



UNIVERSITY OF ZIMBABWE

FACULTY OF LAW

2022

Name: Lloyd Kabara

Registration No: R041705H

Programme: Master of Laws in International Law

Supervisors: Colonel B. Danana

Dissertation Topic

The scope and limitations of international law with regards to the protection of women and children in conflict situations.

Table of Contents

CHAPTER 1	1
1. INTRODUCTION	1
2. BACKGROUND TO THE STUDY	2
3. PROBLEM STATEMENT	4
4. RESEARCH QUESTIONS	4
5. METHODOLOGY	5
6. SIGNIFICANCE OF THE STUDY	5
7. CHAPTER SYNOPSIS	6
CHAPTER TWO.....	8
1. Definition of IHL	8
2. History and Development of IHL.....	9
3. Development of IHL from 1864.....	11
4. Principles of International Humanitarian Law	19
5. The Types of Armed Conflict.	22
6. IHL and IHRL.....	23
7. Women and Children Perspective	24
CHAPTER 3.....	26
1. Introduction.....	26
2. GBV in Conflict Zones: “A global Antisocial”	27
3. Protection of Women under International Law	32
CHAPTER 4.....	39
1. Introduction.....	39
2. The Existing Legal Framework on Child Protection.....	40
3. Human Rights Law.....	41
4. International Criminal Law.....	45
5. International Labour Law.....	46
6. Six Grave Violations of Children Rights during Armed Conflicts	46
7. Conclusion.....	58
CHAPTER 5.....	59
1. Introduction.....	59
2. Restating the purpose of the study.....	59
3. Summary of major arguments.....	59
4. Summary of main findings	60
5. Recommendations	60
6. Conclusion	61

CHAPTER 1

1. INTRODUCTION

The coming of the twentieth century brought with it unprecedented number of armed conflicts which also were of unparalleled intensity and magnitude. New war technologies were being introduced leading to more casualties. The attitude of belligerents was further mandated by the war intensity to use any means possible to eliminate the opposition population. While this had been the aim of war from time immemorial, (to harm and eliminate the enemies as much as possible), the ability to inflict harm on a very large proportion introduced new areas of concern to the Humanitarian space.

According to several reports, the number of civilian victims of armed conflicts, refugees, Internally Displaced Persons (I.D.Ps) and people in need of treatment has rapidly increased. Syria, Iraq, Somalia, Afghanistan, South Sudan, Nigeria, the Occupied Palestinian Territories and the Central African Republic (CAR), are some of the main contemporary humanitarian emergencies where civilians rights, as described in International Humanitarian Law (IHL), Human Rights Law and other corpus of law, have been violated.¹ The international community has formally acknowledged in Security Council Resolution 1325 that "civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements.

While International Humanitarian Law was already set in motion by the turn of the 21st century, the end of the Second World War exposed the need for a new set of rules to govern International law. This led to the establishment of International Human Rights Law (IHRL), with all major Treaties and Conventions on human rights coming into effect. More effort was put establishing peace. The idea of sustaining peace took over the global political space and the world for a moment felt that the illegality of war would establish eternal peace. However, more recorded wars were fought after WW2 the world over, than those recorded in the previous few centuries prior.

The need to introduce new rules again owing to the huge number of civilians' and combatants' deaths led to a parallel increase in the number of treaties Geneva Convention and the Additional Protocols of 1977, the law governing armed conflicts steadily developed. IHL had to catch up with the developed Human Rights Law. The relationship between IHL and international human rights law is a complicated one,

¹ Protecting children during armed conflicts; balancing between existing frameworks and non-compliance. the way forward: Freris Barolo Alexandros Iosif

explicated in a growing body of literature.² These two bodies of law have different goals, different philosophies, though with overlapping, spheres of application. While the aim of IHL has been described as to "preserve humanity in the face of the reality of war," Human Rights Law aims higher at effecting systems against repression.³ The idea that human rights law can inform the ongoing development of humanitarian law (and has done so) has been increasingly recognised.⁴

However, fully securing the rights of combatants and civilians in times of conflicts may never naively be thrust into the trust of International Human Rights law. While Human Rights Law may have developed to curter for injustice between sexes the world over, the global village should never be fooled to assume the same goes for war times.

The writer herein intends to highlight the hemisphere covered by IHRL thus far, and the space covered by IHL to protect women and children and the shortfalls of these internationally adopted norm to minimise and obliterate atrocities committed against women and children.

2. BACKGROUND TO THE STUDY

This paper presents the evolution and attitudes of the international community the last 150 years with regards to conduct governing war. However, even if regulatory principles for the protection of civilians do exist, several issues are causing considerable debate on how enhanced protection could be granted to civilians, and more precisely women and children, due to issues such as 'state sovereignty' and willingness of states to abide by IHL.

The international community faces growing demands to protect the most vulnerable form the effects of war and armed violence. Protecting women and children in armed conflict poses difficult issues for the 193 Member States of the United Nations. There is little opposition to the basic principle of protecting non-combatants. A large group of states wants to strengthen these commitments, making the world a safer place for people, not just sovereign states. But some Member States facing armed conflict often want complete freedom in their use of force. It is more important to some Member States to protect national sovereignty and freedom of action, to

² Louise Doswald-Beck & Sylvain Vitd, International Humanitarian Law and Human Rights Law, 293 INT'L REv. RED CROSS 94 (1993).

³United Nations Centre for Human Rights, Fact Sheet No. 13: International Humanitarian Law and Human Rights 17 (1991).

⁴Theodor Meron, The Humanization of Humanitarian Law, 94 AM. J. INT'L L. 239 (2000).

preserve their ability to use deadly violence against their enemies, regardless of the consequences for the innocent.⁵

Women are theoretically to benefit, just as men are supposed to, from the general protections offered by IHL, including those shielding the wounded, combatants, and persons detained in connection with an armed conflict. However, in addition to the general provisions of IHL, there are some rules that are gender-specific. According to the International Committee of the Red Cross (ICRC), of the five hundred and sixty articles comprising the law of Geneva, approximately fifty provisions from the Conventions and Protocols deal with non-discrimination or otherwise provide "special protection for women."⁶

Recruitment of children and using them as child soldiers, maiming and killing, indecent assault and sexual violence, abduction, attacks on learning institutions and hospitals and denial of humanitarian assistance among others are some of the most heinous of challenges children endure in war torn environments yet the international community's assistance seems out of reach in most cases.

The first call is in the identification of the legal frameworks available for protection women and children. Questions arising in all this are that, after all the development of IHL, (the Hague Conventions, Geneva Conventions with all Additional protocols) and the development of IHRL (The UN system and its major treaties on human rights, coupled with regional treaties and Conventions), are that, do all these mechanism sufficiently cover those who are vulnerable: the plight of women and children in armed conflicts.

It is trite and worth noting that the effects a conflict should not be limited to deaths only, but casualties in a wider sense extend to gross human rights violations, which transcend to loss of a community's wellbeing, place of abode, home/place, and sense of identity.

There is therefore need to interrogate all the relevant available laws that deal with all humanitarian issue, its functionality and most importantly, its efficiency. The later calling upon the writer to zero in on why the available legal framework has not yielded the intended results. Is it because the crafted edicts do not fit well in the specific jurisdictions they are meant to function, do they form round holes in square pegs or is it because of non-compliance on the part of warring parties?

⁵ ODUMUNC 2017 Issue Brief Security Council Protection of Women and Children in Conflict: Implementing UNSC 1325 by ArLynn Parker Old Dominion University Model United Nations.

⁶Women and War, Francoise Krill estimates rather that "about 40 provisions are of specific concern to women." Krill, at 359

It is against this background that inroads have to be made into the suggested topic to advocate for practical changes and to assist already existing voices to advocate for more protection of women and children in war situation.

3. PROBLEM STATEMENT

International law through International Human Rights Law has come comprehensive in addressing inequalities between man and women in scope, but has it done the same in times of conflict. Are women and children adequately catered for in war situations? Are they naturally more susceptible to war situation vulnerabilities than men? Has International Humanitarian Law done enough to protect them?

From the two World Wars to Biafra, from the decolonization decade to the end of the Cold War and from Yugoslavia to Rwanda, Kosovo, Somalia, Afghanistan, Iraq, Libya and, nowadays, Syria, Iraq, Gaza, Ukraine and Central-African Republic (CAR) the situation seems to be the same; complex emergencies with a terrific civilian death toll, limited access for humanitarian organizations and vulnerable populations being indiscriminately attacked (Kellett J. and Peters K., 2013)

Post war interventions have also come short in addressing atrocities committed during the war leading to perpetual stigmatization being attached to survivors of gruesome ordeals during the war.

4. RESEARCH QUESTIONS

Are women and children more vulnerable?

Does the law concern itself with women and children?

Is the law adequate and sufficient in protecting women and children?

Is it just a question of non-compliance by belligerents?

What should be done to foster compliance among Nations?

How best should the International Community approach IHL?

4.1 Main aim

To highlight limitations if any in International Humanitarian Law in protecting women and children in war situations and to make practical suggestions for the protection of women and children during armed conflicts.

4.2 Research objectives

Highlighting vulnerabilities face by women and children in war situations

An analysis of the protection accorded to women and children in both domestic and international war scenarios.

Having a look into the international legal framework on protection of women and children during armed conflict.

Comparison of different conflict setups (international and domestic) Israel/Palestine, Democratic Republic of Congo, Boko Haram and Somalia on compliance with existing IHL on the treatment of women and children.

Identification of gaps in the protection of women and children.

Drawing meaningful suppositions, conclusion and recommendations on the protection of women and children in war situations.

5. METHODOLOGY

This research will be based on the qualitative research methodology and will focus on primary and secondary sources and collection of data. It will involve critical analysis of existing literature for background knowledge. Major information sources will include International Conventions and treaties, Journals, texts, research papers and other articles from scholars. In addition, the research will utilise comparative analysis of other regional contemporary legal instruments and cases of wars fought in various geo-political settings of the globe.

6. SIGNIFICANCE OF THE STUDY

There has been a growing insecurity grounded on the continued threats on vulnerable populations in war scenarios. This state of affairs has not gone unnoticed among scholars and players in the humanitarian space. Consequently, a critique of the legal framework that regulates war and casualties of war has to be put under the microscope with the aim of improving what is currently obtaining on the humanitarian front to foster the protection of vulnerable groups and for this study precisely women and children.

While the law on the conduct of belligerents is open for all to see, unfortunately, and increasingly, the battlefield continues to be inundated by insurgents using unlawful means of conducting warfare to achieve victory by whatever means it takes. The response from the international community on this has not been either timely or sufficient in intervention. Post war interventions have also come short in addressing atrocities committed during the war

The study should benefit in aiding the already loud voices on this topic to improve the legal framework. The study could also be a reference point for advocacy on women and children's rights during and post war periods. Highlighting gaps in the current International Human Right Law and International Humanitarian Law assist policy makers, Non-Governmental Organisations, International players, scholars and

students in finding all the legal tools protecting women and children during armed conflicts

7. CHAPTER SYNOPSIS

This research will be presented in the following five chapters.

CHAPTER ONE: Introduction

This chapter sets the tone for this research. It provides the compass upon which the research rides upon to give answer to every research question.

CHAPTER TWO: An introduction to protection under international Humanitarian Law

The Definition of Armed Conflict.

History of civilian protection in armed conflicts.

Development of IHL

Provisions of IHL and IHRL with regards to women and Child protection

Principles of IHL

CHAPTER THREE: Scope of International Law on Women Protection

This chapter will look into:

General protection of women

Violations against women

Protection of women under IHL

Protection of women under IHRL

CHAPTER FOUR: Scope of International Law on the Protection of Children

The Definition of Children in International Law.

The Development of Protecting the Rights of Child.

Children and Their Rights in International Law.

Armed Conflict and the Protection of Children's Rights

Six grave violations of children rights

Case studies of children's rights violations in various conflicts

CHAPTER FIVE: Summary of Findings, Conclusion and Recommendations

The main thrust of this chapter is to discuss the balance between lack of adequate legal cover for vulnerable groups and non-compliance by belligerents. It will zero in the main problem in between the above mentioned two. The chapter will also

discuss any other cause abuse of rights of vulnerable groups (specifically women and children).

A wider analysis in this chapter will also introduce findings of the study, recommendations and conclude the study with workable solutions on the protection of women and children.

CHAPTER TWO

An introduction to protection under international Humanitarian Law

1. Definition of IHL

International Humanitarian Law (IHL), otherwise known as the laws of war and the law of armed conflict, “is the legal framework applicable to situations of armed conflict and occupation. As a set of rules and principles it aims, for humanitarian reasons, to limit the effects of armed conflict.”⁷ It has been developed with a goal of protecting civilians from those effects, and violations of rules which are considered to be war crimes.

The IHL has two fundamental principles:

1. The protection of persons who are not, or are no longer, participating in hostilities; and
2. The right of parties to an armed conflict to choose methods and means of warfare is not unlimited.⁸

International Humanitarian Law is a collective foundation of international conventions and agreements intended to solve societal problems, due to both domestic and international conflicts. The laws limit the use and the means of military actions, and protect the people from harm, by creating an international foundation protecting civilians, hospitals, doctors and religious staff from being taken as prisoners for ransom, or being otherwise harmed or killed.⁹

The International Committee of the Red Cross defines, IHL as the branch of international law limiting the use of violence in armed conflicts by:¹⁰

a) sparing those who do not (for example, civilians) or

no longer (for example, those who have surrendered, prisoners of war or can no longer participate such as the wounded and sick) or directly participate in hostilities;¹¹

b) restricting it to the amount necessary to achieve the aim of the conflict, which independently of the causes fought for can only be to weaken the military potential of the enemy.

It is from this definition that the basic principles of IHL may already be drawn, namely:

⁷“International Humanitarian Law,” International Justice Resource Center, www.ijrcenter.org

⁸ Ibid

⁹DR. Mohammad Tarawneh, et.al, International Humanitarian Law, p. 8. 2005.

¹⁰ HOW DOES LAW PROTECT IN WAR? Volume 1 Outline of International Humanitarian Law p1

¹¹ If International Humanitarian Law wants to protect anyone, it cannot consider merely any causal contribution to the war effort as participation, but only the contribution implementing the final element in the causality chain, i.e., the application of military violence.

- The distinction between civilians and combatants,
- The prohibition to attack those out of action due to injury or damage,
- The prohibition to inflict unnecessary suffering,
- The principle of necessity, and
- The principle of proportionality.

1.1 Limitations to the definition

This definition nevertheless also reveals the inherent limits of IHL:

- It does not prohibit the use of violence;
- It cannot protect all those affected by an armed conflict;
- It makes no distinction based on the purpose of the conflict;
- It does not bar a party from overcoming the enemy;
- It presupposes that the parties to an armed conflict have rational aims and that those aims as such do not contradict IHL.¹²

2. History and Development of IHL

International humanitarian law is founded on the principles of humanity, impartiality and neutrality. Its roots extend to such historic concepts of justice as Babylon's Hammurabic Code, the Code of Justinian from the Byzantine Empire and the Lieber Code used during the United States Civil War.¹³

The development of modern international humanitarian law is credited to the efforts of 19th century Swiss businessman Henry Dunant. In 1859, Dunant witnessed the aftermath of a bloody battle between French and Austrian armies in Solferino, Italy. The departing armies left a battlefield littered with wounded and dying men. Despite Dunant's valiant efforts to mobilize aid for the soldiers, thousands died.

