 K Mutuma and N Mutunga, 'Civilian Protection in War; an Insurmountable Task? Prohibited & Legally Permissible Conduct during Hostilities' (2022) 8 J Conflict Management & Sustainable Development 19, 21.

93 J Stein and others, 'Post-traumatic Stress in Adult Civilians Exposed to Violent Conflict, War and Associated Human Rights Abuses in the Eastern Mediterranean Region: A Systematic Review and Meta-Analysis' (2021) 294 J Affective Disorders 605, 610.

94 M Slone and A Shoshani, 'Effects of War and Armed Conflict on Adolescents' Psychopathology and Well-being: Measuring Political Life Events among Youth' [2022] 1 Terrorism and Political Violence 1, 12.

2.7.1 Women and Children

During situations of armed conflict, it is imperative to consider the protection of women and children who experience violent forms of abuse and are in utmost need of international protection. These ongoing forms of abuse include rape, forced pregnancy, slavery, enforced prostitution and enforced pregnancy. Belligerents continue to use women and children as instruments of war and take enjoyment in torturous acts. Both IHRL and IHL are based on the central obligation to promote respect for individuals. These laws enjoy a symbiotic relationship and complement each other, providing universal human rights and humanitarian protection to individuals everywhere.[95]

The rights of women and children under IHL are laid down in several international conventions and humanitarian law documents.[96] Additional Protocols I and II to the Geneva Conventions contain provisions that relate specifically to the protection of women and children.[97] With respect to women, the reports of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities dealing with rape, enforced prostitution and other forms of torture or inhumane treatment contain positive conclusions.[98] Moreover, a series of international treaties have emerged that deal specifically with instances of abuse and other matters that are central to women and children during armed conflicts.[99] These instruments are designed to improve the protection provided to persons in situations of international and internal conflicts and they contribute to a better future as mechanisms for safeguarding international peace and security.[100]

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95 L Pruitt, 'Revisiting 'Women and Children' in Peace and Security: What about the Girls Caught in between?' in Marshall J Beier (ed), *Discovering Childhood in International Relations* (Macmillan 2020).

96 Pruitt, 'Revisiting 'Women and Children' in Peace and Security.

97 Pruitt, 'Revisiting 'Women and Children' in Peace and Security.

98 Pruitt, 'Revisiting 'Women and Children' in Peace and Security.

99 Pruitt, 'Revisiting 'Women and Children' in Peace and Security.

100 Pruitt, 'Revisiting 'Women and Children' in Peace and Security.

2.7.2 Refugees and Internally Displaced Persons

Migration and refugee law is a complex subject. It is a creation of both refugee law as a branch of international law and other legal disciplines, which include the laws of armed conflict, in particular IHL, as well as IHRL.[101] International refugee law, which is the sub-discipline within international law, focuses on protecting individuals who flee from their country of nationality because they fear persecution or because the circumstances of their country of nationality will not allow them to repatriate in safety and dignity.[102] The laws of armed conflict, in particular IHL on refugees and internally displaced people, protect both refugees and internally displaced people from being returned to a place of internal or external conflict.[103]

During armed conflict, however, many people are compelled to migrate or simply to be on the move in order to seek safety.[104] Some people who fear being persecuted or are persecuted have already migrated to another country; some are on the move in their own country and may already have gone beyond the borders of their country by the start of conflict.[105]

2.7.3 Persons with Disabilities

Since the 2000 Additional Protocol to the Geneva Conventions was adopted, the situation for people with disabilities in armed conflicts has changed. Those who live with permanent disabilities such as blindness, deafness or loss of a limb have been recognised under international law as being particularly in need of protection and each time they are given more consideration.[106] When they inhabit the territory in which the conflict takes place, they are considered protected persons and, for this reason, they

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101 A Omar, 'Understanding and Preventing Attacks on Health Facilities during Armed Conflict in Syria' (2020) 13 Risk Management and Healthcare Policy 191, 197.

102 Omar, 'Understanding and Preventing Attacks on Health Facilities during Armed Conflict in Syria' 195.

103 Pruitt, 'Revisiting "Women and Children" in Peace and Security'.

104 Pruitt, 'Revisiting "Women and Children" in Peace and Security'.

105 P Wise and others, 'The Political and Security Dimensions of the Humanitarian Health Response to Violent Conflict' (2021) 397 The Lancet 511–516.

106 S Singh and others, 'Delivering Health Interventions to Women, Children, and Adolescents in Conflict Settings: What have we Learned from Ten Country Case Studies?' (2021) 397 The Lancet 533, 537.

are afforded the same rights as the rest of the inhabitants unless the law considers them a category that, owing to their disability, is excluded from protection.[107]

Therefore, when seeking to deal with legal matters as unprecedented as the relationship between IHL and IHRL during times of armed conflict regarding individuals with disabilities, it is imperative to engage in legal analysis and recognise that wrongdoing is exposed by one's actions, much like a vigilant guardian. The findings have uncovered the reality that numerous nations have failed to fulfil their required duties in safeguarding individuals with disabilities.[108]

Currently, the existing approaches within IHRL are insufficient to deal with all the complexities that may arise in armed conflicts. It is necessary to supplement the solutions provided by IHRL with the positive measures outlined in IHL. In essence, the protection of individuals with disabilities necessitates the universal application of IHL norms without discrimination based on physical condition, along with proactive measures to ensure their effective and comprehensive protection.[109]

2.8 Enforcement Mechanisms

The enforcement of IHL is frequently challenging owing to the lack of adherence to and execution of specific international regulations. The International Red Cross serves as a notable organisation and acts as a mediator during times of conflict. In many cases, both conflicting parties obstruct the Red Cross from aiding detainees, relaying messages to family members or providing medical assistance out of fear of retaliation.[110] Following conflict resolution, the Geneva Conventions dictate that the parties and combatants are to apply their regulations for crimes committed against individuals. However, this proves difficult to implement as most conventions depend on insufficient state parties capable of prosecuting individuals.[111] Furthermore, for

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107 J Tyndall and others, 'The Relationship between Armed Conflict and Reproductive, Maternal, Newborn and Child Health and Nutrition Status and Services in Northeastern Nigeria: A Mixed-methods Case Study' (2020) 14 Conflict and Health 1, 5.

108 S Garry and F Checchi, 'Armed Conflict and Public Health' (2020) 42 J Public Health 287, 291.

109 Tyndall and others, 'The Relationship between Armed Conflict and Reproductive, Maternal, Newborn and Child Health and Nutrition Status and Services in Northeastern Nigeria'.

110 A Stoddard, 'Contending with Non-state Forces' in *Necessary Risks* (Macmillan 2020).

111 H Fox, 'The International Court of Justice's Treatment of Acts of the State and in Particular the

international armed conflicts, oversight is also the responsibility of ensuring belligerents comply with the provisions of the Geneva Treaty. However, this poses a challenge as many countries have not ratified the agreements, as they are unable to ensure compliance with the regulations. This ineffectiveness of enforcing the Geneva Convention undermines the very principles it aims to govern.[112]

2.8.1 International Courts and Tribunals

The correlation between International Humanitarian Law and International Human Rights Law is strong. This relationship is not only addressed in legal texts, but also in the regulations and principles of both branches. However, there are still instances that violate this relationship. While these instances are not considered fundamental, they are seen as infringing on the harmony between the two laws, as they are listed separately. International Tribunals and Courts have used various criteria to determine the applicability of International Human Rights Law. This analysis focuses on the decisions of the main International Courts and Tribunals, comparing their approaches to the applicability of both laws and their decisions on matters such as ethnic cleansing, human experimentation and torture.[113]

The three main International Courts have accepted different criteria for the primary as well as the conditional applicability of HRL in armed conflict.[114] One Court decided on a minimum of intensity, another with the criterion of state responsibility, and the third has opted for applicability as long as the facts occurred on the territory of the Council of Europe. The employment of a minimum of intensity is strictly connected to the criteria and in doing so the first is also attributing characteristics to the qualification of the conflict, excluding some types of armed conflict.[115] While it is important to acknowledge the internal violations committed by the Defendant State, as they also

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Attribution of Acts of Individuals to the State' in *Liber Amicorum Judge Shigeru Oda*' (Brill 2022).

112 D Hollis, *The Oxford Guide to Treaties* (2 edn, Oxford 2020) 142.

113 Solis, 'The Law of Armed Conflict'.

114 A Asokan, 'The United Nations Children and Armed Conflict Agenda: Integrating Child Protection Issues and Children's Voices in Peace Processes' [2021] J Public and International Affairs 32, 45.

115 F Gaffey and Others, 'Delivering Health and Nutrition Interventions for Women and Children in Different Conflict Contexts: A Framework for Decision Making on What, When, and How' (2021) 397 The Lancet 543, 548.

violate fundamental rights and freedoms guaranteed even in times of peace, it is hoped that there will be a convergence between the approaches of the Courts. This is because the motivation and the object of both laws are mature and evidently shared, including their complexity and ambiguity. As a result, some imminent questions would seem to govern any overlapping of the matters of Member States.[116] However, it is challenging for IHRL and IHL to converge effectively without compromising the integrity of their respective legal principles, given their typical terms and mutually agreed-upon control system.[117]

2.8.2 National Implementation and Monitoring Bodies

The increased precision of IHL in establishing the limits or methods of its application has resulted in a significant increase in the importance of national legal systems and their interaction with IHL. Legislative bodies are playing a crucial role in incorporating these rules and regulations into national law. In most cases, it is the responsibility of the national armed forces to implement these obligations.[118] Depending on their level of readiness and effectiveness, other specialised bodies may also be involved, such as the public prosecutor's office, the judiciary, human rights committees and humanitarian organisations, to whom responsibilities may be delegated.[119]

Nonetheless, the presence of these specialised organisations is a relatively recent development. While recognising that the primary responsibility for implementing IHL remains with each state, it is important to note that the implementation of IHL should not be limited to these newly formed specialised organs. The principle of decentralisation should also be applied to ensure compliance with IHL.[120]

In order to implement IHL and IHR, states have different mechanisms that can cooperate with each other. In most states, these mechanisms are different. In some

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116 S Singh, 'Delivering Health Interventions to Women, Children, and Adolescents in Conflict Settings: What have We learned from Ten Country Case Studies?' (2021) 397 The Lancet 533.
117 Gaffey and others, 'Delivering Health and Nutrition Interventions for Women and Children in different Conflict Contexts'.
118 Chadwick, *Self-determination* 148.
119 Chadwick, *Self-determination* 148.
120 M Sassòli, 'The Sources of IHL' in *International Humanitarian Law* (Edward Elgar 2024).

states, they have competing features. One of the frequent problems of applying both sets of rules is their parallel existence and the answer to such a situation depends on whether both sets of rules are at the same hierarchical level or not within the legal systems considered.[121]

2.9 Role of IHL and IHRL in Specific Armed Conflicts

In various scenarios, there may be uncertainty in determining whether only the law of armed conflict or human rights law is applicable or in understanding their relationship. Human rights and humanitarian organisations face significant challenges in determining the applicable legal framework when responding to violations arising from armed conflicts.[122] These challenges include establishing whether a situation amounts to an armed conflict, determining the relationship between IHL and IHRL, addressing violations committed by non-state armed groups, protecting civilians and detainees, and ensuring accountability for breaches of international law.[123] The complexity of contemporary conflicts, which often involve multiple actors and overlapping legal regimes, further complicates the effective protection of individuals affected by armed conflict.[124] These organisations have adopted varying positions, often influenced by the points of view of member states or practical limitations in making such legal statements.[125] If human rights bodies assert that their legal standards apply and condemn the killing of any individuals, regardless of their identity, it may conflict with the constrained rights of the parties involved in the conflict.[126]

In many situations today, the major question is whether human rights norms enforced in their peacetime context now apply during the conflict prevailing in some given territory or whether only IHL norms apply. Such indeed is the question raised in the work of the UN Human Rights Council and its special procedures and other treaty bodies in their work in monitoring and assessing human rights. This is not a theoretical

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121 ZA Bhutta and others, 'Doing Better for Women and Children in Armed Conflict Settings' (2021) 397 The Lancet 448, 450.

122 Sassòli, *International Humanitarian Law.*

123 N Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC 2016) 39,57.

124 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* 10.

125 Sassòli, *International Humanitarian Law.*

126 D Warner, *Human Rights and Humanitarian Law: The Quest for Universality* (Kluwer 1997) 87.

question. With respect to every act of conflict-related violence, these norms assign rights and responsibilities to the parties to the conflict and to the international community.[127]

2.10 Emerging Matters and Future Directions

While it is conceivable to exploit the potential of this developing normative framework, specifically the improved safeguarding offered to individuals in war, it is also plausible that inconsistencies and adverse repercussions may arise.[128] Some of the questions raised by this standard have not been adequately analysed by scholars or advocates of international law. For instance, questions remain regarding the extent to which human rights standards can be enforced beyond a country's borders, and also how to limit a state's use of force through legal or enforcement measures when it lacks complete control over parts of its territory. Furthermore, the criteria for justifying international action in areas experiencing civil unrest are topics that have not been sufficiently explored in this or other theories.[129] The pursuit of global ideals and the demand for universally upheld standards raise significant questions regarding realpolitik and the state structure that may not have clear solutions. The greater the focus on these principles, the greater the potential for IHRL to face a crisis of credibility, turning actions into the cynical coercion denounced by its more passionate supporters. These debates are further complicated by the fact that only a few states have demonstrated or professed a willingness to adopt thoughtful policy decisions.[130]

2.10.1 Technological Developments and Challenges

Technological developments are shaping today's battlefields and affecting the exercise and protection of rights in armed conflict.[131] An examination of how

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127 Solis, 'The Law of Armed Conflict'.

128 Chadwick, *Self-determination* 146.

129 M Sun and T Feng, 'Extraterritorial Application of International Human Rights Conventions – from the Perspective of States Regulating the Extraterritorial Human Rights Obligations of Transnational Corporations' (2021) 20 J Human Rights 413, 421.

130 MF Scudder, 'Deliberative Democracy, More than Deliberation' (2023) 71 Political Studies 238, 242.

131 H Lahmann, 'The Future Digital Battlefield and Challenges for Humanitarian Protection: A Primer' (Working Paper, Geneva Academy April 2022).

developments in science and technology contribute to the better protection of the human person in armed conflicts and who is responsible for ensuring respect for and compliance with IHL is indispensable.[132] However, alongside these benefits, the present reality is that states and non-state organisations have used technological means in armed conflict with harmful effects on the protection and exercise of rights, thus affecting the integrity and essence of IHL and human rights.[133]

As armed drones and semi-autonomous cyber-weapons are becoming more prevalent in armed conflicts, emerging technological advancements, including laser weapons and completely autonomous weapon systems that operate without human control, are posing ethical concerns due to their potential impact.[134] Furthermore, new weapons and methods of warfare that are lethal but also discriminatory and disproportionate in their effects are destroying the framework of the norms of IHL and human rights.[135] However, new converging technologies such as biotechnology and advanced materials combined with information technology and artificial intelligence have become a reality in modern-day conflict.[136] These are operationalised through nanotechnology[137] and are connected to automated social media organisational and physical technologies, communication technologies and aerial, space, ground, maritime and aquatic robots equipped with weapons enable mass surveillance, identification by biometric data and algorithms that can be implemented through the use of new platforms.[138] These technologies can affect both the IHL applicable to international armed conflict and IHRL.[139] Their use and the legally ambiguous consequences that characterise their deployment in the absence of human control over targeting must be understood within national and international legal

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132 Kwakwa, *The International Law of Armed Conflict* 142.

