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UPHOLDING THE DIGNITY OF HUMANITY IN TIMES OF CONFLICT: SAFEGUARDING HUMAN RIGHTS DURING NON-INTERNATIONAL ARMED CONFLICT

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Abstract
International Humanitarian Law and Human Rights Law have always co-existed and the law is very clear about the rules established during an armed conflict situation. Armed conflict situations wreck the most havoc in the lives of the non-combatants or the civilians. The Armed Forces during an international armed conflict situation have to follow the guidelines set by the Laws of War but however, during a non-international armed conflict situation where belligerent forces are at play without any set of rules or laws, the situation of human rights becomes controversial. The situation becomes dicey because the State does not want to entertain the idea of a non-international armed conflict as it would lead to ensuring that human rights law will become applicable and situations like this would ruin the reputation of the State in the international forum. The problem arises when there are no proper set rules or guidelines to be followed by both the parties and the ensuing damage and loss is borne by the innocent civilian population. The scope of this article relates to the armed conflict situations and the actions of the armed forces and other belligerent forces which violates human rights of the innocent non- combatants caught between the cross fire. However, the scope is limited to the protection of human rights of the civilian populace during Non-International Armed Conflict and preferably the Common Article 3 of the Geneva Convention.
Keywords: International Humanitarian Law, Human Rights Law, Non-International Armed Conflict, Common Article 3, Geneva Convention.

I. INTRODUCTION

1. International Humanitarian Law and Human Rights Law

International human rights and international humanitarian law have different historical and doctrinal roots, but both work to protect everyone and are based on the principle of respect for the life, welfare and human dignity of individuals.[i] From a legal point of view, many international treaties are rooted in international human rights and international humanitarian law, which is enforced and supported by customary international law.[ii] While international human rights always apply both in peace and in war and international humanitarian law only applies in the context of armed conflict, the two laws should be used in complementary ways that reinforce each other in armed conflict.[iii]

Now, both areas of international law are largely codified. However, international humanitarian law is being codified into a generally agreed international system for binding general documents, new or more specific, clarifying their relationship to previous or more general treaties. In contrast, international human rights are structured into an impressive number of tools, including universal or regional, compulsory or educational, themes as a whole, fair practice, specific rights or realizations.

The law on armed conflict is characterized by simplicity and complexity. These situations are not always easy to define because they only apply in certain situations, and depending on the situation, they are either legal or illegal. In terms of humanitarian law, the most significant shift is that resorting to violence is no longer a legal means of resolving conflict. In general, humanitarian law is currently seen as a way to protect non-fighters as much as possible from the horrors of war, rather than as a code of honour for combatants.[iv] The use of force is a breach of human rights from a purist human rights perspective, which is founded on respect for human life and well-being. At the 1968 Human Rights Conference in Tehran, it was stated as follows:

"Peace is the underlying condition the full observance of human rights and war is their negation".

The core IHL rules of distinction and proportionality reflect the balancing of humanity and military need. Parties to an armed conflict must distinguish between civilians and combatants at all times, as well as between civilian and military objects. Furthermore, an attack may not be launched if it is expected to result in a disproportionate amount of civilian casualties, injuries, or damage to civilian property in comparison to the expected immediate military advantage. Humanitarian law governs military conflicts by restricting the acts of warring parties and ensuring human rights and treatment to those who are no longer involved or may become involved in hostilities. Humanitarian law, like international human rights law, safeguards people's lives and dignity by banning torture and violence, specifying the rights of people facing criminal charges, prohibiting discrimination, and including provisions to protect women and children. Furthermore, humanitarian law governs aggressive actions and the status of Prisoners of War, as well as protecting the symbols of the Red Cross, and Red Crescent,

In general, a distinction is made between laws intended to protect victims of military and civilian armed conflict from laws governing the course of war.

Common Article 3 of the Geneva Convention is a key provision in understanding non-international armed conflicts, as it states that such conflicts must be between one or more High Contracting Parties and a nongovernmental organization. This has made distinguishing between an armed conflict and other forms of violence, such as riots or isolated acts of violence, difficult to determine due to its abstract nature. Ultimately, this relies on each state's political resolve when characterizing any given situation with regard to whether it should be considered an armed conflict under Common Article 3.

2. Human Rights in Non-International Armed Conflict

Victims of non-international armed conflict should be covered by the same laws as victims of international armed conflict from a humanitarian standpoint. They face similar issues and need similar safeguards. “Enemies” apprehend and detain terrorists and civilians in both cases. They must flee or their home will be taken over by the enemy. Towns and villages are attacked, food must be distributed through the front lines, and the same weapons must be used. Furthermore, before applying various protective rules to domestic and international armed conflicts, humanitarian actors and victims must first disperse the conflict. In theory, this can be complicated, because it's still a political minefield. If a humanitarian actor invokes a non-international armed conflict rule in a separation war, for example, it means the separation was ineffective, which the separatist authorities fighting for independence find unacceptable. References to international law of armed war, on the other hand, imply that the rebels are independent states that the central authorities find unacceptable. Indeed, until recently, war between provinces was considered a permissible form of international relations, and the use of force by States was not completely prohibited. A monopoly on the lawful use of force within its borders, on the other hand, is vital to the concept of a contemporary State, as it precludes groups of States from fighting one other.

