

**EXAMINING THE EFFECTIVENESS AND PRACTICAL REALITY OF
INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS**

ELIJAH MUWANGUZI KABWIGU

BKS21B11/152

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF
UGANDA CHRISTIAN UNIVERSITY**

May, 2025



**UGANDA CHRISTIAN
UNIVERSITY**

A Centre of Excellence in the Heart of Africa

DECLARATION

I Muwanguzi Kabwigu Elijah, hereby declare that this dissertation entitled: *“Examining the effectiveness of international humanitarian law in Protecting Human subjects during armed conflicts* has been prepared by myself and nobody has submitted it before to any institute for an award of a degree, or published to any institution of higher learning.

Signature.......... Date.....6 / 05 / 2025.....

Muwanguzi Kabwigu Elijah

APPROVAL

This dissertation has been prepared under my supervision as the University supervisor

SIGNATURE..........

MS. IRENE NATAMBA

Date 6 / 05 / 2025.

DEDICATION

This dissertation is dedicated to my beloved parents, my sisters and brother Don Mark Kabwigu. I also want to thank God for guiding me and protecting me from all kinds of sickness, which allowed me to finish my studies successfully. I also dedicate this dissertation to Mr. Kamuhanda success who believed in me and always encouraged me to work hard as he tutored me to make sure I make it.

ACKNOWLEDGMENT

This dissertation has been a journey filled with ups and downs, hard work, dedication, resilience, perseverance and commitment. As such I would like to acknowledge and thank the Almighty God for his protection and guidance, during this journey.

My deep gratitude goes to my parents, my mother professor Ruth Nsibirabo kabwigu and my father Professor Kabwigu Samuel, who have sacrificed a lot for me and have always supported me.

Special thanks goes to my supervisor Associate Dean Ms. Irene Natamba, for your guidance and always making time from your busy schedule to correct me and see that I improve.

Abstract

The International humanitarian law (IHL), also known as the law of armed conflict, is a set of rules which seeks to limit the humanitarian impact of war by regulating the conduct of hostilities and protecting those not or no longer participating in war. ¹

International Humanitarian Law protects civilian, restricts the means and methods of warfare .²

Armed conflicts are divide into international armed conflicts and non-international armed conflicts ³. The Common Article 2 of the 1949 Geneva Convention⁴ has defined International Armed Conflict (IAC) as any armed conflict or declared war between two or more High Contracting Parties. This was also defined in the case of prosecutor verses Tadic ⁵where an international armed conflict was defined to mean the use of armed force between states . Further, according to additional protocol 1⁶ of the Geneva conventions, armed conflict was also defined to include conflicts by liberation movements .

¹ Droege, C. (2007). The interplay between international humanitarian law and international human rights law in situations of armed conflict. (Page 312)

² CHANGING NATURE OF ARMED CONFLICT:APPLICATION OF HRL AND IHL ANVIKSHA PACHORI (Page 114)

³ Nils Melzer in his book international humanitarian law a comprehensive introduction

⁴ Common Article 2 of the 1949 Geneva Convention

⁵ prosecutor verses Tadic

⁶ additional protocol 1

Non international armed conflicts on the other hand has been defined as an armed conflict between a state and an organized armed group or between two organized armed groups within the territory of a state ⁷.

In this study, the researcher set out to examine how, and whether IHL are effective in protecting human subjects during armed conflicts by imposing limits on the destruction and suffering caused by armed conflict.

⁷ Nils Melzer in his book international humanitarian law a comprehensive introduction

TABLE OF CONTENTS

EXAMINING THE EFFECTIVENESS AND PRACTICAL REALITY OF INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS	i
DECLARATION.....	ii
APPROVAL.....	iii
DEDICATION.....	iv
ACKNOWLEDGMENT.....	v
Abstract.....	vi
CHAPTER ONE: INTRODUCTION.....	1
1.0 Introduction.....	1
1.2 Problem statement	4
1.3 Research Objectives	5
1.3.1 General objective.....	5
1.3.2 Specific Objectives.....	5
1.4 Research questions	5
1.5 Significance of the Study	6
1.6 Justification	6
1.7 Geographical scope.....	7
1.8 Time Scope.....	7
1.9 LITERATURE REVIEW	8
1.10 METHODOLOGY	14
1.10.1 Introduction.....	14
CHAPTER TWO.....	15
2.0 General Introduction	15
2.1 Armed conflict	16
2.2 Types of armed conflict.....	16
2.3How international humanitarian law protects humanity in armed conflict.....	16
3.1 Introduction.....	22
3.2 INTERNATIONAL FRAMEWORK.....	22
3.1.1The Geneva conventions of 1949	22
3.1.2 REGIONAL LEVEL FRAMEWORK.....	24
CHAPTER FOUR	26
4.1 Introduction.....	26

4.1.1 summary of findings	26
4.2 Conclusion	29
4.3 Recommendations	30
BIBLIOGRAPHY.....	32

ACRONYMS/ABBREVIATIONS

AP	:	Additional Protocol
NIACs	:	Non international Armed Conflicts
IHL	:	International Humanitarian Law
IACs	:	International Armed Conflicts

CHAPTER ONE: INTRODUCTION

1.0 Introduction

Globally, there is increasing concern about increased unrest, conflict and wars that cause suffering [8]. Armed conflicts go on to bring danger to persons, affect their social and economic life.