133 J Schillinger and others, 'Water in War: Understanding the Impacts of Armed Conflict on Water Resources and their Management' [2020] WIREs Water 1, 14.

134 Schillinger and others, 'Water in War'.

135 Schillinger and others, 'Water in War'

136 J Mawdesley, 'Applying Core Principles of International Humanitarian Law to Military Operations in Space' (2020) 25 JCSL 263, 273.

137 Schillinger and others, 'Water in War'.

138 E Pauwels 'Artificial Intelligence and Data Capture Technologies in Violence and Conflict Prevention' [2020] Global Center GCCS_AIData_PB_H-1.pdf (globalcenter.org) (accessed on 15 October 2024).

139 Pauwels 'Artificial Intelligence and Data Capture Technologies in Violence and Conflict Prevention'.

frameworks.[140] To provide an appropriate response and avoid unacceptable harm,[141] the parties involved must specifically implement relevant and existing rules of IHL and human rights at different levels, with civil society, industry and technology influential factors being present and required to ensure that the rules adopted meet this requirement.[142]

2.11 Conclusion

In this chapter, I analysed the potential issues that could arise from the concurrent application of IHL and IHRL. The effectiveness of the current systems in regulating armed conflict and safeguarding the rights of those involved in armed conflict situations has been questioned. The author thoroughly explored and discussed the key issues of conflict, interaction and the division of responsibility between the two bodies of law. It is evident that there are discrepancies, particularly in the protection of a class of detainees who are not adequately covered by either body of law, sometimes referred to as 'illegal enemy combatants. The multitude of declarations, reservations and mechanisms for arbitration, in addition to the readiness of states to suspend their obligations when they encroach on sovereign rights, undermines the comprehensive protection of rights for all detainees and prisoners of war. As a result, it can be argued that both bodies of law lead to an uneven application of rights and protections, with very few detainees receiving full protection. While a more cohesive solution might arise from integrating or evolving the law further, this process is likely to be protracted. The outcome of this process could be a set of rules heavily influenced by the civil law tradition of legality, potentially leading to internationally enforceable but internally unenforceable legal bodies. The question then arises whether this is the outcome that the international community would desire and anticipate implementing.

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140 Pauwels 'Artificial Intelligence and Data Capture Technologies in Violence and Conflict Prevention'.

141 Pauwels 'Artificial Intelligence and Data Capture Technologies in Violence and Conflict Prevention'.

142 J Mawdesley, 'Applying Core Principles of International Humanitarian Law to Military Operations in Space' (2020) 25 JCSL 263, 273.

CHAPTER 3

NEEDS OF CIVILIAN POPULATIONS IN PROLONGED CONFLICTS AND ENHANCING RESPECT FOR INTERNATIONAL HUMANITARIAN LAW: THE ROLE OF ARMED NON-STATE ACTORS AND SANCTIONS

3.1 Introduction

Amid ongoing conflicts, this chapter provides an in-depth analysis of the significant repercussions of violence on the affected regions. It examines the trauma experienced in these areas, particularly during periods when the prospect of peace seems unattainable. It also places a strong emphasis on International Humanitarian Law (IHL), which plays a critical role in responding to the complex challenges that arise in protracted conflicts. A central component of this legal framework is the regulation of military conduct to safeguard civilian populations, a matter of increasing relevance in contemporary global affairs.[1] The chapter draws attention to the dynamic debates among international experts and policymakers on the evolving norms and legal frameworks that dictate the conduct of warfare and their implications for individuals residing in conflict-ridden environments. Prioritising civilian protection is especially vital, as these populations frequently suffer the most during conflicts, having to grapple with severe shortages of necessities such as food and water, heightened insecurity and pervasive fear. The grave risks posed to these communities have precipitated significant humanitarian crises, leading both regional and international organisations to advocate a comprehensive reassessment and revision of the regulations governing military operations.[2]

During the past twenty years, civilian deaths either from the fighting in armed conflicts or from the indirect effects of war, including displacement, malnutrition, a lack of

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1 E Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* (2023) 144.

2 G Solis, 'The Law of Armed Conflict: International Humanitarian Law in War' (Cambridge 2021) http://www.question58.com/uploads/1/3/2/9/13292750/ (accessed 17 October 2024).

resources for health and education and general poverty, have increased.[3] Because such enormous human suffering does nothing to enhance the security of the belligerents, the attention of the international community has focused on the civilian population as the central concern in the conduct of war.[4] This is not a new concern; its urgency increases in prolonged conflicts, which have ensured that after victory on the battlefield, the major responsibilities for maintaining order, administering the law of the land and providing basic services have increasingly reinforced concern for the civilian population.

Acknowledging the failure of the legal structure to achieve lawful behaviour and enhance protection for civilians, this study has proposed solutions. Economic sanctions can be invaluable instruments with which to shape the political will of an adversary. Applying and enforcing targeted and comprehensive sanctions may simply provide an unparalleled mechanism not only for enhancing respect for IHL and customary practices, but also for achieving respect for the law against armed non-state actors. The evidence for the necessity of sanctions for enhancing respect for the law and achieving political goals is overwhelmingly convincing. The present study has concluded nonetheless that indexed sanctions must be introduced, applied and enforced cautiously so as not to overburden the civilian population. All such sanctions have been telescoped: goals, including justice, must be small in this era of humanity.

The study examined the application of sanctions in some cases: the implementation, strict control and monitoring of sanctions must be international in character, leaving no space for waivers to belligerents. Compliance is required and restraints should be imposed. Then, and only then, will respect for the law and the direct protection of civilians by armed non-state actors be achieved.[5]

An effective means with which to examine humanitarian issues is through the enhancement of compliance activities, which are fundamental components of operational strategies aimed at ensuring the welfare of individuals affected by conflict.

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3 T Bassen and A Bilali, ‘Impacts of the Russia-Ukraine War on Global Food Security: Towards More Sustainable and Resilient Food Systems?’ (2022) 11 MDPI 1, 7.

4 A Khorram-Manesh and others, ‘Estimating the Number of Civilian Casualties in Modern Armed Conflicts’ [2021] A Systematic Review 7, 11.

5 Bassen and Bilali, ‘Impacts of the Russia-Ukraine War on Global Food Security 7.

This examination can be deepened by reviewing both historical and contemporary case studies that demonstrate how the emphasis on humanitarian considerations has transformed or improved warfare dynamics through international policies, influencing the behaviour of those in positions of legal and moral authority during armed conflicts.[6] Fundamentally, the relationship between law, ethics and warfare is closely intertwined with power dynamics. Since power significantly influences policy formulation and serves as a critical instrument for governance, it is reasonable to employ this framework to understand how international laws and policies designed to protect civilian populations in conflict scenarios can lead to significant and enduring reform. To comprehend how such permanence results in actual change, it is essential to consider the historical context in which international governance and policy have employed power to justify, alter and redefine protective measures.

3.2 Intra-state Conflicts in Contemporary International Humanitarian Law

Conflict pervades nearly every facet of modern life, with just three nations having escaped the wave of violent turmoil since 1950. This highlights a striking discrepancy when compared to the numerous wars that break out annually.[7] It is imperative to recognise the urgency of dealing with this pervasive issue.[8] The ramifications of these conflicts have inflicted widespread collective trauma on populations, which has resulted in an escalating dependence on humanitarian assistance as part of global efforts to redress injustices and alleviate suffering in the twenty-first century.[9] In recent decades, there has been notable transformation of the demographics of those affected by warfare: civilians now outnumber combatants, in this way rendering them increasingly susceptible to the ramifications of conflict.[10] The extended durations of conflict reveal significant changes in the patterns of physical violence, spatial

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6 T Comes, B Van de Walle and L Van Wassenhove, 'The Coordination–Information Bubble in Humanitarian Response' (2020) 29 (11) Production and Operations Management 2484, 2485.

7 I Ishamali and I Okoi, 'Peace Agreements: Instruments of Resolving Conflict in Israeli–Palestinian Conflict' (2023) 6 (2) GNOSI 99, 104.

8 Ishamali and Okoi, 'Peace Agreements: Instruments of Resolving Conflict in Israeli–Palestinian Conflict'101.

9 S Kidame, 'Trauma, Collective Trauma and Refugee Trajectories in the Digital Era: Development of the Trauma Recovery Understanding Self Help Therapy (TRUST)' (PhD thesis, Tilburg University 2021).

10 L Barcells and J Stanton, 'Violence against Civilians during Armed Conflict: Moving beyond the Macro- and Micro-level Divide' (2021) 24 Annu Rev Pol Sci 45, 69.

dimensions, competing factions and the evolving circumstances at the domestic, international and transnational levels. These developing characteristics are accompanied by several prevailing trends, such as the intensifying disputes between established government entities and local non-state groups, the growing significance of intra-state conflicts and the diminishing interactions between non-state and state actors in the context of national-level armed confrontations.

In the context of conflicts, particularly those characterised as new wars, various segments of society experience impacts in distinct ways.[11] However, it is crucial that these conflicts do not evade responsibility;[12] they must be approached within the frameworks of international law, which mandates that their implications on health are examined through the lenses of humanitarian law and human rights.[13] Health, in this regard, holds inherent significance as it not only encompasses the mere absence of illness or disability, but also represents an individual's complete state of physical, menta and social well-being.[14]

The number of armed conflicts is increasing and in many cases these conflicts are prolonged as they are characterised by the relapse of violence and a resultant restarting of hostilities or at lengthy intervals by a continuing level of low-intensity violence.[15] Moreover, civilians, the first designated population of IHL, continue to be intentionally targeted and are victims of the extensive use of anti-personnel mines, which take their toll long after a conflict has ended.[16] The UN system has focused on civilian needs for peace and security and has engaged in efforts before and during conflicts to prevent hostilities, facilitate political agreements between opposing parties, separate them during armed conflicts and build durable peace structures by redressing the root causes through reconstruction and societal transformation.[17]

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11 Balcells and Stanton, ‘Violence against Civilians during Armed Conflict’.
12 Solis, ‘The Law of Armed Conflict’.
13 Solis, ‘The Law of Armed Conflict’.
14 Solis, ‘The Law of Armed Conflict’.
15 J George and A Adesoji, ‘Armed Conflicts, Forced Displacement and Food Security in Host Communities’ (2022) World Development 158 29, 52.
16 Balcells and Stanton, ‘Violence against Civilians during Armed Conflict’.
17 Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4 edn, Cambridge 2022) 1430.

However, there are limitations to the existing UN work and to the protection which IHL can afford to civilian populations caught in prolonged conflicts. The present effort is focused on these very limitations and is divided into two main parts.[18] According to Barcells and Stanton, the first part explores the unique aspects of prolonged armed conflicts, presents a series of case studies to illustrate some of the principal issues and evaluates exit strategies to bring about the end of conflicts. The second part examines the needs of civilian populations and critically discusses the various means, including but not limited to the disarmament, demobilisation and reintegration of combatants, of responding to these needs,[19] thus identifying gaps and deficiencies in IHL based on the Geneva Conventions and Additional Protocols and also in customary law aside from state practices.[20] It also highlights matters related to peacekeeping mission mandates, sanctions policy, non-state actions and potential law-enforcement models.[21]

3.3 Civilian Needs in Long Conflicts

There is widespread awareness of the harsh realities of long conflicts: numerous lives lost or severely affected; many individuals compelled to leave their homes, often travelling on foot with their belongings in plastic bags; extensive destruction of critical infrastructure such as schools and hospitals; and, in most cases, these tragic consequences occur simultaneously.[22]

Shi and Stevens noted that there has been a growing concern among scholars regarding the ways in which the battlefield of conflicts is currently changing from its traditionally understood format, especially regarding the shift from a separation line between armies to civilians' houses.[23] This shift has highlighted a new frontier of conflicts which extends to densely populated areas and causes massive human pain

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18 Solis, 'The Law of Armed Conflict'.
19 Barcells and Stanton, 'Violence against Civilians during Armed Conflict'.
20 M Sassòli, *Principles of International Law: International Humanitarian Law Rules, Controversies, and Solutions to Problems Arising in Warfare* (E Elgar 2019) 619.
21 B Saul, 'From Conflict to Complementarity: Reconciling International Counterterrorism Law and International Humanitarian Law' (2021) 103 IRRC 157, 187.
22 M Buheji, 'Dealing with Loss: Coping with Yearning of Lost Livelihood: Case of Gaza' (2024) 6 IJSSRD 201, 215.
23 L Shi and Gr Stevens, *Vulnerable Populations in the United States* (3 edn, Wiley 2021) 103.

and loss. Matanzima and Marowa are of the opinion that civilians have generally become more entangled in precarious situations where the conflicts in a given area have forced civilians to take care of their own fates or risk living in a state of limbo, fearful of being the scapegoats and the means of conducting reprisals.[24] Owing to this representation, there is a serious need for civilians to have their multifunctional status seriously considered both in the peace making process, and in the post-conflict reconciliation.

According to Martin, long-running conflicts result in immense pressure being placed on populations with a global estimation of about 68.5 million people being forcibly displaced, 40 million of them as internally displaced persons and more than 25 million as refugees, with females and children accounting for the majority.[25] The increased numbers reflect the severity of the crisis, an overwhelmed response system and deteriorating socio-economic conditions, which together place a strain on the existing gaps in food, shelter healthcare services and protection for the host communities and the internally displaced persons (IDPs) and further increase their vulnerability. Displacement strategies are adopted owing to inabilities to avert the spill-over of the conflicts, of combatants to source food, livestock, information, accusations of cattle theft, family considerations, the need for better wages, work or middlemen schemes and care for the injured.[26]

Socially, the aftermath of conflict breeds an environment fraught with fear, suspicion and violence, deeply affecting the community's social framework and eroding trust among its members.[27] Prolonged conflicts exert a profound impact on the lives of civilian populations. The repercussions are vividly illustrated through increased insecurity, limited access to healthcare, widespread malnutrition and profound psychological distress.[28] These are poignant indicators of the suffering endured by

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24 J Matanzima and I Marowa, 'Human–Wildlife Conflict and Precarious Livelihoods of the Tonga-speaking People of North-Western Zimbabwe' in Kirk Helliker (ed) *Livelihoods of Ethnic Minorities in Rural Zimbabwe* (Springer 2022).

25 S Martin, 'Forced Migration and Refugee Policy. Demography of Refugee and Forced Migration' [2017] PMC 140, 144.

26 Martin, 'Forced Migration and Refugee Policy' 140.

27 M Buheji and B Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' (2024) 14 IJPBS 11, 13.

28 S Rijal 'The Importance of Community Involvement in Public Management Planning and Decision-making Processes' (2023) 1 ADMAN 85, 92.

countless individuals. Displaced individuals, ordinary citizens, government representatives, UN agencies, non-governmental organisations and researchers all contribute critical elements deserving attention when dealing with these micro-level aspects of civil strife.[29] There are calls for the dissemination of local, regional and institutional evidence that highlights the immediate and long-term needs of affected civilians. By heeding the perspectives of civilian populations, invaluable and rare insights into their lived experiences and aspirations related to their lives and recovery processes are gained.[30] In certain scenarios, advocates emphasise the urgent necessity for purely humanitarian actions;[31] in others, the focus shifts to specific needs that carry direct political significance.[32] Engaging with and understanding the intricate dynamics of local civilian politics adds layers of complexity to the concept of 'humanitarian need'.[33] Furthermore, it becomes evident that the fulfilment of various types of need is intricately interwoven, suggesting that complex, compounded or unfulfilled requirements significantly influence civilian political behaviours and expectations.[34] Numerous case studies examining prolonged crises vividly illustrate these complex dynamics at play.[35]

3.3.1 Impact of Prolonged Conflicts on Civilian Populations

The term 'prolonged' pertains to conflicts that linger for months, years or even decades in areas where peace seems to be increasingly elusive.[36] These war zones are frequently characterised as 'humanitarian crises.[37] Contemporary prolonged conflicts

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29 Buheji and Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' 11.