On the one hand, international law standards should ensure that victims of international armed conflict are protected. Even if it adheres to the most absolute definition of sovereignty, the State has long followed such rules. States have long recognized that soldiers who murder enemy troops on the battlefield should not be penalized only for their participation. To put it another way, you have the "right to take part" in hostilities.

Non-international armed conflict rules, on the other hand, have only recently arisen. Conflict has long been seen as an internal affair handled by domestic legislation, and no country is willing to accept citizens fighting the Government. To put it another way, no Government will relinquish the authority to retaliate against citizens who join the insurrection. Such refusal, on the other hand, is at the heart of the status of a combatant as defined by international armed conflict law. All principles of present international humanitarian law (international humanitarian law) would be irreconcilable with the basic concept of the present international community of sovereign States if they were applied to international armed conflict and non-international armed conflict. In contrast, armed combat will be basically "non-international" if the international society had ever been organised into a global State, making participation in hostilities for any reason unthinkable for warriors.

II. HUMAN RIGHTS VIOLATION DURING NON-INTERNATIONAL ARMED CONFLICT

1. Direct Consequences on Human Rights Violations in war time due to Proliferation of Non-International Armed Conflict

1.1 Sexual violence

The primary purpose for using rape during wartime is to instill terror among civilian populations with the intent to displace them from their homes. Additionally, this tactic aims to degrade any chance of return by inflicting humiliation and shame upon targeted populations; non-state actors often require these effects if they wish to occupy land within another state's jurisdiction. The Eastern Democratic Republic of Congo serves as one example where this tactic was implemented successfully on a large-scale basis resulting in mass displacement among its population due largely in part by sexual violence inflicted upon women living there at the time.

It must be noted that while most commonly committed by members belonging armed forces or militia groups affiliated with government entities; however individuals unaffiliated may also take advantage of chaotic situations created during conflict periods which further exacerbates issues related especially related cases involving gender based violence such sexual assault against women who are particularly vulnerable under these circumstances making prevention even more difficult than usual. The Democratic Republic of the Congo is a region that has been plagued by conflict and violence for decades. Today it is estimated that there are 200,000 surviving rape victims living in this area alone.

Louise Nzigire, who works as a local social worker within DRC notes that rape has become 'a cheap weapon' used by all sides involved during times of war due its accessibility compared to bullets or bombs. In August 2010 more than 500 rapes were reported with UN peacekeepers failing to protect those affected from such brutalization - leading Atul Khare (current Under-Secretary General for United Nations Department Field Support) apologizing publicly on behalf their failure. It appears even religious groups have not shied away from using this form attack as part their strategies - highlighting just how pervasive it remains today despite global efforts reduce these numbers drastically.

It goes without saying then that reducing levels of sexual assault must remain at forefront of the international agenda when addressing issues related DRC's ongoing conflicts if any true progress can made towards creating safer environment for everyone living here – especially vulnerable populations such children women who are most likely experience trauma first hand due exposure extreme conditions they face daily.

Amnesty International reported in 2015 that the Afghan Taliban had committed heinous atrocities against hundreds of Afghan civilians in Kunduz. The report detailed how Taliban militants raped and murdered female relatives of police commanders and soldiers, as well as women who they suspected were providing reproductive health services to local women. This disturbing news was met with shock and outrage from around the world, highlighting once again the urgent need for an end to violence in Afghanistan.

The situation is especially concerning because it reflects a pattern of behavior by armed groups operating within Afghanistan which has resulted in countless human rights violations over

decades of conflict. Women are particularly vulnerable during times like these when their basic security is threatened due to lack of access or protection from authorities on the ground. In addition, reports indicate that many survivors have been unable or afraid to seek medical care due to fear or stigma associated with sexual assault; these further compounds their suffering while denying them justice for what happened.

