HUMAN RIGHTS VIOLATIONS AND CRIMINAL ACCOUNTABILITY IN ARMED CONFLICT AND THE PLACE OF INTERNATIONAL HUMANITARIAN LAW

AGBO SOPHIA ABUH
ECONOMIC AND FINANCIAL CRIMES COMMISSION, ACADEMY, KARU, ABUJA, ambundeagbo@gmail.com

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ABSTRACT
This study investigates the effectiveness of international humanitarian law (IHL) in ensuring accountability for human rights violations within contemporary armed conflicts. While previous research has addressed the application of IHL in specific conflict contexts, this study adopts a broader, comparative approach to evaluate the adequacy of existing legal frameworks in both international and non-international armed conflicts. The research examines how evolving conflict dynamics, including asymmetric warfare, terrorism, and insurgencies, present unique challenges to the enforcement of IHL. Employing a qualitative methodology, it analyzes legal documents, case law, and historical precedents while integrating perspectives on state and non-state actors' accountability. Unlike previous studies that often focus on a single conflict or geographic region, this research assesses global case studies to identify recurring enforcement gaps in IHL, particularly regarding the roles of international bodies like the United Nations and the International Criminal Court (ICC). Findings reveal that while IHL principles, such as distinction and proportionality, provide a solid framework for civilian protection, enforcement mechanisms remain inconsistent, especially in conflicts involving non-state actors. This study contributes to the literature by offering a comprehensive, cross-regional analysis of IHL's applicability in modern warfare and proposing targeted reforms to enhance accountability for human rights violations across diverse conflict scenarios. These insights aim to inform policy developments and strengthen international legal mechanisms for improved protection of civilians and justice for war victims.

1.1 Introduction

The global increase in armed conflicts, often characterized by complex dynamics involving both state and non-state actors, has underscored the critical role of international humanitarian law (IHL) in protecting human rights during warfare. Traditionally, IHL has provided a legal framework to regulate the conduct of hostilities, particularly through principles established in the Geneva Conventions. These conventions emphasize the humane treatment of individuals who are not actively engaged in hostilities, ensuring their protection in conflict zones. However, the applicability and effectiveness of IHL in modern, asymmetrical conflicts present challenges that have not been fully addressed in existing literature.

Early foundational literature on IHL, including the works of Henry Dunant and interpretations by scholars like Gasser, provided robust frameworks that aimed to humanize war by categorizing combatants and civilians and prohibiting unnecessary suffering. These early contributions largely focused on traditional warfare between states, where organized military forces engaged under clear rules.

The initiative of Henry Dunant (founder of the International Committee of the Red Cross)[1] influenced by the battle of Solferino, Italy eventually birthed the treaties on International Humanitarian Law. The first treaty was signed in Geneva in 1864 at a Diplomatic Conference summoned by the Swiss Government with representation from almost all states. Hans Peter explained how this treaty addressed the protection of military victims of warfare which was subsequently extended to the wounded, sick and shipwrecked members of armed forces at sea in 1899; and then to prisoners of war in 1929.[2]

Modern scholarship has further explored the complexities of asymmetric warfare, in which non-state actors, such as terrorist organizations and insurgent groups, challenge the traditional frameworks of IHL. Scholars like Rahimatu (2016) and Bukar (2021) have documented how conflicts involving non-state actors, such as Boko Haram in Nigeria, expose gaps in the application of IHL, particularly where non-compliance with legal standards is high and enforcement mechanisms are weak. Awhefeada (2014) and Hardy (2012) extend this critique by arguing that current IHL provisions inadequately address the unique challenges posed by internal conflicts and insurgencies, where non-state actors do not adhere to established warfare protocols and states may lack the capacity to enforce IHL standards effectively.

While significant contributions to the discourse on IHL and human rights violations exist, a gap persists in the comprehensive analysis of IHL's effectiveness across diverse conflict scenarios and in identifying specific areas where reforms are needed to strengthen accountability. Much of the existing literature focuses on isolated case studies or specific geographic contexts, leaving a gap in scholarship that addresses IHL from a global perspective, particularly regarding the increasing role of non-state actors and the challenges of prosecuting human rights violations within these contexts. This paper seeks to bridge this gap by providing a comparative, cross-regional analysis of the enforcement challenges faced by IHL and examining the evolving role of international bodies such as the United Nations and the International Criminal Court (ICC) in promoting accountability. Thus, this study extends existing scholarship by analyzing IHL's limitations within diverse, contemporary conflict scenarios and proposing targeted reforms that address the complexities of modern warfare. Through this approach, the paper offers an original contribution to the literature, highlighting specific areas where IHL can be strengthened to better ensure accountability and protection for civilians. By critically examining how IHL adapts or fails to adapt to the realities of asymmetric warfare, this research seeks to inform policy and provide actionable insights for strengthening the global framework that protects human rights during armed conflicts.

