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**CHALLENGES IN THE IMPLEMENTATION OF INTERNATIONAL
HUMANITARIAN LAW**

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Abstract

War has long been and continues to be the most powerful force on the planet. War, on the other hand, should not be harsh or barbaric in nature. Although it is possible to fight a civilized war following the warfare limits. With the exception of a few uncertain areas, International Humanitarian Law is a collection of regulations that address, among other things, the protection of communities ravaged by war and military tactics and procedures. On the other hand, applying international humanitarian law has been proven difficult. A lot has changed in the way conflicts are waged over the last century. Despite the atrocities of conflict, international humanitarian law standards are routinely ignored with callous indifference. However, putting international humanitarian law into effect has proven difficult, with just a small percentage of it being implemented. The regulations may not be enforced against individuals who violate them while on the winning side, but they will be for those who violate them when on the losing side. As a result, the concept of superior power is reflected in the application of international humanitarian law. Implementing IHL in non-international armed conflicts is more difficult than in international armed conflicts. When international humanitarian law cannot be applied to a certain situation, a legal void may occur. The IHL regime is also characterized by a prevalent culture of impunity as a result of the parties' lack of interest, Many of the criminals remain on the loose. Because of the belligerents' callous disregard for the basics of international humanitarian law, the entire system is doomed to fail. The goal of this research is to find the best strategies for overcoming the challenges of implementing IHL in today's environment.

Keywords: Warfare, War on Terror, humanitarian law, superior power, armed conflict

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Introduction

Specific conflict resolution approaches, tactics, and tools are prohibited under international humanitarian law, but combat is not expressly prohibited. It attempts to alleviate the suffering of war victims to the greatest extent possible. It is vital to examine if IHL can solve the new problems caused by conflict's new dimensions. Is there any other flaw in the international humanitarian law framework? States will engage in armed conflict when they believe it is necessary, sometimes for monetary benefit, sometimes to overthrow the government. IHL applies to and must be respected in all conflicts, whether they are waged for self-defense or the right to self-determination, to combat terrorism, to maintain international peace and security, or for any other reason. Because the aggressors did not follow it, International Humanitarian Law was unable to prevent the death of civilians during hostilities or the torture of prisoners of war. Respect for IHL would considerably minimize suffering on both sides, help people regain their trust, and provide the best hope for laying the groundwork for a peaceful resolution to the war. IHL cannot be implemented, but it does not mean it is a panacea for the heinous consequences of war. However, if they followed and obeyed IHL, both parties' suffering would be greatly reduced.²

Modern war takes place without the presence of soldiers and makes use of cutting-edge weaponry fired from a safe distance. The attacks on innocent bystanders and the sheer brutality of these gangs' operations are the two most defining features of their activity. Because there are so many different armed factions involved, the battle is asymmetrical. Taking hostages and murdering civilians are two new tactics of warfare that are becoming more common. Changes in Syria and Iraq during the last few years, as well as the development of ISIS and ISIL, have had a significant impact on IHL. Along with other inmates, journalists and relief workers have been decapitated, and civilians have been killed at random. As Rousseau quotes, "war is not a relationship between man and man, but between state and state", is less applicable in today's world, where conflict is more likely to be a relationship between the state and the person.

²Bothe, Michael, International Legal Aspects of the Darfur Conflict, in: August Reinisch and Ursula Kriebaum (eds.), The Law of International Relations Liber Amicorum Hanspeter Neuhold, Utrecht, 2007.

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The basics of international humanitarian law have been described as “inviolable” by the International Court of Justice. All states are required by international humanitarian law to follow its rules. It should come as no surprise that carrying out one's legal obligations is one of the fundamental foundations of international law. Rules are meaningless if they are not followed. It goes without saying that a verbal pledge alone will not suffice to meet the legal duty to ensure respect. Regardless of the most heinous crimes, it is critical to safeguard and protect fundamental human rights, which is why humanitarian law exists. It attempts to develop unbreakable human rights guidelines.