In "A Memory of Solferino," his book about the experience, Dunant proposed that trained volunteer relief groups be granted protection during war in order to care for the wounded. A group known as the Committee of Five, which later became the International Committee of the Red Cross, formed in Geneva in 1863 to act on Dunant's suggestion. Dunant also suggested a formal agreement between nations "for the relief of the wounded." Several months later, diplomats from 16 nations, assisted by this committee, as well as representatives of military medical services and humanitarian societies, negotiated a convention (treaty) containing 10 articles specifying that:

- Ambulances, military hospitals, and the personnel serving with them are to be recognized as neutral and protected during conflict;
- Citizens who assist the wounded are to be protected;

¹²How does law protect in war? Volume 1 Outline of International Humanitarian Law p2

¹³ Summary of the Geneva Conventions of 1949 and Their Additional Protocols. International Humanitarian Law, April 2011

- Wounded or sick combatants are to be collected and cared for by either side in a conflict; and
- The mark of a red cross on a white background (the opposite of the Swiss flag in honour of the origin of this initiative) will serve as a protective emblem to identify medical personnel, equipment, and facilities.

These formed the basis of the Geneva conventions and what we today know modern day IHL. The main function of the Geneva Conventions as read with their Additional Protocols which forms the core of Public International Law and narrowed down the specifics of International Humanitarian Law of Armed Conflicts. The function of this legal framework whose purpose is for the provision of minimum protections, fundamental guarantees of respect and standards of humane treatment to persons who would have become victims during armed conflicts. The series of treaties which form the Geneva Conventions The Geneva Conventions include issues on the treatment of civilians, prisoners of war (POWs) and soldiers who are otherwise rendered *hors de combat* (outside the fight), or incapable of fighting.¹⁴

2.1 Where is International Humanitarian Law to be found?

International Humanitarian Law as is, is mainly confined in the four Geneva Conventions of 1949. Almost all States of the global world agreed to be bound by these instruments. These four Agreements having been established and complemented by two additional international statutes, the two 1977 additional Protocols which relate to the protection of armed conflicts victims.

Complementary agreements which also forbid the use of particular weapons and certain military operations and also protect certain groups of people and goods include:

- (1) First Hague Declaration of 1899. This Declaration of July 29 1899 prohibited the employment of projectiles, by the Contracting Parties, where object is the diffusion of asphyxiating and deleterious gases.
- (2) Second Hague Convention of 1907 Article 23(a) of the Regulations respecting the laws and customs of war on land annexed to the Hague Convention IV of October 18, 1907 stated that it is especially forbidden.... to employ poison or poisoned weapons. However, the terms poison or poisoned weapons were not defined.
- (3) The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols;
- (4) The 1972 Biological Weapons Convention;
- (5) The 1980 Conventional Weapons Convention and its five protocols;

¹⁴A Critical Analysis On International Humanitarian Law And Its Implementation (Case Study Kenya): Winnierohi Nekesa Wafula P. 16

- (6) The 1993 Chemical Weapons Convention;
- (7) The 1997 Ottawa Convention on Anti-Personnel Mines and
- (8) The 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.¹⁵

The bulk of these provisions as they address and remedy war scenarios thus became provisions of customary International Humanitarian Law. This is so because of their universal application and that they are thought to be the general rules by which bind all States.

3. Development of IHL from 1864

The adoption of the 1864 Geneva Convention has led to a steady but certain development of IHL. Cognisance should be made of the pillars which led to the development of IHL. The expansion of IHL is mainly premised on the following:

- a) The ever-changing scope of the classifications of war victims requiring the protection of humanitarian law (wounded in battle, the sick and shipwrecked, civilian populations, prisoners of war civilians in occupied territories), and also the extension of the circumstances in which victims are in need of protection i.e. international and non- international armed conflicts;
- b) Modern realities of war which lead to the updating of treaties on more regular basis to curter for recent conflicts. IHL has been blamed for falling shot and is always one war behind current war perspectives. An example may be sighted in that in 1906, 1929, 1949, and 1977 amendments were made to the rules protecting the wounded which were first adopted in 1864.
- c) Two separate legal currents have, up until 1977, contributed to this evolution:
 - The Geneva Law, mainly concerned with the protection of the victims of armed conflicts i.e. the non-combatants and those who no longer take part in the hostilities; and
 - The Hague Law, whose provisions relate to limitations and prohibitions of specific means and methods of warfare.¹⁶

In 1907, a second Peace Conference was convened in The Hague. On this occasion, the Conventions of 1899 were revised and some new rules were introduced. Among the additions were a definition of combatants, rules on naval warfare, rules on the rights and duties of neutral powers, rules on military occupation, and rules regarding Prisoners of War (POW).

¹⁵ How Does Law Protect in War? Volume I Outline of International Humanitarian Law Third Edition; Marco Sass, Antoine A. Bouvier, Anne Quintin

¹⁶ A Critical analysis on international humanitarian law and its implementation (case study Kenya): Winnierohi Nekesa Wafula p.24

In 1925, due to the suffering and gross experiences endured during the First World War (1914-1918), the use of gas was prohibited and a protocol to that effect adopted. This Protocol belongs to the legal current of The Hague Law with one also taking a look at its content although the law was adopted in Geneva,

In 1929, the Swiss Confederation convened a diplomatic Conference in Geneva. The key take aways of the Conference were:

- The revision of the of the 1864 Convention for the second time (after 1906). The new provisions included among others that, first official recognition of the emblem of the Red Crescent, albeit that the very emblem had earlier been used since 1876. it was only in 1929 that the symbol was made official;
- another landmark accomplishment of this 1929 Conference was the adoption of the “Convention comparative to the treatment of Prisoners of War” (this also was a result of the effects of the First World War). Partly scrutinised during the Peace Conference of 1899 and 1907, this pertinent issue was not deeply put into consideration before 1929.

In 1949, with the ending of the Second World War, the four current Geneva Conventions were adopted. The First (protection of sick and wounded), Second (protection of shipwrecked), and Third Conventions (prisoners of war), are mainly revisited variants of former Conventions. The Fourth Convention, founding the protection for the civilian population, is in total, a new amendment and constitutes the highest success attributed to the 1949 Conference. The other pivotal accomplishment of the 1949 Diplomatic conference was common Article 3’s adoption to all the four Conventions, the first international provision applicable in situations of no international armed conflicts.¹⁷

In 1977, with four sessions of Diplomatic Conferences running, two additional Protocols to the Geneva Conventions of 1949 were adopted. The First Protocol is for the protection of victims of international armed conflicts, while the second Protocol is for the protection of victims of non-international armed conflicts. The Second Protocol can consequently be regarded as an expansion of Article 3 common to the four Geneva Conventions.

In 1980, a vital convention was also adopted under the auspices of the UN, i.e. the “Convention on prohibition or restrictions on the use of conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.” This treaty prohibits the use of mines, booby traps, incendiary weapons, and no detectable fragments.

¹⁷ International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*(Second Geneva Convention), 12 August 1949, 75 UNTS 85, available at:<http://www.unhcr.org/refworld/docid/3ae6b37927.html>

In 1993, an all-encompassing Convention prohibiting the development, production, stockpiling, and use of chemical weapons was adopted. This statute complements the basic prohibition contained in the 1925 Geneva Protocol.

In 1995, a Protocol, an attachment to the 1980 Convention, was adopted. This new appendage prohibited the use of laser weapons designed to cause permanent blindness.

In 1997, the Ottawa Convention prohibiting the use, stockpiling, production, and transfer of antipersonnel mines was signed.

In 1998, the Rome Statute on the International Criminal Court (ICC) was adopted. This achievement was the zenith of years of effort and presented the resolve of the global world in ensuring that grave perpetrators of war crimes would not go unpunished. The ICC thus has jurisdiction over serious international crimes (Genocide, Crimes against Humanity, war crimes, and Aggression) irrespective of the geographical location the crimes are committed.

In 1999, the adoption of a new Protocol to the 1954 Convention on cultural property occurred. This Protocol II enabled States party to the Convention to supplement and reinforce the protection systems established in 1954. The Protocol further clarified the notions of protection and respect of cultural property. It laid down different insurances in attacks and against the effects of attacks and established a system of enhanced protection for property which is of great importance to humanity.

In 2000, the optional protocol to the 1989 Convention on the rights of the child was adopted. The protocol increases the minimum age for compulsory recruitment from 15 year to 18 years and also calls on States to raise the voluntary recruitment above the age of 15. It further stipulates that armed groups shall not employ children aged 18 and below under any circumstances and calls on Member States to criminalise such practices.

In 2003, a treaty to aid reduction of human suffering as a result of explosive remnants of war was adopted. This also brought rapid assistance to affected communities. These explosive remnants of war amount to unexploded weapons e.g. artillery shells, mortars, grenades, bombs, and rockets left behind after an armed conflict.¹⁸

3.1 Establishment of IHL by Way of Specific Treaties

IHL has existed in two main types of laws, i.e.

- a) Geneva law
- b) Hague law

¹⁸ Human Rights Education Association, International Humanitarian Law, Available at http://www.hrea.org/index.php?doc_id=415

3.1.1 Hague law

It is concerned with the conduct of hostilities and it is reinforced by a number of other Declarations and Treaties which followed the first Hague Peace Conference in 1899. Noteworthy among the principles of The Hague law is that the right of belligerents to adopt means of injuring the enemy is not unlimited.¹⁹

There is prohibition of use of weapons calculated to cause unnecessary suffering or superfluous injury. The principle of distinction between civilians and military targets also has its roots in this branch of law.²⁰

3.1.2 Geneva Law

The four Geneva Conventions of 1949 are the main elements of the Geneva law. These four Conventions are treaties created to protect civilians, the wounded, shipwrecked soldiers and prisoners of war. They were signed into international law in 1949 in Geneva, Switzerland and they form the backbone of IHL.

The Geneva Conventions relate to:

- (1) the treatment of prisoners of war;
- (2) the alleviation of the suffering of wounded and sick combatants in the field;
- (3) the alleviation of the suffering of the wounded, sick, and shipwrecked members of the armed forces at sea; and
- (4) the protection of civilian persons during war.

These treaties which are the basis of IHL may be summed up as follows:

3.1.3 First Geneva Convention/Convention for the Amelioration of the Condition of the Wounded in Armies in the Field²¹

The first Geneva Convention is also known as the Geneva Convention of 1864 and it was written to protect the sick and wounded on the land in the time of war. It was signed into law on August 22, 1864 following the Geneva Conference of 1863 which was convened for the purpose of adopting a convention for the amelioration of the condition of individuals wounded in war.

The three main principles of the First Geneva Convention were to:

¹⁹ Kate Mackintosh, Humanitarian Policy Group Report 5, The Principles of Humanitarian Action in International Humanitarian Law Study 4 in: The Politics of Principle: the principles of humanitarian action in practice, Overseas Development Institute (March 2002) page 4. Available at <http://www.odi.org.uk/resources/docs/305.pdf>

²⁰Article 25 of the Hague Regulations prohibits the attack or bombardment, by whatever means of towns, villages, dwellings or buildings which are undefended.

²¹International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, available at: <http://www.unhcr.org/refworld/docid/3ae6b3694.html>

- (1) Provide relief to wounded soldiers without distinction to nationality;
- (2) Ensure neutrality of medical care, medical establishment, and medical units for fallen wounded soldiers; and
- (3) Recognize the emblem of the International Red Cross as representing a neutral entity.

3.1.4 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea²²

The Second Geneva Convention, for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea was first adopted in 1906, after the Russo-Japanese war, but was significantly updated in 1929 and again in 1949. It adapts the main protections of the First Geneva Convention to combat at sea.

3.1.5 Geneva Convention (III) (Relative to the Treatment of Prisoners of War)²³

The third Geneva Convention applies to prisoners of war. The Convention establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities. They are in the power of the enemy State, not of the individuals or troops who have captured them. Article 4 thereof defines prisoners of war to include:

- i. Members of the armed forces of a Party to the conflict and members of militias of such armed forces;
- ii. Members of other militias and members of other volunteer corps, including those of organized resistance movements, provided that they fulfil all of the following conditions:
 - a) that of being commanded by a person responsible for his subordinates;
 - b) that of having a fixed distinctive sign recognizable at a distance (there are limited exceptions to this among countries who observe the 1977 Protocol);
 - c) that of carrying arms openly;
 - d) That of conducting their operations in accordance with the laws and customs of war.

²²International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (Second Geneva Convention), 12 August 1949, 75 UNTS 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b37927.html>

²³ International Committee of the Red Cross, 75 UNTS 135/ [1958] ATS No 21

- iii. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power;
- iv. Civilians who have non-combat support roles with the military and who carry a valid identity card issued by the military they support;
- v. Merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law;
- vi. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war;
- vii. Makes explicit that Article 33 takes precedence for the treatment of medical personnel of the enemy and chaplains of the enemy.

Article 5 provides that prisoners of war (as defined in article 4) are protected from the time of their capture until their final repatriation. It also specifies that when there is any doubt whether a combatant belongs to the categories in article 4, they should be treated as such until their status has been determined by a competent tribunal.

According to the convention prisoners of war must be:²⁴

- i. Treated humanely with respect for their persons and their honour;
- ii. Enabled to inform their next of kin and the Central Prisoners of War Agency (ICRC, the International Red Cross) of their capture;
- iii. Allowed to correspond regularly with relatives and to receive relief parcels;
- iv. Allowed to keep their clothes, feeding utensils and personal effects;
- v. Supplied with adequate food and clothing;
- vi. Provided with quarters not inferior to those of their captor's troops;
- vii. Given the medical care their state of health demands
- viii. Paid for any work they do;
- ix. Repatriated if certified seriously ill or wounded, (but they must not resume active military duties afterwards); and
- x. Quickly released and repatriated when hostilities cease.

²⁴ Articles 13-16

The convention further provides that prisoners of war must not be²⁵:

- i. Compelled to give any information other than their name, age, rank and service number;
- ii. Deprived of money or valuables without a receipt (and these must be returned at the time of release);
- iii. Given individual privileges other than for reasons of health, sex, age, military rank or professional qualifications;
- iv. Held in close confinement except for breaches of the law, although their liberty can be restricted for security reasons; or
- v. Compelled to do military work, nor work which is dangerous, unhealthy or degrading

3.1.6 The fourth Geneva Convention (Relative to the Protection of Civilian Persons in Time of War)

The fourth Geneva Convention ("Relative to the Protection of Civilian Persons in Time of War") covers all individuals "who do not belong to the armed forces, take no part in the hostilities and find themselves in the hands of the Enemy or an Occupying Power".

According to the convention protected civilians must be:

- i. Treated humanely at all times and protected against acts or threats of violence, insults and public curiosity;
- ii. Entitled to respect for their honour, family rights, religious convictions and practices, and their manners and customs;
- iii. Specially protected, for example in safety zones, if wounded, sick, old, children under 15, expectant mothers or mothers of children under 7;
- iv. Enabled to exchange family news of a personal kind. Helped to secure news of family members dispersed by the conflict; and
- v. Allowed to practice their religion with ministers of their own faith. Civilians who are interned have the same rights as prisoners of war. They may also ask to have their children interned with them, and wherever possible families should be housed together and provided with the facilities to continue normal family life. Wounded or sick civilians, civilian hospitals and staff, and hospital transport by land, sea or air must be specially respected and may be placed under protection of the red cross/crescent emblem.