In response, Amnesty International has called upon all sides involved - including international actors -to take immediate action towards ensuring accountability for those responsible and bringing justice for victims through independent investigations into these crimes against humanity. It also urged governments around the world take decisive steps towards ending impunity by ratifying international treaties related specifically protecting women's rights such as CEDAW (Convention on Elimination Discrimination Against Women). Only then will we be able move closer toward lasting peace within Afghanistan where all citizens can live free from fear without having their basic human rights violated everyday

1.2 Use of Child Soldiers

According to "Article 8 of the Statute of the International Criminal Court, conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities is a war crime, in both international and non-international armed conflicts." Issued in February 2007 by the UNICEF, the Paris Principles define a child associated with an armed group as:

> *"*any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls, used as fighters, cook, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities*"*.[v]

According to the United Nations, in 2016 alone, "children were used by armed groups in seven African countries (Central African Republic, Democratic Republic of the Congo, Mali, Nigeria, Somalia, South Sudan, and Sudan) and by three State armed forces (Somalia, Sudan, and South Sudan)."

Child soldiers are usually recruited by armed groups because they are considered as cheap to maintain. The willingness of children to fight for honour, prestige, revenge or duty rather than for money, and their psychological malleability (which makes them easier to control) favour their recruitment. The civil war in Sri Lanka has been fought for more than 20 years, and the media reported that children were conscripted into armed groups, especially the LTTE, before the war ended in 2009. 1984, and the LTTE rebels built an educational foundation and through which Recruiting persons under the age of 16 in Pondicherry in India. The child soldier known as "Tiger Cub" originally received non-military training. As soon as the young recruit turned 16, he completed a difficult four months of Tigers training. Many people who have been trained in Pondicherry have had great success. LTTE began seriously recruiting women and children after declaring war against 100,000 Indian Peace Keeping Forces (IPKF) in October 1987.

It is estimated that around 300,000 children are currently involved in various conflicts worldwide. Although it has been documented that non-state militias and rebel groups are the most frequent users of this weapon, there have also been cases where States have used child soldiers as well.

In addition to being morally reprehensible, using child soldiers can be detrimental to states' international reputation since they will be held accountable by the international community for their actions. This means that states may try to avoid or hide any involvement with utilizing children for military purposes even if they do so because such activity would draw criticism from other nations and organizations like the United Nations (UN). As an example, Zimbabwe's National Youth Service was originally created as a patriotic youth organization but eventually became a State sponsored militia which employed 10–17-year-olds who were used mainly for suppressing dissent within Zimbabwe's borders before it was banned by authorities in 2018 due to its illegal activities involving minors. Similarly Angola had denied allegations about using underage combatants until NGOs like The Coalition To Stop The Use Of Child Soldiers confirmed their presence both among government forces and UNITA rebels during civil war period between 1975 - 2002.

These two examples demonstrate how governments often attempt to conceal any involvement with employing young people against their will into combat roles despite potential consequences on national image abroad. Therefore, not only should all state actors strive towards ending this practice but also work together internationally so no one could resort such tactics ever again without facing harsh repercussions from global society at large .

1.3 Human Trafficking

Human trafficking and armed conflicts are inextricably linked, with Human Trafficking Search (HTS) finding evidence of this almost everywhere. Today's most notorious examples come from ISIL and Boko Haram who actively advocate for the enslavement of women and children as part of their military tactics. This differs from other armed groups who usually engage in human trafficking to generate free labour; instead these two groups have weaponized it as a method to degrade, displace or subjugate certain civilian populations.[vi]

The Slaves Sales and Purchasing Committee, the central body of ISIS, is responsible for organizing the Yezidi Slave Market where women are forced to use contraception to prevent pregnancy. Doctors have been hired by ISIS to promote early maturity and administer drugs in order to alleviate sexual violence. Similarly, Boko Haram has also used a hierarchy of slaves based on whether women were willing marry militants. Human trafficking takes many forms beyond sexual enslavement; however armed groups continue using child soldiers without any regard for their wellbeing or safety at an alarming rate.

The Democratic Republic of the Congo is an example of a country where internally displaced people are subjected to forced labor in mineral and gold mines, which are then sold into global markets by armed groups that control them. This has had severe implications for the affected individuals, as well as their families and communities, who have been denied access to these resources due to exploitation. Moreover, this illegal trade has resulted in significant economic losses for both local and international actors involved in it. It is therefore essential that immediate action be taken on all levels – from national governments down through civil society – to ensure that those responsible for such abuses are held accountable and ultimately prevented from continuing their activities.

2. Response given to the Human Rights Violations and the level of Accountability of Armed Forces

2.1 The 2012 Minova mass rape in Democratic Republic of the Congo

MONUSCO reported that the conflict caused widespread sexual violence among women in northern and southern Kivu by all parties to the conflict. These attacks included recruiting women to the police as sex slaves. The most famous rape case in Minova took place in November 2012. Women and girls who stepped back from agitation systematically raped FARDC (DRC Official Army) for three days. This led to widespread international condemnation, and the Army of the Democratic Republic of the Congo launched an investigation into the prosecution of sexual harassment perpetrators. It is known that the soldiers attacked the girls. So, in 2014, "a trial was held in the case of Minova". It was the largest rape trial in American history. More than 1,000 victims were identified as a result of the 2012 US Nova terrorist attack, but only 47 had testified at the time of the outbreak.