The applicability of international humanitarian law is dependent on the fulfillment of its standards. If the offenders of the crimes that caused war victims' suffering are held accountable, states and armed forces will be forced to observe the standards of international humanitarian law. A more efficient implementation is required to provide victims of armed conflict with a higher level of protection. It has been raised on occasion whether international humanitarian law is adequate, not only in terms of its ability to incorporate newly discovered realities of organized armed violence within pre-existing classifications but also in terms of the existence of a sufficient body of substantive norms and their applicability in a given situation.

Challenges in Implementing International Humanitarian Law

The significant changes in combat technology that happened during the twentieth century were unquestionably the most significant component of the obstacles faced in the enforcement of the law. With the advent of missile warfare and aerial bombardment, it can be difficult to adhere to the rules that require proportionality and restrict strikes to military targets. These guidelines are intended to ensure that wars are carried out correctly. IHL can and does have a direct impact on the lives and livelihoods of those who are not currently involved in armed conflict. This applies to both the failure to apply IHL and its selective application. The so-called Arab Spring triggered a wide range of humanitarian difficulties in a variety of contexts, including internal armed conflict involving international forces. The ongoing conflict in the West Bank and Gaza Strip jeopardizes the humanitarian agenda.³

³Doswald-Beck, Louise, Implementation of International Humanitarian Law in Future Wars, International Law Studies, Volume-71.

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The Israeli government's construction of a wall in occupied Palestine is a repeated violation of international humanitarian law. Despite this, it appears that no one is capable of altering the current situation. The Israeli government's settlement strategy is another breach of international human rights legislation. Even while the Geneva Conventions provide a framework for nonparticipating Government Parties to follow, international humanitarian law is mostly dependent on the government's political will. The investigation system is made up of a network of safeguarding authorities albeit one that has never been put into action.

It was impossible for world leaders to prevent the killing of Muslim males in Srebrenica, to bring peace to Somalia, or to protect civilians in Darfur from being massacred, tortured, raped, forced from their homes, and looted. They also failed to prevent the destruction of their homes and belongings. The International Committee of the Red Cross produced a paper titled "Strengthening Legal Protection of Victims of Armed Conflict". They listed four examples of international humanitarian law that fall short of adequately addressing humanitarian challenges and should be strengthened. These categories address the methods used to protect hostages, internally displaced people, and the environment during an armed conflict.

The question of whether the International Humanitarian Law separation of armed conflicts into international and non-international conflicts adequately accounts for the current range of hostilities. The more asymmetrical a conflict, the more difficult it is to carry out humanitarian interventions and adhere to international humanitarian law. This is because both sides believe that in order for IHL to be beneficial to them, they must either violate it or have a distorted understanding of it.⁴

Lack of Respect

The issue with today's military conflicts is a disregard for norms rather than a lack of them. Because International Humanitarian Law is built on humanitarian values, gaining the respect of fighters is extremely difficult when the combatants' primary goal is to wreak havoc on civilians. The occupation of Palestinian territory by Israel illustrates its contempt for international humanitarian law. One of the Geneva Conventions' Common Articles specifies that belligerents must always follow appropriate international humanitarian law principles. It is critical to give respect to a broad interpretation. In addition to avoiding criminal behaviour,

⁴Emanuelli, C., The Contribution of International Bodies to the Development and Implementation of International Humanitarian law (IHL).

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one must use caution in order to fulfil one's legal obligations. IHL is based on the principle that all parties have the right to equal legal protection. Even if one party decides to violate the standards, there are reciprocal obligations on both sides. This means that even if one party uses unlawful weapons, the other party must not.

Lack of Compliance Mechanism

In view of the recent events in Mali, the ongoing civil war in Syria, the never-ending crisis in Afghanistan, and the Arab Spring upheavals increased IHL compliance is essential. However, the current institutions' limits in terms of putting humanitarian law norms and principles into action and publicizing them must be considered. Furthermore, the investigation mechanism has been dormant for a long period. The International Fact-Finding Commission has not done anything in a long time. Unfortunately, the power protection system did not function as intended. There is currently no mechanism in place to ensure compliance with IHL.