Further, the convention highlights that protected civilians must not be:

²⁵Articles 49-57

- i. Discriminated against because of race, religion or political opinion;
- ii. Forced to give information;
- iii. Used to shield military operations or make an area immune from military operations; or
- iv. Punished for an offence he or she has not personally committed. - Women must not be indecently assaulted, raped, or forced into prostitution.

3.1.7 The Protocols Additional to the Geneva Conventions of 1949

Two supplementary Protocols to the Geneva Conventions were adopted by an international conference the effect which was to give greater protection to victims of both international and internal armed conflicts in 1977.

3.1.8 Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Protocol I increases the protection for the civilian population as well as military and civilian medical workers in international armed conflicts.

The Protocol's specific provisions comprise of:

Arts. 15, 79, Arts. 76-77 provides for special protections for women, children and civilian medical personnel, and journalists.

Arts. 17, 81 Certifies ICRC, National Societies or other impartial humanitarian organizations approved by warring parties to provide assistance.

Art. 35 forbids the use of weapons that "cause superfluous injury or unnecessary suffering," and also the means of warfare that "cause widespread, long term, and severe damage to the natural environment".

Arts. 43-44 elucidates on the military status of a guerrilla forces by including provisions allowing combatant and prisoner of war status to members of dissident forces when under the command of a central authority. Such combatants are not allowed conceal their allegiance; they must be identifiable as combatants while preparing for or during an attack.

3.1.9 Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Protocol II expands on protections for fatalities caught up in high-intensity internal battles such as civil wars. It does not apply internal instabilities such as riots, demonstrations and isolated acts of violence. Protocol II further enlarges and complements the non-international protections as enunciated in common *Article 3*.

Its specific provisions include:

Art. 4 which protects persons not taking direct part or have ceased taking part in hostilities as entitled to respect.

It further prohibits violence to the life, health and physical or mental well-being of people. In particular, it forbids acts such as murder and cruel treatment, terrorism, hostage taking, slavery, and outrages on personal dignity, collective punishment and pillage. Such forbidden acts are regarded as infringements to fundamental guarantees and rights of all persons.

Art. 4 stipulates that children to be evacuated to safe zones where possible and reunion with their families.

Art. 5 safeguard the dignity of individuals detained during internal conflicts. The Article guarantees similar humane treatment as specified in the Geneva Conventions.

Art. 7 and 9 reinforces the protection of the wounded, sick and shipwrecked as well as medical and religious personnel.

Arts. 10-11, Arts. 13-14, Art. 16 prohibits any attacks on civilians and on “objects indispensable to civilian survival” such as crops, irrigation systems or drinking water sources, cultural objects, and places of worship.

3.1.10 Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

A third Additional Protocol to the Geneva Conventions was adopted in December 2005, which provides for yet another distinctive emblem: the red crystal.

This red crystal would be an optional emblem, with equal in status to the Red Cross and Red Crescent. The red crystal is to be used in atmospheres where the crescent or the cross could seem to be having religious, cultural or political implications.

4. Principles of International Humanitarian Law

The fundamental principles of IHL are the ‘cardinal rules constituting the fabric of humanitarian law.’ They are intended to fill the gaps in International Humanitarian Law. Every rule of International Humanitarian Law is construed and applied in light of them.

These include:-

4.1 The principle of proportionality

This principle states that, where there is a clear military target, it is forbidden to attack if the risk of civilians, or civilian property, being damaged is greater than the expected military advantage. Initiating an attack which may be anticipated to cause related loss of civilian life, injury to civilians or damage to civilian objects that would be unwarranted in relation to the tangible and direct expected benefit is prohibited.

The principle is meant to strike a balance between the requirement of necessity and the requirement of humanity and the rule is only important if the weaponry used is lawful at the time an attack is launched and if the target chosen for attack is a military objective within the meaning of IHL.

4.2 The Principle of Military Necessity

This principle justifies the application of force not prohibited by International Law, to the magnitude necessary, for the realisation of the goals of an armed conflict.

As defined by the American Military Tribunal in Nuremberg in the '*Hostage Case*,' military necessity: permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel, the complete submission of the enemy with the least possible expenditure of time, life, and money.²⁶

While *Article 14* of the 1863 Lieber Code provided that: Military necessity, as understood in modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war

Article 52(2) of the 1977 Additional Protocol I provides the requirements which must be fulfilled before military necessity is invoked as follows: In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

The functionality of military necessity is administered with certain limitations which are:

- a) an attack or action must be intended to help in the military defeat of the enemy;
- b) it must be an attack on a military objective; and
- c) the harm caused to civilians or civilian property must be proportional and not excessive in relation to the tangible and direct military advantage projected.

4.3 The principle of distinction between civilians and combatants

²⁶ USA v. List et al., 11 NMT 1230, 1253 (American Military Tribunals, Nuremberg, 1948). In this case, the defendants were German generals leading the troops in south-eastern Europe during the Balkans Campaign, were charged as those responsible for the hostage-taking of civilians and wanton shootings of these hostages and of partisans that the German troops committed there in the years from 1941 onwards.

According to the principle of distinction between civilians and combatants, belligerents at all times must differentiate and distinguish between civilians and combatants, and attacks must only and only be directed only against the later.

Belligerents should differentiate themselves from civilians by use of distinctive uniforms and/or other forms of identification, also parties to a conflict must at all times differentiate between civilian objects and military objectives, and attacks may be directed only against military objectives.

Respect for this very principle is what makes it possible for humanitarian law to achieve its aim in protecting the civilian population from the harmful effects of armed conflicts.

In the *Kassem* case,²⁷ Israel's Military Court at Ramallah recognised the immunity of civilians from direct attack as one of the fundamental rules of International Humanitarian Law.

4.4 The Humanity principle

It is prohibited to inflict suffering, harm, injury or destruction which is not necessary for the accomplishment of legitimate military purposes.

As will more fully appear in the Martens Clause established in the preamble to the 1899 Hague Convention (II) with respect to the laws and customs of war on land,

“Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.”

This principle also is implied by the principle of necessity, and endorses the basic immunity of civilian populations and civilians from becoming objects of attack in conflicts. This immunity to civilian population does not prevent inevitable eventual civilian casualties that may occur in the course of attacks against legitimate targets which are not excessive in relation to the concrete and direct military advantage projected.

4.5 The principle of chivalry

The principle of chivalry can be defined as the call to a certain amount of fairness and mutual respect between the opposing forces.

²⁷Israeli Military Court at Ramallah, Decision in *Prosecutor v. Omar Mahmud Kassem and Others*; where the defendant claimed he did not carry weapons

It is trite that armed conflicts are conducted not in the politest of engagements, however, chivalry requires conduct of armed conflict in accordance with certain degree of formalities and courtesies.

The chivalry principle reflects well in specific prohibitions such as those against dishonourable or treacherous conduct and against misuse of enemy flags or flags of truce. This concept principle makes armed conflict slightly less savage and more civilised for the individual combatants.

Functional requirements of chivalry include courage, trustworthiness, mercy, courtesy and loyalty, all which are mandatory both by cultural training for military academies, honour codes and by legislative or regulatory prohibitions against violations.

4.6 Use of weapons that cause unnecessary suffering or superfluous injury

Parties to an armed conflict shall confine their operations to subduing the military objectives of the enemy and shall ensure that civilians and civilian objects are respected and protected. This notion is embedded in various international instruments. The St. Petersburg Declaration preamble, on Effect of Prohibiting the Use of certain Projectiles in Wartime (29 November/ 11 December 1868), and the Hague Regulations, Article 23(e).

4.7 Use of indiscriminate weapons

This principle was introduced by the International Court, it was opined as follows:

“States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.”

International Humanitarian Law as a Part of International Law with Special Reference to Its Implementation in the West and South Asian Region Manish Kumar Yadav

5. The Types of Armed Conflict.

IHL is differentiated into two types of armed conflicts which are:

- a) international armed conflicts,
- b) non-international armed conflicts.

5.1 International Armed Conflicts (IAC)

Common article 2 of the Geneva Conventions of 1949, provides that

‘all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total

occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance’.

International armed conflict is therefore defined as a conflict between the armed forces of two different states.

5.2 Non-International Armed Conflicts (NIAC)

A Non-International Armed Conflicts (NIAC) is defined as an armed conflict between nongovernmental armed groups, whatever the number of the individual groups involved, either within a single territory or across several borders. This also includes governmental forces fighting against nongovernmental forces. Common Article 3 applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties".

6. IHL and IHRL

Throughout a considerable part of its history, the International Committee of the Red Cross (ICRC) has customarily refrained from invoking international human rights law, for reason of this law's alleged politicisation. However, the changing character of armed conflicts and other situations of violence where the ICRC is currently operating have prompted it to set a framework for making some limited use of selected and applicable human rights, for the purpose of reinforcing the protection and assistance it provides.²⁸

6.1 The Right to life

International human rights law remains in force during all armed conflicts along with International Humanitarian Law (IHL). In so far as armed conflicts are concerned, it is however generally expected that human rights law be construed in ways fully consistent with IHL. This is particularly so with the case of the right to life.

The European Convention specifies as follows,

Deprivation of life shall not be regarded as inflicted in contravention of the Article when it results from the use of force which is no more than absolutely necessary:

- i. in defence of any person from unlawful violence;
- ii. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- iii. In action lawfully taken for the purpose of quelling a riot or insurrection.

The right to life is non-derogable under whatsoever considerations, but the European Convention highlights that, an exception for 'deaths resulting from lawful acts of war'.

²⁸ The International Committee of the Red Cross and International Human Rights Law Sergey Sayapin*

The right to life, in itself entails that measure be taken to meet an adequate standard of living and to freedom from cruel, inhuman or degrading treatment or punishment. An individual's right to life to require that steps be taken to preserve life where it may be endangered, and a reciprocal duty on others to take such steps. Also implicit in assuring the right to life is the duty not to withhold or frustrate the provision of life-saving assistance.

Further to this, IHL has generated specific provisions for assistance to civilian populations during conflict. Such provisions obligate states and other parties to aid in the provision of humanitarian and impartial assistance when the civilian population lacks essential supplies.²⁹

7. Women and Children Perspective

IHL emphasises, in various provisions of the Geneva Conventions the concept of formal equality and non-discrimination. Protections should be provided "without any adverse distinction founded on sex." The reality of women's and men's lived experiences of conflict has highlighted some of the gender limitations of IHL.

A study of the 42 provisions relating to women within the Geneva Conventions and the Additional Protocols found that almost half address women who are expectant or nursing mothers. Others have argued that the issue of sexual violence against women in conflict has not yet received the attention it deserves. Soft-law instruments have been relied on to supplement the protection of women in armed conflict:

- UN Security Council Resolutions 1888 and 1889 (2009), which aim to enhance the protection of women and children against sexual violations in armed conflict; and
- Resolution 1325, which aims to improve the participation of women in post-conflict peace building.

Read together with other legal mechanisms, in particular the UN Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) can enhance interpretation and implementation of IHL.

In addition, International criminal tribunals (like the International Criminal Tribunals for the former Yugoslavia and Rwanda) and mixed tribunals (like the Special Court for Sierra Leone) have contributed to expanding the scope of definitions of sexual violence and rape in conflict. They have effectively prosecuted sexual and gender based crimes committed during armed conflict. There is now well-established

²⁹ Articles 3 and 5 of the *Universal Declaration of Human Rights* 1948; Articles 6 and 7 of the *International Covenant on Civil and Political Rights* 1966; common Article 3 of the four *Geneva Conventions* of 1949; Articles 23, 55 and 59 of the *Fourth Geneva Convention*; Articles 69 to 71 of *Additional Protocol I* of 1977

jurisprudence on gender-based crimes. Nonetheless, there remains an urgent need to further develop constructions of gender within International Humanitarian Law.

CHAPTER 3

Scope of International Law on Women Protection

1. Introduction

*“If women in real life are not always protected as they should be, it is not due to the lack of a legal basisThe international community will not succeed in remedying this situation merely by adopting new rules. Most of all, it must see that the rules already in force are respected.”*³⁰

“[i]t is apparent from a comparison between the reality of armed conflict for women... and the existing relevant norms of international law, that the latter are inadequate.”³¹

Violations and atrocities in war scenarios from a modern-day legal perspective, call for a humanitarian response but from another take these abuses have to be seen as mass violations of human rights. They have an effect on all members of the society, irrespective of gender, age, race, nationality, religion or ethnic origin. Violations however cascade more keenly to women, leaving them particularly vulnerable to all forms of such defilements. The foremost objective of this research is to answer the question on whether the legal framework and the actual position of women in the armed conflicts is sufficient an environment to deal with women or that room for a better approach should be advocated for. In a bid to make a thorough inquest into this objective, the most prevalent of violation cases of women's rights during present-day hostilities need to be examined. Further to this, a detailed analysis of international legislation which has a bearing on the protection of women in armed conflicts is required, analysis to which possible evolution of such legal framework is sought.

The world at large has formally and severally recognised in Security Council Resolution 1325 which specifies that,

*“civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements ...”*³²

The UN Committee, in its view on the Elimination of All Forms of Discrimination against Women (CEDAW) states as follows, "gender-based violence ... is ... violence

³⁰ Frangoise Krill, *The Protection of Women in International Humanitarian Law*, 249 INT'L REV. RED CROSS 337, 359 (1985).

³¹ Judith Gardam & Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1, 56 (2000).

³² SC Res. 1325, pmbL., U.N. Doc. S/RES/1325 (Oct. 31, 2000), reprinted in 40 I.L.M. 500 (2001).

that is directed against a woman because she is a woman or that affects women disproportionately."³³

2. GBV in Conflict Zones: “A global Antisocial”

In the Democratic Republic of Congo, for instance, a country that has been named ‘the world capital of rape’³⁴ and the worst place on earth to be a woman, “the fighting has been increasingly associated with high rates of sexual violence that, at times, have been referred to as a ‘plague’ or of epidemic proportions” (Addario and Egan, 2008). Some reports mention around 400,000 women victims of rape during the conflict presently living in this country; another study found that 1,152 women are raped every day a rate equal to 48 per hour, much higher than the previous estimate of 16,000 rapes reported in one year by the United Nations.³⁵

A significant distinguishing of sexual violence is its persistence and ubiquitous existence the world over and through history. The mass rapes in Bosnia-Herzegovina between 1991 and 1995 were a dramatic recall of a historically rooted phenomenon, which also involved regular armies during the whole century.³⁶

Occasions where sexual violence has been widely reported include the Armenian genocide by Ottoman Turkey in 1915, the Japanese attack on the Chinese in Nanking during the II World War, the Chinese civil war, the partition of India and creation of Pakistan and the liberation war in Bangladesh in 1971. But also during and after the Cold War, in the Crimean war, the Vietnam war and Cambodia, the conflicts in Latin America and Haiti, and in many countries in Africa (Angola, Djibouti, Liberia, Mozambique, Ruanda, Sierra Leone, Somalia, Sudan or the Democratic Republic of Congo) and Asia (East Timor, Sri Lanka, Burma, Kashmir (India) or Papua New Guinea); and also in wars and conflicts in central Europe and Eurasia, including Afghanistan, Turkey, Kuwait, Georgia, Bosnia and Kosovo.³⁷ No part of the global world is spared on this list.

2.1 Various Kinds of violations

The forms of gender-based abuse of women and girls in armed conflict that are most frequently documented in literature include:³⁸

³³ U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation 19*,

³⁴ (Palermo and Pateman, 2011: 925)

³⁵ <http://www.guardian.co.uk/world/2011/may/12/48-women-raped-hour-congo>

³⁶ Battistelli, 1999; Seifert, 1994; Stiglmeier, 1994; Hayden, 2000; Beverly, 1996; Sharratt and Kaschak, 1999.