Despite the comprehensive legal frameworks established under international humanitarian law (IHL), including the Geneva Conventions and the Rome Statute, significant challenges persist in enforcing these frameworks to ensure accountability for human rights violations in modern armed conflicts. Much of IHL was

[1] IFRC "The Birth of the Red Cross" https://www.ifrc.org/our-history-and-archives accessed on 22 October 2024

[2] Ibid 3

developed with traditional, state-based warfare in mind, yet today's conflicts increasingly involve non-state actors, asymmetric warfare, and unconventional tactics that render many traditional IHL provisions difficult to apply and enforce effectively. As a result, civilian populations in conflict zones continue to suffer disproportionately, with inadequate legal recourse and accountability for perpetrators. Existing literature highlights the limitations of IHL when applied to conflicts involving non-state actors, such as insurgents and terrorist organizations, which frequently disregard established norms and target civilians indiscriminately. Furthermore, enforcement mechanisms are often hindered by issues of jurisdiction, political interests, and limited resources within international bodies like the United Nations and the International Criminal Court (ICC). While previous research has examined specific conflicts or regional case studies, there is a gap in scholarship regarding a comprehensive, cross-regional analysis of IHL's effectiveness and its limitations in addressing modern conflict dynamics globally. This study addresses these gaps by analyzing IHL's applicability across diverse armed conflict scenarios and evaluating the effectiveness of current enforcement mechanisms in holding perpetrators accountable. Specifically, the research seeks to identify how IHL can be adapted to better address the realities of asymmetric warfare and the involvement of non-state actors. Through a comparative, global perspective, this study aims to contribute to the literature by proposing actionable reforms to strengthen IHL's enforcement, enhance civilian protection, and improve accountability for human rights violations in contemporary conflicts.

This paper employs and critiques the framework of International Humanitarian Law (IHL) through a nuanced approach that goes beyond previous applications of IHL theory in the literature. Traditional studies have often used IHL primarily as a prescriptive framework, focusing on its role in defining acceptable conduct in warfare and ensuring humanitarian protections. However, in light of the evolving nature of contemporary conflicts, characterized by asymmetric warfare and the rise of non-state actors. This paper engages with IHL not just as a legal framework but as a conceptual tool that must be critically evaluated and adapted to meet the demands of modern warfare.

1.2 Aim and Objectives of the Study

The aim of this study is to examine the effectiveness of international humanitarian law (IHL) in addressing human rights violations and ensuring criminal accountability during armed conflicts. It seeks to evaluate the adequacy of existing legal frameworks in protecting civilians and regulating the conduct of both state and non-state actors in various conflict situations. Other objectives include:

1. To analyze the historical development and principles of international humanitarian law, including the Geneva Conventions and other relevant treaties.

2. To assess the nature and scope of human rights violations occurring during armed conflicts, focusing on the impact on civilian populations.

3. To evaluate the effectiveness of current legal frameworks in holding perpetrators accountable for human rights violations during armed conflicts.

4. To identify the challenges and limitations in the application and enforcement of international humanitarian law, especially in asymmetric warfare involving non-state actors.

5. To investigate the role of international organizations, such as the United Nations and the International Criminal Court, in enforcing compliance with international humanitarian law and promoting justice for victims of war crimes.

1.3 Scope of the Study

The scope of the study covers the examination of international humanitarian law principles as applied to modern armed conflicts. It explores how these principles address human rights violations involving state and non-state actors and evaluate the adequacy of existing legal frameworks, such as the Geneva Conventions and related treaties, in regulating warfare conduct and protecting civilians. The study includes an analysis of historical and contemporary cases of international and non-international armed conflicts, highlighting challenges in enforcement, especially in asymmetric warfare and the involvement of non-

state actors. In addition, the research investigates the role of international organizations in promoting compliance and accountability under IHL.