Considering the numerous effects linked to unrest on populations, particularly those not involved in the fighting, it is of needed to examine how effective International Humanitarian Law is in reducing or elimination such effects and suffering. Further, because the conflicts are becoming longer means that the impact last and eventually affects more people.[9] For instance, civil conflicts in the early 1970's lasted an average of just 2&1/2 years. "This changed and in the mid-1980s, international and regional conflicts have lengthened to four years and by the early 1990s. The sustained conflicts have more than doubled to a peak of over nine years or even more years"[10]. In addition, the number of international armed conflicts, post the cold war has reduced however the non- international armed conflicts which are of state and non- state parties are on the rise. While this has reduced the overall number of death that was a case

⁸ Waszink, C. (2011). Protection of civilians under international humanitarian law: trends and challenges. NOREF report. Page 5

⁹ Dunne, J. P., Hoeffler, A., & Mack, A. (2013, Page 21).> accessed on 20th April 2025

¹⁰ Richard Kozul-Wright and Piergiuseppe Fortunato (2011): Introduction. Chapter 1.> accessed on 20th April 2025

with international armed conflicts the direct targeting of civilians and abuse of rights is now common. [11]

This enduring situation of wars and conflicts happening, internationally and locally, despite the existence of International humanitarian law which is in place to ensure that during situations of armed conflict, non warring people are protected. It is important for countries, regions to respect existing rules under international humanitarian law by effectively applying them to be able to control human suffering especially among those who are not part of the war or conflict. Unfortunately, armed conflicts between states continue to be reported and have given way to civil wars[12]

A number of armed conflicts are also seen at a regional level. Some of the examples of regional conflicts documented are wide spread. The most current conflict in Europe is the one between Russia and Ukraine and this conflict has been raging for close to 4years, that is from 2022.[13]

In the African region, the conflict between the allied democratic forces (ADF) in Congo, which is a war against the government of Congo has been long enduring. Amidst this regional conflict, other countries like the Republic of Uganda have been drawn in this conflict.[14] These regional conflicts have greatly affected the peace and security in the

¹¹ Protection of civilians under international humanitarian law: trends and challenges 1August 2011Camilla Waszink Page 5

¹² Richard Kozul-Wright Piergiuseppe Fortunato (eds): Securing Peace State-Building and Economic Development in Post-Conflict Countries ISBN: 978-1-84966-588-9

¹³ D'Anieri, P. (2023). Ukraine and Russia. Page 9.> accessed on 20th April 2025

¹⁴ Titeca, Kristof, and Daniel Fahey. "The many faces of a rebel group: the Allied Democratic Forces in the Democratic Republic of Congo." *International Affairs* 92.5 (2016) Page 1 <https://academic.oup.com/ia/article-abstract/92/5/1189/2688114>> accessed on 20th April 2025

countries where they are existing. To make it worse, other nations have been drawn into these international or regional conflicts. For example, the conflict between Russia and Ukraine have drawn nearly all countries in Europe and America. In the same way, the conflict in DRC by the ADF has drawn in neighboring countries like Uganda, Rwanda and this is a confirmation that unrest and suffering is widely spread to affect those civilians not involved in the conflict. For instance, as a result of this ADF regional conflict there has been increased displacement and death. In 2012, the Uppsala Conflict Data Program (UCDP) recorded 32 armed conflicts with a minimum of 25 battle-related deaths.^[15]

One wonders whether, and how the principles of International Humanitarian Law which are in place have been implemented in the Democratic Republic of Congo and in other regions where armed conflicts are happening. Therefore, this calls for a study like this one to examine what are the realities involved in implementing the IHL. A huge gap still prevails in the desired statutory instrument, civilians still bare the burnt of armed conflicts which cause destruction of property, mass displacement and attack on non-combatants etc.^[16] For example, Israel is on the verge of committing ethnic cleansing. All this is happening despite the existence of legal and legal framework, as well as rules provided by the international humanitarian laws.

A key question that calls for answers is, how effective are the laws that are in place being implemented? Secondly, the other question that requires answers is: are the

¹⁵ Themnér, Lotta, and Peter Wallensteen. "Armed Conflicts, 1946–2012." *Journal of Peace Research* 50.4 (2013)

¹⁶ 8.9. Justino, P. (2011). The impact of armed civil conflict on household welfare and policy responses. *Securing Peace: State-Building and Economic Development in Post-Conflict Countries*, 19-52.

principles of the IHL being achieved? From the stated questions this study was justified to question the effectiveness and practical realities of putting in action the international humanitarian law. The study therefor focuses on the effectiveness of International Humanitarian Law in addressing issues related to armed conflict and its impact on civilians

1.2 Problem statement

International humanitarian law is in place to reduce the effects of armed conflict happening non-warring factions of the population.^[17] international humanitarian law outlines the obligation of both state and non-state armed groups during conflicts. These obligations include, among others ensuring the swift and undisturbed delivery of humanitarian aid, adherence to the rules established under article 1 of the Geneva Conventions and guarantee the freedom of movement for humanitarian personnel in conflict zones. It also mandates the protection of civilians. Aiming to prevent unnecessary suffering among affected populations and ensures the continued provision of essential services

However, in reality, under situations of armed conflicts at both the international and non-international levels are evidently limited or no protection of civilians in the war areas. This is despite the presence of the international humanitarian laws. Therefore, the effectiveness of the IHL should be examined. If this problem is ignored, we will go on to have the codified laws but they would not be relevant as their objectives would not be realized.

¹⁷ Nils Melzer in his book international humanitarian law a comprehensive introduction. Page 17

Thus, this study posed the following objectives:

1.3 Research Objectives

1.3.1 General objective

Examining the effectiveness of, international humanitarian law in protecting civilians during armed conflicts.

1.3.2 Specific Objectives

Specifically, the study set out to:

1. Determine awareness of the existence of international humanitarian law, its principles and objectives.
2. Examine effectiveness of implementing IHL
3. To assess the challenges in achieving success in protecting populations in areas affected by armed conflicts

1.4 Research questions

1. To what extent are international humanitarian law rules put into practice in armed conflicts?
2. How effectively are international humanitarian law principles being implemented to fulfill its objectives?
3. What are the challenges of applying international humanitarian law principles?