³⁷ Leatherman, 2011: 2; Bastick, Grimm and Kunz, 2007

³⁸ Sources from which this list has been compiled include, JUDITH G. GARDAM & MICHELLE J. JARVIS, WOMEN, ARMED CONFLICT AND INTERNATIONAL LAW (2001); ELISABETH REHN & ELLEN JOHNSON SIRLEAF, WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING (2002); and The U.N. Special Rapporteur on Violence Against Women,

- rape
- sexual abuse and assault
- deliberate infection with HIV/AIDS
- pornography and recording of sexual violence
- sexual mutilation
- medical experimentation on sexual and reproductive organs
- enslavement and sexual slavery
- forced marriages or cohabitation
- pregnancy complications, birth defects, and sterility following exposure to toxic or prohibited weapons
- gender based forms of arbitrary detention and de facto arbitrary detention
- forced impregnation
- forced pregnancy and abortion; enforced sterilization
- strip-searching, forced public nudity, and sexual humiliation
- forced veiling or unveiling
- trafficking in women and girls
- enforced prostitution
- failure to grant refugee status for gender-based harms

Different kinds of abuses predominant during conflict may have an uneven or gender-specific impression on women. The type of abuses include; deliberate or indiscriminate attacks on the civilian population, the detention of women in conditions designed for men or without the presence of female guards, or forced displacement and expulsions. Similarly, the deprivation of economic, social, and cultural rights in conflict situations has a particular impact on women.³⁹

This includes:

- house destruction, demolition, and expropriation
- property destruction and confiscation
- denial and withholding of humanitarian assistance
- shortage of food, leading to malnutrition (cultural custom may mandate that women and girls are fed last)
- lack of adequate sanitary conditions and supplies, especially during menstruation and lactation
- loss of education and employment
- lack of adequate medical care and rehabilitation, including reproductive and maternal health care
- increased burden of care responsibilities⁴⁰

³⁹ Do We Need New International Law to Protect Women in Armed Conflict Karima Bennouna 2001, Case Western reserve Journal of International Law Vol.38

⁴⁰ Ibid

Furthermore, the effects of gender-based abuses suffered during times of conflict are magnified by discrimination against women, and may endure long after armed conflict has ended. Examples include:⁴¹

- “unmarriageability” or loss of a spouse after rape or amputation due to landmines or other injury during conflict
- discrimination against mothers of children produced by conflict-related rapes
- the derogatory perception of victims as “fallen,” “dishonored,” or “disgraced”
- “shame” imposed on the family
- the practice of honour killings, suicides, and self-inflicted harm following sexual abuse or rumours of such abuse
- impunity for perpetrators of gender-based harms
- the perception of women as “secondary” victims of conflict
- the increase in so-called ordinary violence against women

The African Union Protocol on the Rights of Women in Africa, defines “violence against women” to include:

*“all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime or during situations of armed conflict[] or war.”*⁴²

2.2 Sexual violence

Violence of a sexual nature is quite an infinite and complex occurrence. It is a very controversial phenomenon that has been defined in numerous ways. One may loosely conclude that sexual violence remains the foremost vulnerability faced by women in war times. It however can be understood as, “...any harm that is perpetrated against a person’s will, and that results from power inequities that are based on gender roles”.⁴³

A more comprehensive definition this Author could stick to would attribute sexual based violence to “Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, included, but not limited to home and work.”⁴⁴

2.2.1 The Causes of Sexual Violence in Armed Conflicts

⁴¹ *ibid*

⁴² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 1(j), *adopted July 11, 2003*.

⁴³ Reproductive Health Response in Conflict Consortium (2003) Gender-based Violence Tools Manual, 9.

⁴⁴ IASC, Inter-Agency Standing Committee (2005). Task force on Gender and Humanitarian Assistance,

Causes of sexual violence in conflicts are vast and they vary. No lasting solution could be reached without zeroing in on the origins and intentions of perpetrators.

It is not uncommon for belligerents to use sexual violence as a cheap weapon of war for strategic progression or military motivated objectives, such as clearing of a civilian population from a field they intend to operate in. In this case it “is committed to instil terror in a population and to incite light from a given territory”⁴⁵

In other instances, it has been a propagation of tribal genocide, contributing to the annihilation of a particular ethnic group.

Women in most countries are the core of the social fabric, who are commonly in the custody of rudimentary economic support activities, vital to the daily lives of their families. Any violation of their integrity and violence aimed against them as individuals is used as a well purposed weapon for social disruption.

One rather common explanation that is frequently used and is closely connected to the former, relays sexual violence with the intentions of punishing or humiliating an enemy group. Susan Brownmiller has proficiently described it in her famous book, “Against our Will: Men, Women and Rape”:

“Men of a conquered nation traditionally view the rape of “their women” as the ultimate humiliation, a sexual coup de grace. Rape is considered by the people of a defeated nation to be part of the enemy’s conscious effort to destroy them (...). The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victor’s trooping of the colours. The act that is played out upon her is a message passed between men vivid proof of victory for one and loss and defeat for the other.”⁴⁶

When used against women and girls, this form of humiliation is also aimed at their families and communities, shamed for failing to protect them.

Yet still, considerable voices have also called attention to the fact that sexual violence can be inspired by cultural beliefs, an illustration can be drawn from the belief that the rape of a virgin conveys magical powers or invincibility.⁴⁷

Other times, it has been identified as a way to express aggression and brutality of armed groups, encouraged or tolerated as a ‘morale booster’ or a “reward for bravery”.⁴⁸ This observation resonates on Collins’comment on violence in general, when he notes that “The key to an understanding of violence (...) is above all the structure of solidary groups and the moralities that reflect their emotional ties. The moral boundaries may set some persons beyond the pale of moral obligation, but

⁴⁵ Bastick, Grimm and Kunz: 14

⁴⁶ Brownmiller, 1993: 38

⁴⁷ Gender based violence in Armed Conflicts, Sexual Violence in Armed Conflicts: A Global overview
Helena Carreiras: 20

⁴⁸ Bastick, Grimm and Kunz: 15

they may also organize confrontations that make violence not just morally indifferent but morally motivated.⁴⁹

These notions in totality, emphasise sexual violence as predominantly an expression of domination, related to particular understandings of masculinity and femininity. To this effect, Seifert state that, “rape is not an aggressive expression of sexuality, but a sexual expression of aggression.”⁵⁰

It is however of much importance to bring into the scrutiny some recent Conceptualisations of violence where it is seen as the consequence of an excess or a deficiency of sense. Wieviorka notes that,

“[we should]approach what is the more mysterious, the core of violence: not the frustrations it eventually reveals, not the more or less rational calculations of those who appeal to this resource in case of need, not the culture from where it arises. It is out of the idea of loss and overabundance of sense that violence is built, the excess and lack it involves; it is the twisted, perverted, or sometimes perverse subjectivity, what makes it possible”⁵¹.

A more vivid introspection into this perspective on getting to understand the causes of sexual violence in conflicts would require that different types and forms of violence be acknowledged. They might be a result of overabundance of sense, as in the case of violence resting upon a strong ideology or being used as a ‘weapon of war’, but also situations of loss of sense, when violence seems to result from a lack of organization and discipline or is linked to a general breakdown of law and order.⁵²

Being that as it may, the unfortunate and devastating personal and social ills of sexual violence during and after battle encounters speak way too loud in contrast to these causes. As noted above, some of these individual consequences amount to grave health implications on both physical and psychological dimensions leaving survivors facing extremely serious physical injuries, trauma and depression.

2.2.2 Perpetrators

In war times, women face harm from a multiplicity of actor, which actors may be public and private players, among them:

- Invading soldiers may rape and murder;
- Armed groups may kidnap women and force them to fight.
- Those sent by the international community to help, such as aid workers or peacekeepers, may sexually harass or abuse women.

⁴⁹Collins, Randall (2004). “Three Faces of Cruelty: Towards a Comparative Sociology of Violence”. *Theory and Society* 4: 419

⁵⁰ Seifert, R. (1992). *War and Rape: Analytical Approaches*, Geneva, Women’s International League for Peace and Freedom: 1

⁵¹ Wieviorka, 2006:266/267

⁵² Baaz, M. E., Stern M. (2009) “Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)”. *International Studies Quarterly*, 53(2):

- Furthermore, "ordinary" violence against women and girls, such as domestic violence, child abuse, battering, rape, or female genital mutilation, may be exacerbated by the pressures of a conflict situation.⁵³

It therefore can be said, women and girls face an uninviting collection of violence, harm, and deprivation from numerous situations during conflict, surrounded on every sides by impending coercions, as well as what the Former UN Special Rapporteur on violence against women has called threats of "unimaginable brutality," without safe haven.⁵⁴ Most of these abuses may not necessarily exclusively comprised of sexual violence, although imminent threats such violence certainly looms.

3. Protection of Women under International Law

Protection of women in conflicts depends on International Humanitarian Law and International Human Rights Law both of which are designed to protect people during war.⁵⁵ Each type of law is considered to be essential towards that objective, and independent of the other; however, both originate from the International Convention Law.⁵⁶

International Humanitarian Law spells out human conduct for both international and non-international armed conflicts, while Human Rights Law as spelt out in various domestic law (mainly in national Constitutions) regulates and establish relationships between the individual and their States.

With regards to the functionality of IHL and IHRL, three theories are founded, to the effect that:

1. Both laws are individual and independent from each other
2. Both laws should be consider as one law
3. Each law complements the other⁵⁷

Article seven of the Fourth Geneva Convention gives every individual the right to practice her or his human rights, it also preserves the right to not give up any or all rights to any authority under any circumstances. In addition, Article seven ensures the right to demand one's rights from any international group.

3.1 Protection of Civilian Women

⁵³ Do We Need New International Law to Protect Women in Armed Conflict Karima Bennoune, 2007: Vol. 38: 368

⁵⁴The U.N. Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, delivered to the UN. Commission on Human Rights*, U.N. Doc. E/CN.4/2001/73 (Jan. 23, 2001)

⁵⁵ Baktieh, John S. *Humanitarian International Law: Principles and Development*. p. 36. 1999.

⁵⁶International Convention Law is that International Law contained in treaties, vis-à-vis that are derived from customary practices.

⁵⁷Sameer, Ahmad Mussa. Modern Talk, The Similarities and Differences Between International Humanitarian Law and HR. 2007.

The question at hand to fully respond to this section can be summed up as: What kind of legal protection does the IHL give to women? International has at its disposal, several specific legal instrument to cover women in conflict situations. The following section will evaluate the Geneva Conventions, 1949, with its main thrust being the protection of civilians in war times, and the First Geneva Protocol, 1977, which prohibits discrimination against women.

3.1.1 General Protection for Civilian Women; Geneva Conventions, 1949 and the UN Charter

The Geneva Conventions represents a great accomplishment in recorded Humanitarian Law. It has endeavoured to protect civilians during acts of war since 1949. They proclaims respect human dignity during military conflicts, as civilians are exposed to dangers that the military faces during war. The three main principles of protection for civilian women are as follows:

- Protection from discrimination
- The right to humanitarian treatment
- Protection from acts of atrocity

3.1.1.1 Non-Discrimination against Women

The general protection afforded women includes the principle of non-discrimination. The provisions that address non-discrimination are reiterated under Articles 9 and 57 of the First Additional Protocol, and Articles 2 and 4 contained the Second Additional Protocol, as well as in the Fourth Geneva Convention. At the centre of International Humanitarian Law is the notion to protect every civilians without any discrimination, and application of this protection should be equal across the gender.

3.1.1.2 Right to humanitarian treatment

Furthermore, *Article 3 of the Fourth Geneva Convention*, underscores that people should be treated in a humanitarian way, without any sexual discrimination more so for the protection of civilians

3.1.2 General Protection for Civilian Women; the First Additional Protocol

While the four major Conventions address a various categories of person and their needs, later agreements tend to focus more on women and their specific needs; for example, the First Additional Protocol refers to the Geneva Convention of August 12, 1949, which provides for protecting victims of military conflicts. The First Protocol puts a great emphasis on the protection of women.⁵⁸ Apart from Iraq, Rwanda and Bosnia, history is littered with examples of women and children

⁵⁸ Pictet, Jean S., Doctor of Laws and then Director for General Affairs of the International Committee of the Red Cross—the authors examine the four Conventions, Art. by Art. , and deal with questions concerning the implementation and application of international humanitarian law.

suffering more due to war than the male population mainly because they form the bulk of the civilian population.

Article 50 of the First Additional Protocol protects women in the same manner as all other civilian populations. The protection offered does not distinguish or limit the scope, whether it is from persecution by higher authority from one side or attacks. It highlights that any person not enrolled in a military group, or if there is any doubt whether or not that person is a civilian, must be considered civilian.⁵⁹ The First Additional Protocol, Article 10 reserves the right of protection for sick, injured, disabled, and new born babies.

Universal Declaration for Human Rights (UDHR).

The Universal Declaration for Human Rights came into effect a year before the First Additional Protocol. Provisions relevant to the protection of women came into being. Provisions relevant to this discussion highlighted below are as follows:

- *Article 2-* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
- *Article 3-* Everyone has the right to life, liberty and security of person.
- *Article 5-* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- *Article 7-* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Convention on Elimination of Discrimination against Women (CEDAW), 1979

CEDAW is the most specific Human Rights instrument that addresses women's rights. While it may be appropriate in peace times, there is no suspension of human rights during war times and each of the provisions still operates along with IHL.

Some of CEDAW provisions relevant for women in war times:

The States Parties to the present Convention,

- Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

⁵⁹ Civilians are more clearly defined in Art. 4 (A) (1), (2), (3) and (6) of the Third Convention and in Art. 43 of this Protocol.

- Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,
- Noting that the States parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, . . .
- Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,
- Concerned, however, that despite these various instruments extensive discrimination against women continues to exist, [and]
- Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

3.6 Private Military and Security Companies (PMSCs)

The collapse of a two-headed international order, (the cold war) where relations between partisans from each side can be described as an imminent state of quasi-aggression, provoked what Peter Singer calls “security gap.”⁶⁰ This massive occurrence made possible the flourishing of private corporation’s execution military functions directly owing to the end of the Cold War. These companies have offered diverse services ranging from:

- providing military training and weaponry to Governments, rebels and terrorist groups;
- setting up or replacing national armies;
- Military and security services;
- armed guarding and protection of persons and objects;
- logistic services on convoys;
- manning securities on buildings and other places;
- maintenance and operation of weapons systems;
- prisoner detention; and
- advising or training of local forces and security personnel.⁶¹
- Strategic planning;
- Intelligence;
- Investigations;

⁶⁰P. W. Singer (2004). *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press, p. 49.

⁶¹The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict in 2008.¹⁰

- land, sea or air reconnaissance;
- light operations of any type;
- satellite surveillance;
- any kind of knowledge transfer
- with military applications;
- material and technical support to armed forces and other related activities.⁶²

The framework of IHL has been so poorly adapted to this new actor on the battlefield. Notwithstanding the infrequent data on this subject, some scandals involving PMSC employees who have finally managed to call out abusive conduct ranging from forced prostitution, sexual assault and human trafficking.