1.4 Conceptual Clarification

In the context of this study, key terms such as **international humanitarian law** (IHL), **accountability**, and a**symmetric warfare** are critical to understanding the nuanced challenges of protecting human rights in modern armed conflicts. Traditionally, IHL has been conceptualized as a framework to "humanize" war, establishing legal distinctions between combatants and civilians and setting limits on the conduct of hostilities. Yet, as contemporary conflicts increasingly involve non-state actors, such as insurgent and terrorist groups, the traditional application of IHL faces unprecedented limitations. Unlike conventional state actors, non-state entities often operate without adherence to established norms, challenging the traditional boundaries of IHL and undermining the protection of civilians in conflict zones.

Accountability within IHL involves holding both state and non-state actors legally responsible for violations of established war protocols and human rights abuses. While the Geneva Conventions provide the foundation for such accountability, enforcement remains inconsistent and often politically charged, particularly where non-state actors are involved.

Asymmetric warfare refers to conflicts where there is an imbalance in power, resources, and tactics between opposing forces, typically between a state and non-state actors employing unconventional strategies, such as guerrilla warfare, terrorism, and insurgency. This type of warfare challenges the application of IHL principles, particularly the rules of distinction, proportionality, and military necessity, as non-state actors often target civilians as part of their strategy. This conceptual clarification establishes a foundation for addressing the complexities of enforcing IHL in modern conflicts.

Review of Related Literature

Empirical Review

Initially established to humanize warfare, IHL emerged as a response to atrocities witnessed in conflicts such as the Napoleonic Wars and later in World War I and II. Henry Dunant, driven by his experience witnessing the aftermath of the Battle of Solferino, founded the International Committee of the Red Cross (ICRC) and advocated for humanitarian protections in armed conflict, resulting in the 1864 Geneva Convention. This early framework provided the bedrock for what would become the modern IHL framework, centered on humane treatment for all those no longer actively participating in hostilities. Dunant's work established a humanitarian standard that would shape subsequent IHL developments, emphasizing the duty of care in warfare.

While Dunant's contributions laid foundational principles, contemporary scholarship questions whether IHL can fully address the complexities of today's asymmetric and unconventional conflicts. As Mack (2008) notes, traditional IHL operates on assumptions of state-centered warfare, where clearly defined actors adhere to rules of engagement. Mack's perspective, however, reveals a limitation in IHL's flexibility; IHL may inadequately regulate the conduct of non-state actors, who increasingly use guerilla tactics that disregard civilian protection and operate outside traditional command structures. This critique expands the discourse by highlighting the need for an adaptive IHL framework that can handle decentralized combat strategies. By identifying IHL's gaps in asymmetric contexts, Mack's work informs this study's argument for adapting humanitarian law to better handle the involvement of non-state actors.

Subsequent literature, such as that by Geiss and Siegrist (2011), further interrogates the gap in IHL regarding the accountability of non-state actors, which includes not only insurgents but also private military companies and multinational corporations operating in conflict zones. Geiss and Siegrist argue that, unlike states, non-state actors lack accountability structures that compel adherence to humanitarian standards, creating a legal void in which human rights violations often occur with impunity. Their argument extends the frontier of IHL discourse by illustrating how traditional legal frameworks inadequately address the blurred lines of modern combatant status. The study adopts this view as a basis for examining how accountability gaps within IHL expose civilians to heightened risks, thus underscoring the need for IHL reforms that address non-state actors' obligations directly.

In addition to the accountability gaps identified by Geiss and Siegrist, Rahimatu (2016) illustrates these issues within specific conflict contexts, such as the Boko Haram insurgency in Nigeria. Rahimatu's research highlights the challenges of enforcing IHL in regions where state control is limited, and non-state actors systematically violate IHL principles, targeting civilians as part of their strategy. This case-specific analysis is instrumental in demonstrating that IHL, while comprehensive in its principles, remains ineffective in areas where non-state actors have established parallel systems of power that ignore humanitarian obligations. Rahimatu's insights emphasize that local conflicts with global implications require a reconceptualization of IHL's enforcement, adding empirical weight to this study's proposition for a more decentralized IHL application framework that can better engage non-state actors in regions with limited governance.