1.5 Significance of the Study

From the review of literature, observations and insights will be noted about the numerous civilians around the world who continue to suffer and be affected in various ways by the adverse effects of international armed conflicts(IACs) and non-international armed conflicts(NIACs). The findings of this study will therefore highlight existing evidence of suffering, including limitations in the process of implementing IHL, as well as areas that can be looked at to improve the effectiveness of the IHL in IACs and NIACs. This information is required urgently particularly during these times when conflicts are on the increase. Thus, the findings of this study are required and will expose the realities of implementing IHL in areas where conflicts exist.

1.6 Justification

A study on examining how IHL is being implemented is urgently required because it will document what is happening, what is being done to ensure that men and women, girls and boys in areas where conflicts happen are protected from suffering. Since the IHL and its principals are in place, there is need to disseminate them and push for their implementation so that where conflicts cannot be avoided,

Further, there have not been many studies that have examined how IHL is being implemented. This current study will be able to bring out this unique and required information to improve the safety of citizens in areas affected by conflict. Further, this study is justified because its findings will help to ascertain if the laws of international humanitarian law remain effective and practiced now armed conflicts and guide on how they could be made more effective.

1.7 Geographical scope

Although this study was mainly on review of existing literature, the geographical scope focused on the armed conflict between Israel and Palestine.

1.8 Time Scope

The research focused on the time frame between 24th February 2022 when the Russia-Ukraine conflict escalated to date. This was because in this time frame we witness the new changes that have developed in armed conflicts.

1.9 LITERATURE REVIEW

1.9.1 Outline

The chapter presents an assessment of existing literature on the problem of study, which was on examining the effectiveness of international humanitarian law in shielding human subjects during armed conflicts. This chapter presents the works of researchers who have studied and documented issues in relation to the current problem of study which is explaining how IHL principles are being maintained. This chapter is written in sections following these themes. i.e. definition of the International humanitarian law (IHL), principles of IHL and effectiveness of international humanitarian law.

Definition of International Humanitarian Law

International Humanitarian Law has been described by scholars as a body of international legal principles that govern the conduct of hostilities during armed conflicts also known as the law of war. [18]

One of the most popular scholars by the names of Jean Pictet has defined IHL as a collection of rules aimed at reducing the impact of armed conflict for humanitarian purposes. It offers protection to individuals who are not involved, or no longer, in the fighting and imposes limits on the methods and means of warfare.[19]

It is important to note that international humanitarian law plays a critical role in protecting civilian population. It is also useful in reducing and regulating the actions of violence. To that effect, because of the IHL, Dinstein has argued that IHL should address

¹⁸ Nils Melzer international humanitarian law a comprehensive introduction (Page 17)

¹⁹ <https://international-review.icrc.org/sites/default/files/S002086040007279Xa.pdf> > accessed on 20th April 2025

any issues that arise during armed conflict. These definitions however focused more on protection of civilians but to promote humanity in armed conflicts the writers had to as well consider protection of nonmilitary objects for example schools, hospitals and so on.

Effectiveness and Principles of International Humanitarian Law

Conferring to Diakonia, in the easy guide to international law “international humanitarian law should regulate war and minimizes suffering buy balancing the deferent principles in international humanitarian law such as the distinction between civilians and combatants.” [20] the author goes ahead to discuss what would enable international humanitarian law be effective, the author was of the view that states had to be held accountable for the breach of international humanitarian laws. However, he did not address what other recommendations would be considered to make international humanitarian law more effective. Which is one of the gap the study will look to solve.

In Nils Melzer’s “international humanitarian law: a comprehensive introduction.” The author went on to state that effectiveness of the IHL is also exhibited through the protection of the principles including: equality and non-reciprocity during armed conflict. Under this principle, the warring factions should comply with their humanitarian obligations in all circumstances and observe that all parties are considered equal, without special preference or exclusion. [21]

²⁰ Diakonia.se/IHL/news/easy-guide-to-international-humanitarian-law >(page1)

²¹ Nils Melzer international humanitarian law a comprehensive introduction (Page 17)

Further, the author talks of the principle of distinction which is also provided for in the IHL. Nils Melzer, explains that the principle of distinction rests on the idea that the sole lawful aim of warfare should be to weaken the enemy. In contrast civilians must be broadly protected [22]consequently, all parties engaged in an armed conflict regardless of where or how long the conflict lasts are obligated to consistently distinguish between civilians and military targets [23.] Effectiveness in ensuring that the citizen population is distinctively protected shows that the IHL has been effectively upheld.

The author still goes on to list the principle of Precaution. This principle argues that to have effectiveness in implementing the international humanitarian law, parties involved in a war are expected to be governed by this principle of precaution on the military methods they employ[24]. The principle of precaution therefore, is meant to control the belligerents to consider the target they are to hit and take precaution not to target or unintentionally affect civilians.

However, considering the principles of international humanitarian law that Nils Melzer addressed, there is still a gap, the author did not consider which is the other factors that are not codified as principles under IHL, such as the non-legal factors which also affect civilians in an armed conflict, this study intends to address this gap as well.

²² Nils Melzer international humanitarian law a comprehensive introduction (Page 18)

²³ Nils Melzer international humanitarian law a comprehensive introduction (Page 18)

²⁴ Nils Melzer international humanitarian law a comprehensive introduction (Page 18)

Challenges of Upholding the IHL Principles

There are challenges that affect the realization of the effectiveness of international humanitarian law. A vast body of study shows that the principles exist, but certain challenges hinder their effectiveness.

According to Eechaute in Non-international armed conflict, these laws sometimes do not really apply to the context or situation at hand. For example, the laws on targeting particular object, person. Coupled with the rules on the kind of selective and specific weapon and method to be used to avoid excessive and extended impact are not easy to achieve, as it is not easy to implement the principle of targeting due to uncertainty on who is not actively participating in the armed conflict. I could give a current example of the case of the Gaza where fighters, weapons are in the same places where patients-hospital are. This has led Israel to bombard seemingly people or civilian spaces. This lack of sufficient distinction of who is in the fighting or not is a challenge to the principle of targeting and thus affects the practicability of executing targeting.^[25]

Another challenge affecting the implementation of IHL and keeping to the principles is that some of the provided rules have a certain level of ambiguity and this is a very serious issues affecting interpretation and the effectiveness of international humanitarian law.