The most known is the scandal involving the employees from DynCorp Aerospace Technology UK Ltd in illegal prostitution and human trafficking in Bosnia.⁶³ A former employee from DynCorp, who was fired afterwards, brought the case to daylight. The publicity resulted in a lawsuit and in the dismissal of the employees involved. However, the contractors were not operating alone, and there were uniformed peacekeepers in the set also.⁶⁴

The reasons for this... dialogue between International Human Rights Law or International Humanitarian Law and PMSC are due to the lack of clarity of the legal framework that guides the activities of the latter on the field and in the context of conflict. This is not the same as to say that PMSC are not bound by Human Rights or Humanitarian Law; what it means is that in the decade that is now gone after the boom of this industry, PMSC still have no binding regulation that create for them the same kind of reins that, for instance, armed forces have.⁶⁵

As Gumedze perfectly summed up, regarding the necessity for special measures within the military industry for sexual exploitation and abuse, he says, “(...) before the problem of sexual exploitation and sexual abuse of women and children is addressed, there is a need to understand the dynamics of the private security/military industry (...).”⁶⁶

Data have shown that women and children experience high levels of physical and mental violence during armed conflicts, and it is a given that they compose the higher mortality rate amongst civilians.⁶⁷ It is also a given that, if civilians are the

⁶² *Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council.* Article 2(a) and (b)

⁶³ See C. de la Vega and A. Beck (2006). *The Role of Military Demand in Trafficking and Sexual Exploitation* Commission on the Status of Women 50th Session, Human Rights Advocates. Available at <http://www.humanrightsadvocates.org/advocacy-at-the-un/>, pp. 10-13.

⁶⁴ See also H. Tonkin (2011). *State Control over Private Military and Security Companies in Armed Conflict.* Cambridge, UK: Cambridge University Press,

⁶⁵ GENDER VIOLENCE IN ARMED CONFLICTS 2013: Women and Private Military and Security Companies: One More Piece for the Puzzle Catarina Prata p.50

⁶⁶ S. Gumedze (2007). *Sexual Exploitation and Sexual Abuse: the Need for Special Measures within the Private Security/Military Industry.* Institute for Security Studies. Available at <http://www.issafrica.org/pgcontent.php?UID=14854>.

⁶⁷ See also A. F. Vrdoljak (2011). *Women and Private Military Security Companies*, p. 282.

highest number of casualties in an armed conflict, among these, women and children also take the top. This has not been changed by the appearance of PMSC on the battlefield. If something has changed, it was for worse. Civilian casualties caused by actions from PMSC have been well documented and spread on the news.⁶⁸

Scholars are still debating whether and how PMSC and contractors fall under IHL.⁶⁹ However, while there is not a legal framework specifically designed for PMSC and their employees, general rules apply to them regarding protection of women's rights and compliance with rules of International Humanitarian Law (IHL).

Security Council Resolution 1325 (2000)⁷⁰ called upon "all parties to armed conflict to fully respect international law applicable to rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two relevant Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court"⁷¹

It would be pertinent to take home the fact that, PMSC in the strictness of their existence, do not convey a new set of deliberations with regards to the civilian women as victims in armed conflicts. They continue to suffer the same violations by either a member of regular armed forces or by an employee from a PMSC.

The arch nemesis of women protection is the lack of clarity of the valid Laws beyond general rules, the secrecy surrounding activities of PMSC and long awaited mechanisms that are non-existent to foster any accountability that would end the suspicious of impunity that is associated with the industry.

Female Employees in PMSC

The military universe continues to have a strong masculine aura, which grounds strongly the macho subcultures within, including the private military industry.⁷² Orthodox military settings are the basis of similar environments that are often reproduced in PMSC.

⁶⁸ Women and Private Military and Security Companies: One More Piece for the Puzzle Catarina Prata p.51

⁶⁹ LL.M Thesis presented to complete the International Legal Sciences thesis program from NYU School of Law, C. Prata (2012).

⁷⁰ Available at http://www.un.org/events/res_1325e.pdf.

⁷¹ SC Res. 1325 (2000). para. 9. See also A. F. Vrdoljak (2011). *Women and Private Military Security Companies*, pp. 288-290.

⁷² P. Higate (2012). *Aversions to Masculine Excess in the Private Military and Security Company and their Effects*: Working Paper No. 08-12 - School of Sociology, Politics and International Studies - University of Bristol

This status quo is not only replicated because PMSC employees are mainly former male armed forces members, but also because there is no distinction in human relations, from the regular armed forces. The scenario is the same; the functions are the same; the uniforms; weaponry, in sum, the experience of being a PMSC employee resembles too much to that of being a member of the armed forces. Other thing in common is that they do not provide a friendly environment for women.⁷³

The problems with women working to PMSC are not only related to improper sexual conduct. Gender trends in this sector follow the ones in general labour market. The value that skilled women could have to the success of PMSC mandates is dangerously undermined. Women usually enter to PMSC with uneven status as men, and they often are relegated to secondary functions, viewed as suitable for their gender.⁷⁴

It may be of importance, in conclusion to highlight that the international community in tandem with the compliance of national institutions feel the urging need to push for a clearer legal framework that is applicable to PMSC. The secrecy surrounding the industry, the controversies associated with impunity that has come with it, and the unavailability of effective responses, due to the lack of regulation covering PMSC, have justified the timid initiatives.

⁷³ Gender Violence in Armed conflicts p 52

⁷⁴ Women and Private Military and Security Companies: One More Piece for the Puzzle Catarina Prata p. 53

CHAPTER 4

Scope of International Law on the Protection of Children

1. Introduction

The main thrust of this chapter is the protection afforded to children during armed conflicts, one group of individuals most protected legally, but not practically so. Although children are part of “vulnerable populations,” they are targeted in various scenarios, thereby generating the supposition that a lot could be done to protect them. The far-reaching IHL and IHRL cover so much, with regards to conflict consequences. However, various conflicts only show that children are not only being targeted e.g. Gaza, DRC and Sierra Leon, but also being used as human shields or child soldiers. After considerable debate, the UN finally came up with a list of 6 grave violations against children in armed conflicts, which will be discussed in this chapter⁷⁵ (United Nations, 2005).

The numbers, in terms of child protection, are appalling. According to different UN agencies, there are over 1 billion children living in countries affected by conflict, including 300 million under 5 years old.⁷⁶ Many children are among the frequently high civilian death toll, sexually exploited and are also victims of landmines. According to UNHCR 36.5 million of the 89.3 million internally displaced people are children amounting to 41 percent.⁷⁷

This exploitation of children has been highlighted by the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy (2009), in her report to the 12th session of the Human Rights Council in Geneva. She exposed the “shocking reality that in far too many situations of armed conflict children are routinely brutalized and their most fundamental rights contravened.” Additionally, she reflected on the changing nature of conflicts, highlighting that ‘people have become deliberate targets of terror attacks in public spaces and the “collateral damage” of attacks on combatants’. However, cases of detention of children and of sexual violence against boys and girls consists a quotidian phenomenon which amounts to a grave breach of international humanitarian and human rights laws. “Sexual violence has been used as a premeditated tactic of war designed to humiliate or exterminate a population or to force displacement. For children, the physical and mental consequences are devastating, with far-reaching negative effects on sustainable peace and security”, said Coomaraswamy (2009).

Children are part of a wider group of the civilian population and, as such, enjoy the protection afforded to civilians. A civilian⁷⁸ is ‘any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the

⁷⁵ <https://www.unicef.org/press-releases/grave-violations-childrens-rights-conflict-rise-around-world-warns-unicef>

⁷⁶European Commission Humanitarian Aid and Civil Protection, 2013)

⁷⁷<https://www.unhcr.org/refugee-statistics/#:~:text=An%20estimated%2036.5%20million%20>

⁷⁸ Additional Protocol 1, art 50

Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.’ Additionally, ‘the civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.’

2. The Existing Legal Framework on Child Protection

Individuals not taking part in hostilities, directly or indirectly, are guaranteed humane treatment and are covered by the legal provisions on the conduct of hostilities as discussed in the previous chapter. Children who take direct part in hostilities do not lose that special protection.⁷⁹

2.1 Protection from effects of war-establishment of hospital and safety zones

With regards to child protection, the High Contracting Parties to the Geneva Conventions and the parties to the conflict, after the outbreak of hostilities, can establish in their own territory and if the need arises, in occupied areas, hospital and safety zones and localities so organised as to protect from the effects of war children under fifteen, expectant mothers and mothers of children under seven⁸⁰. Non-interference of these safety, for the population, zones should always be observed. The facilitation, establishment and recognition of these safety zones and hospitals, lies on the Protecting powers and the International Committee of the Red Cross⁸¹.

Safety zones in some instances are not easy to create, and taking Syria as an example, observations were that, in the absence of consensus from all parties to the conflict, a ‘safety zone’ cannot be created. One Hurd Ian (2012) highlighted that; ‘I would expect the Assad government to bombard or starve any such territory’.⁸² Consequently, agreements between parties to the conflict not reach fruition. Non-compliance with IHL is creates major drawbacks to practitioners.

2.2 Detention or Internment, penal and disciplinary sanction and release of Child

Children shall be subject to the laws in force in the territory in which they are detained, while the competent authorities should always consider the age of the internee while awarding disciplinary punishment⁸³.

In detention, all possible facilities shall be provided to children and they shall be allowed to attend schools either within the place of internment or outside. In

⁷⁹ <https://www.geneva-academy.ch>> Geneva Academy 2014

⁸⁰ Customary IHL, Rule 35

⁸¹ GC IV 1949, art. 14

⁸² Ian Hurd is an expert in international law and associate professor of political science at Northwestern University in Illinois.

⁸³ GC IV, art. 81

addition, special playing grounds shall be reserved for children and young people⁸⁴. Finally, children under fifteen years of age shall also be given additional food, in proportion to their physiological needs⁸⁵.

The parties to the conflict shall do everything within their power in order to release children as soon as possible⁸⁶. They shall endeavour, during the armed conflict, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees in particular children, pregnant women, and mothers with infants and young children among others⁸⁷.

Lastly, children under 18 years are protected against working during internment⁸⁸.

2.3 Age of Children and the Death Penalty

The legal age of a child is not defined by the GC and AP. Since the age limit for being considered a child is not regulated, it was not clear who enjoy special protection. The domestic legislation of the country is important to guide practitioners on this.

Examination of the IV GC shows that the articles concerning to establishment of hospital and safety zones, the consignment of relief supplies, procedures concerning to child welfare and clothing and food, establish the age of 'below 15 years' in terms of preferential treatment for children⁸⁹. Jean Pictet, an expert of IHL, highlights that "international usage has now settled on an age limit of fifteen years as defining what is meant by "children" when no further description is given"⁹⁰.

As far as the of imposition of the death penalty on children age limit is concerned, the ICRC Diplomatic Conferences of 1948 resolved that eighteen years is the age limit for a death penalty pronouncement⁹¹.

3. Human Rights Law

This research will examine the following human rights instruments; the Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, the Optional Protocols to the Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, will be examined.

3.1 Universal Declaration of Human Rights

⁸⁴ GC IV, art. 81, 89

⁸⁵ Ibid

⁸⁶ GC IV, art. 132

⁸⁷ Ibid

⁸⁸ GC IV, art. 51

⁸⁹ GC IV, art. 14,23,24,38,50,89

⁹⁰ Pictet J., 1960

⁹¹ GC IV, art. 68

With regards to child protection, the UDHR⁹² states that “motherhood and childhood are entitled to special care and assistance” it further describes the family as “the natural and fundamental group unit of society.” Despite not mentioning much on child protection, it would not suffice to talk about human rights and not mention the basis that the UDHR provides for all other human rights instruments.

3.2 International Covenant on Economic Social and Cultural Rights

The soft unenforceable of the UDHR led to state parties agreeing on more legally binding documents in the form of UN treaties. In 1966 consequently, 2 treaties were adopted, which included many provisions of UDHR, which are; the International Covenant on Civil and Political Rights (ICCPR), and the other, the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Like every human being, children are entitled, to enjoy the rights provided in the ICESCR⁹³. It stresses on the need for children to be given special protection and assistance, in particular to avoid economic and social exploitation, including such labour which is harmful to their morals or health. Art 10 specifies the right to education, and finally, art. 12 provides for ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.

Further to this, the instrument stipulates steps to be taken by States parties in the reduction of stillbirths and infant mortality; ensuring the healthy development of children; improving environmental and industrial hygiene; the prevention, treatment and control of diseases; and access to medical care for all.⁹⁴

3.3 The International Covenant on Civil and Political Rights

The ICCPR deals with the protective framework against most forms of human rights abuses, such as torture, arbitrary arrest, inhumane treatment, enslavement, arbitrary imprisonment and forced labor.

The bulky of these rights⁹⁵ relate directly to children and also form parts of IHL. The ICCPR, further upholds the rights of the Child to protection, and stipulates that, ‘Every child, with no discrimination based on his race, colour, sex, language,

⁹² UDHR, art. 25(1)

⁹³ The economic, social and cultural rights protected by the ICESCR are the right to self-determination of all peoples ; the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ; the equal right of men and women to enjoy the rights in the ICESCR ; the right to work ; the right to form and join trade unions ; the right to social security ; protection and assistance to the family ; the right to an adequate standard of living ; the right to health ; the right to education ; and the right to cultural freedoms .

⁹⁴ Art 12

⁹⁵ The Covenant legally protects some major human rights. The right to life, the prohibition of torture, the right to liberty and security of person, the right to freedom of movement, the right to a fair hearing, the right to privacy, the right to freedom of religion, expression, and peaceful assembly, the right to family life, the rights of children to special protection, the right to participate in the conduct of public affairs, the over-arching right to equal treatment, and the special rights of members of ethnic, religious and linguistic minorities are the rights protected in the Covenant (CIRP, no date).

religion, national or social origin, fortune or birth, has a right, from his family, his society and his state, to protection accorded to its status as a minor.’⁹⁶

3.4 Convention on the Rights of the Child

The International Convention on the Rights of the Child (ICRC) was adopted in 1989. It sets out the civil, social, economic, political, health and cultural rights of children. It defines who a child is; ‘A child is any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation.’⁹⁷

Art 38 provides for children in circumstances of armed conflict, states should ‘respect and ensure respect for IHL rules’ and protect children during armed conflict⁹⁸. Furthermore, State parties should take all measures for children under 15 not to directly participate in hostilities⁹⁹.

Article 38 has fueled an extensive debate and criticism. Foremost, all other provisions protect children until the age of 18 (Helle D., 2000). Secondly, it does not improve on anything and scholars, attributes that it could undermine the already existing provisions of IHL concerning to recruitment and participation in hostilities,¹⁰⁰ which only prohibits direct participation, whereas Protocol II also prohibits indirect participation).¹⁰¹ (Helle D., 2000)

Finally, the creation of a Committee on the rights of the child is provided by the Convention in order to monitor states’ compliance towards the fulfillment of their obligations undertaken by virtue of the Convention¹⁰². However, the protection granted faced severe criticism (Helle D., 2000), thus leading to the adoption of two Protocols in order to enhance the protective system; The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

3.5 The Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The adoption of a legally binding instrument which would establish 18 years as the minimum age for participation in hostilities and recruitment was the objective for a number of states for several years (childrenrights.ie, 2014). This instrument was meant to be the Optional Protocol to the CRC, which was adopted by the UN General Assembly on 25 May 2000 and entered into force on 12 February 2002.

⁹⁶

⁹⁷

⁹⁸ CRC art. 1(4)

⁹⁹ CRC, art. 1(2)

¹⁰⁰ Protocol I to the Geneva Conventions supra

¹⁰¹

¹⁰² CRC, art. 43

According to OPAC; ‘States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities’¹⁰³. This significant provision covers an important gap in international law, nonetheless forgetting to cover indirect participation in hostilities, which increasingly takes place the last two decades. Additionally, it affirms that ‘State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces’¹⁰⁴. Even though this provision is positive, it is undermined by the next provision which permits voluntary recruitment below the age of 18 years.