Other scholars, like Bukar (2021), approach IHL from an enforcement perspective, exploring how international mechanisms like the International Criminal Court (ICC) are hindered by jurisdictional limitations, political interests, and resource constraints. Bukar's work critiques the ICC's selective engagement in conflict regions, noting that enforcement is often restricted to politically expedient cases, leaving many human rights violations unaddressed. This perspective contributes a critical layer to IHL literature, revealing how enforcement inconsistencies undermine the universality of IHL principles and diminish its credibility as a protective mechanism in armed conflicts. Bukar's analysis provides a practical basis for this study's recommendation to bolster IHL's enforcement capacity, ensuring that accountability mechanisms are not subject to selective application.

The discourse on accountability further evolves through the work of Sassòli (2019), who contends that IHL's focus on state actors fails to address the ethical and operational complexities introduced by non-state actors, including multinational corporations and private military contractors operating in conflict zones. Sassòli argues that private sector involvement in warfare has escalated, creating a scenario where non-state entities hold significant power but operate outside traditional accountability frameworks. His argument invites a critical rethinking of IHL's scope to include corporate accountability, thus expanding the regulatory landscape to cover entities with substantial influence over conflict dynamics. This study draws on Sassòli's argument to advocate for expanding IHL's scope to better reflect the multi-actor reality of modern conflicts, where corporations and non-state armed groups are increasingly central.

Also, Hudges (2020) critiques the limitations of corporate accountability within IHL by exploring how corporate entities contribute to conflict economies and perpetuate violence in high-risk areas. Hudges suggests that the lack of explicit legal frameworks governing corporate actions in conflict zones enables impunity and prolongs human suffering. This critique underscores the need for comprehensive IHL reforms that extend accountability beyond traditional actors, incorporating legally binding standards for corporate behavior. This study builds on Hudges' position by advocating for an adaptive IHL model that includes corporate and non-state actors in its accountability mechanisms, thereby extending the boundaries of existing scholarship to address modern warfare complexities.

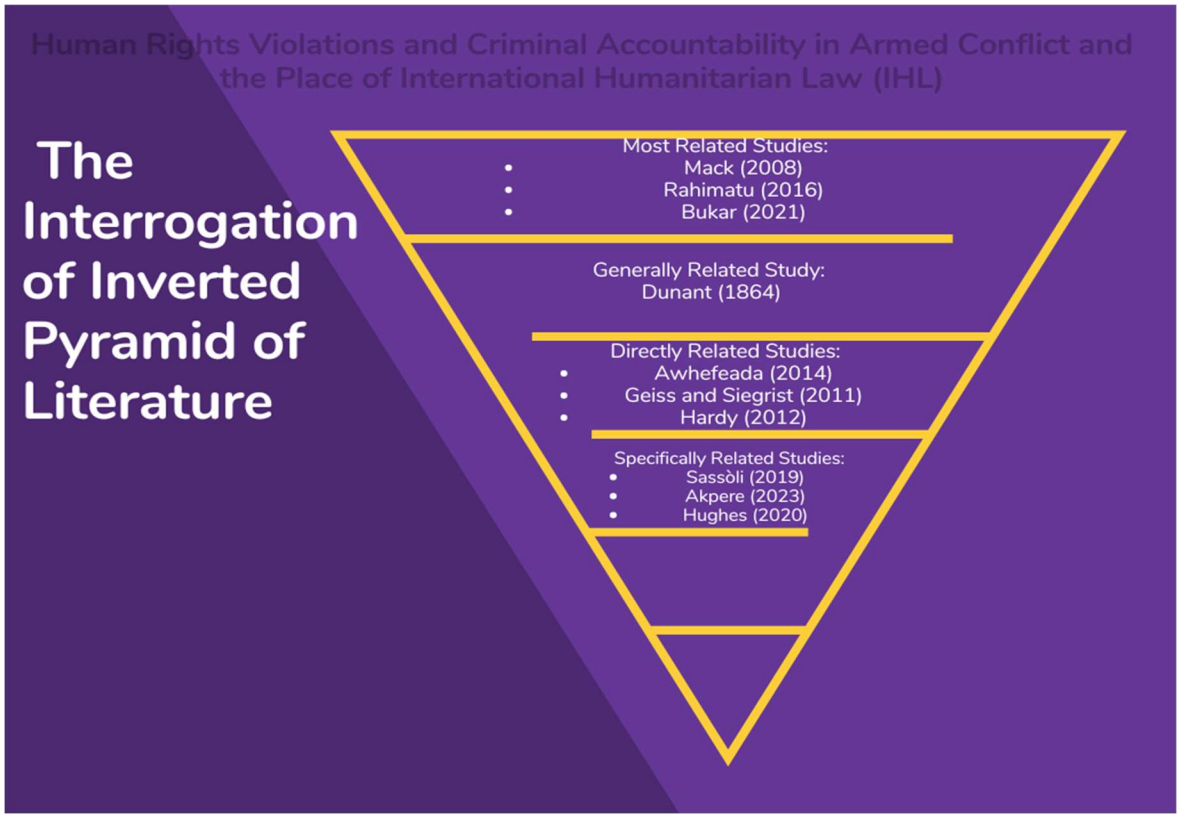
Akpere's (2023)[3] research titled *Business Operations in Armed Conflicts: An Analysis of the Criminal Responsibilities of Business Executives Operating in High-Risk Contexts* and the ongoing study share similarities in their focus on accountability during armed conflicts. Both studies explore how international law addresses criminal responsibility in situations involving serious violations of human rights and international humanitarian law (IHL). He analyzed the legal frameworks used to prosecute individuals, including corporate executives, for their roles in perpetuating or supporting unlawful activities during conflicts. Additionally, both studies address the complexities of modern warfare, including the involvement of non-state actors and various entities beyond traditional military forces. However, the studies differ in scope and focus. The research on business operations specifically centers on the complicity of business executives and the extent to which