Availability of Weapons

It is terrible that having access to firearms comes with such a heavy human cost. Consider the political cost as well. The belief that they can win this battle is driving the parties further away from the bargaining table. Arming the various players in a conflict does not lay the groundwork for victory; rather, it gives the impression that the outcome was successful. This is a dangerous and risky misconception because it allows the battle ahead of us to go indefinitely.

The likelihood of more people dying in the fighting and an entire area being devastated by fire grows as the war progresses. Because of their widespread availability, conventional weapons may continue to harm or kill innocent people long after a war has finished. Concerns have been made about the rapid expansion of the arms trade and the unrestrained spread of weapons in relation to the question of whether or not international humanitarian law has been violated. As long as getting weaponry is too easy, it will be more difficult to deliver humanitarian help, and more likely that grave violations of international humanitarian law will occur.⁵

⁵ International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, ICRC, October 2011.

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War on Terror

The so-called War on Terror, announced by the American administration in response to the September 11, 2001 attacks, is one of the most challenging and puzzling problems confronting international humanitarian law in the twenty-first century. In the name of the phony War on Terror, national governments, particularly the US government, routinely take actions that are plainly prohibited under IHL.

Terrorism has been in some form from the beginning of time, and it is very likely that it will continue to exist in the future. Terrorism will always be a source of contention. As a result, a person suspected of being a terrorist may be detained for an extended period of time without charge.

Furthermore, whether terrorist acts, which are often carried out by terrorist organizations, should be regarded to have reached the minimum degree of intensity, or whether they should be treated as crimes that fall under the scope of a domestic law enforcement system, has been contested. Both of these concepts have been the topic of debate. Using terrorism as an excuse to attack a country is prohibited and violates international human rights law. As an example of a nation's anti-terrorism program, Israel employs targeted assassinations. Since 2000, hundreds of people have perished in terrorist acts, some of which were successful and some of which were not. Individuals have been injured or died as a result of the collateral damage caused by various failed targeted killing attempts.

The Privatization and Commercialization of War

Natural resources and armaments are increasingly being swapped during battles. To accomplish this, the nature of the fight has shifted. IHL regulations are broken regardless of how they are administered. During times of war, private military and security corporations provide assistance. Transfers of arms should be avoided if there is a high risk that they may be used to commit crimes against humanity, violations of international humanitarian law, or war crimes.⁶

This threat should not be underestimated. The world's most powerful countries must recognize the possibility that new weapon shipments to Syria would be used to commit

⁶Kalshoven, F., *Constraints on the Waging of War*, Geneva, ICRC, 1987.

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human rights violations and other crimes by opposition groups, the Syrian government, and its militias.

Certain forms of the trade in explosives and weapons must be prohibited if International Humanitarian Law is to be applied to the instruments and methods of conflict. Chemical weapons, biological weapons, and weapons with a high risk of detonation are all prohibited. Are the states ready to support this effort? This is an extremely important question. War is similarly privatized and promoted in the context of the capitalist global system. Under the current circumstances, we cannot expect to totally abolish the use of these weapons in a battle. **Automatization of Warfare and Cyber Warfare**

When more advanced technology is employed in war, determining who is liable for breaching the rules of warfare and upholding them becomes more challenging. Drones and other hightech weapons have created a slew of new issues. Those responsible for bringing cyberspace into compliance with the regulations that govern armed warfare face a number of challenges as a result of its emergence as a new battleground. Implementing international humanitarian law is becoming increasingly difficult as cyberwarfare becomes more widespread, particularly when it comes to attributing blame.

The IHL does not clearly forbid such warfare. Unintentional civilian deaths and injuries caused by the use of remotely operated weapons impede the execution of international humanitarian law. Furthermore, it is feasible that an automated weapon system will be unable to discern between military and civilian targets. According to the proportionality principle, it is also unclear how these weapons could effectively assess incidental civilian deaths, civilian injuries, and civilian property damage.

A fully autonomous weapon system that complies with IHL is a significant programming problem that is almost certainly unattainable. This weapon system also raises concerns about the concepts of difference and proportionality, as well as the need to exercise caution before launching an attack. To ensure that current issues are discussed in a knowledgeable manner, to emphasize the importance of considering emerging technologies' potential humanitarian impact and IHL implications, and to ensure that these technologies are not used prematurely or in situations where respect for IHL cannot be guaranteed.⁷

⁷ Rousseau, Jean-Jacques, *The Social Contract*, 1994 (originally published in 1762), Book I, ch. IV.