Finally, ‘Armed groups, distinct from the armed forces of a State, should not under any circumstances, recruit or use in hostilities persons under the age of 18 years’¹⁰⁵. This provision was particularly welcomed by the ICRC who saw NSA being addressed and included in the OPAC. As of May 2014, 156 states are party to the protocol and another 17 states have signed but not ratified it¹⁰⁶. Overall, the Optional Protocol represents a clear improvement of existing international law, although the text also contains evident weaknesses.

3.6 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The Protocol has been adopted by the United Nations General Assembly in 2000 and entered into force on 18 January 2002 counting 167 states parties and 10 states in the ratification process.

The importance of this Protocol lies to the fact that it provides definitions for the offences of ‘sale of children’, ‘child prostitution’ and ‘child pornography’ and the creation of obligations on governments to hold people accountable for such violations¹⁰⁷. According to the Protocol, not only traffickers and smugglers should be punished for such acts, but also those accepting the child for these activities¹⁰⁸.

Considering the best interest of the child, the Protocol protects the rights of child victims and abides governments in providing support to these children, especially in terms of interaction with the criminal justice system (Unicef, 2009). Additionally, psychological, medical and financial services should be offered in order to assist children to reintegrate in their respective societies, while all actions should be taken in accordance to the principles of non-discrimination, best interests of the child and child participation (Unicef, 2009).

¹⁰³ OPAC, art. 1

¹⁰⁴ OPAC, art. 2

¹⁰⁵ OPAC, art. 4(1)

¹⁰⁶ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en

¹⁰⁷

Available

from;

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=136&chapter=4&lang=en>

¹⁰⁸ Art. 4

Finally, significant focus is being put in terms of international cooperation and public education. The trans nationality of the majority of the aforementioned acts, such as human trafficking, sex exploitation etc. demands a closer cooperation among states in order for such activities to be combatted. In terms of public education and awareness, information and education campaigns are the major tools used to improve child protection (Unicef, 2009).

To conclude, the existence of an important number of human rights treaties which protect children and their high number of ratifications, reveal the willingness of states to abide by the law and protect children in times of peace and war. In addition, despite the prevalence of IHL in periods of armed conflicts, numerous provisions found in human rights treaties could assist in enhancing the protective framework for children during armed conflicts.

4. International Criminal Law

The Rome Statute of 1998, which led to the creation of the International Criminal Court (ICC), includes specific provisions for the protection of children during armed conflicts against acts of genocide, war crimes, crime against humanity and, in the near future, acts of aggression (AMICC, no date).

The creation of the ICC could be considered as the tool via which the obligations incorporated in to the CRC and its Protocols could be fulfilled. The increasing number of children who are victims of atrocities during armed conflicts could make the ICC a tool of primordial importance, and an important step towards that direction would be the increment of the court's Member-states (HRW, 2008). The membership would encourage state parties to alter their domestic legislation in order to include more provisions concerning child protection (AMICC, no date).

Children's rights incorporated into the Rome Statute include 'laws punishing crimes committed against children, recognition that separate procedures are necessary to establish the criminal responsibility of children, special measures protecting children as victims and witnesses during judicial proceedings, and requirements that judicial staff have expertise on children's issues.' (AMICC, no date).

Precisely, The Rome Statute criminalises the conscription, enlistment or use in active hostilities of child soldiers under the age of fifteen years, both in international and non-international armed conflicts¹⁰⁹. Furthermore, it criminalises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as both war crimes and crimes against humanity¹¹⁰ and the widespread or systematic enslavement, including trafficking in children¹¹¹. Finally, the Rome Statute criminalises as genocide the forcible transfer of children from a

¹⁰⁹ Rome Statute, art. 8(2)(b)(xxvi), (e)(vii)

¹¹⁰ Rome Statute, art. 7(1)(g), 8(2)(b)(xxii), (e)(vi)

¹¹¹ Rome Statute, art. 7(1)(c), (2)(c)

group to another with the intent to destroy, in whole or in part a national, ethnic, or racial group as such¹¹².

The ICC strengthened the protection granted in armed conflicts, in its landmark decisions and statutory provisions. However, the small number of State-parties (123) has limited the effectiveness of the tribunal, specifically in Israel and Syria scenarios in which ICC has no jurisdiction to intervene.

5. International Labour Law

International Labour Law apart from IHL, HRL and ICL, also offers improved Child protection. The International Labour Organization (ILO) Minimum Age Convention and Worst Forms of Labour Convention, emphasize on the minimum age (15) in which a child can start working and underline the worst forms of labour, with the objective to limit exploitation of children (child-soldiers.org, 2014).

6. Six Grave Violations of Children Rights during Armed Conflicts

The comprehensive law applying in armed conflicts, comprises; IHL, IHR, Child law and International Labour law, an overview of which was discussed earlier on. As a follow up, it would suffice to discuss the context of the six violations, which will be conducted by use of contemporary examples. Syria, the Occupied Territories, DRC, Somalia, Afghanistan and Iraq are some of case studies to be used. The harshness of the armed conflicts and the frequent violations of children rights in these specific contexts was the motivation for opting for these cases reinforcing the study/theory.

6.1. Recruitment or use of Children by Armed Groups and Armed Forces

The Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions prohibits the recruitment and use of children under the age of 15. This legal provision is also a part of customary international law, applicable to all parties in situations of international and non-international armed conflict.¹¹³ As earlier mentioned, human rights law has raised the threshold for direct participation in hostilities to 18 years old. The CRC also requires that parties increase the age for compulsory recruitment to 18 years, whereas the countries that continue to permit voluntary recruitment must introduce strict safeguards.

International Criminal law has affirmed the previous statement. In 2004, the Special Court for Sierra Leone (SCSL) in the *Hinga Norman* case expressed its assertion that the recruitment and use of children in armed conflict is a war crime under customary international law. Moreover, the ad hoc tribunals for the former Yugoslavia, Rwanda and Sierra Leone also shared this view underlying that the recruitment and use of children under the age of 15 years in armed conflict is a war crime.¹¹⁴

¹¹² Rome Statute, art. 6(e)

¹¹³ International Bureau for Children's Rights, 2010.

¹¹⁴ International Bureau for Children's Rights, 2010.

The arrest of child soldiers by the other party to the conflict does not restrict them to enjoy the rights and special protection granted to them by IHL and further provides for protection of child soldiers by stressing the need to involve them in the disarmament, demobilization and reintegration process.

Furthermore, arbitrary detention of children is prohibited under international humanitarian and human rights law. The arrest and detention of a child shall respect the national and international norms, and only be used as a measure of last resort. In addition, special protections must be afforded to all children by virtue of their age and despite their active participation in hostilities.¹¹⁵

The ICC and the Special Tribunal for Sierra Leone, have issued two important decisions which could be considered as a major step towards child protection from recruitment in armed groups (ICC-CPI, 2012). On March 2012 Lubanga Dyilo, in the first trial of this kind before the ICC, was convicted for enlisting and conscripting children under the age of 15 into the ‘Forces patriotiques pour la libération du Congo’ and their use for active participation in hostilities. These actions amounted to war crimes according to the court (International Bureau for Children’s Rights, 2010). The significance of the decision lies in two facts. First and foremost, according to the Court’s decision the voluntary or involuntary recruitment of children does not have any relevance in terms of associating children with armed groups. Secondly, the broad interpretation of the term “active participation in hostilities” was a means to ensure that best protection would be granted to all children associated with armed conflicts.

On 26 April 2012, the SCSL convicted the former President of Liberia, Charles Taylor, for helping the commission of war crimes by the Revolutionary United Front (RUF) during the 1991-2002 civil war in Sierra Leone (International Bureau for Children’s Rights, 2010). The importance of the decision lies in two facts. First, it was the first time that a former Head of State had been convicted for war crimes against children, which were committed by an armed group indirectly associated with him, thus not under his direct command. Second, it was the first Court that decided that the recruitment of children aged less than 15 years old, constitutes a war crime (SRSB-CAAC, 2013).¹¹⁶

The theory on the issue proves that legal documents and Court’s decisions are accessible for the prevention of recruitment and use of child soldiers. However does States compliance follow the rules?

Case study

¹¹⁵ SRSB-CAAC, 2013. Better Protect Child Affected by Armed Conflict

¹¹⁶ International Bureau for Children’s Rights, 2010.

The use of child soldiers, or as officially named ‘children associated with armed forces and groups’¹¹⁷, is a common feature in different armed conflicts. One of the most outrageous examples where children have been used as child soldiers, is the case of Somalia.

According to Human Rights Watch,¹¹⁸ Somalia’s armed conflict continues to have grave effects on civilians, despite the fact that the Islamist armed group al-Shabaab lost ground in 2012. During this conflict, both al-Shabaab and the opposing forces¹¹⁹ have committed mass humanitarian law and human rights violations. It was noted that in areas under its effective control, al-Shabaab imposed the Sharia law, leading to restrictions on basic rights, whereas the new government strives to deal with the numerous security issues.

In their report, published the 15th of May, 2014, the United Nations documented the recruitment and use of 1,293 children during the armed conflict (Secretary-General, 2014). According to the UN, Al-Shabaab has recruited 908 children, the Somali National Army and allied militia 209 and Ahl al-Sunna wal-Jama’a (ASWJ) 111. The remaining elements were related to the Somaliland Armed Forces (15) and to unknown armed groups (36). To make matters worse, Al-Shabaab continued its recruitment campaign, promoting the need for children to become soldiers. As an example, on January 24th, Al-Shabaab recruited six 12 years old boys in a Koranic school in south-west Baidoa. In other incidents, 19 children aged 15 years old, have been recruited during such campaigns in Bardhere district, Gedo region, and Jilib district, Middle Juba region. The use of children by Al-Shabaab consists of active and direct or indirect participation in hostilities. However, what caused considerable debate is the recruitment of 14 children, in order to work for the African Union Mission in Somalia (AMISOM) in various capacities, including to man checkpoints and as cooks. As a result, the UN endeavors to work with the AU Mission in order to prevent such cases.

The Somali case study that even though the legal framework does exist, one of the most challenging issues is to ensure law enforcement and that State and Non-State Actors cease to recruit children.

6.2. Killing and Maiming of Children

In addition to what is provided for above, in terms of the legal protection of children, the arbitrary deprivation of life and the prohibitions against killing or maiming are principles reflected in international humanitarian law, international human rights law and international jurisprudence.¹²⁰ A noteworthy stride in the direction of child protection against killing and maiming was the SC and GA resolutions affirming their

¹¹⁷ <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>

¹¹⁸ 2012.

¹¹⁹ These allied forces consist of combination of Somali government security forces, troops of the African Union Mission in Somalia, Ethiopian government forces, and allied militias.

¹²⁰ SRS-G-CAAC, 2020

“strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict” (Secretary-General, 2014). It was however not until resolution 1882 that the SC added killing or maiming of children as one of the six grave violations.¹²¹

With regards to torture, the CRC provides as follows, “every child has an inherent right to life” and State parties shall guarantee to the “maximum extent possible the survival and development of the child.” The African Charter on the Rights and Welfare of the Child (1990) and other treaties also reiterate the children’s right to life and protection against torture. Furthermore, the Convention against Torture (CAT) includes a prohibition of torture in times of peace and war.¹²²

International jurisprudence is also littered with momentous decisions on this concern. Diverse ad-hoc International Tribunals have documented that willful killing during armed conflicts may amount to war crimes or crimes against humanity. Notably, the International Tribunals for Rwanda, the former Yugoslavia and Sierra Leone have successfully prosecuted commanders for atrocities and grave breaches of the Geneva conventions, such as arbitrary killing, torture and other forms of ill-treatment against civilians, while they have been also held accountable for crimes committed by their soldiers (SRSG-CAAC, 2013).¹²³ The Rome Statute of the ICC has also reaffirmed that killing and maiming may in certain instances amount to war crimes, crimes against humanity or even genocide¹²⁴.

In conclusion, although precise provisions for the protection and respect of children’s lives do exist, the changing nature of armed conflicts continuously makes an inquest into the application of these principles and regulations. The ever increasing deaths among children in recent conflicts demands for improved protection against killing and maiming. One of the most actual and tremendous example is the Occupied Palestinian Territories.

Case study

Despite the continuous peace efforts, the Israeli-Palestinian conflict which started in 1947, seems unable to change. Parties to the conflict, the Israeli armed forces and Palestinian armed forces or NSA, have committed grave violations of children rights, with killing and maiming being on top of the list (Defence for Children International, 2012).¹²⁵

According to the UN, eight Palestinian children (six boys and two girls) were killed and 1,265 were injured in the occupied Palestinian territories in 2013, whereas no Israeli children were killed in 2013. However, in the armed conflict which took place

¹²¹ International Bureau for Children’s Rights, 2010

¹²² SRSG-CAAC, 2013

¹²³ Ibid

¹²⁴ <http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84->

¹²⁵ <https://resourcecentre.savethechildren.net/document/defence-children-international-annual-report-2012/>

in summer 2014, and lasted 50 days, the number of casualties incremented radically (Defence for Children International, 2012). 495 children have been killed from the Israeli armed forces and 3.106 have been injured. In addition, the use of children as human shields is one more crime committed by both parties to the conflict, which constitutes a significant violation of children rights, even if the parties to the conflict justify it under the notions of ‘collateral damage’ and ‘military necessity’ (Defence for Children International, 2012).¹²⁶

6.3 Sexual Violence against Children

Rape and other forms of sexual violence amount to grave breaches of international humanitarian law. These may also amount to war crime, crime against humanity or a constitutive act with respect to genocide (International Bureau for Children’s Rights, 2010).¹²⁷ The Security Council Resolution 1882 of 2009 added sexual violence against children as a reason for listing parties to conflict in the Secretary-General’s Annex of the Annual Report on Children and Armed Conflict (Secretary-General, 2014).¹²⁸

The obligation of humane treatment under Common Article 3 and article 27 of the 4th Geneva Convention explicitly prohibit such acts stating that: “Women [including girls] shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” (SRSG-CAAC, 2013).¹²⁹

As far as International jurisprudence and treaties are concerned, the ICTY, the ICTR, in addition to the European Court of Human Rights and the Inter-American Commission on Human Rights, have issued decisions according to which rape amounts to torture and is prohibited by all means (Strumphen-Darrie C., 2014).¹³⁰ furthermore, the Convention against Torture (1984), the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) and the Vienna Declaration of the World Conference on Human Rights (1993) treaties prohibit the sexual abuse and exploitation of children (UNICEF, 2009). In addition, the ICCPR and the Convention for the Elimination of all Forms of Discrimination against Women (1979) highlight the women’s liberty to be free from discrimination (SRSG-CAAC, 2013).¹³¹ Finally, the CRC¹³², its Optional Protocol on Trafficking and Exploitation and the African Charter on the Rights and Welfare of the Child highlight that children should be protected against torture and other

¹²⁶ <https://defenceforchildren.org/en>

¹²⁷ <https://www.end-violence.org/members/international-bureau-childrens-rights>.

¹²⁸ <https://reliefweb.int/report/world/children-and-armed-conflict-report-secretary-general>

¹²⁹ Ibid

¹³⁰ Protecting Children During Armed Conflicts Balancing Between Existing Frameworks and Non-Compliance

¹³¹ Ibid

¹³² <http://www.childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>

humane or degrading treatment, which also includes acts of rape and sexual violence.