According to Akande Dapo in Clearing the Frog War, despite agreement on the principles that civilians who take a direct part in hostilities are subject to direct attack by the adversary, there has been much difficulty in applying it. Even the basic question of who

²⁵ Eechaute H, 'Non-International Armed Conflict

is a civilian is sometimes difficult to answer in times of armed conflict, there is also little guidance on the meaning of some terms and concepts used in situations of conflict- particularly in non-international armed conflicts. For example, words such as “direct participation” used in reference to someone who is not or who has pulled out and is no longer participating in war is difficult to explain. In situations where a person or groups are in the location or geographical space where war is taking place, it becomes difficult to decide who should be considered as no longer taking a direct part in hostilities so that he again benefits from civilian immunity. [26]

The last challenge of enhancing the Implementation of International Humanitarian Law also known as the is the relationship between IHL and state sovereignty which has been found to be complex. International law recognizes that state sovereignty is not absolute and that states have certain obligations towards the international community, particularly in areas such as human rights and humanitarian law. However, states in conflicts go on to consider their state sovereignty over respecting the principles of international humanitarian law. [27]This in itself is a big challenge to successful implementation of the IHL. According to Sivakumaran (2012), “the application of IHL in the national armed conflicts claimed that there is often an unwillingness of the states to legitimize non-state actors in times of warfare.” Take the example of Syrian conflict where international humanitarian law enforcement mechanisms in civil wars have

²⁶ Akande, Dapo. Clearing the Fog of War

²⁷ Conflict Zones: A Comprehensive Review (Page 5)

highlighted the ineffectiveness of the process of keeping the IHL and principles. The list of challenges is endless and it keeps growing. [28]

At the moment, different literatures were more focused on certain challenges affecting the effectiveness, leaving out a number of other challenges that need to be resolved for the international humanitarian laws to be effective.

²⁸ Sivakumaran (2012)

1.10 METHODOLOGY

1.10.1 Introduction

This chapter showed the methodology the researcher used for this particular research.

Research methodology refers to the systematic approach used to identify, gather and analyze information related to a particular research topic. It outlines the process through which a study is structured to meet its objectives using chosen research tools. This includes key components such as the research designed, methods of data collection and analysis as well as the broader framework guiding the entire research procedure .^[29]

The methodology the study used is the qualitative research methodology. This is because it is not possible to go to the field and the research is totally desktop research. Qualitative methodology enabled the researcher attain data from existing research, and documented experiences of people.

²⁹[https://paperpal.com/blog/academic-writing-guides/what-is-research-methodology#penci-What is research methodology](https://paperpal.com/blog/academic-writing-guides/what-is-research-methodology#penci-What-is-research-methodology) > (Page 1) accessed on 25th April 2025

CHAPTER TWO

understanding non- legal aspects affecting the effectiveness of international humanitarian law

2.0 General Introduction

Since ancient times, war has inflicted immense suffering and devastation on both soldiers and civilians. Generations have endured the trauma of violence, loss and abuse, with countless families left shattered; it is from this deep anguish and the urgent plight of war victims that emerged legal framework born out of past and present battlefields., aimed at alleviating human suffering during armed conflicts .^[30]

This chapter looks at the objective of International Humanitarian Law and its scope as well as the idea of armed conflicts and the various types of armed conflicts that are in existence and non-legal aspects affecting the effectiveness of international humanitarian law.

“International humanitarian law is a set of rules that seek to limit the humanitarian consequences of armed conflicts.” ^[31] “We should also understand that international humanitarian law is sometimes also referred to as the law of armed conflict or the law of war (jus in bello).” The primary purpose of IHL is to restrict the means and methods used in armed conflicts to ensure the protection and humane treatment of civilians.

.

³⁰ Nils Melzer international humanitarian law a comprehensive introduction (2016 Page 12)

³¹ Nils Melzer in his book international humanitarian law a comprehensive introduction (Page 17)

2.1 Armed conflict

An armed conflict is not defined in article but it has been defined in cases for example the case of prosecutor versus Tadic^[32] as whenever there is a resort to armed force amongst States. This definition has since then been adopted by international organizations.

2.2 Types of armed conflict

International humanitarian law is triggered once a conflict breaks out and it applies equally to all parties involved, irrespective of all parties involved irrespective of which initiates the hostilities. IHL makes a clear distinction between international armed conflicts and non- international armed conflicts

International armed conflicts involve hostilities between two or more states, such conflicts are overseen by a comprehensive set of rules, primarily those found in the four Geneva conventions and additional protocols.^[33].

2.3 How international humanitarian law protects humanity in armed conflict

The study revealed that the core objective of international humanitarian law is to limit the means and, modes of warfare available to the parties in conflict and to safe guard the humane treatment of individuals who are not or are no longer actively involved in hostilities. These fundamental principles are binding on all belligerents, including states such as Israel. The responsibility for enforcing and implementing international humanitarian law translating its provisions into practical action primarily lies with the

³² prosecutor versus Tadic

³³ Nils Melzer international humanitarian law a comprehensive introduction (Page 54)

states that have ratified the Geneva conventions and their Additional Protocols. This obligation is clearly outlined in common article 1 of the four conventions, which mandates that states must both respect and ensure respect for the conventions in all circumstances. However, the continued harm inflicted on civilians during armed conflicts raises a critical question: why does this occur despite the presence of a comprehensive legal framework? The following factors will help explain this troubling reality.