[3] Akpere, E. S. (2023). Business Operations in Armed Conflicts: An Analysis of the Criminal Responsibilities of Business Executives Operating in High-Risk Contexts (Master's thesis, International Operational Law, Spring 2023).

international criminal law can hold individuals accountable for their roles in high-risk, conflict-prone areas.

Hardy (2012)[4] research titled share a common focus on the enforcement of international humanitarian law (IHL) and the accountability for violations. Both studies emphasize the need for effective legal frameworks to address breaches of IHL and explore the obligations of states to implement measures that ensure compliance with the law. However, the two studies differ in their specific approaches and geographic focus. Hardy's research concentrates on domestic implementation, using Uganda as a case study to examine the challenges and consequences of failing to establish an effective system for repressing IHL violations. It offers practical solutions for remedying the shortcomings in Uganda's legal framework, emphasizing the importance of going beyond the minimum obligations required under IHL. In contrast, the ongoing study takes a more global perspective, evaluating various armed conflicts and addressing both international and non-international scenarios.

This literature review interrogates the progression of IHL discourse from its foundational principles to contemporary critiques that highlight its limitations in modern, asymmetric conflicts. Through the interrogation of these studies, this paper identifies a crucial gap in existing scholarship: while much of IHL theory addresses conventional warfare, there is a pressing need to develop an adaptive humanitarian law model that accommodates the multi-dimensionality of modern conflicts. This study thus contributes to literature by proposing a reconceptualization of IHL that enhances its flexibility, applicability, and enforcement in diverse conflict scenarios, responding directly to the accountability gaps identified in previous research.



[4] Hardy, K. (2012). An analysis of the domestic implementation of the repression of violations of international humanitarian law (LLM dissertation, University of Pretoria). Faculty of Law.

Methodology

The methodology of the study involves a qualitative research approach, focusing on the analysis of legal documents, case law, and scholarly literature related to international humanitarian law. The research includes primary and secondary sources, such as international treaties (e.g., the Geneva Conventions), UN reports, and case law from international tribunals, are examined to understand the legal frameworks governing armed conflicts and the enforcement of human rights protections. Selected case studies of both international and non-international armed conflicts are analyzed to illustrate the application of IHL principles. These include historical conflicts, such as the wars in Yugoslavia and Rwanda, as well as more recent conflicts involving non-state actors, like the Boko Haram insurgency in Nigeria. The study compares different legal frameworks and enforcement mechanisms across various jurisdictions to identify gaps and inconsistencies in the application of IHL. The methodology aims to provide a comprehensive analysis of the effectiveness of IHL in addressing human rights violations during armed conflicts, while also proposing recommendations for strengthening legal frameworks.