30 A Petersen, 'Newly Qualified Social Workers' Careers: A Mix of Turbulence, Goals and Safety' (2023) 53 BJSW 798, 811.

31 Buheji and Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' 11.

32 Buheji and Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' 12.

33 Buheji and Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' 11.

34 M Jawad and others, 'Estimating Indirect Mortality Impacts of Armed Conflict in Civilian Populations: Panel Regression Analyses of 193 countries, 1990–2017' (2020) 18 BMC Medicine 1, 4.

35 Jawad and others, 'Estimating Indirect Mortality Impacts of Armed Conflict in Civilian Populations' 2.

36 Buheji and Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' 13.

37 United Nations Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2025* (United Nations 2025).

examples include the conflicts in Syria, Yemen, Sudan, Ukraine, the Democratic Republic of the Congo, Somalia, Afghanistan, and the Israeli–Palestinian territories. Such crises are complex and have a significant impact on the civilian populations entangled within them. At a physical level, conflicts lead to extensive injuries and resultant disabilities, necessitating adequate treatment and rehabilitation efforts.[38] The provision of essential and emergency medical care for both sudden and ongoing health conditions in conflict areas is vital, yet it poses considerable challenges.[39] The immediate fallout from injuries is that they disrupt social life and it can lead to enduring economic turmoil.[40] Owing to limitations in healthcare personnel, equipment and supplies in these war-torn regions, numerous injured civilians may face lifelong disabilities.[41] The psychological aspect primarily revolves around the mental anguish experienced in conflict situations.[42] Displaced individuals and refugees continue to bear the weight of conflict's damaging effects on their new communities. Prolonged exposure to violent environments can also inflict severe psychological harm.[43]

Balincheko examined the multifaceted aspects of internal displacement. One significant focus is on restoring a sense of normalcy to the lives of those who are internally displaced.[44] In times of conflict, diverse and spontaneous cultural practices often emerge, blending and giving rise to new cultural norms that warrant both respect and protection. As the conflict endures, the specific actions taken by these communities necessitate social, economic and political assistance.[45] The consequences of such prolonged strife include the erosion of traditions, beliefs and customs, and also shifts in the values associated with hospitality and care, leading to

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38 Khorram-Manesh and others, 'Estimating the Number of Civilian Casualties in Modern Armed Conflicts' 4.

39 United Nations Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2025*.

40 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (ICRC 2024) 15–25;

41 Jawad and others, 'Estimating Indirect Mortality Impacts of Armed Conflict in Civilian Populations' 5.

42 Khorram-Manesh and others, 'Estimating the Number of Civilian Casualties in Modern Armed Conflicts' 4.

43 Khorram-Manesh and others, 'Estimating the Number of Civilian Casualties in Modern Armed Conflicts' 1.

44 S Balinchecko, 'A Dynamic Approach to Localness in the Context of Conflict-affected Internal Displacement and Return in Ukraine' (2021) 1 SN SOC SCIE https://doi.org/10.1007/s43545-021-00057-1 (accessed on 12 April 2025).

45 R Stivers, *The Culture of Cynicism* (Wipf and Stock Publishers 2023) 234.

a general decline in community-oriented structures; and the emergence of innovative, non-traditional networks begins to replace longstanding relationships, resulting in considerable social harm.[46]

Economically, the situation can be viewed through the lens of the financial wellbeing of individuals navigating life amid sustained warfare.[47] Ongoing conflicts often deepen the dependency of already financially strained individuals on external support, which may include donations, private philanthropy, government aid and food distribution.[48] Those affected by the war, including the local inhabitants of conflict zones, tend to deplete their financial resources, savings, retirement plans, investment securities, health benefits and other forms of currency.[49] For example, for many years during the Cold War, countries in which a government was fighting a civil war did not receive much international attention.[50] However, during the Syrian civil war,[51] a situation that merits more concern than has been realised in many international quarters became obvious.[52] The fighting has created new militias and altered the behaviour of some that previously existed.[53] Thus, it appears that from the standpoint of aiding those in need, human rights and the building of democracy, it might be significant to consider the possible effects of applying the Geneva Convention on Associations in Internal Disturbances in Syria.[54]

On 26 March 2015, the Arab-led coalition – which includes Saudi Arabia, the UAE, Bahrain, Kuwait, Qatar, Jordan, Egypt, Sudan and Pakistan – launched an operation to intervene in the conflict in Yemen,[55] putatively at the request of Yemen's legitimate

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46 Stivers, *The Culture of Cynicism* 101.

47 M Uddin, 'Addressing Work–Life Balance Challenges of Working Women during COVID-19 in Bangladesh' [2021] JWSL 8, 20.

48 Stivers, *The Culture of Cynicism* 101.

49 M Tarik, 'The Russo-Ukrainian War is a Threat to Food Security in the Arab World' (2022) 18 IRJSS 2748, 2752.

50 M Tarik, 'The Russo-Ukrainian War is a Threat to Food Security in the Arab World' 2751.

51 M Burns, 'Economic Consequences of Conflict, Displacement and Humanitarian Aid: Implications for Syria' (MA dissertation, Clark University 2016).

52 Burns, 'Economic Consequences of Conflict, Displacement and Humanitarian Aid: Implications for Syria'.

53 Stivers, *The Culture of Cynicism* 101.

54 M Burns, 'Economic Consequences of Conflict, Displacement and Humanitarian Aid: Implications for Syria' (MA dissertation, Clark University 2016).

55 Q and I Sharif, 'Health system functionality in a low-income country in the midst of conflict: The Case of Yemen' https://core.ac.uk/download/210993721 (accessed on 8 April 2025).

government in response to the wishes of the Yemeni people.[56] Interestingly, Yemen's legitimate government emanated from the Gulf Initiative, which is noteworthy, the Gulf Initiative having stemmed from initiatives proposed at a time when the regime had started militarising its armed supporters.[57] This situation had been resolved some time previously through a peaceful negotiating process between unarmed civilian protesters and the political establishment at the time of Yemen's 2011 Arab Spring uprising.[58] Suffice it to say that Saudi Arabia and other countries have now intervened militarily.[59]

3.4 International Humanitarian Law and Armed Non-state Actors

The framework of IHL can be viewed as being divided into two main aspects.[60] Historically, IHL relates primarily to the actions of states as these entities are responsible for enforcing international law and are obligated to comply with its established principles.[61] However, the relevance of IHL extends beyond just state actors; it encompasses all individuals and groups actively engaged in armed conflicts in addition to those holding positions of influence or authority, or who exercise *de facto* control over one of the conflicting parties.[62] Certain principles of IHL are recognised as customary norms, meaning that they are accepted by both state and non-state actors as being legally binding, regardless of whether explicit legal norms are articulated in multilateral treaties between states.[63] In addition, states possess the capability to create new customary norms by demonstrating their legal beliefs, which is referred to as *opinio juris*.[64]

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56 Sharif, 'Health system functionality in a low-income country in the midst of conflict: The Case of Yemen'.

57 Sharif, 'Health system functionality in a low-income country in the midst of conflict: The Case of Yemen'.

58 Sharif, 'Health system functionality in a low-income country in the midst of conflict: The Case of Yemen' .

59 D Harvey, 'Oases of Influence: Geopolitical Implications of China's Economic Engagement with the Arab World' (Master's thesis, Naval Postgraduate School 2021) 45.

60 Solis, 'The Law of Armed Conflict'.

61 Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* 146.

62 M Bradley, 'Human Security in Armed Conflict: Norms, Agendas and Actors for Protecting Civilians' in Gerd Orberleitner (ed) *Research Handbook on International Law and Humanity Security* (Edward Elgar 2022).

63 R Ferrero, 'International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions: Some Perspectives on Selected Issues' [2022] IRRC https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/ (accessed on 6 April 2025).

64 Solis, 'The Law of Armed Conflict: International Humanitarian Law in War'.

According to Crawford, IHL constitutes a significant segment of international law dedicated to averting humanitarian crises, with a particular emphasis on safeguarding individuals who are no longer involved in hostilities.[65] Historically, IHL has focused on protecting individuals who do not engage in combat; however, its importance is escalating, particularly regarding internal conflicts or instances of armed confrontations where the conflicting factions are either unable or unwilling to mitigate the violence that adversely affects civilians.[66] At the heart of IHL lie the Geneva Conventions which govern various fundamental principles, including the standards of proportionality, discrimination and precaution that must be considered during military operations.[67]

All the parties to an armed conflict, whether a state or an organised armed group in a non-international armed conflict, are bound by the rules and principles laid out in IHL, also referred to as the law of war.[68] The likelihood is that the three most important principles found in IHL are distinction, proportionality and necessity.[69] Distinction alludes to a sharp separation being drawn at all times during armed conflicts between civilian s and combatants.[70] Proportionality prohibits the launching of an attack where it is expected to cause incidental injury or excessive damage in relation to the concrete and direct military advantage expected to be gained[71] while necessity requires that attacks always be confined to legitimate military objectives.[72]

The purpose of IHL in general and of such fundamental norms in particular is to preserve the security, personality and dignity of others.[73] Crawford believes that IHL is a regime that has developed steadily over the course of the past one-and-a-half

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65 E Crawford and A Pert, *International Humanitarian Law* (2 edn, Cambridge 2024).
66 Solis, 'The Law of Armed Conflict: International Humanitarian Law in War'.
67 Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* 146.
68 Solis, 'The Law of Armed Conflict: International Humanitarian Law in War'.
69 C Kreß and R Lawless, *Necessity and Proportionality in International Peace and Security Law* (Oxford 2021) 11.
70 M Basedau and others, 'Rebels with a Cause: Does Ideology Make Armed Conflicts Longer and Bloodier?' (2022) 66 JCR 1828, 1853.
71 L Daniele, 'Incidentality of the Civilian Harm in International Humanitarian Law and its *Contra Legem* Antonyms in Recent Discourses on the Laws of War' (2024) 29 JCSL 29, 54.
72 M Davis, *Trench Warfare* (Publify AS 2025) 5.
73 S Shaba, 'Analysing the Protection Regimes for Non-combatant Personnel and Their Civilian Counterparts' (2022) 6 AJLHR 141, 147.

centuries.[74] Since its formal inception following the adoption of the first Geneva Convention of 1864, IHL as a whole and its provisions and documents have been reinforced piece by piece.[75] Mantilla has described that this normative development has taken place through a continuing process of treaty-making and has also been supplemented by the activities of various bodies of states entrusted with universal or regional human rights protection.[76] According to Distein, it is common knowledge that when the conduct of armed hostilities goes too far, it eventually amounts to violations of the laws and customs of war or what is also conventionally referred to as war crimes.[77] In addition, in extreme cases, these breaches may also result in a widening of the definition to give an account of gross violations of human rights and crimes against humanity, or even genocide.[78]

Opposing some deterministic portrayals that non-state armed actors might not comply with IHL principles, in fact, many such groups do respect the law and have humanitarian approaches and concern.[79] Surveys of and testimonials provided by members of organised armed groups sometimes reveal a good knowledge of the rules and norms of IHL and a meaningful respect for the duty of care towards civilians and prisoners of war.[80] In other words, non-governmental armed actors respect IHL norms if it is in their interests to do so, doing so being conceived as a practical function of the requirements of their military and societal strategies.[81] In other words, compliance with the relevant norms of IHL is considered to be a legitimate act. Another perspective from which to examine this level of compliance with IHL on the part of non-state armed groups would be to grant them a right to prosecute and sanction those international and/or regional actors whose attitudes, conduct or omissions are causing extreme

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74 Crawford and Pert, *International Humanitarian Law* 250.

75 E Kwakwa, *The International Law of Armed Conflict*: *Personal and Material Fields of Application* (Brill 2023) 141.

76 G Mantilla, 'From Treaty to Custom: Shifting Paths in the Recent Development of International Humanitarian Law' (2024) 37 LJIL 359, 378.

77 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1430.

78 CJ Simeon, 'Violations of Fundamental Human Rights, Serious International Crimes, and the Prosecution of Those who have been Excluded from Refugee Protection' in *Serious International Crimes, Human Rights, and Forced Migration* (Routledge 2022).

79 JJ Niyo, 'Legal Fragmentation and Obligations for Armed Non-state Actors: Can International Humanitarian Law and International Human Rights Law Learn from Each Other?' [2022] Elgar https://doi.org/10.4337/9781839108273.00009 (accessed on 25 April 2025).

80 M Hamza, 'Fragmented Armed Groups in International Humanitarian Law' (2021) 4 JSTOR 104, 111.

81 E Crawford, *Non-Binding Norms in International Humanitarian Law: Efficacy, Legitimacy, and Legality* (Oxford 2022) 28.

suffering and misery to non-combatants and civilians.[82] In this regard, non-state armed groups may sometimes be viewed as performing public-law functions in conjunction with the enforcement duties and public powers of states.[83]

3.5 Engagement of Armed Non-state Actors in Enhancing International Humanitarian Law

In assessing the needs of civilians, a crucial element lies in the opportunity to interact with armed non-state actors with the aim of enhancing their abilities and their willingness to adhere to humanitarian principles.[84] These actors possess a diverse array of motivations for following humanitarian law, which may include self-interest, ethical considerations, a quest for legitimacy, religious beliefs, humanitarian intentions, the desire for acknowledgment, experiences of collective trauma and the creation of avenues for dialogue and cooperation.[85] To align some of these motivations with a respect for IHL, it is essential for a proponent of these norms to engage with them; for example, the attainment of greater legitimacy often hinges on gaining some type of acknowledgment or advocacy.[86] Numerous instances exist where armed groups have attempted to align aspects of their actions with IHL, yet their perspectives and capabilities remain disjointed.[87] These non-state armed entities struggle to interpret and apply IHL and human rights principles adequately, which then necessitates the assistance of dedicated external experts and resources to uphold these standards effectively.[88]

ANSAs face a myriad challenges and limitations in conflict zones when acquiring the

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82 M Pedrazzi, 'Strengthening IHL Compliance: The Conduct of Hostilities, the Protection of Essential Services and Humanitarian Assistance in Contemporary Armed Conflict: 46th Round Table on Current Issues of International Humanitarian Law' (Sanremo, 14–15 September 2023).

83 B Ntaka and L Csicsmann, 'Non-state Armed Groups and State-building in the Arab Region: The Case of Post-Gaddafi Libya' (2021) 28 SAJIA https://doi.org/10.1080/10220461.2021.2019104 (accessed on 25 April 2025).

84 D Jaff and others, 'Civil–military Interactions during Non-conflict Humanitarian Crises: A Time to assess the Relationship' (2022) 22 Defence Studies 399, 413.

85 I Brunk and M Hakimi, 'Russia, Ukraine, and the Future World Order' (2022) 166 AJIL 688, 697.

86 K Vermeyeir and G Kelchtermans, 'Unpacking the Support Practices of Educational Advisors: Congruency, Loyalty, Legitimacy, and Urgency' (2021) 23 474, 495.