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It has been demonstrated that the use of cyberattacks as a form of warfare is a true and ongoing threat, and it is evident that this will have substantial implications for the formulation of norms controlling humanitarian aid in the future. Because of technological advancements, wealthier countries' military forces have a significant tactical advantage in conflicts, putting international observance of humanitarian law in jeopardy.

Enforcement Mechanism of IHL

The work required to apply international humanitarian law and rectify violations of IHL when they occur must emphasize criminal accountability. States that have signed humanitarian law documents, such as the Conventions and Protocols, must put an end to and prevent violations. Hence, states have a responsibility to put a stop to all infractions and, in particular, to establish legislation that allows significant violators of the Conventions to be punished. A system of sanctions must be in place for violations of international humanitarian law to serve as a deterrence.

The International Criminal Court was established to investigate, convict, and punish those who violate international humanitarian law. This type of violation is referred to as a “war crime”. Furthermore, some international tribunals have been established to investigate, convict, and punish people suspected of committing war crimes in both international and non-international conflicts. National courts, foreign courts, and hybrid courts exist. Some tribunals blend the two classifications. It is necessary to highlight the Nuremberg Tribunal, the Tokyo Tribunal, the Special Court for Sierra Leone, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda.

People who disobey the law and triumph in powerful states are either not prosecuted at all or receive less harsh sentences than those who do the same in weak governments. Lawbreakers in weaker states, on the other hand, face punishment. In the eyes of the victims, when accountability is passed to the parties involved, impunity almost always follows. The relevance of international tribunals to the enforcement process is not lessened by the fact that they can only address the top of the compliance iceberg. Similarly, in cases involving

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violations of international humanitarian law, there is practically never an effective domestic criminal justice system.⁸

Lack of Co-operation of the States

Some countries continue to deny that NIACs occur on their territory and, as a result, that IHL applies, making dialogue with the International Committee of the Red Cross regarding their IHL commitments difficult or impossible. Some governments have been hesitant to acknowledge the need for the International Committee of the Red Cross and other Movement components to engage non-state armed groups on matters relating to their security and access to victims, as well as to disseminate international humanitarian law and humanitarian principles, on the grounds that they are “terrorist organizations” or otherwise prohibited.

Urban Warfare

In modern warfare, violations of international humanitarian law (IHL) committed by state or non-state actors almost always have a disproportionately negative impact on civilian populations. Combat in modern warfare is increasingly taking place in areas where people outnumber soldiers. This condition not only makes upholding international humanitarian law during hostilities more difficult, but it also contributes to the yearly deaths of thousands of defenceless civilians. Participation, which encourages and protects non-state actors, has contributed to an increase in the frequency of urban violence. A war that affects a large area of a densely populated country has major consequences for human life. The International Committee of the Red Cross advises against using explosive weapons in populated areas because they have a wide area of effect.⁹

Asymmetric Warfare

In modern armed conflicts, asymmetric warfare has been deployed, resulting in violations of international humanitarian law in Iraq, Afghanistan, and the Israel-Palestine conflict. Modern warfare is a deadly game played in social contexts in which opponents try to outwit one another by exploiting each other's vulnerabilities. In its broadest sense, asymmetric warfare

⁸Talmar-Pere, Annika, National Implementation of International Humanitarian Law: The Case of Estonia, ENDC Proceedings, Volume 15, 2012.