Data Analysis and Discussion

The Historical Development and Principles of International Humanitarian Law

Early Codification and Key Milestones

The development of IHL can be traced back to ancient times, but its formal codification began in the 19th century. The adoption of the first Geneva Convention in 1864 marked a significant turning point, providing protection to wounded soldiers on the battlefield. This initial treaty was inspired by Henry Dunant's experiences and advocacy following the Battle of Solferino. The 1868 Declaration of Saint Petersburg further advanced IHL by prohibiting the use of certain weapons deemed to cause unnecessary suffering. The late 19th and early 20th centuries saw the adoption of the Hague Conventions of 1899 and 1907, which set out regulations for the conduct of hostilities and introduced principles such as military necessity and the prohibition of unnecessary suffering.

Impact of the World Wars and the 1949 Geneva Conventions

The First and Second World Wars demonstrated the inadequacy of existing legal protections, leading to widespread civilian suffering and atrocities. In response, the four Geneva Conventions of 1949 were adopted, expanding the scope of IHL significantly. These conventions included comprehensive protections for wounded and sick soldiers, shipwrecked members of armed forces at sea, prisoners of war, and civilians. The Geneva Conventions of 1949 remain a cornerstone of IHL, establishing the legal framework for protecting individuals who are not participating in hostilities. Their adoption signaled a commitment by the international community to regulate the conduct of war and mitigate its humanitarian impact.

Post-1949 Developments and the Additional Protocols of 1977

The 1977 Additional Protocols to the Geneva Conventions marked a significant evolution in IHL. Protocol I addressed international armed conflicts, while Protocol II was the first treaty focused solely on non-international armed conflicts (NIACs). These protocols introduced innovations such as enhanced protection for civilians and limitations on means and methods of warfare. The document highlights that the development of IHL after 1949 aimed to fill gaps in the legal framework, especially concerning the protection of civilians. The Additional Protocols were adopted amid changing warfare dynamics, including the prevalence of civil wars and asymmetric conflicts.

Contemporary Developments and Customary International Law

The evolution of IHL has continued through both treaty law and customary international law. Customary IHL plays a significant role in supplementing treaty-based rules, particularly where treaty law is limited, such as in non-international armed conflicts. The convergence between IHL for international and non-international conflicts has increased, driven by treaties like the Anti-Personnel Mine Ban Convention (1997) and the Convention on Cluster Munitions (2008). The development of IHL has also been shaped by international tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and Rwanda (ICTR), whose jurisprudence has helped

clarify the rules and expand individual criminal responsibility for violations.

Principles of International Humanitarian Law

Distinction

One of the fundamental principles of IHL is the distinction between combatants and non-combatants, as well as between military objectives and civilian objects. This principle is intended to ensure that hostilities are directed only at legitimate military targets, thus minimizing harm to civilians.

Proportionality

The principle of proportionality prohibits attacks that would cause excessive harm to civilians or civilian property relative to the anticipated military advantage. This principle is central to limiting collateral damage during armed conflicts.

Military Necessity

Military necessity allows for the use of force in warfare but only to the extent necessary to achieve a legitimate military objective. It is balanced by the requirement to avoid unnecessary suffering.

Prevention of Unnecessary Suffering

IHL prohibits the use of weapons or methods of warfare that cause superfluous injury or unnecessary suffering. This is reflected in various treaties, such as the Declaration of Saint Petersburg and subsequent conventions restricting certain weapons.

The Effectiveness of Current Legal Frameworks for Holding Perpetrators Accountable for Human Rights Violations During Armed Conflicts

The effectiveness of current legal frameworks for holding perpetrators accountable for human rights violations during armed conflicts is mixed. While significant progress has been made in establishing legal instruments and institutions to prosecute war crimes and other serious violations, several challenges still limit the overall effectiveness of these frameworks.

Strengths of Current Legal Frameworks

International Legal Instruments

The Geneva Conventions and their Additional Protocols form the backbone of international humanitarian law (IHL) and establish a comprehensive set of rules for protecting civilians and combatants in armed conflicts. The Rome Statute of the International Criminal Court (ICC) further complements these frameworks by defining war crimes, crimes against humanity, and genocide, and empowering the ICC to prosecute individuals responsible for these crimes. The establishment of international ad hoc tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), has demonstrated that legal mechanisms can effectively hold individuals accountable for large-scale human rights violations. These tribunals have contributed to the development of case law that clarifies the rules of IHL and the principles of individual criminal responsibility.