87 F Wajner, 'The Populist Way Out: Why Contemporary Populist Leaders Seek Transnational Legitimation' (2022) 24 BJPIR 420, 436.

88 J Hannes, 'Bridging the Accountability Gap: Armed Non-State Actors and the Investigation and Prosecution of War Crimes' (2020) 18 JICJ 567, 584.

essential knowledge and skills needed to adhere to IHL. According to Wajner, one of the most significant hurdles is structural: these groups tend to be diverse, fragmented and lack cohesion;[89] often they are driven by varying religious or ideological beliefs that fuel their decision to engage in armed conflict.[90] It is common to encounter a single armed group that features multiple leaders and factions, each with its own agenda; and, in addition to that, there are seldom established paramilitary frameworks and the resources available to these groups often stem from illegal activities, resulting in a near absence of funds for organised military actions.[91] Throughout the course of conflict, the ability of armed groups to invest in their efforts and to organise and train individuals capable of committing violence in alignment with fundamental human rights and IHL standards fluctuates significantly.[92] A significant number of combatants possess little to no knowledge of IHL or international human rights principles.[93] This indicates that in order to formulate more effective and innovative policies regarding the interaction between insurgent movements and IHL, a blend of academic, operational and empirical research is essential to foster a deeper understanding of the connection between IHL and non-state security systems (NSSs).[94] Furthermore, it becomes evident that the local populace perceives the armed group as intricately linked to their own community and concerned with the well-being of that community.[95]

3.6 The Role of Sanctions in Promoting Respect for International Humanitarian Law

Sanctions are measures used in the field of conflict management and peace and security with the aim of influencing the behaviour or policies of state and non-state actors.[96] There are different types of sanctions, including economic, military, diplomatic

89 Wajner, 'The Populist Way Out' 422.
90 C Kuik, 'Getting Hedging Right: A Small-state Perspective' (2021) 3 CISR 313, 315.
91 F Díez-Martín and others, 'Measuring a Scientifically Multifaceted Concept. The Jungle of Organizational Legitimacy' (2021) 27 https://doi.org/10.1016/j.iedeen.2020.10.001 (accessed on 27 April 2025).
92 Wajner, 'The Populist Way Out' 420.
93 Díez-Martín and others, 'Measuring a Scientifically Multifaceted Concept'.
94 Díez-Martín and others, 'Measuring a Scientifically Multifaceted Concept'.
95 M Sassòli, 'The Sources of IHL' in *International Humanitarian Law* (E Elgar 2024).
96 Sassòli, 'The Sources of IHL' in *International Humanitarian Law*.

and civilian measures.[97] Sanctions are often imposed with the intention of halting, preventing or resolving specific conflicts or punishing parties found responsible for war crimes, crimes against humanity or terrorist activities.[98] Generally, sanctions are supposed to be effective and to achieve specific purposes by influencing the behaviour of the parties to a conflict. In a situation of armed conflict, sanctions should encourage or require involved parties to refrain from actions prescribed by IHL.[99] Moreover, sanctions should be used to encourage parties to adhere to IHRL and refugee law or to adhere to arbitration and negotiation efforts in order to settle international disputes.[100] This section discusses whether sanctions are effective in promoting respect for IHL by arming the parties in armed conflicts. In this regard, the research relied not only on the compliance of state parties, but also on the compliance of non-state armed groups with IHL. This is an important element, given the current nature of armed conflicts, which involves interactions between states and non-state actors. The different types of effectiveness of sanctions and arguments in favour of the use of smart or targeted sanctions[101] which consider humanitarian needs in a theatre of conflict are examined in this section. Some of the principles of targeted sanctions are directly relevant to their consideration as more effective measures for upholding respect for IHL in the conflict theatre.[102] This section also explores how, given the current normative context of IHL,[103] the norms are applicable and acceptable to discuss as rules of international law. The punishment of all the parties involved in the perpetration of war crimes and violations of human rights and refugees is now applicable to all states in all armed conflicts, both international and intrastate.[104]

When considering courses of action[105] due to violations of IHL, the inclusion of

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97 D Perksen, 'Economic Sanctions and Political Stability and Violence in Target Countries' in Peter AG van Bergeijk (ed) *Research Handbook on Economic Sanctions* (Elgar 2021).

98 RB Early, 'Making Sanctions Work: Promoting Compliance, Punishing Violations, and Discouraging Sanctions Busting' in Peter AG van Bergeijk (ed) *Research Handbook on Economic Sanctions* (Elgar 2021).

99 Solis, 'The Law of Armed Conflict'.

100 SM Rowhani, 'Rights-Based Boundaries of Unilateral Sanctions Rights-Based Boundaries of Unilateral Sanctions' (2023) 32 Wash'ILJ 132, 168.

101 CG Hufbauer and J Euijing, 'Economic Sanctions in the Twenty-first Century' in Peter AG van Bergeijk (ed) *Research Handbook on Economic Sanctions* (Elgar 2021).

102 Solis, 'The Law of Armed Conflict'.

103 Crawford, *Non-Binding Norms in International Humanitarian Law* 219.

104 C Huber, *Sanctions on Violent Non-state Actors to Restore International Peace and Security: A Systematic Analysis of the Conditions under which UN targeted Sanctions* (Hamburg 2022).

105 Hufbauer and Euijing, 'Economic Sanctions in the Twenty-first Century' 56.

economic and business-based measures such as sanctions in conflict zones can be considered an option only once the direct and indirect impacts of and the potential responses from the affected populations have been fully evaluated.[106] Given that sanctions may be imposed or enforced in several sectors of a country's economy or other country-specific sanctions, they may lead to a loss of income and deprivation for ordinary hardworking, breadwinning and family-supporting individuals and households by inhibiting access not only to goods and services, but also to livelihoods and well-being.[107] It is both morally and legally unacceptable to punish whole civilian populations for the actions of a few individuals, particularly when they cannot change the factors that led to the measures being imposed in the first place.[108]

In verifying acts of terrorism or conduct, , it should be borne in mind that international law protects civilians in conflict situations regardless of the cause,[109] to ensure an effective network of relationships, to understand and respond to groups, coalitions and individuals so as to enhance short and long-term support and to minimise any backlash and adverse impacts.[110] Sanctions must balance fair punishment[111] or sending a negative signal to influence behaviour and peace with justice;[112] they should try to avoid the entrenchment of authoritarian and corrupt political and military elites by undermining their moral legitimacy to rule.[113] Without initial and sustained legitimate, responsive and accountable local solutions,[114] top-down initiatives such as financial or other rewards, including international support, may prove to be ineffective and transformative.[115] Over time, participatory and effective monitoring and oversight by informal and formal civilian networks need to be ensured.[116]

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106 Solis, 'The Law of Armed Conflict'.

107 M Gregory, S Farzan and S Jin, 'The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions' [2020] https://brill.com/view/journals/gg/26/1/article-p121_6.xml?language%3Den (accessed on 25 April 2025).

108 D Perksen, 'Economic Sanctions and Political Stability and Violence in Target Countries' in Peter AG van Bergeijk *Research Handbook on Economic Sanctions* (Elgar 2021).

109 Solis, 'The Law of Armed Conflict'.

110 A Koehler, 'Inhumane Diplomacy: A Systematic Review on the Effects of International Sanctions on Poverty' (2024) 8 ITPD 126, 143.

111 Solis, 'The Law of Armed Conflict'.

112 Koehler, 'Inhumane Diplomacy' 128.

113 Koehler, 'Inhumane Diplomacy' 128.

114 Koehler, 'Inhumane Diplomacy' 128.

115 Koehler, 'Inhumane Diplomacy' 129.

116 Solis, 'The Law of Armed Conflict'.

3.6.1 Types of Sanctions

Under international law, there are two principal forms of sanctions that are authorised and implemented by states.[117] The first type is non-coercive in nature and involves diplomatic or economic relations between states.[118] International law tolerates economic coercion but not military or armed coercion.[119] The second type of sanctions employed by states under international law permits the use of military force.[120] The states employing military sanctions must rely only on those measures compatible with Article 41 of the UN Charter[121] while employing military sanctions, which may include lawful ways of waging armed conflicts.[122] The application of military sanctions by two or more states must be supported by or culminate in a UN Security Council Resolution.[123] States may act alone if the sanctions are undertaken in self-defence.[124] In the past, the application of military sanctions has involved self-defence against armed attack between states.[125] Military enforcement measures have been employed by the international community to restore international peace and security where diplomatic and economic sanctions have proven ineffective.[126] Notable examples include the UN-authorised interventions during the Korean War (1950), the Gulf War (1991), operations in Somalia (1992), Bosnia and Herzegovina (1992–1995), Haiti (1994), and Libya (2011).[127] These interventions were undertaken pursuant to Chapter VII of the United Nations Charter, which empowers the Security Council to authorise the use of force in response to threats to international peace and security.[128] States

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117 Early, 'Making Sanctions Work' 89.

118 D Perksen and J Jeong, Coercive Diplomacy and Economic Sanctions Reciprocity: Explaining Targets' Counter-sanctions' (2022) 33 https://www.tandfonline.com/doi/abs/10.1080/10242694.2021.1919831 (accessed on 27 April 2025).

119 M Roscini, *International Law and the Principle of Non-intervention: History, Theory and Interactions with other Principles* (Oxford 2024) 154.

120 J Schmidt, 'The Legality of Unilateral Extra-territorial Sanctions under International Law' (2022) 27 JCSL 53, 81.

121 UN Charter.

122 I Bogdanova, 'Targeted Economic Sanctions and WTO Law: Examining the Adequacy of the National Security Exception' (2021) 48 Legal Issues of Economic Integration 194, 200.

123 V Gowlland-Debbas, *United Nations Sanctions and International Law* (Kluwer 2021) 135.

124 C Henderson, 'The 25 February 2021 Military Strikes and the "Armed Attack" Requirement of Self-defence' (2022) 9 J on the Use of Force and International Law 58, 77.

125 C O'Meara, 'Reconceptualising the Right of Self-defence against "Imminent" Armed Attacks' (2022) 9 J on the Use of Force and International Law 284, 323.

126 UN Charter.

127 Malcolm N Shaw, *International Law* (9th edn, Cambridge University Press 2021).

128 UN Charter.

that neither participate nor make individual contributions are immune to the obligations under the law unless they have supported the sanctions.[129] Institutions that create, maintain and enforce sanctions in times of peace are governed by the norms of *jus ad bellum*, which include self-defence.[130] Military sanctions that are correctly authorised and implemented generate their just powers and immunity from liability under the UN Charter and customary law.[131] In those situations where sanctioning states have met their obligations and there is a balance of legal justifications between them and target states, the laws of war would regulate the conduct of hostilities to minimise injury and suffering to communities in times of armed conflict.[132]

3.6.2 Impact of Sanctions on Civilian Population

This section examines the impact of prolonged confrontations on civilian populations, highlighting the various sides involved in the conflicts and other factors that may either alleviate or intensify these effects.[133].

The emphasis is on the significance of understanding the scope of civilian populations, exploring the rules of engagement regarding armed non-state actors and identifying potential actions as a foundation for this comprehensive overview.[134] It also considers the ramifications for civilian groups, focusing in particular on how long these populations have remained embroiled in armed conflict while delineating the differing factions involved in the disputed areas.[135]

The ongoing armed conflict in Ukraine, particularly in the eastern region, serves as the primary case study. The analysis includes the length of time that civilians have been trapped in this armed struggle and raises concerns about the narrow perspective of

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129 O'Meara, 'Reconceptualising the Right of Self-defence against "Imminent" Armed Attacks'.

130 M Fogt, 'Legal Challenges or "Gaps" by Countering Hybrid Warfare: Building Resilience in *Jus Ante Bellum*' (2020) 27 SWJIL 28, 100.

131 Rowhani, 'Rights-based Boundaries of Unilateral Sanctions'.

132 B Lepard, 'Challenges in Implementing the Responsibility to Protect: The Security Council Veto and the Need for a Common Ethical Approach' (2021) 25 J of Ethics 223, 228.

133 M Buheji, 'Addressing Human Factors in Gaza: Challenges and Solutions for Post-war Recovery' (2024) 15 IJM 38, 45.

134 O Hathaway and others, 'Ensuring Responsibility: Common Article 1 and State Responsibility for Non-state Actor' (2017) 95 Texas Law Rev 544, 590.

135 E Heffes, 'Armed Groups and the Protection of Health Care' (2019) 95 ILS 230, 243.

fighting groups.[136] These groups may prioritise certain matters while neglecting the essential needs and conditions facing civilian populations caught in extended conflicts.[137] Nevertheless, this oversight may not be entirely devoid of concern or consideration. In addition, outside influences may contribute to the neglect of civilian welfare.[138]

3.6.3 Effectiveness and Limitations

Sanctions have motivated the targeted actors or those in a position to exert influence on them to halt violations of IHL or undertake measures to improve the protection of the civilian population.[139] Sanctions have facilitated the communication of international outrage about violations of IHL and have expressed a collective commitment to the values and norms of IHL.[140] The imposition of sanctions can be used as a diplomatic tool to communicate directly with the conflict parties, influence their strategic calculations and induce them to embark on negotiations also to work towards more stringent protection of the civilian population.[141] Several examples demonstrate how sanctions have been used to influence the behaviour of parties to armed conflicts and enhance the protection of civilians.[142] In the former Yugoslavia, sanctions imposed by the United Nations formed part of a broader strategy that encouraged negotiations leading to the Dayton Peace Agreement.[143] Similarly, targeted sanctions against the regime of Charles Taylor in Liberia weakened support for armed groups and contributed to peace efforts.[144] In Sierra Leone and Côte d'Ivoire, sanctions were used to isolate actors responsible for human rights abuses and to encourage compliance with peace agreements.[145] In Sudan and Libya, sanctions served as a mechanism for

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136 Balcells and Stanton, 'Violence against Civilians during Armed Conflict'.
137 Hathaway and others, 'Ensuring Responsibility'.
138 Hathaway and others, 'Ensuring Responsibility'.
139 G Mallard and others, 'The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions. Global Governance: A Review of Multilateralism and International Organizations' BRILL (2020) 26(1) 142, 153.
140 Mallard and others, 'The Humanitarian Gap in the Global Sanctions Regime' 144.
141 UN Charter.
142 Thomas J Biersteker, Sue E Eckert and Marcos Tourinho (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge University Press 2016) 25–54.
143 United Nations Security Council, *Report of the Informal Working Group of the Security Council on General Issues of Sanctions* UN Doc S/2006/997 (2006).
144 David Cortright and George A Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner Publishers 2000).
145 Cortright and Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*.

expressing international condemnation of violations of IHL and exerting pressure on parties to improve civilian protection. These examples illustrate how sanctions can influence the strategic calculations of conflict parties, facilitate dialogue with the international community, and reinforce respect for international legal norms.[146] The use of sanctions sends a signal that international institutions are operative and that the international community is not indifferent to their illegal behaviour but is concerned.[147]

Sanctions have also encouraged specific individuals or groups with influence to halt violations of IHL and to implement measures that aim to protect civilians better.[148] In addition, sanctions have helped to express global disapproval of instances of IHL violations and have indicated a collective commitment to its principles and norms.[149] By imposing sanctions on conflicting parties, the international community conveys the view that, while recognising their partial legitimacy, their behaviour resembles criminal conduct.[150] Sanctions have also promoted dialogue between conflicting parties and the global community, serving as a diplomatic tool that facilitates direct communication with those involved in the conflict, influencing their strategic decisions and encouraging them to engage in negotiations focused on enhancing civilian protection.[151] The enforcement of sanctions indicates that international institutions are actively involved and highlights the international community's concern regarding unlawful actions rather than a stance of indifference.[152]

Sanctions strategies exhibit varying levels of effectiveness, depending on the context, and they often have limitations or may result in counterproductive outcomes. This highlights the need for a detailed and nuanced evaluation of sanctions, one that advocates a case-by-case approach.[153] The assessment of sanctions, whether

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146 Biersteker, Eckert and Tourinho (eds), *Targeted Sanctions 35*.