⁹ Program on Humanitarian Policy and Conflict Research, "Transnationality, War and the 9 Law," A Report on a Roundtable on the Transformation of Warfare, International Law, and the Role of Transnational Armed Groups. Cambridge: Harvard University, 2006, 7

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refers to situations in which one side of an asymmetric armed conflict employs illegal and non-military techniques to topple a militarily superior foe.¹⁰

Humanitarian Law limits armed conflict

Humanitarian law has evolved into a complex set of regulations that handle a wide range of issues. International humanitarian law limits the use of violence in armed conflicts to what is necessary to hinder the enemy's military capabilities and to safeguard those who do not or no longer directly participate in hostilities.¹⁰

An international armed conflict occurs when one or more states use military force against another, regardless of the causes for the war or the intensity of the battle. No formal declaration of war or acknowledgement of the situation is required. What happens on the ground decides whether there is an international armed conflict, and hence whether international humanitarian law can be applied in this situation. It is based on genuine occurrences.

International humanitarian law achieves a balance between humanity and military necessity by restricting violence and regulating how people impacted by armed conflict are treated. International humanitarian law protects a wide range of civil and political rights, including the right to life of enemy rendered ineffective owing to harm or damage or judicial guarantees, as well as economic, social, and cultural rights such as the right to food and healthcare. Group rights, including the right to a healthy environment, are also safeguarded.

This is especially true for the sick and injured, who must be respected, safeguarded, gathered, and cared for. Another important point to note is that all armed conflicts, regardless of their cause or origin, are subject to international law. Without exception, they must be respected in all circumstances and with regard to every individual they protect. Current humanitarian law prohibits unequal treatment of war victims based on the just war principle. There are two sets of precise rules: one for international armed conflicts and one for non-international armed

¹⁰Thurer, Daniel, International Humanitarian Law: Essence and Perspectives, SZIER/RSDIE 2/2007. ¹⁰

14 International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts," ICRC, 31IC/11/5.1.2, Geneva, 2011, 6

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conflicts or civil wars, while the broad guidelines below apply to all types of armed conflict.¹¹ **What should be done to put the law into effect**

To avoid conflict, steps must be made to ensure that international humanitarian law is followed. It is the responsibility of states to educate their citizens and armed forces on their laws. If infractions do occur, they must be prevented or penalised. They must expressly adopt legislation to punish the most egregious violations of the Additional Protocols and Geneva Conventions, which are classified as war crimes. State legislatures must also approve laws protecting the red crescent, red crystal, and red cross symbols. These are the safeguards provided by international law to sick and injured people in armed conflict, as well as those who care for them. Significant international action is required, including the creation of tribunals to try crimes committed during armed conflicts. The Rome Statute of 1998 established an International Criminal Court to investigate crimes such as war crimes. Individuals, governments, and other organisations can all make a substantial contribution to the implementation of international humanitarian law.¹²

Conclusion

It is impossible to blame ongoing human misery on a lack of political will to resolve disputes on the part of powerful government and military institutions. Apathy for globally binding rules and treaties has produced this situation. In order to create good reciprocity, the state and its armed forces must also behave appropriately during armed combat otherwise, these agreements and laws would be impossible to enforce. It is difficult to apply international humanitarian law effectively without the support of states. The International Humanitarian Law (IHL) system is dependent on governments' willingness to put IHL principles into practice. Many questions of international humanitarian law remain unsolved.

To put IHL principles into reality, international transfers of weapons and ammunition must be restricted. In this situation, it is critical to limit access to weapons and monitor their manufacture and sale. Conventional weapons cannot be transferred in accordance with internationally accepted regulations. Putting war criminals on trial is another way to compel states to follow humanitarian law standards. Both civilians and members of the armed forces

¹¹ International Committee of the Red Cross, "International Humanitarian Law: Answers to Your Questions," Geneva, 2004, [Www.icrc.org](http://www.icrc.org), ICRC, Oct. 2002, 19.

¹² Program on Humanitarian Policy, "Transnationality, War and Law," 5.

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face criminal consequences for war crimes and crimes against humanity. The fact that we know about the Nuremberg and Tokyo tribunals but not those in Hanoi, Baghdad, or Kabul demonstrates that International Humanitarian Law is only partially implemented.

International humanitarian law seeks to alleviate and mitigate the suffering caused by conflict. Its guidelines are the outcome of a rigorous balancing act between humanitarian laws and the constraints of war or military necessity. Humanitarian law is a sensitive issue that should never be jeopardised. It must be upheld at all costs in order for human principles to survive, and, in many cases, simply to protect life.



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