Increased Use of Universal Jurisdiction

Some countries have incorporated universal jurisdiction into their domestic laws, allowing them to prosecute individuals for certain war crimes regardless of where the crime occurred or the nationality of the perpetrators. This approach helps address impunity in cases where the perpetrators cannot be prosecuted in their home countries or in the country where the conflict took place.

Role of Customary International Law

Customary IHL has expanded the scope of legal accountability by supplementing treaty-based obligations, particularly in non-international armed conflicts where formal treaty law is less developed. It helps fill gaps in situations where treaties may not be applicable and provides a basis for prosecuting violations of IHL.

Limitations and Challenges

Inconsistent Enforcement

The enforcement of IHL remains uneven across different conflict scenarios. While international tribunals and the ICC have prosecuted some high-profile cases, many perpetrators escape justice due to a lack of political will, insufficient resources, or competing geopolitical interests. Countries involved in armed conflicts may be reluctant to prosecute their own military personnel or those of allied nations, limiting the reach of international justice mechanisms. Some examples include the current president of Russia, Vladimir Putin and potentially The current Prime Minister of Israel.

Limitations of the International Criminal Court (ICC)

The ICC faces significant constraints, such as limited jurisdiction, resource shortages, and political interference. It can only prosecute cases involving states that are party to the Rome Statute or referred by the United Nations Security Council. Some major powers, including the United States, Russia, and China, are not ICC members, which limits the court's ability to hold perpetrators accountable in conflicts involving these states.

Summary of Findings

Having conducted the review and analysis, the following findings were made.

The central thrust of this research problem lies in the tension between established principles of international humanitarian law (IHL) and the complex realities of modern asymmetric warfare. Traditional IHL, founded on conventions such as the Geneva Conventions, was built to regulate state-based conflicts, assuming clear distinctions between combatants and civilians and expecting compliance from all parties engaged in warfare. However, the findings of this study reveal critical limitations within this framework, particularly in its applicability to conflicts involving non-state actors and decentralized, guerrilla tactics.

Conceptually, this study identifies that IHL's traditional constructs of distinction, proportionality, and military necessity are increasingly ineffective when applied to asymmetric warfare. The principle of distinction, for instance, mandates that parties to a conflict differentiate between combatants and civilians, targeting only the former. Yet, non-state actors such as insurgents and terrorist groups frequently operate within civilian populations, making adherence to this principle challenging. Existing literature by scholars like Rahimatu (2016) and Geiss and Siegrist (2011) underscores this limitation by highlighting how non-state actors disregard civilian protections due to strategic advantage. While previous studies emphasize the struggle to enforce IHL in such contexts, this research extends that argument by showing the conceptual obsolescence of rigid frameworks in warfare where combatants no longer fit into traditional categories.

The findings also interrogate the theory of state responsibility, a cornerstone of IHL, by illustrating its limited relevance in holding non-state actors accountable. Traditional IHL places accountability within state structures, assuming that governments can and will regulate the behavior of their military forces. However, this assumption fails in conflicts where non-state actors exercise control without state oversight or adhere to decentralized structures that complicate direct accountability. Sassòli (2019) critiques this limitation, suggesting that non-state actors, including corporate entities and private military contractors, now play pivotal roles in conflicts and must therefore be encompassed within an IHL framework of accountability. This research aligns with Sassòli's critique, demonstrating through comparative analysis that non-state actors are increasingly central to modern warfare and suggesting that an IHL revision must integrate mechanisms that account for these actors.

From a theoretical standpoint, this study's findings contribute to a re-evaluation of the lex specialis principle within IHL, which holds that specific laws (such as those governing armed conflict) take precedence over general laws (such as human rights law) in conflict settings. Previous studies, including those by Bukar (2021) and Hardy (2012), have shown that the lex specialis principle creates jurisdictional challenges when conflicts blur the lines between civilian rights and military objectives, particularly in cases of terrorism and insurgency. This research pushes this analysis further by questioning the adequacy of lex specialis in asymmetric warfare, where military and civilian domains overlap.