2.2 The Saudi-led coalition and the Houthi in Yemen

The ongoing conflict in Yemen has been characterized by numerous human rights abuses committed by the Houthi movement, an armed group that is fighting against the regular government of Yemen. In areas they control, they have been responsible for arbitrary arrests and detentions of critics and opponents as well as journalists and NGO practitioners without judicial warrants or stated reasons. As reported by Amnesty International, some detainees were even subject to torture or other barbaric treatments with impunity. The Houthi have failed to launch any serious investigations into violations of international humanitarian law committed by their troops which only serves to further exacerbate this crisis situation in Yemen. The situation in Libya in 2011 was vastly different from the current conflict in Yemen.

2.3 The NATO-led coalition in Libya in 2011

In response to UN Security Council Resolution 1973, NATO formed a coalition and intervened with the intention of protecting civilians. The coalition took great care to avoid civilian casualties and only struck targets that had clear military utility. Furthermore, they established structures such as the National Commission of Inquiry and Joint Incidents Assessment Team which

were intended to investigate any violations of International Humanitarian Law or human rights by their own troops - although they lacked impartiality and independence, at least it showed an attempt at fair investigation unlike what has been seen by Houthis who have neglected this aspect entirely. The paradoxical situation of NATO trying to protect civilians yet failing to avoid their deaths has been a point of contention for many observers and critics. This was exemplified in the June 19 airstrike on Tripoli, which resulted in the death of 9 civilians and was acknowledged by NATO as being their responsibility. This case highlights an important issue: that more powerful states will be held more accountable for their actions, especially when it comes to minimizing civilian casualties.

It is thus clear that while human rights violations occur regardless if they are committed by armed groups or strong states alike, how these violations are pursued and addressed will vary depending on who is responsible. International Humanitarian Law (IHL) is an important legal framework that seeks to protect civilians and other non-combatants in times of war. However, the lack of accountability for armed groups has led to widespread human rights violations in modern warfare. This situation demonstrates how IHL must be adapted to keep up with changing circumstances and ensure that those responsible for committing atrocities are held accountable. Furthermore, it emphasizes the need for international organizations such as the United Nations Security Council or International Criminal Court to take a more active role in monitoring compliance with IHL standards and ensuring perpetrators face justice.

III. HUMANITARIAN LAW APPLICABLE DURING NON-INTERNATIONAL ARMED CONFLICTS

The legal framework under both the human rights laws as well as humanitarian law uses various rules to accord the use of force. Unlike human rights law where the State agencies need to review the use of any kind of force, humanitarian law simple starts with the premise that when lethal force is used, during which, there is a possibility that humans might be intentionally deprived of their rights and injury occurs and the primary aim is to draw a line between non-combatants and combatants.

1. International Instruments for the Protection of Civilians

By outlawing torture, providing protections for those facing criminal charges, outlawing discrimination, and establishing rules for the protection of women and children, humanitarian law safeguards people's lives and dignity. It also seeks to control the conduct of hostilities, as well as the status of combatants and prisoners of war. It is basically a subset of international armed conflict law. This branch of law predates universal human rights law by many decades. The different phases of the development of humanitarian law are: “the Conference of Paris (1856), the Conference of Geneva (1864), of Saint Petersburg (1868), of Brussels (1874), The Hague (1899 and 1907) and Geneva (1949 and 1977). The most relevant instruments adopted at these conferences are the four Geneva Conventions (1949) and their two Additional Protocols (1977).”

The theory of discrimination and distinction between non-combatants and combatants is the foundation of IHL. Reflections on the principles that distinguish combatants from non-fighters in armed conflict have already appeared in the moral and theological discussions of medieval Christian scholars, as well as in other legal traditions, such as the culture of Islamic law. However, thanks to the efforts and openness of Henri Dunant, who led the creation of the Red Cross until the late 19th century, no more definitive steps came out of creating internationally recognized rules for the protection of civilians in armed conflict under the Hague Conference in 1899. The increasing destruction and unrivalled suffering of civilians during Wars I and II accelerated these efforts and led to a codification of civil defence. However, this process did not go without contradiction with the internal complications discussed below.

The Law of Geneva summarily covers four different Geneva Conventions:

1. "Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1864;
2. Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1906;
3. Treatment of Prisoners of War, 1929;[1] and
4. Protection of Civilian Persons in Time of War, 1949)" and
    a. "Protection of Victims of International Armed Conflicts, 1977;
    b. Protection of Victims of Non-International Armed Conflicts, 1977;
    c. Adoption of an Additional Distinctive Emblem, 2005."

Conducting military operations in a way that protects civilians was considered within the scope of the Hague Act, and GC IV did not provide any additional provisions for it. Only the Reform Protocol of 1977 guaranteed a wider range of citizens and civil protection reform.