Asymmetric Warfare

The study focused on the armed conflict in Israel and it was found that one of the reasons the rules of ihl are not practiced is the fact that there is an asymmetric warfare. Asymmetric warfare is a military term that describes a war between forces that have different military power, strategies, or tactics. It often involves a smaller, less powerful force using unconventional methods against a larger, more powerful force. [34]The conflict involves a state actor (Israel) and non-state armed groups (like Hamas). Non-state actors may not fully adhere to IHL or lack the capacity to enforce compliance within their ranks. This asymmetry presents significant challenges for regulatory bodies like the international committee of the red cross, which struggle to ensure accountability and adhere to international humanitarian law where the parties involved are fundamentally unequal. The principle of equality of arms becomes difficult to uphold, as the belligerents pursue vastly different objectives and employ divergent

³⁴ <https://www.britannica.com/topic/asymmetrical-warfare> > accessed on 26th April 2025

means and methods in the execution of their military strategies.^[35] this makes implementing international humanitarian principles such as equality hard

Implementation

A necessary outcome of this is that widespread and systematic violations of basic rights need to be treated as crimes against humanity and that perpetrators must be subjected to accountability, the problem is not that international humanitarian law is irrelevant but it is not implemented. While some adjustments might be possible and necessary, the major problem is the lack of political will by states to seize them, and in particular, the fact that the triggering off the onset existing IHL mechanisms depend on the consent of parties to a conflict..^[36] For example, the international criminal court's issuance of an arrest warrant for Benjamin Netanyahu and Yoav ³⁷Gallant cannot be easily archived as there is no set body with the jurisdiction to implement these orders, this then makes it hard for international humanitarian law to exercise its authority and implement its principles. And for this reason the study found out that the codified laws are in existences as needed but are not implemented

Excessive force

The study shows that despite the principle of proportionality during armed conflict, we still witness belligerents not considering it in attacks for example the recent missile strike by Israel on world central kitchen aid workers highlights the scale and

³⁵ https://www.icrc.org/sites/default/files/review_article/file/irrc_857_8.pdf > accessed on 26th April 2025

³⁶ <https://casebook.icrc.org/case-study/icrc-ihl-and-challenges-contemporary-armed-conflicts> >accessed on 26th April 2025

³⁷ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber> > accessed on 26th April 2025

disproportionality of the ongoing violence, this incident has contributed to a surge in the number of wounded and severely ill individuals, accruing at a time when essential resources such as medical personnel, supplies, food and healthcare facilities are critically limited [38] This goes on to affect the laws set out from being effective in the armed conflicts and affecting the protected persons and objects.

A recent challenge facing international humanitarian law is the growing tendency of states to categorize all acts of warfare carried out by organized armed groups as acts of terrorism. [39] This weakens the effectiveness of the principles and rules of international humanitarian law as states do not follow them when targeting the organized groups, they have labeled as terrorist groups just like Israel and Hamas .[40]

Differences in Legal Ideologies.

The study has shown that despite the presence of principles under IHL governing international armed conflicts and non-international armed conflicts the efficiency of these laws are affected when it comes to achievement of the objectives by the differences in legal ideologies[41] in that the legal instruments available are interpreted differently belligerents in any armed conflicts frequently interpret and use legal principles in any way they find favorable to them, this may controvert with the required legal standard and procedures required for the effectiveness of international humanitarian law. This issue stems from the fact that states possess varying legal

³⁸ <https://www.aljazeera.com/news/2024/11/30/israel-kills-world-central-kitchen-aid-workers-in-gaza> >accessed on 26th April 2025

³⁹ Sassòli, Marco. "Transnational armed groups and international humanitarian law." (2006)

⁴⁰ <https://en.wikipedia.org/wiki/Hamas>

⁴¹ https://www.icrc.org/sites/default/files/topic/file_plus_list/092increasing_respect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf Pg11 > accessed on 26th April

framework, which leads them to respond to conflicts in significantly different ways . This has caused challenges when trying to universally applied international humanitarian law

Contradictions

Contradiction undermine efforts to ensure adherence to efforts to ensure adherence to the principles of international humanitarian law for instance, inconsistencies or gaps in key definitions can create confusion and hinder compliance. This partly due to the fact that international law relies on definitions established by international lawmaking bodies, which are intended to be broadly applicable. However individual states often develop their own interpretations based on domestic legal framework and specific national context. As a result, state -level approaches to addressing armed conflicts may conflict with the definitions and obligational set out under international humanitarian law .^[42]

Changing Nature of Armed Conflicts. Legal instruments like the Geneva convention were established at a time when armed conflicts had not evolved into sophisticated ways, intensity and severity.”^[43] “Modern armed conflicts are now varying a lot from traditional armed conflicts methods that were used before the 21st century. Modern methods of armed conflicts are now being characterized by a lot of technology usage and the use of transitional groups. For example, the use of drones to launch an attack against a region or State, Cybercrimes as noted by confrontations between the USA and

⁴² International humanitarian law and the challenges of contemporary armed conflicts Document prepared by the International Committee of the Red Cross for the 30th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, November 2007(Page26–30)

⁴³ CHANGING NATURE OF ARMED CONFLICT:APPLICATION OF HRL AND IHL ANVIKSHA PACHORI (Page 114)

Russia of hacking the US elections. Such activities are difficult to regulate using the IHL and even to enforce compliance to the IHL as the IHL has not yet been amended to account and deal with such problems which goes on to affect it being effective. [44]

Urban warfare presents significant challenges for military ground operations due to the complexity of fighting in densely populated areas. Defending forces often have the advantage, with numerous hidden firing positions and the ability of ambush impairs the attacking forces capacity to clearly distinguish between combatants and civilians, these factors pose serious difficulty for IHL making it hard to protect the civilians and non-military objects. [45]

⁴⁴ Nils Melzer international humanitarian law a comprehensive introduction (2013 P34)

⁴⁵ International humanitarian law and the challenges of contemporary armed conflicts Document prepared by the International Committee of the Red Cross for the 30th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, November 2007(Page 26–30)

CHAPTER 3

3.1 Introduction

International Humanitarian Law (IHL), also known as the laws of war, is a legal framework that aims to protect civilians and limit the effects of armed conflict. It is made up of different elements and principles that make up its legal framework, under IHL we go on to have laws arising from treaties, customary law and so on.^[46]

This chapter offers an in-depth examination of the legal framework if international, regional and national level that form the foundation of international humanitarian law. It seeks to clarify the legal mandate, policy and institutional framework that guide the implementation of international humanitarian law. Furthermore, the chapter analyzes how these legal frameworks interact, highlighting areas they align and differ. It will also assess how such relations influence the effectiveness of international humanitarian law.