147 G Mallard and others, 'The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions. Global Governance: A Review of Multilateralism and International Organizations' BRILL (2020) 26(1) 142, 153.

148 A Bartles-Smith, 'Religion and International Humanitarian Law' (2022) 104 *IRRC* 1728, 1761.

149 Rowhani, 'Rights-based Boundaries of Unilateral Sanctions'.

150 B Jentleson, *Sanctions: What Everyone Needs to know* (Oxford 2022) 38.

151 E Moret, 'Unilateral and Extraterritorial Sanctions in Crisis: Implications of their Rising Use and Misuse in Contemporary World Politics' in Charlotte Beaucillon (ed) *Research Handbook on Unilateral and Extraterritorial Sanctions* (Elgar 2021) 21.

152 Schmidt, 'The legality of unilateral extra-territorial sanctions under international law'.

153 T Corda, 'The Politics of Sanctions Compliance. Explaining Sanctions Effectiveness through the Lens of Domestic Veto Players. Empirical Evidence from the Cases of Eritrea, Iran, and Sudan' (PhD thesis, University of Milano 2022).

positive or negative, is significantly influenced by contextual variables and necessitates continuous evaluation.[154] A key area of debate has been the serious and detrimental effects on civilian populations. These negative consequences can arise not only as unintended results of such measures but, in some cases, they may also be deliberate outcomes of the sanctions. When sanctions are disproportionately applied or misdirected towards wartime economies, they can unintentionally empower violent elites who exploit vulnerable groups.[155] In addition, the implementation of sanctions directed at economic frameworks can worsen the dynamics of armed conflict. In situations without military intervention, civilians typically suffer the most from sanctions.[156] Economic sanctions can greatly compromise human rights. Both the UN and the EU have acknowledged that sanctions often produce harmful effects in practice.[157] In this regard, a significant recommendation by the UN Special Rapporteur for international solidarity underscores the necessity of reintegrating affected nations into the global economy to encourage peace.[158] However, the purported 'sharp' or 'hard' sanctions currently in use appear to contradict this principle, mainly affecting innocent civilians, who face the most severe repercussions.[159] For example, in the case of the Democratic Republic of the Congo, the effectiveness of sanctions has been questioned due to their ostentatious application and lack of meaningful impact.[160] Conversely, certain sanctions have been designed to deal with corruption, focusing on securing strategic areas in the regime. Governments frequently impose these measures in reaction to international matters without recognising their potential adverse effects on local economies.[161]

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154 S Pattaro and others, 'The Impacts of Benefit Sanctions: A Scoping Review of the Quantitative Research Evidence' (2022) 51 JSP 615, 653.

155 Perksen, 'Economic Sanctions and Political Stability and Violence in Target Countries'.

156 Solis, 'The Law of Armed Conflict'.

157 Rowhani, 'Rights-based Boundaries of Unilateral Sanctions'.

158 K Brahim, 'The United Nations in a Multipolar World: Assessing Its Role and Relevance in Africa's Future' (March 2024).

159 E Moret, 'Unilateral and Extraterritorial Sanctions in Crisis: Implications of their Rising Use and Misuse in Contemporary World Politics' in Beaucillon Charlotte (ed) *Research Handbook on Unilateral and Extraterritorial Sanctions* (Elgar 2021) 25.

160 K Laciste, 'Delightful or Decadent? Perceptions of Sapeuses and Sapeurs in Kinshasa, Democratic Republic of the Congo' (PhD thesis, University of California Santa Cruz 2022).

161 C Portela, 'Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?' in Beaucillon Charlotte (ed) *Research Handbook on Unilateral and Extraterritorial Sanctions* (Elgar 2021) 449.

3.7 Conclusion

This chapter aimed to bring to light the challenges faced by civilians in conflict situations. In short, it essentially highlighted the nature, impact and the experience related to conflict and post-conflict environments and how in their course these processes undermine the realisation of the basic human needs for survival among civilian populations. Only by attaining those basic needs do individuals possess the mobility and capability ultimately to realise their human permanence. In the same way, the enhancement of such potentials will also in turn be used more efficiently to sustain and promote the well-being of self and environment alike. Therefore, it is essential to find a possible way of conducting effective management, both to realise the peaceful environment in the conflict and post-conflict situations and to construct sustainable recovery and development.

Furthermore, in situations of conflict, non-state actors often exhibit a unique ability to listen and engage with various stakeholders, possibly even surpassing government efforts. This engaging approach can serve to foster a national dialogue about the adoption and implementation of IHL, particularly in scenarios lacking international validation. Furthermore, the flexibility afforded by non-state actors in applying IHL can harmonise the law with local customs and cultural practices, thereby enhancing its protective impact on the civilian populace. It is essential to acknowledge the rising prominence of technologically savvy non-state groups that favour internal recruitment over a reliance on foreign fighters driven solely by ideological motivations. Within this framework there exists a feasible opportunity for these actors to be persuaded to educate their combatants in IHL, tapping into their self-interest to develop more effective fighters. This is a delicate balance because such training can pose challenges owing to existing disincentives within state-controlled territories, along with the potential risks of alienating loyalists who identify with religious or ethno-nationalist sentiments within their ranks. Engagement initiatives focused on both domestic and international recruits, particularly in cases where the nations whose civilians the hybrid group fighters are likely to confront could strategically shape the influx of fighters into a more controlled demographic. When faced with irregular challenges, non-state actors often exacerbate the complexities of the situation. And although some progress

has been made regarding Islamic injunctions against looting, historical experiences indicate that discussions about robbing civilians can easily be redirected. This redirection may highlight the way certain tactics could undermine the broader interests of a campaign, potentially serving as a distraction that weakens the collective movement. In the light of these considerations, any initiatives aimed at fostering engagement must be intricately linked to the ongoing discourse around the overarching war strategy itself.

CHAPTER 4

HUMAN RIGHTS VIOLATIONS DURING HUMANITARIAN CRISES CAUSED BY ARMED CONFLICT

4.1 Introduction

Human rights violations during humanitarian crises caused by armed conflicts deserve particular attention in order to promote the dignity and protect the rights of those suffering; and they may be characterised by internally or externally displaced populations, large populations of refugees in neighbouring countries and/or protracted humanitarian crises.[1] Human dignity can still be preserved in the most distressing situations when we manage to respect the human dignity of others. Humanitarian crises often result in gross violations of human rights. Such disasters are complex occurrences sometimes characterised by widespread and severe dislocations in the socio-political, physical and legal environments which incapacitate the normal mechanisms for human rights protection.[2]

The dilemmas in emergencies are indeed pressing victims of violence and disaster have lost not only their physical bearings and material possessions, but also their roots: they do not belong anywhere, and no one wants them. A variety of factors contribute to the seriousness of human rights abuses in armed conflicts;[3] these include control over territory, arms, transport and communication facilities, resources and people.[4] According to Solis, the slow response of national and international institutions to protecting vulnerable groups in emergencies can also lead to greater humanitarian emergencies and human rights abuses that could have been avoided.[5] The weak participation of local governance institutions, and also of certain international human

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1 T Rodenhäuser and S Mutasa, 'The International Humanitarian Law Framework for Humanitarian Relief during Armed Conflicts and Complex Emergencies' [2023] SSRN 10, 28.

2 N Schimmel, 'Trapped by Sovereignty: The Fate of Internally Displaced Persons and Their Lack of Equal Human Rights Protection under International Law' [2022] World Affairs 503, 529.

3 Rodenhäuser and Mutasa, 'The International Humanitarian Law Framework for Humanitarian Relief during Armed Conflicts and Complex Emergencies' 12.

4 B Perrin, 'Humanitarian Assistance and the Private Security Debate' [2008] CORE 5, 34.

5 G Solis, 'The Law of Armed Conflict: International Humanitarian Law in War' (Cambridge 2021) http://www.question58.com/uploads/1/3/2/9/13292750/ Accessed on 17 October 2024.

rights actors, can contribute further to an enabling environment for human rights abuses in armed conflicts. IHRL, in some cases, might not suffice, thanks to its inherently state-centred nature. And while the intervention of international criminal justice does provide some form of accountability, it is activated only after seminal atrocities have been committed.[6]

4.2 Human Rights Violations in Contemporary International Humanitarian Law

4.2.1 Defining Human Rights Violations in the Context of International Humanitarian Law

Conflicts have become an almost universal aspect of contemporary existence. The ramifications of these conflicts have been to inflict widespread collective trauma, resulting in an escalating dependence on humanitarian assistance as part of the global efforts to respond to injustices and alleviate suffering in the twenty-first century.[7] In recent decades, there has been a notable transformation in the demographics of those affected by warfare, with civilians now outnumbering combatants,[8] thus rendering them increasingly susceptible to the ramifications of conflict. Moreover, the extended durations of conflict expose significant changes in the patterns of physical violence, spatial dimensions, competing factions and the evolving circumstances at the domestic, international and transnational levels. These developing characteristics are accompanied by several prevailing trends, such as the intensifying disputes between established government entities and local non-state groups, the growing significance of intra-state conflicts and the diminishing interactions between non-state and state actors in the context of national-level armed confrontations.[9]

The health of civilian populations located in these contexts of brutality has increasingly come to the attention of the international community because of the harm they suffer.

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6 AB Kohrt and L Carruth, 'Syndemic Effects in Complex Humanitarian Emergencies: A Framework for Understanding Political Violence and Improving Multi-morbidity Health Outcomes' (2020) 295 Soc Sci Med 2, 12.

7 Solis, 'The Law of Armed Conflict'.

8 L Barcells and J Stanton, 'Violence against Civilians during Armed Conflict: Moving beyond the Macro- and Micro-Level Divide' (2021) 24 Annu Rev Pol Sci 45.

9 E Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application* (Brill 2023) 154.

The vulnerability of women and children, for example, has even been exaggerated during some wars where the law required enhanced protections. In the context of conflicts, particularly those characterised as new wars, various segments of society experience the impact in distinct ways.[10] However, it is critical that these conflicts do not evade responsibility;[11] they must be dealt with within the frameworks of international law, which mandates that their implications for health are examined through the lenses of humanitarian law and human rights. Health, in this regard, holds inherent significance as it encompasses not only the mere absence of illness or disability, but also represents an individual's complete state of physical, mental and social well-being.[12]

4.2.2 Impact of Humanitarian Crises Caused by Armed Conflict

According to Rodenhäuser and Mutasa, armed conflict is a leading cause of humanitarian crises[13] and this fact has been recognised by the United Nations and other international organisations. Efforts have been made to respond to the humanitarian needs caused by armed conflict. In this regard, humanitarian assistance is meant to safeguard and promote basic human rights and serve the humanitarian role in humanitarian crises caused by armed conflict.[14] Yet humanitarian assistance practices conducted in armed conflict have been negatively affected by a number of factors, partly because the nature of armed conflict has changed significantly over the past two decades. Armed conflicts today generally take the form of internal conflicts where state sovereignty is invoked.[15] And whereas IHL provides a legislative framework that governs the conduct of armed conflict, it has not generally been effective in stemming the plague of unchecked violence unleashed in humanitarian crises. There is no temporary constitution for civilians that proscribes in detail what they should not do to their enemies during armed conflict.[16]

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10 Rodenhäuser and Mutasa, 'The International Humanitarian Law Framework' 14.

11 WB Head, *Wicked Problems in Public Policy: Understanding and Responding to Complex Challenges* (Palgrave 2022) 56.

12 Solis, 'The Law of Armed Conflict'.

13 Rodenhäuser and Mutasa, 'The International Humanitarian Law Framework' 10.

14 Perrin, 'Humanitarian Assistance and the Private Security Debate' 8.

15 J Lokulo-Sodipe, 'Protection of Medical Personnel and Other Voluntary Staff in Armed Conflict' (2018) 78 JLPG 3, 7.

16 NM Trew, 'This is Who We Are: The Role of Military Ethics, Culture, and Religion in Disseminating International Humanitarian Law to the Armed Forces' (2025) 107 IRRC 256, 286.

Trew believes that since any armed conflict is neither an entirely limitless nor a complete state of order, it presents a dilemma for civilians of how to play and maintain their role with respect to mutually reinforcing theatres of misery and injustice.[17] Intra-state armed conflict, compounded by armed violence, now accounts for an escalating majority of new humanitarian crises. Trew adds that population groups which lack the protection of the central government authorities, indigenous communities, displaced people, etc. form the new victim groups of armed conflict, fuelled by arms races. This type of conflict primarily has given rise to a new stage of victimisation on a massive scale, in which routine massive killings of people and the destruction of property due to ethnic cleansing remain unnoticed.[18]

Since the end of the Cold War (1990), humanitarian crises have proliferated, shocking the conscience of a world which believed that the lessons of the Holocaust, the Khmer Rouge and Rwanda would never again be forgotten.[19] Nonetheless, humanitarian crises have become more complex and difficult to contain. According to Solis, much as a mechanised army is unwieldy on the battlefield, IHRL, trans-boundary environmental regulations and criminal law are largely ineffective in the form of an ill-coordinated patchwork.[20] Consequently, forming new coalitions to tackle a new hazard becomes easier said than done. Sadly, embattled civilian populations seeking refuge from violence do not have any instrument akin to weapons of mass destruction or a currency of the reserve.[21] The porousness of one conflict is used to spread violence against civilians to facilitate another similar conflict. Thousands of hungry and oppressed human beings fleeing towards the heartland of human civilisation only bring with them more predicaments and woes.[22]

4.3 Applicable Legal Framework during Armed Conflicts

17 Trew, ‘This is Who We Are’.
18 Trew, ‘This is Who We Are’.
19 T Parker, ‘Prevention of Human Rights Violations and Violations of International Humanitarian Law while Fighting Terrorism’ in *Handbook of Terrorism Prevention and Preparedness* (2021) 1062.
20 Solis, ‘The Law of Armed Conflict’.
21 B Giacomo, ‘International Humanitarian Law and the Protection of the Civilian Population in Cyberspace: Towards a Human Dignity-oriented Interpretation of the Notion of Cyber Attack under Article 49 of Additional Protocol I’ (2021) 59 MLLWR 115, 140.
22 Solis, ‘The Law of Armed Conflict’.

Dinstein writes about the relevant rules governing armed conflicts at the international level which are set out in The Hague Regulations, the four Geneva Conventions and their Additional Protocols, in addition to the additional protocols adopted in recent years.[23] The provisions of these international instruments are intended to afford protection to the various human rights of all persons located in the territory and subject to the jurisdiction of a state, and to ensure full respect for the rule of law and the protection of personal liberty by prohibiting non-derogable rights and allowing derogations from other rights.[24] The protection promulgated in IHL complements IHRL: both bodies of law must be interpreted in a manner that upholds the dignity and fundamental rights of victims throughout the transition from humanitarian crises to post-conflict recovery periods.[25]

They must therefore be interpreted and applied in a harmonious manner so that the survival, dignity and fundamental human rights of the victims of natural, man-made and technological disasters and related emergency situations are maintained during and following the transition from humanitarian emergency to post-conflict recovery phase.[26] Importantly, non-state actors do not possess the authority to derogate from human rights obligations, which underscores the imperative for accountability among all the parties involved.