Rape and sexual violence during armed conflict is criminalised under International criminal law and a number of decisions reiterate this account. Also, the statutes of the SCSL, ICTR and ICTY clearly outline rape and sexual violence as war crimes and crimes against humanity (International Bureau for Children's Rights, 2010).¹³³ The ICTR in the *Akayesu*¹³⁴ and *Muzema*¹³⁵ cases and the ICTY in the *Furundzija*¹³⁶ and *Kunarac*¹³⁷ cases accused the perpetrators for rape and torture against women and girls. In addition, the SCSL established 'forced marriage' being an offence under international criminal law (SRSG-CAAC, 2013).¹³⁸

Finally, the Rome Statute of the ICC provides that 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other forms of sexual violence of comparable gravity' may constitute war crimes and crimes against humanity. Jean Pierre Bemba Gombo, a former leader of a Congolese armed group, was convicted in March of 2016 for having committed war crimes and crimes against humanity, which result from allegations of rape and other abuses committed by troops under his command (International Bureau for Children's Rights, 2010).¹³⁹

To reinforce the theory, one of the most important examples where sexual violence against children is the case of DRC.

Case study

According to Human Rights Watch (2014), the armed conflict which broke the past two decades continue in eastern Democratic Republic of Congo, with Congolese governmental forces and NSA, mainly M-23, responsible for grave violations against civilians. One of the most widespread form of violations against civilians and children is sexual violence and GBV, with the number of victims increasing year after year. According to UN officials, only in North Kivu, it is estimated that there are 25.000 cases of sexual violence against women and children every year (OCHA, 2014b).

The Democratic Republic of the Congo, and the east of the country in particular, has been described as the "rape capital of the world", while the intensity of all forms of sexual violence has been described as the worst in the world (BBC, 2010). According to UNFPA, the majority of the victims have been children, with the number reaching the 65%. In addition, among this 65%, the majority were girls, whereas 10% of child victims are said to be under 10 years old (HRW, 2009). Since child recruitment is

¹³³<https://www.unglobalcompact.org/what-is-gc/participants/12106-International-Bureau-for-Children-s-Rights-IBCR->

¹³⁴ THE PROSECUTOR. VERSUS. JEAN-PAUL AKAYESU. Case No. ICTR-96-4-T

¹³⁵<https://brazil.postsen.com/news/24650/Rio-City-Hall-takes-action-to-demolish-building-in-Muzema.html>

¹³⁶ Case IT-95-17/1-A

¹³⁷ IT-96-23-T & IT-96-23/1-T ICTY

¹³⁸ *ibid*

¹³⁹ <https://www.icc-cpi.int>. p 2

associated with sexual violence, it is also an interesting fact that many child soldiers are often sexually abused (HRW, 2009). To make matters worse, the numbers in this part of the world are shocking; according to HRW(2009) the 12% of children the zone of Kivu perish within the first year of their lives, numerous children are being recruited and minors are being raped and are victims of widespread gender-based violence.

According to the United Nations(2014) 209 cases of conflict-related sexual violence against girls, some as young as 4 years of age, were reported, while Mayi Mayi groups and FARDC were identified as the main perpetrators with 91 and 43 verified cases, respectively. Mayi Mayi Simba elements in Orientale Province raped 59 girls in 2013 (Secretary-General, 2014). For instance, following the rape of 19 girls during an attack on 6 January 2013 in Mambasa territory, 25 girls were raped on 5 February during an attack on Bafwambaya village, Haut-Uélé territory. The area of major concern is associated with the impunity offered to perpetrators of sexual violence. Only sixty-six perpetrators were arrested and thirty-six sentenced in 2013 (Secretary-General, 2014). Furthermore, thirty-nine FARDC members and seven high-ranking officers were also accused of having committed rape and sexual violence in South Kivu in late November and early December 2012 and are currently standing before the Operational Military Court of North Kivu Province (Secretary-General, 2014).

All in all, sexual violence against children, and women, is a major issue in DRC and other countries (Alcorn t., 2013). Sexual violence is used as a tool in order to intimidate women and children from the opposing groups and as an ethnic cleansing tool, as in the case of Rwanda (Alcorn T., 2013). To make matters worse, the fear of the victims to speak out, leads to underreport in the actual cases of sexual violence (Alcorn T., 2013). The major challenge for humanitarians remains the ability to get a lasting solution to such a complex issue.

6.4 Attacks against Schools and Hospitals

In periods of armed conflicts, schools and hospitals are usually used for the provision of shelter and protection. However, attacks against schools or hospitals are increasingly being used as methods of warfare and may constitute war crimes and crimes against humanity (SRSG-CAAC, 2013).¹⁴⁰

IHL¹⁴¹ provides for the protection of schools and hospitals via the prohibition of targeting civilian objects.¹⁴² Schools or hospitals are only to be attacked under the principle of military necessity and after having taken precautions. This is a customary norm of international law applicable to all parties to conflict in all

¹⁴⁰ *ibid*

¹⁴¹ Customary IHL, Rule 7

¹⁴² These objects shall at all times be distinguished from military objectives and be protected under the principle of distinction, therefore protected against the effects of military operations

conflict situations¹⁴³. This protection under IHL is lost only “unless and for such time as they are military targets”, meaning when being used for military purposes. Put differently, the functionality of the establishment is altered from its intended purpose. However, IHL provides that in case it is not clear whether a school or hospital is a military or civilian object, the building shall not be attacked (SRS-CAAC, 2013).

Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons ban the use of mines and incendiary weapons against schools, hospitals or other civilian objects¹⁴⁴. Hospitals and medical personnel are afforded special protections under international law dating back to the very origins of international humanitarian law with the 1864 Geneva Convention and The Hague Conventions of 1899 and 1907¹⁴⁵.

The International Court of Justice has also declared the protection of civilians and civilian objects of paramount importance under international humanitarian law¹⁴⁶. In the Kupreskic (2000) and Kordic & Cerkez (2001) cases the ICTY developed significant jurisprudence on the necessity to protect schools and hospitals from attack (Secretary-General, 2014). The Rome Statute also provides for the prosecution and punishment of those targeting schools or hospitals during armed conflict. Such acts amount to war crimes regardless of whether they occur during an IAC or NIAC (SRS-CAAC, 2013).

The use of schools for military purposes puts children’s life under threat and impede their right to education. In addition, it leads to high dropout rates among girls (SRS-CAAC, 2013). In November 2012, a number of stakeholders developed the Lucens Guidelines on the military use of schools, addressing the issue and providing guidelines to governments for endorsement¹⁴⁷. The purpose of the guidelines is to enhance knowledge, understanding, monitoring, and reporting of the issue, while it should also be included in military training and doctrine.

Case study

The armed conflict in Afghanistan, which dates back to the mid-70’s, has always been characterized by severe violations of human rights despite the diversification of the parties to the conflict (Secretary-General, 2014). After the 9/11,¹⁴⁸ the NATO involved its forces in an armed conflict in Afghanistan, thereby establishment of an

¹⁴³ Customary IHL, Rule 10

¹⁴⁴ Available from; Article 2(1) of the 1980 Protocol III to the Convention on Certain Conventional Weapons states: “It is prohibited in all circumstances to make ... civilian objects the object of attack by incendiary weapons.”

¹⁴⁵ Customary IHL, Rule 25

¹⁴⁶ Pursuant to Article 8(2)(b)(ii) of the 1998 ICC Statute, “[i]ntentionally directing attacks against civilian objects, that is, objects which are not military objectives” constitutes a war crime in international armed conflicts.

¹⁴⁷ http://www.protectingeducation.org/sites/default/files/documents/draft_lucens_guidelines.pdf

¹⁴⁸ the date of the attacks on the World Trade Center and the Pentagon in the US in 2001: <https://dictionary.cambridge.org/9/11>

atmosphere of persistent violence and extreme abuses, including mainly the attack on schools and hospitals, under the excuse of ‘military necessity’ (ndtv.com, 2014).

In regions all over the country, schools continued to be the foremost targets from attacks launched by the parties to the conflict willingly or unwillingly. According to the UN, schools have been attacked in 73 incidents with a death toll of, at least, 11 children and 46 injured kids. The main means used were explosive devices, while schools have also been damaged from suicide attacks (Secretary-General, 2014). To make matters worse, the Taliban continued to threaten girls’ schools and other schools (Secretary-General, 2014). As an example, in May 2013, teachers and children at a girls’ school were threatened by Taliban members in Nangarhar Province. The Taliban issued a letter stating that students who would continue to attend school would have been victims of acid attacks (Secretary-General, 2014). In May, in Zabul Province, the Taliban closed 40 schools with the use of violence in revenge of governmental actions. Moreover, 13 teachers were killed or injured in 2013 and eight teachers were abducted by armed opposition groups (Secretary-General, 2014).

According to the Afghan Ministry of Education, the aforementioned threats and actions of the Taliban’s affected approximately 115,000 people as a result of the security situation in the southern (482 cases), south-eastern (39) and western (18) regions (UNESCO, 2014). In addition, the use of schools and hospitals by the Afghan armed forces for military purposes put children’s life in hazard and gravely affected their access to education in, at least, 15 incidents (UNESCO, 2014). As an example, in October, despite’s the governments’ statement not to use schools for military purposes, Afghan security forces closed down schools for military purposes (UNESCO, 2014).

Despite the existing comprehensive legal framework, incidents such as attacks and looting of health-care facilities, installation of explosive devices within hospitals and forced entry, are a usual phenomenon (Secretary-General, 2014). In addition, there have been 39 reported cases of killed, maimed or abducted health-care personnel attributed to armed opposition groups (Secretary-General, 2014). Another example of the barriers faced by health workers is the restriction of access for polio vaccination campaigns in 2013 in some provinces (Secretary-General, 2014).

As highlighted by the Special Representative of the Secretary General for Children and Armed Conflict Leila Zerrougui and UNESCO Director General, Irina Bokova (2014), ‘attacks against schools are a security crisis, a human rights crisis and a development crisis and we must act now’. In addition, Madame Bokova reiterated her concern that “conflicts are on the increase and children are in the front line with approximately 28 million girls and boys worldwide who have lost their right to education.”(UNESCO, 2014).

6.5 Abduction of Children

Children abduction is a prohibited act under International law and may amount to a grave breach of the GC or even to a war crime or crime against humanity (SRSG-CAAC, 2013). Children abduction, in combination with forced displacement of a population or deportation of civilians, is a crime often spotted in the field (SRSG-CAAC, 2013).

It has also been the case that abduction of children may be associated with “enforced disappearance”, a crime which constitutes a significant violation of several human rights treaties. Additionally, actions such as hostage-taking, arbitrary deprivation of liberty and abduction, constitute a violation of different Conventions¹⁴⁹, while different regional human rights instruments also provide for the abduction of children (International Bureau for Children’s Rights, 2010).

An important element of child abduction are the consequences that follow the action. It is a common phenomenon in conflict zones to abduct children for trafficking or enslavement reasons (International Bureau for Children’s Rights, 2010). A major example of child abduction is the case of the Lord’s Resistance Army in the central African region, which is often associated with other violations against children, including; recruitment and use of children, killing and maiming and rape and other forms of sexual violence (International Bureau for Children’s Rights, 2010). One of the worst forms of child transportation, namely the illicit transportation across borders during armed conflicts, is often committed by Governmental armed forces and non-State armed groups. As a result, the Convention against Transnational Organised Crime’s Protocol to Prevent, Suppress and Punish Trafficking in Persons was adopted, in order to forbid all forms of human trafficking including forced recruitment, prostitution and sexual slavery (SRSG-CAAC, 2013).

The Optional Protocol on Trafficking and Exploitation deals with significant elements of children abduction. In addition, the Rome Statute stipulates that “unlawful confinement” is a grave breach of the GC and may amount to a war crime (SRSG-CAAC, 2013).

Case study

In 2014, the issue of children abduction come on top of the agenda. The abduction of more than 276 young girls by the jihadist group Boko Haram in the north provinces of Nigeria came as a shock for the global community.

The conflict in Northern Nigeria, began in 1999 with the establishment of sharia law in several provinces in Northern Nigeria (Badamasiuy J., 2011). From 2000 onwards, riots between Christians and Muslims communities have resulted in thousands of deaths. The intensity of the riots increased significantly in 2009, when the Jihadist group of Boko Haram started an armed conflict against the central government

¹⁴⁹ e.g. International Convention against Taking of Hostages, Common Article 3, the Convention on the Rights of the Child, the ICCPR and the UDHR

(Badamasiuy J., 2011). As a result, in 2010 the number of deaths incremented to 55 people and in 2013 the number exceeded 1000 (channel 4.com, 2014).

Hundreds of people have been displaced from the north-eastern provinces due to the military activities of Boko Haram and the governmental military response (Badamasiuy J., 2011). According to a joint assessment mission conducted by the Nigerian authorities the United Nations and the Nigerian Red Cross, a huge proportion of the 11 million people living in the north of the country has been directly or indirectly affected by Boko Haram (channel4.com, 2014).

As far as abductions are concerned, the abduction of the 276 children in the town of Chibok in Borno State from Boko Haram was only one of the several cases of children abduction in the north of Nigeria (channel 4.com, 2014). According to reports, it is associated with enslavement and forced marriage. However, abduction should be examined on a case by case basis. Abduction is almost always associated with one of the first four grave violations of children rights, namely recruitment, killing, attacks on schools and rape (channel 4.com, 2014). For example, as a result of inter-communal conflict, the United Nations received reports of 250 children abducted last year in South Sudan, which took place during cattle raiding. In addition, attacks at nighttime had as sole aim to abduct children (channel 4.com, 2014).

To this end, child abduction is a multifaceted problem, tightly connected with the other grave violations of children rights.

6.6. Denial of Humanitarian Access

The 4th GC and AP provide a well-articulated framework on the issue of humanitarian access to civilians, while attacks against humanitarian workers assisting children are prohibited (ICRC, 2011). In addition, attacking or denying access may constitute a war crime or a crime against humanity and according to customary international law parties to the conflict shall facilitate the access of humanitarian organisations (SMSG-CAAC, 2013).

However, provision of aid and access can be granted under certain principles. Relief organisations should act under the principles of impartiality, namely offering the aid to every individual without adverse distinction, neutrality, hence without taking sides and independently (ICRC, 2011). A major challenge is to be granted the consensus of the state. In theory governments should not impede access to humanitarian organisations in areas under their control and facilitate the provision of aid (ICRC, 2011).

However, practice has revealed that governments do impede access for several reasons (ICRC, 1999). As a result, the Security Council, the General Assembly and the Human Rights Council have repeatedly condemned such denial. Denial of access may lead to a grave violation of several rights, as for example the right to survival and the right to be free from hunger, fundamental rights enjoyed by all people

(SMSG-CAAC, 2013). Additionally, according to legal instruments, relief operations should pay special attention to children and shall be provided with special care and aid. The CRC contains several provisions that regulate the provision of humanitarian aid to children, in addition to ensuring that children seeking refugee status “receive appropriate protection and humanitarian assistance” (ICRC, 2011).