3.2 INTERNATIONAL FRAMEWORK

The legal framework governing international humanitarian law internationally is found in both codified laws and uncodified rules, for example treaty law and customary law

3.1.1 The Geneva conventions of 1949

These conventions establish detailed rules aimed at protecting various categories of individuals during armed conflicts, including wounded, sick or shipwrecked combatants, prisoners of war and civilians. They also extend protection to medical staff, military

⁴⁶ Nils Melzer in his book international humanitarian law a comprehensive introduction (page 17)

chaplains and civilian personnel supporting the military. There are four core treaties that could be considered the backbone of IHL, and that is the Geneva convention 1 which is one that deals or protects the wounded and the sick in armed conflicts in the field. [47] as seen under **article 3 of the Geneva convention 1** provides that persons not part of the war are to be treated humanely .[48]

The 1949 Geneva convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea. This deals with the protection of the wounded, sick and shipwrecked in a battle at sea this convention came up to protect humanity on the armed conflicts that took place at the sea. Article 4 of the convention states that in case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship. Forces put ashore shall immediately become subject to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.[49]

The Geneva Convention Relative to prisoners of war, 1949. This convention gives rules on how prisoners of war should be treated. The last treaty under the 1949 Geneva conventions is the convention related to the protection of civilians in times of Armed conflicts. This is seen under Article 4 of the convention. [50]

These treaties make part of the legal framework governing international humanitarian law. Supplement to the Geneva conventions we have the Additional protocols that is

⁴⁷ https://www.icrc.org/sites/default/files/document/file_list/hp_legal_framework> accessed on 26th April 2025

⁴⁸ Geneva convention 1(Page36)

⁴⁹ Geneva convention (Page 62)

⁵⁰ Geneva convention (page 82)

Additional protocol 1 and Additional protocol 2 which apply to the non-international conflicts.

The Hague conventions^[51]. The Hague convention go on to regulate the means and methods of warfare, including rules on the conduct of hostilities and the treatment of prisoners.

The Rome statute of the international criminal court (1998) ^[52]is as well part of the legal framework and it establishes the ICC under Article 1 and defines war crimes, giving the court jurisdiction over serious violations of international humanitarian law.

3.1.2 REGIONAL LEVEL FRAMEWORK

While international humanitarian law is primarily governed by international treaties, regional frameworks are equally important as they go on to support or complement it. For example, the **African Charter on Human and people's Rights 1981** ^[53]although primarily a human rights instrument, it indirectly supports IHL principles, especially during armed conflicts. Such a treaty compels the states that are signatories to it to respect its objectives hence promoting human rights in armed conflicts

The ECOWAS Protocols and the African Union Peace and Security Framework ^[54]include mechanisms to address conflict and promote compliance with international humanitarian law.

.

⁵¹ Hague conventions

⁵² Rome statute of the international criminal court (1998)

⁵³ African Charter on Human and people's Rights 1981

⁵⁴ The ECOWAS Protocols and the African Union Peace and Security Framework

3.3 DOMESTIC LAWS

For international humanitarian law to be enforced in Uganda, different laws have been set up to give effect to the rules in the different international treaties such as the Geneva conventions for example;

The 1995 constitution of the Republic of Uganda as amended ^[55]which goes on to provide for the ratification of international treaties and agreements as seen under **article 123**. This enables the enforcement of the treaties in International humanitarian law

The Geneva conventions Act ^[56]goes on to as well incorporate the Geneva Conventions into Ugandan law, allowing prosecution of grave breaches of the policies under IHL, hence being an important legislation. **Section 2** of the Geneva conventions act provides that “Any person, whatever his or her nationality, who, whether within or without Uganda commits or aids, abets or procures the commission by any other person of any grave breach of any of the conventions commits an offence and is liable on conviction.”

3.2.2 CUSTOMARY LAW

Customary law is part of the legal framework of international humanitarian law and it is Derived from the general and consistent or notorious, accepted practice (opinion juris) many rules in international humanitarian law are customary and apply even to states that have not ratified the treaties and could also be considered as law regardless of them not being codified

⁵⁵ The 1995 constitution of the Republic of Uganda

⁵⁶ The Geneva conventions Act

CHAPTER FOUR

4.1 Introduction

4.1.1 summary of findings

Under this chapter the researcher gave a summary of the findings the challenges that have affected the practical reality and effectiveness of international humanitarian law on armed conflicts, as well as the conclusion and recommendation.

The research in its findings shows the presence of laws that govern armed conflicts and are primarily found in the Geneva conventions and their Additional Protocols. The research goes on to show the principles of international humanitarian law and these include

The principle of equality of belligerents under international humanitarian law ensures that the rules apply to all parties involved in an armed conflict. Belligerents cannot still excuse non-compliance with IHL citing the brutality of the conflict, they are still obligated to uphold their humanitarian responsibility.

Balancing military necessity and humanity in war or armed conflicts. The study found that international humanitarian law seeks to strike a balance between military necessity and principles of humanity during armed conflicts. IHL acknowledges that, in order to defeat the opponent there should be a balance between the necessity and humanity.

The study found that the principle of distinction is as well required for the effectiveness of IHL. States should endeavor to accomplish the military objective, which is to weaken the military forces of the enemy, whereas the civilian population shall enjoy general

protection against endangerments arising out of the military operations. Therefore, the parties to an armed conflict must at all times distinguish between the civilians and combatants. In this way IHL protects the victims of armed conflicts

The principle of precaution as part of the broader principle of distinction, imposes an obligation to avoid or at the very least minimize incidental harm to individuals and objects protected from direct attack. Consequently, IHL mandates that constant care must be exercised during military operations to protect civilians and civilian property.