The study's findings advocate for an "adaptive IHL" model, which proposes more flexible mechanisms that can address the accountability gaps identified in this research. By moving beyond the state-centric, conventional structures that dominate current IHL, this model suggests that incorporating adaptable, enforceable standards for both state and non-state actors is essential for ensuring civilian protections and effective enforcement. This concept differs from previous studies, which have largely suggested incremental reforms to the existing IHL framework without reconceptualizing its foundational assumptions.

Conclusion

The study concludes that there is a critical need for rethinking the theoretical and conceptual foundations of international humanitarian law (IHL) in light of modern conflict realities. While traditional IHL frameworks, based on the Geneva Conventions, provide clear guidelines for state-based warfare, their application fails in asymmetric conflicts that involve non-state actors, unconventional warfare tactics. The study's findings reveal that, unlike previous studies that primarily recommend incremental changes within the existing IHL framework, the current state of modern warfare demands a more transformative, adaptive approach to humanitarian law.

Conceptually, while past research, such as that by Mack (2008) and Rahimatu (2016), has highlighted the difficulties of enforcing IHL in conflicts involving non-state actors, this study goes further by arguing that IHL's current structure is not merely insufficient in enforcement but also conceptually outdated. Thus, the paper posits that an "adaptive IHL" framework, responsive to the realities of decentralized and hybrid combat environments, is necessary to uphold civilian protection effectively.

Theoretically, this study also critiques the lex specialis principle, which suggests that specific laws of armed conflict supersede general human rights laws during wartime. Although this principle has been foundational to IHL, the study demonstrates its limitations in contemporary warfare, where distinctions between military and civilian spaces are increasingly ambiguous. Previous studies, such as those by Bukar (2021) and Hardy (2012), have explored how jurisdictional conflicts arise when human rights law and IHL intersect. However, this research adds a new dimension by questioning the effectiveness of lex specialis itself, proposing that an adaptable framework could address jurisdictional challenges more effectively by tailoring protections to the fluid dynamics of modern warfare.

Essentially, this paper's findings extend beyond previous studies by advocating for a more adaptive and inclusive approach to IHL, one that encompasses both state and non-state actors within an accountability framework designed for the realities of 21st-century conflicts. The proposed model of adaptive IHL offers a transformative perspective, highlighting the importance of flexibility and responsiveness in humanitarian law to ensure effective protection for civilians amidst the evolving landscape of modern armed conflicts.

Recommendation

The following recommendations are proposed in accordance with the findings of the study to enhance the effectiveness of international humanitarian law (IHL) in addressing the complexities of modern warfare:

i. The study reveals that the current state-centered accountability structure of IHL is insufficient for handling violations by non-state actors, including terrorist organizations, insurgent groups, and private military contractors. IHL enforcement mechanisms should be expanded to include non-state actors by creating legally binding accountability frameworks that impose direct responsibilities and penalties for human rights violations in conflict zones. This approach would ensure that non-state actors are held accountable, thereby closing a critical gap in IHL enforcement.

ii. As the findings indicate, the principle of distinction between combatants and civilians is challenging to uphold in asymmetric conflicts. To address this, IHL should incorporate context-sensitive applications of the distinction principle, which would consider the complexities of combat environments where non-state actors may integrate with civilian populations. Enhanced training for military forces and clear guidelines for identifying legitimate targets in complex urban or civilian-dense settings would support more effective implementation of this principle.

iii. Given the limitations of the lex specialis principle in conflicts where military and civilian domains overlap, it is recommended that IHL re-evaluate the rigid application of lex specialis. This principle should be revised to allow for concurrent applications of human rights law and humanitarian law.

iv. It is recommended that these organizations be empowered with expanded mandates and resources to monitor compliance more effectively. This might include establishing independent monitoring bodies to oversee conflict zones and support enforcement actions without direct reliance on state cooperation, thereby reducing political interference.

v. With corporations playing increasingly significant roles in conflict economies, this study recommends that IHL include explicit protocols that define corporate responsibilities in armed conflicts. These protocols should hold corporations liable for directly or indirectly supporting conflict actors or perpetuating violence in high-risk zones. Such protocols would encourage responsible corporate behavior, addressing the current gap in IHL that overlooks the influence of corporate actors in modern warfare.

vi. To support IHL's adaptive implementation, it is essential to build capacity at local levels. This includes legal training for local judiciaries, law enforcement, and military personnel on context-specific IHL applications.

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