The Protocol I read:

> "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives" (AP I, Article 48).

Article 48 of the Protocol I also establish "detailed rules of discrimination in the conduct of military attacks. Article 51 contains a provision of prohibition of indiscriminate attacks on civilian population as well as threats of such attack in order to spread terror (AP I, Article 51). However, this particular provision is missing in the case of Protocol II, which governs the rules of civilian protection in the case of non-international conflicts."

Essentially, Protocol II establishes "protection of civilian population along the lines of Common Article 3 of the GC IV, which rules that persons taking no part in hostilities shall in all

circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or any other similar criteria" and prohibits:

a. "Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
b. taking of hostages;
c. outrages upon personal dignity, in particular humiliating and degrading treatment;
d. passing of sentences and the carrying out of executions without previous judgment by a regularly constituted court…" (GC IV, Article 3).

Additionally, Protocol II also "provides protection from dangers arising from military operation to civilian population as such and individual civilians."

2. The Explicit Rules of Common Article 3

Armed conflict of an international nature is governed by the Common Article 3 of the 1949 Geneva Convention of 1949 and the Supplemental Protocol II to the 1977 Geneva Convention, which supports the guarantee of a common Article 3 for internationally armed non-conflict victims. It contains 28 articles.

Common Article 3 "contains the minimum warranties applicable to non-international armed conflicts." There is no explicit definition of this form of armed conflict in this section. This is a negative definition that tries to encompass all forms of armed conflict that are unable to be categorized globally and hence do not fall within the Geneva Conventions' other provisions. Common Article 3 does not contain definitions of international armed conflict or internal anxiety or tension that enable the boundary between the two types of situations. Of course, this is not supervision, but a legal strategy aimed at protecting the application of these basic protections from any dispute over the applicability of the situation.

In general, countries have carefully recognized that international law plays a role in armed conflict within their borders where no other State exists.[vii] The situation developed the international criminal tribunal's responsibility for war crimes by applying Additional Protocol II of 1977 to the establishment of the International Criminal Court of Rwanda (1994) from a "minimalist" approach to the common provisions of the 1949 Geneva Convention, former Yugoslavia in 1995 and finally the Charter of the International Criminal Court of Rome in 1998.

In 2004, Sierra Leone's Special Court of Appeals said, "The location of armed conflict could be perceived as a rebel movement beyond an insurmountable conflict within the country within the internal security framework. Domestic law regulated at the level of conflict, which must be governed by Article 3 of the Geneva Convention.[viii] This is done to confuse the recognition of rebellion by other States with the real existence of armed conflict. While Sierra Leone's case may be suitable for this explanation of the rebellion, it is difficult to argue that all cases where the common provisions are deemed appropriate will consist of a "rebellion" beyond a "rebellion".

The Human Rights Commission of the Americas, addressing this issue in 1997, concluded that "the most difficult issue is not to apply the common Article 3 to the top of domestic violence, but to apply it to the bottom."[ix] In this case, the committee decided that an armed conflict occurred in 1989 when 43 armed men attacked a military base in La Tablada near Buenos Aires. Their goal was to stop the coup they believed they were planning in the barracks. Internal Armed Conflict is the coordinated nature of hostile actions taken by intruders, direct intervention by government forces, and the nature and level of violence in the event in question.[x] The Commission was impressed with the fact that the attackers "performed armed attacks, that is, military operations against military bases, which are typical military targets."[xi] As a result, "In spite of brief clashes between the attackers and members of the Argentine army, violent encounters resulted in the provisions of Common Article 3 and other rules relating to domestic hostilities."[xii]

First, human rights violations are nothing more than the State's responsibility. This is because, in reality, it is a right that is protected from State actions. Second, courts and tribunals that have the power to determine whether human rights are violated do not need the power to apply common Article 3. Third, rebels who can be prosecuted under Common Article 3 can be considered victims of human rights in the Human Rights Court. Fourth, rebel forces involved in an international armed conflict that are not trying to overthrow a legitimate government may not be subject to international law.[xiii] The use of this approach can be a dangerous dimension for international criminal courts, as only States have little responsibility to interpret human rights under the country's constitution and laws where human rights must be respected.

Likewise, attempts to develop minimal humanitarian standards that apply to all situations of internal conflict and tension rarely raise national concerns. Despite the fact that these efforts are supported by certain sectors of the country, such a "soft law" approach has yet to yield results. The 1991 Moscow Declaration and the 1994 Budapest Summit emphasized the importance of a Statement on the minimum standards applicable in all situations. The United Nations Commission on Human Rights has also shown great interest in this type of Statement. However, States are reluctant to use this method.