Proportionality the research gave the principle of proportionality in that when incidental harm to civilians or civilian objects is unconditional, it must be assessed under the principle of proportionality. This principle for placing or authorizing an attack must avoid any operation if it is expected to cause civilian casualties.

With all the above, the study shows though international humanitarian law has set rules to be able to control armed conflicts such as that of Israel and Palestine there are still challenges affecting the effectiveness of international humanitarian law and they included the following

Asymmetric warfare which is a military term that describes a war between forces that have different military power, strategies, or tactics. It often involves a smaller, less powerful force using unconventional methods against a larger, more powerful force. The research showed that this made it hard to implement IHL principles such as proportionality

The second challenge was implementation, the research shows that the problem is not that international law is irrelevant, but that it is not implemented. While some

adjustment might be possible and necessary, the major problem is the lack of political will by states to seize them, and in particular, the fact that the triggering of most existing IHL mechanisms depends on the consent of the parties to a conflict.

The research also stated that Parties not being part in international humanitarian law treaties affects the practicability and effectiveness of international humanitarian law.

The study went on to identify another challenge affecting the implementation of international humanitarian law which is excessive force, the study shows that despite the principle of proportionality during armed conflict, we still witness belligerents not considering it in attacks it went on to give an example of the recent missile strike against World Central Kitchen aid workers by Israel.^[57]

The research showed that difference in ideologies of the belligerents also affects international humanitarian law in that the legal instruments available are interpreted differently Parties and States to an armed conflict often interpret and use legal principles in a way that favors them and this may contradict with the required legal standards and procedures required for an effective functioning of the IHL.

contradictions also have a negative effect on efforts to promote compliance to the IHL principles. For example, contradictions relating to given definitions which are either contradictory or incomplete in nature. This was found to be part of the reasons international humanitarian law is not effective in armed conflicts and civilians are still affected.

⁵⁷<https://www.aljazeera.com/news/2024/11/30/israel-kills-world-central-kitchen-aid-workers-in-gaza>

The researcher observed that current legal framework governing armed conflicts are increasingly being out paced by the evolving nature of modern warfare. Unlike traditional armed conflicts that dominated before the 21st century, contemporary warfare is heavily influenced by advanced technology and the involvement of traditional groups. For instance, attacks are now being carried out using drones, and cyber warfare such as allegations of Russian interference in the US elections. These modern tactics pose significant challenges to the regulation and enforcement of IHL, making compliance more difficult to achieve.

4.2 Conclusion

International humanitarian law has its primary objective which is to limit the effects of armed conflict by controlling the means and methods of warfare^[58]. International humanitarian law has set up laws and principles which are to be followed in the conduct of armed conflicts, such as equality, proportionality, distinction and so on. ^[59]However, in conclusion the rules in international humanitarian law have not been effectively realized as expected due to the different challenges to their implementation and fulfillment. This has led to the continued violation of international humanitarian laws also known as Jus In Bello. And persons not participating in the armed conflicts or the nonmilitary objects have continued to be affected in the wars.

⁵⁸ Solis, Gary D. The law of armed conflict: international humanitarian law in war. Cambridge University Press, 2021. (Page 7)

⁵⁹ Nils Melzer in his book international humanitarian law a comprehensive introduction (page 17)

4.3 Recommendations

Based on the study that has been made, for international humanitarian law to be effective I consider the following recommendations.

Fostering Political Will and Engagement. By the development of political will and engagements, the states will be more involved in promoting the rules of International Humanitarian Law, this can be done by for example by involving armed groups in the development of these rules which would make them more realistic and enforceable

There is therefore, a pressing need to develop new strategies that enhance the respect for, enforcement of, compliance with and overall effectiveness of international humanitarian law in addressing modern armed conflicts, one key approach is to encourage states to adopt national penal legislation that enables the prosecution of international humanitarian law violations committed during and after armed conflicts. Furthermore, ensuring that the prosecution of war criminals is highly visible and can serve as a powerful deterrent, discouraging future violations by demonstrating the consequences of such actions.⁶⁰. This would make the international humanitarian law rules effective as war criminals would be assured on being held accountable

It is essential to focus on achieving legal harmonization and the unification of legal terms, definitions and principles among states and international bodies. Such alignment would significantly reduce inconsistencies, ambiguities and vagueness within the legal

60

https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/improving_compliance_with_international_report_eng_2003.pdf> accessed on 28th April 2025

frameworks, thereby strengthening the overall coherence and effectiveness of legal instruments governing armed conflicts.⁶¹

In developing new approaches to address both international armed conflicts (IACs) and Non international armed conflicts (NIACs), it is crucial to urge international bodies to formulate strategies that directly address the challenges hindering the effectiveness of international humanitarian law and efforts to ensure compliance. These measures should aim to strengthen the implementation of enforcement of International Humanitarian Law in the face of evolving conflict dynamics.

It is equally important to enhance and support the role of the international committee of the red cross(ICRC) in promoting respect for and adherence to International humanitarian law. This can be achieved by expanding the scope and comprehension, international humanitarian law education and awareness programs, aimed at fostering a deeper understanding and greater compliance among both state and Non- state actions.