According to IHL¹⁵⁰, the protection of humanitarian relief personnel and their equipment is a priority for the parties to the conflict. More precisely, several provisions analyze the fact that humanitarian personnel, their equipment and the buildings or other objects are granted specific protection under the GC and their AP (ICRC, 2011). Freedom of movement for relief personnel is a sine-qua-non condition, subject only to imperative military necessity. In addition, treaty and customary law recognise that medical transports and facilities are provided with further protection¹⁵¹. An important document which touches upon humanitarian personnel, is the 1994 Convention on the Safety of United Nations and Associated Personnel which, however, only deals with UN staff (HPCR, 2011).

Case study

One of the most terrific examples of continuous denial of humanitarian access, leading to an increasing number of affected children, is the Republic of Syria.

The ongoing armed conflict in Syria between the government of Al-Assad and different parties has been a consequence of the Arab Spring protests (Cornell.edu, 2011). After three years of armed conflict the situation remains unclear and the civilians are again the main targets. The humanitarian emergency in Syria has led to almost 9 million displaced people, thousands of perished children and gross violations of human rights and humanitarian law (syrianrefugees.eu, 2014).

As far as denial, or intentional restriction, of humanitarian access by all parties to the conflict is concerned, the situation remains critical. More than 250.000 people live in besieged areas by the government forces, the Islamic State (ISIL) and other parties to the conflict (Kang K., 2014). All these areas could not receive humanitarian aid in 2013 and reports were received of children dying. In addition, humanitarian access to areas controlled by extremist groups was denied, whereas the abduction and killing of humanitarian personnel was an issue of grave concern (Kang K., 2014).

Syria’s parties to the conflict decision to refuse access to relief operations, has raised considerable debate and has drawn attention to the argument of whether or not a State should give its consent in order for humanitarian assistance to be provided (Secretary-General, 2014). It is significant to keep in mind that the rules governing the provisions of such assistance derive from different bodies of law and

¹⁵⁰ AP I, art. 71

¹⁵¹ Customary IHL, Rule 31

differ depending on the type of the conflict or disaster. However, the only common ground among these bodies of law is the need of state consent (SRSG, 2013).

The reality in Syria leads to extensive drawbacks. Children and civilian populations cannot be accessed due to the lack of consensus; checkpoints and incidents lead to diversion of humanitarian supplies, thus hampering the supply of food and other items; medical supplies have been confiscated or obstructed by Government forces when entering in opposition territories; essential contents, including life-saving and surgical equipment, were removed at checkpoints; finally, humanitarian personnel, logistics and supplies have been imposed to bureaucratic procedures (Secretary-General, 2014b).

In addition to the huge difficulties faced when negotiating access with the government, armed groups are also implementing the strategy of denial. Jabhat al-Nusra has repeatedly attacked humanitarian convoys in different areas, looting trucks with food baskets, medicines, vaccines and other essential for the population elements (Secretary-General, 2014b). To make matters worse, humanitarian workers are being constantly targeted to death. Since 2011, 25 Syrian Arab Red Crescent volunteers have been killed, whereas on 13 October 2013, seven humanitarian staff were abducted in Idlib governorate. Finally, 35 UN staff have been abducted, missing or killed (Secretary-General, 2014).

To conclude, the barriers imposed by all the entities combatting in Syria, caused, and continue to cause, severe setbacks in the provision of humanitarian aid to children. Even if the International Court of Justice and International Criminal Court highlight the fact that the provision of humanitarian aid is not 'interference in domestic issues' and that 'denial of access may amount to war crime', the parties to the conflict continue to impede access (Rottensteiner C., 1999).

7. Conclusion

The analysis of the six grave violations of children rights gave an important overview of the connection between these violations and existing principles of international law and the actual reality. The examples of recruitment and use of child soldiers in Somalia, killing and maiming in the Occupied Territories, sexual violence in DRC, attacks against schools in Afghanistan, abduction in Nigeria and denial of access in the Syrian Arab Republic, reflect the challenges faced by humanitarian organizations when it comes to actual protection. Even though the framework for child protection, as described in the SC resolution, could be the foundation of a solid child protection policy, there is still a lot to be done.

CHAPTER 5

Summary of Findings, Conclusion and Recommendations

1. Introduction

The Chapter highlights conclusions and recommendations of the research on the role of International law in the protection of women and children. It provides a summation of the main outcomes and these will be used to craft recommendations on how to improve the protection of women and children in war situations.

2. Restating the purpose of the study

The main thrust of this study was to identify the legal frameworks available for protection women and children. Further, the study sought find the sufficiency of such legal framework in protecting women and children. Another motive was delve into case studies of how the international and local legal framework would function in different areas ceased with armed conflicts. Lastly, recommendations would be sought to find ways to improve the legal system and the situation in war torn territories.

3. Summary of major arguments

To tackle the main questions emanating from the study, chapter 1 set the motion by giving a brief introduction of study, the research topic, problem statement and the objectives thereof. Further, the chapter specifies the aims and limitations of the research.

The research accomplished this by engaging in a qualitative desktop research, incorporating an intense literature review, the history of IHL and the relevance of IHRL.

Chapter 2 introduces the protection offered under International law i.e. both International Humanitarian Law and International Human Rights law. The chapter goes further to provide specific international legislation that deals with civilian protection, precisely that which deals with the protection of women and children.

Chapter 3 expounded on the vulnerability of women, taking note of the fact that they need a wider scope of protection simply because they are women. Vulnerability extends beyond that of mere provisions under general civilian protection. Further, international legislation for the protection of women in conflict is interrogated and deficiencies are brought to light. The chapter also list the types of atrocities that women are exposed to.

The research in Chapter 4 outline the law in place for the protection of children in conflict. It outlines the role of IHL, IHRL, International Criminal Law and International Labour Law as the safeguards in guaranteeing children's protection. It also narrows down on the definition of a child and puts the ages of Protection at 15 years and 18 years under different circumstances. Most importantly, there is a

list of the six grave violations faced by children and case studies of various conflicts follow the legal theories.

4. Summary of main findings

The enquiry came to the realisation that women and children are the most vulnerable of groups when it comes to war situations. Women and children form the majority of the civilian population and when civilians are victims of war, it is therefore trite that the majority of the casualties are women and children.

Secondly, there is available law to protect these vulnerable groups. Not only is the law available, it also is tailored out of years of human experience in war. This is also coupled with the fact that vast knowledge resources has been put into the crafting of all international legal instruments that deal with the protection of women and children. The crafting processes are holistic and astute legal analysis follow up through the input of scholars. The establishment of these sets of laws is not just a brush by, but a well-intended thrust to improve protection of vulnerable groups.

Notwithstanding the above, the law available for the protection of women and children still falls short. It is said that the law is always one step behind the war. There are always new methods of fighting that expose the old law or there is always a way used by perpetrators to invent to circumvent the current legal provisions and the grasp of the law. The law is always playing catchup in various instances. Apart from the development of law scenarios and the innovations of perpetrators, there are always spaces that the law has not yet thoroughly covered or open to different interpretations hence does not cover the protection it intends to.

Lastly, compliance to known law by belligerents has always been the chief problem. This has always been the major setback with regards to protection of anyone whether wounded soldiers, prisoners of war or civilians including women and children. Deliberate harming of civilians and violation of the prescribed methods of war has left humanitarians with very limited space to save or salvage scenarios requiring need.

5. Recommendations

This study has revealed that reform is needed for the purposes of an enhanced protection environment for either everyone in conflict zones or specifically women and children. The following listed recommendations are proffered by this research.

5.1 drafting of Additional Protocol

It is recommended that a third Additional Protocol to the Geneva Convention of 1949 be drafted with the aim of specifically protecting women in time of conflict. This is meant to complement the space covered by CEDAW during peace times.

Alternatively, there could be an Optional Protocol to CEDAW, this would save to cover any gaps left in either IHL or IHRL.

5.2 Permanent Commission

It is also recommended that an international Truth and Reconciliation Commission specifically on violence against women in armed conflict be set up. This would actually be conveniently set up in any *ad hoc* tribunals from time to time as need arises.

5.3 Prioritisation of Women

It is recommended that, organisations providing humanitarian aid should prioritise women and put women issues first. In the absence of priority service in emergency situations, scarcity may lead women selling sex to be considered first on humanitarian services.

5.4 Effective Prosecution

Effective prosecution of perpetrators of violations against women and children by the ICC would serve as an example to Governments and warlord engaging in such conduct. There has not been many examples to function as deterrence especially against women and children.

5.5 Prevention of War

The UNSC, in cooperation all the UN systems, should use all available tools to prevent conflicts, including early warning, preventive diplomacy, preventive deployment of peacekeepers, preventive disarmament, and much effort be put into post-conflict peace building.

6. Conclusion

After a whole enquiry into the issues affecting women and children, queries still remain and one major question would be, since the Second World War and the development of the contemporary IHL, has the situation changed for vulnerable groups? Put differently, can the world safely project a better future for women and children in conflict?

The reality is that, women and children have never been offered a better legal protection in history than what is being offered now. It is safe to say vulnerable groups have never been more protected and paradoxically have never been more vulnerable. While this has been the best legal environment for vulnerable groups, this can also be said to be the worst possible atmosphere to survive during a conflict.

Each new war has presented new challenges to observance of International Humanitarian Law standards while impunity made a mockery of efforts to deter perpetrators.

BIBLIOGRAPHY

- A. F. Vrdoljak (2011). *Women and Private Military Security Companies*.
1. Ahmad Mussa, Sameer, Modern Talk, The Similarities and Differences Between International
 2. ArLynn Parker; ODUMUNC 2017 Issue Brief Security Council Protection of Women and Children in Conflict: Implementing UNSC 1325 Old Dominion University Model United Nations.
 3. Article 2(1) of the 1980 Protocol III to the Convention on Certain Conventional Weapons states:
 4. Baaz, M. E., Stern M. (2009) "Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)". *International Studies Quarterly*, 53(2):
 5. Baktieh, John S. *Humanitarian International Law: Principles and Development*. 1999.
 6. Bastick, Grimm and Kunz, 2007
 7. Battistelli, 1999; Seifert, 1994; Stiglmeier, 1994, Hayden, 2000; Beverly, 1996; Sharratt and Kaschak, 1999.
 8. De la Vega and A. Beck (2006). *The Role of Military Demand in Trafficking and Sexual Exploitation* Commission on the Status of Women 50th Session, Human Rights Advocates.
 9. Prata (2012) LL.M Thesis presented to complete the International Legal Sciences thesis program from NYU School of Law.
 10. Catarina Prata Gender Violence in Armed Conflicts 2013: Women and Private Military and Security Companies: One More Piece for the Puzzle
 11. Collins, Randall (2004). "Three Faces of Cruelty: Towards a Comparative Sociology of Violence". *Theory and Society* 4:
 12. Convention on the Rights of the Child,
 13. *Covenant on Civil and Political Rights* 1966; common Article 3 of the four *Geneva Conventions* of 1949;
 14. DR. Mohammad Tarawneh, et.al, International Humanitarian Law.

15. *Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council. Article 2(a)*
16. ELISABETH REHN & ELLEN JOHNSON SIRLEAF, *Women, War and Peace: The Independent Experts' Assessment on The Impact of Armed Conflict on Women and Women's Role in Peace-Building* (2002);
17. European Commission Humanitarian Aid and Civil Protection, 2013)
18. Françoise Krill *Women and War*, estimates rather that "about 40 provisions are of specific concern to women.
19. Françoise Krill, *The Protection of Women in International Humanitarian Law*, 249 INT'L REV. RED CROSS (1985).
20. Freris Barolo Alexandros Iosif; *Protecting children during armed conflicts; balancing between existing frameworks and non-compliance, the way forward.*
21. H. Tonkin (2011). *State Control over Private Military and Security Companies in Armed Conflict. Cambridge, UK: Cambridge University Press,*
22. Helena Carreiras Gender based violence in Armed Conflicts, Sexual Violence in Armed Conflicts: A Global overview <http://www.childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>
23. <http://www.guardian.co.uk/world/2011/may/12/48-women-raped-hour-congo>
24. http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
25. http://www.protectingeducation.org/sites/default/files/documents/draft_lucens_guidelines.pdf
26. <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>
27. <https://www.icccpi.int>.
28. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en
29. <https://www.geneva-academy.ch>> GenevaAcademy2014
30. <https://www.unicef.org>>grave
31. [press-releases/grave-violations-childrens-rights-conflict-rise-around-world-warns-unicef](#)

32. Ian Hurd is an expert in international law and associate professor of political science at Northwestern University in Illinois.
33. IASC, Inter-Agency Standing Committee (2005). Task force on Gender and Humanitarian Assistance, ICCPR
34. International Bureau for Children's Rights, 2010.
35. International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)*, Human Rights Education Association, International Humanitarian Law,
36. International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*
37. International Convention against Taking of Hostages International Convention Law is that International Law contained in treaties, vis-à-vis that are derived from customary practices.
38. International Humanitarian Law, International Justice Resource Center, www.ijrcenter.org
39. Israeli Military Court at Ramallah, Decision in *Prosecutor v. Omar Mahmud Kassem and Others*;
40. JUDITH G. GARDAM & MICHELLE J. JARVIS, *Women, Armed Conflict and International Law* (2001);
41. Judith Gardam & Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1, 56 (2000).
42. Karima Bennouna 2001 Do We Need New International Law to Protect Women in Armed Conflict 2001, Case Western reserve Journal of International Law Vol.38
43. Kate Mackintosh, Humanitarian Policy Group Report 5, The Principles of Humanitarian Action in International Humanitarian Law Study 4 in: The Politics of Principle: the principles of humanitarian action in practice, Overseas Development Institute
44. Leatherman, 2011: 2;
45. Louise Doswald-Beck & Sylvain Vitd, *International Humanitarian Law and Human Rights Law*, INT'L REV. RED CROSS (1993).
46. Marco Sass, Antoine A. Bouvier, Anne Quintin; *How Does Law Protect in War? Volume I Outline of International Humanitarian Law*

47. P. Higate (2012). *Aversions to Masculine Excess in the Private Military and Security Company and their Effects*: Working Paper No. 08-12 - School of Sociology, Politics and International Studies - University of Bristol
48. Pictet, Jean S. Doctor of Laws and then Director for General Affairs of the International Committee of the Red Cross the authors examine the four Conventions.
49. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 1(j), *adopted July 11, 2003*.
50. Reproductive Health Response in Conflict Consortium (2003) Gender-based Violence Tools Manual, 9.
51. S. Gumede (2007). *Sexual Exploitation and Sexual Abuse: the Need for Special Measures within the Private Security/Military Industry*. Institute for Security Studies
52. SC Res. 1325, pmb., U.N. Doc. S/RES/1325 (Oct. 31, 2000), I.L.M. 500 (2001).
53. Seifert, R. (1992). *War and Rape: Analytical Approaches*, Geneva, Women's International League for Peace and Freedom:
54. Summary of the Geneva Conventions of 1949 and Their Additional Protocols. International Humanitarian Law, April 2011
55. *The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* in 2008.
56. The U.N. Special Rapporteur on Violence Against Women,
57. Theodor Meron, *The Humanization of Humanitarian Law*, 94 AM. J. INT'L L (2000). Third Edition;
- 58.
59. U.N. Communication on the Elimination of Discrimination against Women, *General Recommendation 19*,
60. United Nations Centre for Human Rights, Fact Sheet No. 13: International Humanitarian Law and Human Rights 17 (1991).
61. W. Singer (2004). *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press.
62. Winnierohi Nekesa Wafula; A Critical analysis on international humanitarian law and its implementation (case study Kenya).
63. *Women and the Gender Perspective: Violence Against Women, delivered to the UN. Commission on Human Rights*, U.N. Doc. E/CN.4/2001/73 (Jan. 23, 2001)