3. Necessity of Equal Protection for the victims of Non-International Armed Conflicts as that of International Armed Conflicts

The application of various rules to non-international armed conflict requires humanitarian activists to classify the conflict before using these rules. This is a serious problem because it is always complex both theoretically and politically. In order to categorize a conflict, you need to evaluate the problem (the criteria that must be consulted before entering war to determine whether or not there is a war). For example, references to non-international armed conflict laws in wars involving States and separatists imply that the separation fails. This is unacceptable for separatists and provides less protection for civilians. Meanwhile, the application of international armed conflict laws suggests that the separatists have succeeded in creating a separate State that the current government cannot accept. It is unlikely that countries will agree to treat international and

non-international armed conflicts in the same way in order to protect their authority and unity in the territory.

Protocol II contains provisions to ensure that the sovereignty and government responsibilities of a State are not affected in any legal way. However, the protection of victims in international armed conflict must be guaranteed by norms of international law which have been widely adopted by most States. For example, 196 countries ratified the Geneva Conventions in 1949 either wholly or with reservations. The issue today is that many conflicts involve non-State actors who are not bound by these rules and regulations; consequently, civilians do not receive adequate protections as those afforded to combatants during an international armed conflict. As such, States often view this type of conflict as an internal problem governed solely under domestic law and thus will refuse to recognize certain laws which could provide justification for citizens fighting against their own governments if necessary. Today, international humanitarian law is more important than ever before in non-international armed conflict. In these conflicts, it is essential to apply all the rules of modern international humanitarian law so that civilians and combatants alike can be protected from unnecessary suffering or harm. International Humanitarian Law ensures that those involved in a conflict are treated humanely and with dignity regardless of their status as either civilian or combatant. This includes protection against torture, cruel treatment, outrages upon personal dignity and other forms of violence such as rape or sexual abuse. Additionally, IHL also guarantees respect for human rights during times of war by prohibiting certain weapons which cause unnecessary suffering such as chemical weapons and cluster bombs. By applying all the rules outlined under international humanitarian law to non-international armed conflicts we can ensure greater protection for individuals affected by war while still allowing legitimate military objectives to be pursued without undue harm being inflicted on innocent people caught up in a conflict situation. If international humanitarian law does not respect the principle of equality between fighters in non-international armed conflict, the likelihood of enforcing all armed forces, States and non-States will be much lower.

IV. PROTECTION OF HUMAN RIGHTS OF CIVILIANS DURING CONFLICT SITUATION AND ROLE OF JUDICIARY

States must also take legislative, administrative, fiscal, judicial, and other steps to ensure that human rights are fully realized. In connection to economic, social, and cultural rights[xiv], this commitment might be implemented gradually or quickly, and it involves the obligation to facilitate, provide, and promote these rights. It is also possible (at least if armed conflict is different from short-term conflict) there is a possibility that there will be some form of national emergency law, giving soldiers legal powers that they cannot otherwise have.[xv]

1. Effects of the Actions of Armed Forces and Impact on Civilians

When armed conflict, or even the presence of armed conflict, is difficult to determine, the armed forces can be unsure of the legal basis for their acts. They are taught that if the war is foreign, enemy combatants may be killed or wounded for no apparent reason solely because of this

designation. There is no limit to the number of enemy warriors that can be killed, but the limit on the killing or injuries of such individuals is contrary to international humanitarian law. The military can also destroy property if military needs justify such destruction. Those who do "their job" well, such as by killing a large number of enemy combatants,[xvi] can receive gallantry awards and elevated status in most states. Those who aren't as good or successful at it may find themselves killed. Those detained are entitled to be treated as prisoners of war and are usually detained until the end of active hostilities demanding their return from the State. For individual armies involved in armed conflict of a non-international nature, the situation is completely different.

First, it is likely to be amended by some emergency legislation, but national laws will continue to apply. In many states, national law includes human rights standards, but this emergency law can reduce them to some extent.[xvii]In particular, these human rights obligations are in violation of national law, regardless of whether they are subject to an allowable waiver notice or a declaration of ratification of the human rights convention. Even with exceptions, "Parties must fulfill their basic obligations…. which provides effective remedy".[xviii]

Secondly, as State law (backed by emergency law) continues to apply, those who hold weapons against the armed forces of the State will continue to comply with it. Being involved in armed conflict means that many crimes are committed, from betrayal to murder. In the event of arrest, such warriors will be prosecuted in accordance with State law or in accordance with all existing human rights protections under applicable human rights treaties, in accordance with the template of the Criminal Code. Unlike prisoners of war, civilians arrested by the military (or other security forces) cannot be released after being detained outside of a civilian prison until the end of the armed conflict.