⁶¹ <https://docs.neu.edu.tr/library/>> accessed on 28th April 2025

BIBLIOGRAPHY

LAWS

1. The 1995 constitution of the Republic of Uganda
2. The ECOWAS Protocols and the African Union Peace and Security Framework
3. The Geneva conventions Act
4. Hague conventions
5. Rome statute of the international criminal court (1998)
6. African Charter on Human and people's Rights 1981
7. Additional protocol
8. common Article 3

CASES

1. prosecutor versus Tadic

BOOKS

1. Nils Melzer in his book international humanitarian law a comprehensive introduction
2. Diakonia international humanitarian law center
3. International Humanitarian Law an Introduction (Hans- peter Gasser).
4. Crawford and Pert in the book, International Humanitarian Law (2024)

BOOK CHAPTERS

1. Richard Kozul-Wright and Piergiuseppe Fortunato (2011): Introduction. Chapter 1., IN Richard Kozul-Wright Piergiuseppe Fortunato (eds): Securing Peace State-Building and Economic Development in Post-Conflict Countries ISBN: 978-1-84966-588-9

ARTICLES

1. Alexander, A. (2015). A short history of international humanitarian law. *European Journal of International Law*, 26(1), 109-138.
2. Arhevan, A., & Tunggal, A. R. (2023). A UNICEF's Protective Role for Child Victims of War in Ukraine. *Mediasi Journal of International Relations*, 6(2), 1-22.
3. Cordula Droege (2025): International humanitarian law and peace: A brief overview, Cambridge University Press. url: <https://internationalreview.icrc.org/articles/international-humanitarian-law-and-peace-a-brief-overview-927>
4. Doswald-Beck, L., & Vité, S. (1993). International humanitarian law and human rights law. *International Review of the Red Cross (1961-1997)*, 33(293), 94-119.
5. Droege, C. (2007). The interplay between international humanitarian law and international human rights law in situations of armed conflict. *Israel Law Review*, 40(2), 310-355.
6. Droege, C. (2025): International humanitarian law and peace: A brief overview, CambridgeUniversityPress.url:<https://internationalreview.icrc.org/articles/international-humanitarian-law-and-peace-a-brief-overview-927>

7. Dunne, J. P., Hoeffler, A., & Mack, A. (2013). Armed conflicts. Global problems, smart solutions: Costs and benefits, 21-71
URL:https://books.google.co.ug/books?hl=en&lr=&id=g9tRAgAAQBAJ&oi=fnd&pg=PA21&dq=article,+armed+conflicts+are+lasting+longer+and+affects+more+people.&ots=XP2J1fDw5o&sig=F-6KY7jUf99A9JO0cDNwws0WKyw&redir_esc=y#v=onepage&q=article%2C%20armed%20conflicts%20are%20lasting%20longer%20and%20affects%20more%20people.&f=false
8. Gasser, H. P. (1994). International humanitarian law an introduction. *International Review of the Red Cross (1961-1997)*, 34(298), 88-88.
9. Hathaway, O. A., Crootof, R., Levitz, P., & Nix, H. (2011). Which Law Governs During Armed Conflict-the Relationship Between International Humanitarian Law and Human Rights Law. *Minn. L. Rev.*, 96, 1883.
10. Justino, P. (2011). The impact of armed civil conflict on household welfare and policy responses. *Securing Peace: State-Building and Economic Development in Post-Conflict Countries*, 19-52.
11. Kozul-Wright, R and Fortunato, P (2011): Introduction. Chapter 1., IN Richard Kozul-Wright Piergiuseppe Fortunato (eds): *Securing Peace State-Building and Economic Development in Post-Conflict Countries* ISBN: 978-1-84966-588-9
12. Organization for Economic Co-operation and Development. (2023). *Assessing the Impact of Russia's War Against Ukraine on Eastern Partner Countries*. OECD Publishing
13. Morris, B. (2004). On ethnic cleansing. *New Left Review*, 26, 35.

14. Justino, P. (2011). The impact of armed civil conflict on household welfare and policy responses. *Securing Peace: State-Building and Economic Development in Post-Conflict Countries*, 19-25
15. Sassòli, Marco. "Transnational armed groups and international humanitarian law." (2006)
16. Titeca, Kristof, and Daniel Fahey. "The many faces of a rebel group: The Allied Democratic Forces in the Democratic Republic of Congo." *International Affairs* 92.5 (2016) <https://academic.oup.com/ia/article-abstract/92/5/1189/2688114>> accessed on 20th April 2025
17. changing nature of armed conflict: application of hrl and ihl anviksha pachori

Online Resources and Links

18. <https://docs.neu.edu.tr/library/>
19. https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/improving_compliance_with_international_report_eng_2003.pdf
20. <https://international-review.icrc.org/sites/default/files/irrc>
21. https://www.icrc.org/sites/default/files/document/file_list/hp_legal_framework
22. <https://blogs.icrc.org/ilot/2017/08/14>
23. Sivakumaran (2012), the application of IHL in the National armed conflicts

24. Enhancing the Implementation of International Humanitarian Law in Conflict Zones: A Comprehensive Review suggested that International humanitarian law (IHL)
25. Akande, Dapo. Clearing the Fog of War
26. Eechaute H, 'Non-International Armed Conflict
27. <https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law>
28. <https://www.aljazeera.com/news/2024/11/13/is-israel-committing-ethnic-cleansing-in-gaza>
29. https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/what_is_ihl.pdf
30. <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>
31. https://www.icrc.org/sites/default/files/review_article/file/irrc_857_8.pdf
32. <https://www.aljazeera.com/news/2024/11/30/israel-kills-world-central-kitchen-aid-workers-in-gaza>
33. <https://casebook.icrc.org/case-study/icrc-ihl-and-challenges-contemporary-armed-conflicts>
34. <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber>
35. <https://www.lawfaremedia.org/article/holding-hamas-accountable-at-the-icj-through-palestine>
36. <https://en.wikipedia.org/wiki/Hamas>

37. https://www.icrc.org/sites/default/files/topic/file_plus_list/092increasing_re spect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf Pg11
38. https://paperpal.com/blog/academic-writing-guides/what-is-research-methodology#penci-What_is_research_methodology
39. <https://www.ilovephd.com/qualitative-research-methodologies/#:~:text=Advantage>
40. https://www.researchgate.net/publication/379655878_Quantitative_Research_Methods_Maximizing_Benefits_Addressing_Limitations_and_Advancing_Methodological_Frontiers#:~:text=The%20precision%2C%20objectivity%2C%20and%20capacity,subtle%20qualitative%20aspects%20of%20phenomena.