Whereas Van Steenberghe is of the view that in order to facilitate robust compliance and accountability the laws governing armed conflicts must function effectively through robust enforcement, insufficient implementation of these laws may worsen and deepen the suffering of the very individuals who are meant to be protected.[27] As a general rule, IHRL continues to apply during situations of armed conflict, but states can derogate from only some of their IHRL obligations. For their part, non-state actors are not

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23 Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4 edn, Cambridge 2022) 1432.

24 E Chadwick *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* (2023) 148.

25 B Saul, 'From Conflict to Complementarity: Reconciling International Counterterrorism Law and International Humanitarian Law' (2021) 103 IRRC 158, 202. ((157 in bibliography)

26 J Crawford and F Baetens, 'The Creation of States in International Law' in *Leading Works in International Law* (Routledge 2023).

27 R Van Steenberghe, 'The Impacts of Human Rights Law on the Regulation of Armed Conflict: A Coherency-Based Approach to Dealing with both the "Interpretation" and "Application" Processes' (2022) 103 IRRC 1348, 1395.

capable under IHRL of derogating from any obligations. To ensure maximum compliance and enforcement, and accountability, the international laws described above must therefore one day, through the practice of groundwork, be enforced.[28]

4.4 Types of Human Rights Violation

Humanitarian crises are often accompanied by a collection of human rights violations;[29] and the violations that are commonly reported during crises can contribute significantly to human suffering, thereby aggravating the complexity of crises.[30] Human rights violations that take place during the unfolding of armed conflict are both numerous and multifaceted. They can be categorised as violations in terms of limitations on the accessibility and availability of basic services, those involving the physical denial of access to basic services and those perpetrated in the form of threats or psychological and physical violence.[31]

One of the most prominent human rights violations is forced displacement and the use of violence against civilians. The former is affected by a myriad factors often associated with institutions which have a bearing on displacement, such as land, housing and property rights; urban and city planning; or citizenship rights and processes.[32] Human rights violations are often not confined to a particular locality but have national, regional and global implications.[33] These various forms of human rights violations always take place in relation to systemic and/or institutional factors. The bridge between the violations and *prima facie* adherence to human rights norms or the ambiguous nature of an ordeal could conceal the detrimental effects and multiple instances of victimisation.[34] Armed groups and state actors frequently perpetrate various forms of human rights abuse with greater systematic and insidious power. Such perpetrators often elude investigations and accountability owing to their absolute number, elusiveness, high degree of complexity and the confusion regarding their

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28 Kwakwa, *The International Law of Armed Conflict* 154.
29 Rodenhäuser and Mutasa, 'The International Humanitarian Law Framework' 12.
30 T Ferrero, 'Challenges to Implementation of Humanitarian Access Norms in the Sahel: Some Perspectives on Selected Issues' (2021) 103 IRRC 862, 882.
31 Rodenhäuser and Mutasa, 'The International Humanitarian Law Framework' 15.
32 Ferrero, 'Challenges to Implementation of Humanitarian Access Norms in the Sahel' 858.
33 Perrin, 'Humanitarian Assistance and the Private Security Debate' 38.
34 Solis, 'The Law of Armed Conflict'.

operationality.[35] Socio-economic viability or survivorship and recovery strategies[36] may themselves lead to various forms of secondary abuse. Such factors can have implications for human security in the context of humanitarian crises. The psychological toll of violations is significantly high and harmful to the human soul, impairing cultural integrity and leading to a loss of historical identity among affected individuals.[37]

According to Solis, while the violations have accumulated through decentralised local administrations and armed group structures, overlaying them are the highly systematic nationwide governance strategies which possess no localisation in their operations of any kind.[38] In order to hold parties accountable for significant suffering, evidence demands an investigation of the cross-connectors between state operations and the non-state mechanisms of governance.[39]

Displacement survivors develop various everyday strategies of survivorship: they may drift into marginal economic activities and remain deprived of legal status in neighbouring countries.[40] This is related to and compounded by the jurisdictional gap between conflict-induced cross-border migrants in search of refuge and the displaced, in addition to those who have not been rescued.[41] Retaliation and induced collective punishment, mainly in ungoverned regions, are also extensive. Moreover, displacement hinders the delivery of social, economic, educational and civil rights. Furthermore, refugees are also often targeted for extrajudicial execution, killings, reprisals and abductions.[42] They therefore conduct attacks to preserve and expand their territorial areas of control. Hate crimes fuelled by frustration and prevalent mistrust and prejudice towards displaced populations compound the situation both

35 Balcells and Stanton, 'Violence against Civilians during Armed Conflict: Moving beyond the Macro- and Micro-level Divide'.
36 Solis, 'The Law of Armed Conflict'.
37 M Burns, 'Economic Consequences of Conflict, Displacement and Humanitarian Aid: Implications for Syria' (MA dissertation, Clark University 2016).
38 Solis, 'The Law of Armed Conflict'.
39 Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* 151.
40 Burns, 'Economic Consequences of Conflict, Displacement and Humanitarian Aid'.
41 S Shaba, 'Analysing the Protection Regimes for Non-combatant Personnel and their Civilian Counterparts' (2022) 6 AJLHR 141, 145.
42 D Perksen, 'Economic Sanctions and Political Stability and Violence in Target Countries' in Peter AG van Bergeijk (ed) *Research Handbook on Economic Sanctions* (Elgar 2021).

logistically and locally.[43] In addition, insecurity endangers the lives of NGO workers, private citizens and UN staff members. Displacement has the potential to promote dependency, hatred and unflagging enmity. It is therefore a long-term dilemma and has multifaceted ramifications for individuals, given the ensuing socio-economic and psychological suffering that may endure for generations.[44]

4.4.1 Forced Displacement

Forced displacement is possibly the most significant human rights violation and it results in a state of vulnerability for those individuals and communities who are caught in armed conflict. Displacement can result from numerous factors, including ethnic cleansing, systemic violence or military strategies to remove populations from desirable areas.[45] In addition, individuals or groups subjected to forced displacement can face persecution and loss of rights, including those to their land and homes. The international legal implications of displacement are consequently profound and include the right to safety, the right to seek and enjoy asylum and the right to prevent states from returning refugees or asylum-seekers to danger zones.[46]

Displacement occurs in one of two main forms: either as refugees fleeing across a border to safety in another country or through internal displacement, with people fleeing their homes but unable to escape beyond the borders of their country and therefore still under the jurisdiction of their own state.[47] The numbers of internally displaced persons are typically higher than those of refugees and they pose a greater risk to stability and cohesion in today's societies.[48] These people face challenges linked to securing such basics as shelter, food, water and sanitation, and also healthcare (including reproductive and mental health) and education for children. Traumatic stress is an outcome faced by the members of entire displaced communities

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43 Barcells and Stanton, 'Violence against Civilians during Armed Conflict: Moving beyond the Macro- and Micro-level Divide'.

44 J George and A Adesoji, 'Armed Conflicts, Forced Displacement and Food Security in Host Communities' (2022) 158 World Development 29

45 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1430.

46 George and Adesoji, 'Armed Conflicts, Forced Displacement and Food Security in Host Communities'.

47 S Martin, 'Forced Migration and Refugee Policy. Demography of Refugee and Forced Migration' [2017] PMC 140, 142.

48 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1433.

and it influences their future coping, resilience and recovery.[49] Basic services associated with displacement must therefore be triaged to promote healing and recovery, rehabilitation and limited reconciliation. International assistance provided in the past two decades has increasingly privileged access to camps, public health posts, field hospitals, schools and water-distribution systems as a core strategy. While they are essential measures of care in the immediate post-disaster phase, these services fail to offer longer-term solutions to those who have been displaced.[50]

4.4.2 Violence against Civilians

Violence against civilians is one of the crucial human rights violations suffered during armed conflict.[51] Such violence can involve physical assault and/or sexual abuse or even the torture of individuals or a specific pattern of inhuman treatment that causes grievous physical or mental harm.[52] Such treatment can include torture, rape, sexual violence and the psychological trauma of being exposed to pervasive insecurity, particularly in the case of families and children.[53] Moreover, Teddy Atim believes that many serious violations of civil rights have occurred because armed conflict has been accompanied by humanitarian crises such as sudden natural disasters, epidemics or armed conflicts.[54] Civil rights violations will certainly hinder the development of citizens' human rights, the occurrence of civil and human rights violations either being perpetrated or neglected by the apparatus of state power. Initially a state is established with the aim of protecting the basic human rights of citizens.[55] These rights include the right to life, the right to pursue property and the right to feel secure.[56] As a social entity, the state must foster civil rights that determine the legal status of citizens in relation to the state. Yet, in carrying out its functions, the state can carry out policies which violate civil rights, violations that can take the form of excessive acts by law-enforcement

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49 M Buheji and B Buheji, 'Mitigating Risks of Slow Children Development due to War on Gaza 2023' (2024) 14 IJPBS 11, 12.

50 Jawad and others, 'Estimating Indirect Mortality Impacts of Armed Conflict in Civilian Populations: Panel Regression Analyses of 193 countries, 1990–2017' (2020) 18 BMC Medicine 1, 13.

51 M Bradley, 'Human Security in Armed Conflict' in Orberleitner Gerd (ed) *Research Handbook on International Law and Humanity Security* (Elgar, 2022).

52 Bradley, 'Human Security in Armed Conflict'.

53 Bradley, 'Human Security in Armed Conflict'.

54 T Atim, 'The Intersection of Internal Displacement in the Context of Armed Conflict and Violence with Climate Change and Disasters' (2022) 6 Global Campus Human Rights J 5, 14.

55 B Ramcharan, 'Human Rights and Human Security' [2021] Disarmament Forum 42, 47.

56 The Constitution of South Africa Act 106 of 1996.

officers which result in the loss of life in the most extreme cases. In addition, the unfair distribution of budgets can result in some citizens' rights being rendered untouchable by state services.

In addition to the physical and mental harm that most of the abuses cause, other types of violence are ideological in nature: the attackers target the victim because of their ethnic, regional or political identity.[57] Across societies, this can result in stigma and bring shame on victims. In many cases, these kinds of attack are meant to break the cohesion that defines a society and accustomed harmony.[58]

Violence often takes place within wider strategies of control and is usually neither accidental nor random. By targeting civilians, armed groups attempt to demonstrate to the population and to their adversaries that they have the capacity, even the determination, to control them, wherever they may be, rather than simply conduct important military operations or interventions.[59] They do so to create terror and to demonstrate to civilians that sticking with them is pointless and will put their lives and livelihoods in danger. And while it can at the outset appear that some aspects of violence may be related to traditional political or ethnic struggles, the information, methods and strategic selectivity deployed in most cases demonstrate that the underlying motivations are often intertwined with greed or the granting of a strategic advantage.[60] Far from being random or mindless crimes, attacks – including massacres, gang rapes and family killings – are often carefully planned exercises aimed at exerting power and solidifying control.[61]

According to Freeman, the long-lasting consequences are an increasingly fragmented or divided societal structure, the loss of public order, judicial systems and educational

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57 R Ferrero, 'International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions: Some Perspectives on Selected Issues' [2022] IRRC https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/ (accessed on 6 April 2025).

58 Solis, 'The Law of Armed Conflict'.

59 Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* 142.

60 E Pineda, *Seeing Like an Activist: Civil Disobedience and the Civil Rights Movement* (Oxford University Press 2021).

61 B Ramcharan, 'Human Rights and Human Security: *Forty Years after the Universal Declaration* (Martinus Nijhoff 2021) 44.

opportunities and negative impacts on economic and social growth in the entire region of the crisis.[62] Investigating the reasons is important to providing the necessary fair justice, but it is also important to formulate appropriate interventions. The best response is a multifaceted approach that provides for a range of protection needs of different groups, and which varies according to the root causes and strategies they support.[63] These numerous forms of extreme violence[64] against individuals can lead to fatal injuries and psychological suffering, though. Sexual violence, sexual abuse and torture, moreover, often target the most vulnerable in society, even more so when they are victims of rape or gang rape.[65]

Governments claim that they have a role to play by motivating development, suppressing bureaucracy and reducing taxes, confiscatory regulations and less required government packages.[66] In several cases, armed groups are responsible for these serious violations. Impunity, however, is common. In a very limited number of jurisdictions, the leading perpetrators of these abuses are brought to trial;[67] a number of convictions are handed down to the main perpetrators, especially when there is an international coalition of investigators helping the national prosecution services.[68] However, the survivors continue to struggle to obtain redress and compensation from the state for the damage caused to them.

4.4.3 Political Rights Violations

Political rights are frequently violated in humanitarian crises caused by armed conflict, usually by state authorities.[69] This is one reason why IHL imposes obligations on states during armed conflicts to support victims in territory controlled by them. Violations allow states to persecute perpetrators and offer prosecutorial powers to them. Contributing to accountability and reparation, HRL prohibits discrimination

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62 M Freeman, *Human Rights* (4 edn, Polity Press 2022).
63 Pineda, *Seeing Like an Activist: Civil Disobedience and the Civil Rights Movement* 127.
64 D Kretzmer and E Klein, *The Concept of Human Dignity in Human Rights Discourse* (Kluwer 2021).
65 Kretzmer and Klein, *The Concept of Human Dignity in Human Rights Discourse*.
66 Pineda, *Seeing Like an Activist: Civil Disobedience and the Civil Rights Movement* 124.
67 Solis, 'The Law of Armed Conflict'.
68 Bradley, 'Human Security in Armed Conflict'.
69 Solis, 'The Law of Armed Conflict'.

against, incitement towards and the torture and disappearance of victims.[70] Such human rights law in non-international armed conflict can now be enforced by the International Criminal Court. Meanwhile, IHL expresses expectations which do not generate rights for individuals: for victims with urgent needs for assistance and protection from continuing harm and arming there are usually no effective avenues for seeking collateral compliance with their expectations.[71] Despite this, some human rights NGOs have shown remarkable zeal for pursuing options beyond the scope of IHL, including claims against NGOs' or states' involvement with armed opposition groups.[72]

Liwanga insists that reparation is a state obligation in response to the unlawful killing of civilians, arbitrary killing and enforced disappearances in armed conflict.[73] The prohibition of such serious violations is part of customary law and peremptory norms. Garrett is of the opinion that states are liable for unlawful state conduct and must pay adequate sums, implement laws and judicial decisions, and act judiciously and in good faith by instituting remedial proceedings.[74] In this regard, the future work of the UN Working Group on Individual Communications is devoted to strengthening the right to obtain reparation for serious human rights violations. Furthermore, individual complaints may be submitted to treaty monitoring mechanisms and enquiries are possible under a few mechanisms.[75]

4.5 Impact on Vulnerable Groups

Vulnerable groups in society, such as women and children, face the severest impacts of armed conflict and the subsequent deterioration of humanitarian crises. Already disadvantaged and vulnerable prior to the eruption of conflict, women and children are disproportionately affected by grave violations of human rights and are at severe risk

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70 Chadwick, *Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict* 143.