Thirdly, what individual soldiers are fighting will be civilians by the nature of the conflict. It is unlikely that such people will be trained as soldiers or subject to military discipline. They may be completely ignorant of all international humanitarian law.[xix]They know and break these two laws, but the rebels may not have an effective way to enforce them. In most cases, they cannot be separated from civilians; they can perform normal civilian occupations during the day and become "terrorists" at night. Separations from civilians who do not participate in the conflict endanger the lives and property of many more people than when armed conflict is international in nature.

Fourth, in an international armed conflict (but not always), even if the fighters on both sides respect each other, it is unlikely that it will happen in an armed conflict that is not international. Attacks on soldiers in this type of conflict are more probable from sources which are unexpected, and if they occur in an international armed conflict, then both are considered banned "traitors" type of behavior.[xx] Rebels refer to these forbidden forms of action, so they can be classified as "terrorists," a term that fits the concept of an unacceptable form of armed conflict.[xxi]

Finally, soldiers are usually trained with the best weapons for international armed conflict. During non-international armed conflict they will be able to approach armoured vehicles with powerful rifles and attack helicopters. Moreover, soldiers are usually trained with the best weapons

for international armed conflict. Once started, it becomes increasingly difficult for individual soldiers or rebels to take up their own power and maintain the fence. After a period of armed conflict, the limits of what military commanders consider to be an acceptable behavior of the armed forces are widened due to legal or de facto changes in the rules of war. In turn, the rebels can see that the fear of individual soldiers due to the unpredictability of guerrilla warfare for such military equipment available to the military is the only real hope for success. For them, many accidents in the military can be seen as the only way to achieve their goals.

This contrast with international armed conflict shows that during a non-international armed conflict there is a much greater risk of harm to individual civilians (without rebellion). It also shows that military accidents can be higher than during international armed conflicts, as uncertainty is a realistic option, unlike most recent types of conflict.[xxii]

2. Judicial Approach towards Common Article 3

As stated earlier, the 1949 Geneva Convention does not require States Parties to enact laws punishing violations of common Article 3 that are not considered significant violations of the Convention. Its only duty to the state is to allow international groups like the International Committee of the Red Cross (ICRC) to provide aid. There is no regulatory agency in place to ensure that common Article 3 is followed. In addition, Common Article 3 may be applied by States Parties at some discretion in their legislation. In other words, the State's commitment to safeguard victims of non-international armed conflict requires compliance with and application of unified and parallel domestic legislation.

However, you can see the following final submissions arising from the court decision. First, criminalization allows punishment for individuals in accordance with Article 3 of the general. Second, it is possible to interpret the terms "armed conflict" and "international armed conflict" by comparing evidence based on the "typical profile". However, these developments are more important for sovereign States. This is because the interpretation of these courts may differ materially from the interpretation of local government and local courts as determined by the constitution and national law. For example in the latest opinions of the ICTY Chamber of Representatives in *Tadic*, Common Article 3 of the Geneva Conventions sets out customary international law. Further, the rules of Article 3, Paragraph 1 in common prohibit several acts, such as: (i) performed in the context of an armed conflict; (ii) is closely related to an armed conflict, and (iii) committed against a person who is not actively involved in hostilities.[xxiii] Regarding the question of the existence of armed conflict, the Appellate Committee noted that "there is an armed conflict within a State whenever interstate or long term armed forces are used between authorities or organized armed groups or between such groups."[xxiv] ...

While it may be ambiguous from a legal point of view, *Tadic's* decision opens up the possibility of less violent conflict and is considered an anti-humane crime. In the Roman decree of the International Criminal Court, the definition of anti-humanitarian crime is an explanatory definition that defines anti-humanitarian crime, listing certain acts committed as part of a

comprehensive assault as a systematic crime against all civilians. Criminal acts that are considered anti-humane crimes under Roman decree describe these acts as "a widespread or systematic attack on all civilians who are aware of the attack." It can be seen how the ICTY Charter differs from the Rome Statue which reflects more phrases that adapt to the new verse of the passage.

V. CONCLUSION

The distinction between international armed conflict and non-international armed conflict is gradually blurred in national law and in recently adopted international documents. However, it appears that the time is not ripe for the abolition of this duality. Everyone agrees that violations of common Article 3 standard do not constitute a "material violation" within the meaning of the Geneva Conventions. However, its violation may be considered as a war crime or an anti-humane crime if it is specifically defined in the statute or document that establishes the International Court of Justice.

National law and national courts have been established to ensure that Article 3 is enforced more effectively than international criminal courts designed to deal with specific circumstances and needs within the framework of constitutional and State law. Materials for international decision-making tend to further confuse the traditional understanding of Common Article 3. Any attempt to reach a unified interpretation seems to lie in national law that reflects the evolving aspects of humanitarian law that have more to do with international disputes than attempts to do so. It provides the protection provided under Common Article 3 in relation to war crimes and crimes against humanity that have already caused considerable confusion in humanitarian law.

In fact, the above view that it is desirable to use a minimum of force is supported by the current case law in such cases. This is not surprising, as case law in this regard has already been cited a lot as a result of judgments by courts and human rights groups- *Guerrero v. Colombia (HRC 1992) or McCann et al.*[xxv] The UK proposes that not only human rights apply, but also the principle of avoiding violence is possible, and that the use of force is inevitable to respect the principle of proportion.

However, it is possible that states may see their own interest in upholding humanitarian law and will no longer see themselves as being compelled to do so only because of human rights activity. The advantages of adhering to humanitarian law are self-evident, particularly in terms of preventing widespread destruction and animosity, making it easier to achieve a sustainable peace.[xxvi] If former chivalry cannot be revived, it would be a beneficial development if the military could be taught to take pleasure in the professionalism displayed when acting in compliance with humanitarian law. Because this rule is still strongly anchored in its traditional beginnings, it is not alien to military thinking, and it has the benefit of being a realistic code for military behavior while still preserving human rights to the greatest extent possible given the circumstances. It is intended that ongoing acknowledgment of the unique nature of humanitarian law, together with the varied efforts given to human rights law implementation, will have the impact of improving the protection of people in violent situations.

[i] The International Criminal Tribunal for the former Yugoslavia's Trial Chamber underlined in *Prosecutor v. AntoFurundija* that the universal concept of respect for human dignity was the "fundamental basis" of both human rights and international humanitarian law. Case No. IT-95-17/1-T, para. 183 of the 10 December 1998 judgement.

[ii] One of the most important sources of international legal responsibilities is customary international law. International custom is described as "proof of a general practise acknowledged as law" in the Statute of the International Court of Justice.

[iii] The Council recognised that human rights law and international humanitarian law were complementary and mutually reinforcing, in keeping with contemporary international jurisprudence and the practise of relevant treaty authorities. (A/HRC/11/31, para. 5).

[iv] The fundamental reason for humanitarian law's continued application is that most of the rules aim to protect the vulnerable in armed conflicts, and that these principles can only be followed in practise if they apply to both sides.

[v] Stephanie Tremblay, *Child Recruitment and Use – Office of the Special Representative of the Secretary-General for Children and Armed Conflict*, https://childrenandarmedconflict.un.org/six-grave-violations/child-soldiers/ (last visited Mar 14, 2023).

[vi] Human Trafficking Search's database: http://humantraffickingsearch.org/

[vii]Prosecutor v. Tadic, Appeals Chamber, 2 October 1995, IT-94-1-AR 72 at para.117, (1996) 35 ILM 35.

[viii]*Prosecutor v. Kallon and Kamara*, Case No. SCSL-2004-15-AR72(E) at para. 17.

[ix]Case 11.137, *Abella v. Argentina*, Report No. 55/97, 18 November 1997, para. 153.

[x]*Abella v. Argentina* (n. 59 above) at para. 155.

[xi] Ibid.

[xii]Ibid., para. 156. Compare the long-running 'internal armed conflict' in Guatemala, Myrna Chang Case (Inter-American Court of Human Rights) (2003) Ser. C, No. 101, para. 134.8.

[xiii]*Ibid*, p. 505.

[xiv] In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights stated that "while full realisation of the relevant rights may be achieved gradually, steps toward that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned."

[xv] Where internal disturbances do not escalate to the point of armed conflict, emergency legislation is likely to be enacted.

[xvi] The amount of "kills" a fighter pilot had over enemy aircraft determined whether or not he was considered a "ace." It was not required, however, to establish that the enemy pilots were killed.

[xvii]CCPR/C/81/Add.7, 3 April 1995, para.26 (Guatemala).

[xviii] HRC General Comment No. 29 (see n. 41 above) at para. 14.

[xix]Prosecutor v. Tadic, Appeals Chamber, IT-94-1-AR 72, 2 October 1995 at para.107, (1996) 35 ILM 35.

[xx] Regulations Annexed to the Hague Convention IV 1907, Art. 23(b); Additional Protocol I 1977, Art.37 respectively.

[xxi] They may also be referred to as "criminals" by the state, which conjures up a similar image of unacceptably bad behavior.

[xxii] Compare the NATO action in Kosovo in 1999, which was almost entirely carried out by air strikes on what were ostensibly military targets in the Federal Republic of Yugoslavia.

[xxiii]*Prosecutor vs. Tadic*, 112 *ILR*, p.202

[xxiv]*Prosecutor vs. Tadic* (Jurisdiction) (Appeal Chamber), 105 *ILR*,p.488

[xxv] ECtHR, *McCann and Others v. United Kingdom*, (1995), http://www.leeds.ac.uk/law/hamlyn/gibralta.htm,

[xxvi] The relevance of humanitarian law in enabling the restoration to peace was recognised in nineteenth-century documents such as the 1874 Brussels Declaration.