71 E Crawford and A Pert, *International Humanitarian Law* (2 edn, Cambridge 2024) 210.

72 Stephan, 'The Crisis in International Law and the Path Forward for International Humanitarian Law' (2022)104 IRRC 2088, 2096.

73 R Liwanga, 'Reparation for Violations of Human Rights Committed by States: An Analysis of the ICJ Judgment over the DRC Conflicts' [2021] ILJ 5, 16.

74 G West, 'Constitutional Private Law' (PhD thesis, Yale Law School 2025).

75 West, 'Constitutional Private Law'.

of violence, exploitation and abuse.[76] While women suffer from sexual and gender-based violence, sexual exploitation and abandonment, forced pregnancies and limited access to reproductive healthcare, the primary risks facing children are recruitment into fighting forces, displacement and violence.[77] These children – currently reported as being involved in a minimum of 19 conflict situations worldwide – include adolescents in addition to young survivors of conflict and those born into it. They are consequently not merely victims but bear substantiated claims of being direct human rights violators themselves.[78]

The psychological and socio-economic impacts of conflict on women and children remain largely unredressed; moreover, they are denied essential coverage under IHL and the human rights regime.[79]

The significant and lasting social and economic impacts of violations affecting human rights are felt by all members of society but are especially detrimental to children and women, given the overall societal gender disparities and social and cultural norms.[80] In many societies, both women and children generally live under circumstances of economic dependency on men and spend their lives as part of the home of mobile women. In certain societies during circumstances of conflict and exile, the norms of sexual honour and purity further compromise their images of purity and their sexual habits, limiting and on occasion prohibiting former inhabitants of rural areas from engaging in reproductive public health activities, including prevention, care and assistance.[81] The question whether individuals are in fact granted humanitarian treatment and security in equal ways becomes more important especially during interventions in the humanitarian community. It is crucial that these obstacles are overcome through the production of focused action plans.[82]

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76 West, 'Constitutional Private Law'.
77 R Smith, *International Human Rights Law* (8 edn, OUP 2022) 9.
78 Kwakwa, *The international law of armed conflict* 142.
79 Solis, 'The Law of Armed Conflict'.
80 Fleck D, *The Handbook of International Humanitarian Law* 629.
81 L Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Martinus Mijhoff 2021) 44.
82 W Solf, 'Protection of Civilians against the Effects of Hostilities under Customary International Law and under Protocol 1' (1986) 1 American University International Law Review 115.

4.5.1 Women and Children

During humanitarian crises caused by armed conflict, certain people are at risk of becoming more vulnerable than others to various forms of discrimination or violence. Women in conflict-affected societies are at particular risk of sexual and other forms of gender-based violence.[83] They are often the victims of rape, sexual assault, domestic violence, abduction and trafficking. Sexual exploitation also takes place side by side with these serious violations. Because of their sex and gender, in societies where there is a lack of protection women have fewer means of protecting themselves and their children from violence. As a result, women and girls become absolute victims of abuse and end up in the position of so-called 'expendable commodities'[84] towards which men exercising their aggression and sexual violence can have access, usually with complete impunity. Trafficking is both a global and a local issue that mainly affects women, but also men and children.[85]

All children suffer during the accountability crises compounded by armed conflict: they are no longer able to attend school, are usually excluded from access to food aid because of disrupted food distribution systems, are deprived of parental care, are often orphaned and sometimes they are forced to participate in fighting.[86] Because of their involvement in fighting, they also face the risk of death and injury. Girls are more likely than boys to be drawn into domestic labour or become servants to be protected from violence or to be sold. Child recruitment by armed groups and forced conscription violates a child's right to safety and security, freedom of movement and the rights to health of access to education.[87] The fate of a 'child soldier' is particularly dramatic because of its extreme anti-social dimensions: children who have been used as child soldiers often show the same signs of traumatic stress as other children who have been abused.[88] Moreover, their personal and social development may be severely

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83 Solis, 'The Law of Armed Conflict'.

84 A Müller, 'Social Rights in Armed Conflict Situations' in Christina Binder and others (eds), *Research Handbook on International Law and Social Rights* (E Elgar 2020) 89.

85 M Freeman and M Peña, 'Negotiating with Organized Crime Groups: Questions of Law, Policy and Imagination' (2023) 105 IRRC 639, 641.

86 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1429.

87 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1433.

88 L Pruitt, 'Revisiting "Women and Children" in Peace and Security: What about the Girls Caught in between? in Marshall J Beier (ed), *Discovering Childhood in International Relations* (Macmillan 2020) 58.

compromised as a result of what they have gone through, and such children may experience difficulties in re-establishing relationships with the people around them.[89]

4.5.2 Refugees and Internally Displaced Persons

Given the armed conflict-driven humanitarian crises discussed, human beings in these affected areas flee their homes often at the impending threat of violence and even at times in the wake of gross human rights abuses or violations.[90] Particular populations, including the elderly, young children, pregnant women or the survivors of severe human rights abuses may need medical assistance that is not readily available, and they are usually refused access to these remedies by a dominant political or military force which seeks to use it as a tool of control or coercion.[91]

Among those on the move, Martin describes 'internally displaced persons' (IDPs) as individuals who have been forced to leave their homes, but who have not moved across international borders;[92] they are therefore unable to gain access to international protection. These populations can face difficulty in securing their most basic human rights, and their rights under IHRL and IHL. Those who have moved across international borders, in contrast, are able to access a set of legal rights under international and national law,[93] much of which is codified as part of the Refugee Convention and its Protocol,[94] which seeks to protect and support displaced populations while they spend time in a host country. Major problems exist in all of these populations linked to the different statuses of displacement and flight, injury, trauma and loss that are faced by the displacement-affected people who are the victims of gross human rights abuses or violations.

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89 A Zulfiqar and others, 'Doing Better for Women and Children in Armed Conflict Settings' (2021) 397 The Lancet 448.

90 L Shi and Gr Stevens, *Vulnerable Populations in the United States* 103 (3 edn, Wiley 2021).

91 Wise and others, 'The Political and Security Dimensions of the Humanitarian Health Response to Violent Conflict' 509.

92 Martin, 'Forced Migration and Refugee Policy. Demography of Refugee and Forced Migration' 139.

93 Martin, 'Forced Migration and Refugee Policy. Demography of Refugee and Forced Migration' 140.

94 1951 Refugee Convention and its 1967 Protocol.

4.6 Prevention and Accountability

Lee believes that preventing human rights violations is vital to averting the suffering they cause and to ensuring a speedy recovery from humanitarian crises, including those caused by armed conflict.[95] A variety of preventive actions and mechanisms can be employed, from establishing early warning systems to mobilising community engagement through dialogue projects for conflict resolution.[96] Establishing accountability through international cooperation, dialogue or human rights diplomacy has been effective, particularly in relation to violations in non-international armed conflicts, to deter potential perpetrators.[97] Systems and mechanisms for investigating and accounting for serious violations are well developed, from the occasional establishment of commissions of inquiry to ad hoc international criminal tribunals and a permanent International Criminal Court.[98] Civil society and local grassroots non-violent movements, including women's organisations, play a critical role in advocating human rights and social justice and attempting to prevent incidents and impunity. They are also instrumental in building peace. Preventive aspects can be traced in the international standards, which require the protection of human rights and humanitarian law for the adequate education of civilian populations, in all contexts, to ensure that they understand and prevent human rights abuses.[99] These standards focus particularly on women and children and include awareness-raising related to security, safe behaviour and emergency procedures.

Motivating violators to comply with their obligations, cooperate and prevent violations are complementary to the imposition of sanctions after they have occurred.[100] However, the implementation of sanctions and accountability mechanisms raises challenges to achieving the full realisation of their preventive potential, including the lack of political will, the lack of resources and security concerns.[101] Fighting a culture

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95 J Lee, 'Media Influence on Humanitarian Interventions: Analysis of the Rohingya Refugee Crisis and International Media Coverage' (2021) 6 Int J Humanitarian Action 5, 11.

96 Bradley, 'Human Security in Armed Conflict'.

97 Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* 45.

98 Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* 47.

99 Ferrero, 'International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions'.

100 M Hili, *Investigating Engagements between International Police Agencies and Non-state Actors in Peace and Stability Operations* (2024) 89.

101 Ramcharan, *The Concept and Present Status of the International Protection of Human Rights*

of impunity through accountability mechanisms is advocated by several observers, but the multifaceted causes and forms of armed conflict require comprehensive approaches that deal with mitigating the root causes of conflict, the origins of its violence and the conditions conducive to its triggering. Preventive actions are most effective when they respond to all stages of the peace continuum, and they therefore need to be part of the integrated strategies that involve various actors and stakeholders.[102]

4.6.1 Preventive Measures

While it might seem obvious, the importance of initiatives to prevent and thus avert massive or dramatic human rights violations during humanitarian crises and confusing situations should not be underestimated. These measures include establishing early warning systems to anticipate conflicts and to allow preventive responses, whenever possible, based on a technical and professional assessment.[103] Beigbeder suggests that community engagement should, as much as possible, be an integral constituent of prevention and empowerment on the part of the population itself regarding the capacity to contribute to conflict resolution. Moreover, local inhabitants are not only, to a large extent, the main victims, but are also now recognised as being possible key actors in conflicts whose objectives are generally oriented towards consensus-building and peace processes. This is particularly the case when the 'discount' of a negotiated settlement is seen as a better option than continuing suffering.[104] The community perspective is fundamental when the aim of prevention is to induce changes in policy based on secure local ownership. It must therefore be supported and implemented by both local staff and those of international humanitarian organisations with an intimate understanding of the needs, perspectives and thinking of the target populations.[105] Preventive measures should not only be implemented as part of the organisation's

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102 Ferrero, 'International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions: Some Perspectives on Selected Issues'.

103 Y Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* (Brill 2023).

104 Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* 262.

105 Ramcharan, *The Concept and Present Status of the International Protection of Human Rights* 251.

programming and activities,[106] but should also contribute to the capacity-building of the local population to enable self-help. Moreover, the organisation should contribute to the capacity for conflict resolution and peer-building of local organisations, both formal and informal. This must be perceived as a preventive risk-reduction strategy in preparation for future emergencies where enormous or severe human rights violations could be expected.[107] Local officials, whether minor or high-ranking, must also be empowered through training to promote peace, silent diplomacy and constructive conflict resolution and mediation. Furthermore, Distein suggests that local NGOs may contribute indirectly to risk reduction[108] involving human rights and human dignity.

A second strategy is to organise capacity-building in communities in order to promote the basic rules and principles of international human rights standards, based, as far as possible, on their own culture and view of humanity.[109] A third strategy is to organise workshops for police officers and even soldiers on international human rights and disaster management administration.[110] In other words, local institutions, from top to bottom, from formal to informal, must possess an appreciation of the substance of human rights and be able to implement them during their daily activities. A fourth strategy, which includes all the stakeholders, is related to the integration of a 'conflict-sensitive approach'[111] to dealing with human rights from the root.

Old and new issues are combined in these basic and cross-cutting strategies for human rights improvement in the context of promoting community-based humanitarianism. The main body of stakeholders and the capacities of the humanitarian system must integrate these preventive strategies and security initiatives in such a way that special measures are mainstreamed into the tasks in which they are involved.[112]

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106 J Hathaway 'Violations of Fundamental Human Rights, Serious International Crimes, and the Prosecution of Those who have been Excluded from Refugee Protection' in *Serious International Crimes, Human Rights, and Forced Migration (2 edn, Cambridge University Press 2021)*

107 C Kreß and Lawless, *Necessity and Proportionality in International Peace and Security Law* 11 (Oxford 2021).

108 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1435.

109 Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* 260.

110 Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* 262.

111 Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* 261.

112 M Pedrazzi, 'Strengthening IHL Compliance: The Conduct of Hostilities, the Protection of Essential Services and Humanitarian Assistance in Contemporary Armed Conflict: 46th Round Table on Current Issues of International Humanitarian Law' (Sanremo, 14–15 September 2023).

4.6.2 Accountability Mechanisms

International law commits states to investigating, prosecuting and punishing those responsible for violating fundamental rules and norms.[113] When there are widespread or systematic violations of human rights, governments may lack the will or capacity to bring perpetrators to justice, or they may be involved in violating the rights of others themselves. In such cases, the international community may need to consider other measures. These could include providing technical, financial and other forms of assistance for the development of an effective domestic legal framework or for prosecuting perpetrators according to the principles of universal jurisdiction.[114] In some situations, the international community may encourage the establishment of a special tribunal, truth commission or other truth-telling forum that targets past violations from a given period.[115] Beigbeder concurs that these are approaches to pursuing justice and reconciliation in the wake of human rights violations rather than enabling the prevention of these violations in future humanitarian crises.[116]

Establishing effective accountability mechanisms to redress serious breaches of IHL, human rights and norms is difficult, primarily for political rather than legal or other reasons.[117] Political constraints in a domestic situation where the violations have occurred or are ongoing determine whether domestic accountability is possible. Similarly, the credibility of the actions and decisions of international institutions and norms guides the decision whether international accountability is attempted.[118] Only rarely is it possible to impose even partial justice through international mechanisms because of their internal or external consequences.[119] For example, a failure to ensure accountability can profoundly damage the credibility of the proposed tribunal or truth commission in the eyes of the communities and the individuals most affected. It has

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113 Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 1437.

114 J Dilshad and others, 'Civil–Military Interactions during Non-conflict Humanitarian Crises' (2022) 22 Defence Studies 399.

115 Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* 46.

116 Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organisations* 263.

117 Díez-Martín and others, 'Measuring a Scientifically Multifaceted Concept. The Jungle of Organizational Legitimacy' (2021) 27 https://doi.org/10.1016/j.iedeen.2020.10.001 Accessed on 27 April 2025.

118 D Perksen, 'Economic Sanctions and Political Stability and Violence in Target Countries' in Peter AG van Bergeijk *Research Handbook on Economic Sanctions* (Elgar 2021).

119 M Pedrazzi, *International Law and the Principle of Non-intervention: History, Theory and Interactions with other Principles* 151

therefore become increasingly apparent that overarching strategies for protecting human rights need to be grounded in a culture of human rights which is predicated on values of empathy and nurturing.[120] At the international level, a range of sanctions and measures exists to dissuade governments[121] from committing future abuses.

4.7 Conclusion

This chapter has investigated the human rights violations occurring within the complicated and often severe context of humanitarian crises. Such crises have been defined in various ways by different scholars, resulting in a variety of interpretations. A core aspect of the circumstances identified by these scholars is the presence of armed conflict, which exacerbates the overall gravity of the situation. Consequently, the chapter has placed particular emphasis on those human rights violations which occur during humanitarian crises that are specifically instigated by armed conflict, highlighting the distinct challenges encountered in these contexts. A significant secondary focus of this chapter is the implications of human rights violations for the humanitarian aid community, which were carefully analysed. The chapter concentrated primarily on the commonly recognised violation of torture, which is regarded as a serious infringement of human rights that raises critical ethical concerns. An in-depth exploration of the chapter topic was undertaken which aimed to clarify the origins and contexts of such crises and specific violations, together with the legal and ethical obligations for humanitarian actors involved in aid provision amid these challenging environments. In addition, the chapter examined the consequences of these implications for humanitarian actors to enhance the understanding of the difficulties they confront.

A focused examination of the relationship between armed conflict and humanitarian crises reveals the effects of armed conflict on civilian populations. Specific attention was given to torture as a violation, considering the associated legal and ethical responsibilities of humanitarian actors when delivering aid amid crises. These actors

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120 Balcells and Stanton, ‘Violence against Civilians during Armed Conflict: Moving beyond the Macro- and Micro-level Divide’.

121 Saul, ‘From Conflict to Complementarity’ 18.

often encounter complex challenges while aiding in hazardous environments. The chapter also explored the ways in which the ongoing state of humanitarian crises influences torture as a violation and its implications for the provision of humanitarian aid. The analysis in this chapter supports the conclusion that humanitarian crises adversely affect the actions of states and international organisations in respect of torture violations, negatively affecting humanitarian actors in the region.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This dissertation dealt with the changing relationship between IHL and IHRL in modern wars. As wars become more known by unfair methods of warfare, the use of private actors and high-tech changes, the legal boundaries that usually separate these two rules become less clear, which raises important questions about being clear, working together, following rules and who is the custodian of such rules. The task of deciding which law applies to a particular armed conflict is not a simple one. It was argued that it is always a case- and consequence-specific exercise that is subject to determining which law governs the specific facts of the case at hand. This situation is often complicated by the number of intersecting points in any given scenario. And while each body of law achieves its overarching purpose in an encapsulated system, both bodies of law face challenges at the confluence and divergence of cross-interpretation and application, with respect to human rights law and its intersecting relationship with humanitarian law during armed conflict.

5.2 Conclusion

The study showed that IHL and HRL, while sharing the same high purpose of protecting human dignity, have legislative and enforcement frameworks which are necessarily in conflict with each other. IHL is a law of the battlefield; it is applicable in times of war and seeks to regulate the conduct of hostilities by laying down the rules governing interbelligerent warfare and protecting the rights of civilians who are caught in the crossfire between fighting forces during an armed conflict. HRL is always applicable and seeks to hold accountable the violators of individual fundamental freedoms. The intersection between these two regimes in contemporary armed conflicts with features of transnational non-international armed conflicts raises key interpretative questions and their practical implications. Syria, Yemen and Ukraine are three case studies that reveal how much uncertainty states and international bodies face as they negotiate the boundaries of these two normative systems. The dual

applicability of IHL and HRL often leads to selective enforcement, the politicisation of legal norms and inconsistent judicial outcomes.

This study made a conscious decision to stay within the parameters of a legal approach without straying into social science methodology. The objective was an analysis of the relationship between IHL and HRL through doctrinal and case-law-based methods. Consequently, all the discourse in this study does not derive from empirical fieldwork in conflict zones or direct involvement with them. Also not discussed in any detail is regional regime development and the enforcement mechanisms for both IHL and HRL. For example, how important could the role played by the African Charter on Human and Peoples' Rights have been in undertaking a cross-jurisdictional approach to the mechanisms for enforcing IHL or IHRL vis-à-vis their intersecting relationship in this relevant jurisdiction? The *nexus* between law and international relations can be better enhanced by combining legal research with political science. A multidisciplinary perspective on law vis-à-vis science can provide more profound insights into the challenges posed by technology.

5.3 Final Reflection

In summary, Chapter One laid down the basic structure for considering the complex link between IHL and IHRL in today's armed conflicts. It has provided the background and reason for studying how these two sets of laws meet, support each other and sometimes fight against each other when dealing with modern warfare.

The chapter also described the main research problem and goals, pointing out that it is crucial to assess critically whether current legal rules and systems can respond adequately to new humanitarian crises. It has highlighted the dilemmas faced by states and international institutions in balancing military necessity against human rights obligations and the tension between sovereignty and accountability. By setting out the research questions methodology and the scope of the study Chapter One laid the groundwork for the detailed analysis in subsequent chapters. This introductory chapter ultimately reaffirmed that IHL and IHRL meet at a point very central to human dignity and justice in times of armed conflict.

Chapter Two laid down the basic premise that IHL and IHRL complement each other rather than being mutually exclusive. It showed that IHL specifically regulates conduct during armed conflict whereas IHRL continues to apply simultaneously, ensuring basic rights protections even in situations of violence and instability. The analysis revealed the fact that contemporary jurisprudence particularly from the International Court of Justice and that of regional human rights bodies has been instrumental in harmonising the two regimes and clarifying their concurrent applicability. However, it also revealed some existing tensions regarding derogations, extraterritorial application and enforcement which continue to challenge coherence in international legal protection during conflicts.

Chapter Three assessed the humanitarian needs of civilian populations in protracted conflicts and the roles of both armed non-state actors and sanctions in enhancing respect for IHL. It highlighted that modern-day conflicts increasingly involve non-state actors whose behaviour directly affects the welfare of civilians. This chapter argued that effective civilian protection can be achieved only if there is constructive engagement with these actors through dialogue, education and incentive-based compliance mechanisms while also ensuring accountability for any violations committed by them. It also noted that sanctions are a tool of pressure, but that they must be applied judiciously so that humanitarian suffering is not exacerbated.

Chapter Four dealt with the human rights violations that take place during humanitarian crises due to armed conflicts by showing how gaps in implementation, political interference and weak institutional mechanisms often hinder accountability. It noted that, despite the normative strength of both IHL and IHRL, enforcement is inconsistent particularly in conflicts marked by prolonged violence, state fragility or geopolitical competition. Hence strengthening operational capacity on the part of international and regional institutions plus enhancing cooperation by states is necessary to fill this accountability gap.

In general, this study concludes that the protection of human rights and the promotion of humanitarian principles in contemporary armed conflicts require a more integrated and pragmatic approach. The convergence of IHL and IHRL must be reinforced

through coherent interpretation, effective enforcement and sustained international commitment. Moreover, political will, education and active participation by both state and non-state actors are required to ensure respect for these laws not only by employing legal mechanisms, but also through political will. Only such multidimensional efforts can give hope to the international community that civilian suffering will be reduced, the rule of law will be upheld and the enduring humanitarian ideals that lie at the heart of both legal regimes will be realised.

5.4 Recommendations

The following recommendations are drawn to remedy proactively the challenges considered in the study.

5.4.1 Direction for Harmonisation

The principal bodies should be mandated to evolve a codified regime or systematic jurisprudential framework that guides the applicability of both branches of law in a complementary and mutually reinforcing manner, particularly in armed conflicts which are not international in nature.

5.4.2 Direction for Institutions

International bodies, especially the ICC, must improve their organisational ability, trustworthiness, independence and integrity to restore institutional protection from politics and relations between states. This is important to ensure that wrongdoers are punished according to the correct laws regarding serious breaches of IHL and IHRL.

To improve its efficiency, the ICC should implement a consolidated strategic framework across its organs. The 2023–2025 Strategic Plan focuses on performance indicators and inter-organ coordination. Better judge selection and training, case management improvements and the adoption of digital tools are essential steps that should be taken towards institutional resilience.

The ICC’s jurisdiction remains narrow because key powers such as the United States,

China, Russia and India do not participate. Diplomatic efforts and incentives to ratify the Rome Statute can help to widen its jurisdiction. In addition, reforming the UN Security Council's referral process by limiting veto power would reduce political interference in cases and increase access to cases. Confronting perceptions of regional bias is important for the ICC's reputation: it should take steps to ensure balanced prosecution across continents and political contexts. Engaging with civil society, ensuring transparency and aligning expectations with the ICC's mandate will serve to build public trust and institutional integrity. Reforming the ICC is not just a legal imperative; it is also a moral obligation. By improving its structure, widening its jurisdiction and enhancing its legitimacy, the ICC can better achieve its role as a foundation of international justice. These reforms would make sure that the Court remains an institution that people believe in and which works well in pursuing accountability and human rights.

5.4.3 Direction for Contemporary Challenges

The evolution or adjustment of the legal and normative structures of warfare to deal with important matters that arise from the application and possible abuse of new technologies in war: AI-driven weapons and cyber operations.

To respond adequately to the great risks that new technologies in warfare bring, particularly with AI weapons and cyber warfare, there is an urgent need to create and modify the legal and normative systems that reflect the way conflict has changed. The traditional laws governing armed conflicts based on the Geneva Conventions and customary international law were never intended to control autonomous systems capable of making decisions about life and death or cyber tools that can disrupt civilian infrastructure without firing a single shot. Therefore, legal frameworks must be expanded to define accountability for actions taken by AI systems to clarify command responsibility and ensure compliance with the principles of distinction proportionality and necessity.

Normative standards should also be devised that govern the ethical deployment of autonomous weapons, including transparency in the algorithmic decision-making

safeguards against unintended escalation. In the cyber domain, international law must evolve to deal with attribution challenges and regulate state-sponsored cyber operations to protect civilian networks from becoming legitimate military targets. Multilateral cooperation, inclusive dialogue and binding treaties are essential to ensure that technological innovation does not outpace legal restraint. The adaptation of these frameworks is not only a legal necessity but also a moral obligation if human dignity and global stability are to be preserved in the light of increasingly complex warfare which is becoming automated.

5.4.4 Direction for Greater Impact

The civilian dimension of conflict requires prioritisation and mainstreaming, as does guiding the interrogation of legality, challenged either internally in advance of an operation or post-conflict and operative direction. This institutionalised approach is necessary if the civilian dimension in conflict is to be prioritised or mainstreamed. This starts with national defence policy and military doctrine embedding civilian protection so that operational planning, the rules of engagement and mission execution are all subjected to humanitarian principles. Legal interrogation must be facilitated at all stages – pre-operational, during execution and post-conflict – through internal review boards, embedded legal advisors and independent audits to check on compliance with international law. Civilian–military coordination should be enhanced by engaging civilian liaison officers who will help with joint planning between military and humanitarian actors. Training needs to be upgraded so that it includes modules on civilian protection and ethical conduct plus scenario-based exercises that simulate real-world dilemmas. Accountability means having incident reporting systems backed by independent investigations for the sake of transparency and public trust. Innovations such as the real-time tracking of harm to civilians plus precision targeting systems will minimise collateral damage further. Political leaders should approve these initiatives so that protecting civilians turns into a strategic priority instead of being left at the edges.

5.4.5 Direction for Education

It is necessary to cultivate awareness and enhance the dedication of military personnel, members of civil society, humanitarian workers and officials, states, international organisations and agencies towards achieving adherence to norms and compliance or sample traits among pertinent states regarding the complete convergence of IHL and HRL both in theory and practice.

To sum up, the convergence of IHL and HRL in today’s wars is symptomatic of a bigger conflict: the fight between safety and kindness, control and answerability, rules and might. As battle moves beyond normal limits, so should the rules that manage it. This study calls for a new focus on legal unity, system honesty and moral truth. Care for human worth must remain at the centre of world law. In Meron's words, it must not be given up, no matter how hard the battlefield gets. The way forward for laws protecting people in conflict and their rights does not lie in strictly following old rules but in their careful transformation to respond to the needs of a new world. The opportunity for change depends on political will, global teamwork and the strength of legal bodies. These problems are large but not unchangeable or insurmountable. Legal change, along with ethical dedication, can lead to a clearer and kinder way of handling conflicts.

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Declaration:

I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.

I declare that this assignment is my own, original work. Where I have used someone else's work, I have indicated this by using the prescribed style of referencing. Every contribution to, and quotation in, this assignment from the work or works of other people has been referenced according to this style.

I have not allowed and will not allow anyone to copy my work with the intention of passing it off as his or her own work.

I did not make use of another student's work and submit it as my own.

NAME: MVELEDZO THALITA MAANO

SIGNATURE: 

STUDENT NUMBER: 48998273

MODULE CODE: DFCIL92

DATE: 28 FEBRUARY 2026

College of Law_RERC

Date: 25/02/2026

Dear: Ms Mveledzo Maano

Decision: Ethics Approval from 25 /02/2026 to 25/02/2029

NHREC Registration # : (if applicable)
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International Humanitarian Law and Human Rights Law in Contemporary Armed Conflicts: Challenges, Dilemmas and Prospects

Qualification: LLM

Thank you for the application for research ethics approval by the College of Law_RERC for the above-mentioned research study. Ethics approval is granted for three years.

The **negligible risk application** was **reviewed** by the College of Law_RERC on 25/02/2026 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.

The proposed research may now commence with the provisions that:

1.	The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.

2.	Any adverse circumstance arising during the undertaking of the research study that may affect the ethical integrity of the study, including those involving research participants, third parties, or juristic persons, must be reported in writing to the College of Law_RERC without delay.

3.	The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.

4.	Any changes that may affect study-related risks to research participants, juristic or third persons, must be reported in writing to the College of Law_RERC, accompanied by a progress report.

5.	The researcher will ensure that the research study complies with all applicable national legislation, professional codes of conduct, institutional guidelines, and scientific standards relevant to the specific field of study. Where applicable, adherence to the following South African legislation is essential: the Protection of Personal Information Act (No. 4 of 2013) , the Children's Act (No. 38 of 2005), and the National Health Act (No. 61 of 2003)

6.	Future use of this research data is permitted only in de-identified form and only for secondary research with objectives similar to those of the original study. Any secondary use involving identifiable human data will require additional ethics clearance.

7.	No fieldwork activities may continue beyond the stated expiry date (25/02/2029). A completed Research Ethics Progress Report must be submitted as an application for renewal and is subject to approval by the Research Ethics Committee. A Close-Out Report must be submitted upon completion of the research study.

8.	The basis, in alignment with Section 7.2 of the Unisa Policy on Research Ethics (2024).College of Law_RERC may require the submission of regular progress reports on a [monthly/quarterly/annual]

Additional Conditions

1.	Disclosure of data to third parties is prohibited without explicit consent from the research participants and Unisa.
2.	Research data must be stored in compliance with the university's research data management policy for a period of up to 15 years.
3.	When publishing the results, the researcher must take appropriate precautions to safeguard the confidentiality and privacy of the research participants, juristic persons, third parties, and the university, in accordance with institutional policies and ethical standards.
4.	Adherence to the National Statement on Ethical Research and Publication Practices, specifically Principle 7 on Social Awareness, must be ensured. This principle states: 'Researchers and institutions must be sensitive to the potential impact of their research on society, marginal groups, or individuals, and must consider these when weighing the benefits of the research against any harmful effects, with a view to minimising or avoiding the latter where possible.' The University of South Africa (Unisa) accepts no liability for any failure to comply with this principle.

Note

The reference number 13079 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Kind regards,



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LETTER OF CONFIRMATION: NATURE OF EDITORIAL INTERVENTION

To: The Academic Head.
College of Law.
University of South Africa

25.1.2026

I write to confirm that I was engaged as an accredited professional text editor to perform the following editorial interventions on the LLM dissertation by Mveledzo Thalita Maano 'International Humanitarian Law and Human Rights Law in Contemporary Armed Conflicts: Challenges, Dilemmas and Prospects':

1. Copy-editing the text (comprising five chapters), which included language and stylistic editing and imposing consistency of usage.
2. Ensuring that UK English, not US English, conventions have been applied consistently and applying them where they have not.
3. Checking the numbering and formatting of the hierarchy of headings and subheadings.
4. Styling the large quotations, which are displayed separately from the author's text.
5. Ensuring that the conventions of the referencing system – Oscola – have been applied consistently in both the footnotes and the bibliography.
6. Checking that the references in the footnotes and those listed in the bibliography reflect one another in all respects and raising author queries regarding missing or conflicting details.

This being an examinable work, no structural or content editing was undertaken. Any

questions about these facets were flagged for the student's attention and action. The student was provided with an edited document with all Tracked Changes visible and author queries raised in Comments for her attention and actioning.



John Linnegar
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