



NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW PROGRAMME

**SOLDIERS' LEGAL AWARENESS AS A METHOD OF HUMAN RIGHTS
PROTECTION DURING ARMED CONFLICTS**

ROZA OMER HAMAD AMIN

MASTER THESIS

NICOSIA

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20166289

MASTER THESIS

SUPERVISED BY:

Assoc. Prof. Derya Aydin Okur

NICOSIA

2018

“War must always be fought for peace”

- Sallust-

To my parents

ACCEPTANCE

We as the jury members certify the " soldiers' legal awareness as a method of human rights protection during armed conflicts" Prepared by Roza Omer Hamad Amin defended on

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ABSTRACT

SOLDIERS' LEGAL AWARENESS AS A METHOD OF HUMAN RIGHTS PROTECTION DURING ARMED CONFLICTS

This study sought to examine how soldiers' legal awareness influences the protection and violation of human rights in IACs with reference to Iraq. This is based on observations that have been made which showed that the nature of atrocities perpetrated by members of the armed forces (soldiers), are so inhumane and will leave one questioning whether soldiers are fully aware of the existence of human rights. Examinations made from the study outlined that IACs have a high tendency to cause undesired consequences which include massive death tolls, high levels of sexual abuses of women and children, harassment, torture and mass killings. The findings also showed that much of human rights abuses recorded in IAC are perpetrated by soldiers who have been a key instrument behind HRVs as noted with unconventional war methods and weapons which they have been using in IACs. The study also outlined that the IHL is an embodiment of fundamental standards and is not a body of laws while IAC standards set by the IHL are not usually followed and in most cases they are violated. The study also managed to establish that the ongoing level of violence that is taking place in Iraq is threatening both the constitution formulation process and its use to handle human rights abuses and the Iraq constitution itself is surrounded with a lot of inherent problems and its formulation has to a large extent being biased toward certain ethnic and region-based groups.

Key terms: Human right, international armed conflict, soldier's legal awareness

ÖZ

SİLAHLI ÇATIŞMA SIRASINDA İNSAN HAKLARI KORUMA BİR YÖNTEM OLARAK ASKER YASAL BİLİNCİ

Bu çalışma, askerlerin yasal bilincinin, Irak'a referansla IAC'larda insan haklarının korunmasını ve ihlal edilmesini nasıl etkilediğini incelemeyi amaçlamıştır. Bu, silahlı kuvvetlerin (askerler) mensupları tarafından işlenen vahşetin doğasının çok insanlık dışı olduğunu ve askerlerin insan haklarının varlığından tam olarak haberdar olup olmadıklarını sorgulayacak olan gözlemlere dayanmaktadır. Araştırmadan elde edilen incelemeler, IAC'ların kitlesel ölüm kayıtlarını, kadın ve çocukların cinsel istismarlarının yüksek düzeylerini, tacizi, işkenceyi ve kitlesel katliamları içeren istenmeyen sonuçlara neden olma eğilimi yüksek olduğunu belirtmiştir. IAC'de kaydedilen insan hakları ihlallerinin çoğunun, IAC'larda kullandıkları geleneksel olmayan savaş yöntemleri ve silahlarla belirtildiği üzere, HRV'lerin desteği ile askerler tarafından gerçekleştirildiği de gözlemlenmiştir. Ayrıca, IHL'nin temel standardı olan uygulama IHL tarafından belirlenen IAC standartlarının genellikle takip edilmediğini ve çoğu durumda ihlal edildiğini belirten yasalar bütünü olmadığını belirtmiştir. Çalışma ayrıca, Irak'ta devam eden şiddetin, hem anayasa formülasyon sürecini hem de insan hakları ihlallerini ele alan uygulamayı tehdit ettiğini ve Irak anayasası ile çatışıp birçok problem getirdiği ve formülasyonunun büyük ölçüde belirli etnik ve bölge bazlı gruplara karşı hedef alındığı gözlemlenmektedir.

Önemli terimler: İnsan hakkı, uluslararası silahlı çatışma, askerin hukuki farkındalık.

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ABBREVIATIONS

HRTPs: Human Rights Training Programmes

HRVs: Human Rights Violations

IAC: International Armed Conflict.

Ibid: ibidem

ICC: International Criminal Court

ICRC: International Committee of the Red Cross

ICTY: International Criminal Tribunal for the former Yugoslavia

IHL: International Humanitarian Law

IHRL: International Human Rights Law

ISIL: Islamic State of Iraq and the Levant

LOAC: Law of Armed Conflict

NATO: North Atlantic Treaty Organization

NIAC: Non- International Armed Conflict.

OHCR: United Nations Commission on Human Rights

pp: Pages

UN: United Nations

UNDHR: UN Declaration of Human Rights

UNHR: United Nations Human Rights

Vol: Volume

PREAMBLE

Throughout the history of human being, the war was a political and social phenomenon and it has left a great effect on mankind and hence it can be said that war is the creator of history.

The crucial political circumstances and the sovereignties which change a community in its root to a humanitarian community are consequences of war and have obtained their legitimacy from war and armed conflicts. War is the creation of change, the expected and unexpected incidents, and it leaves a permanent impact on human history. We can say war is a sort of speedy changes.

Some experts believe that statutory laws cannot organize human behaviour during war and battlefields and that statutory laws will never be a reference point upon which human rights, dignity and the lives of people and civilians will be protected.

Based on the idea that war is a specific, unwanted and instant situation whose nature is complicated and dangerous, questions can be levied as to how the law can fight to preserve human rights and ensure that everybody is aware that people's destinies in this sensitive situation are on the edge. Thus, the phenomenon of war in our mind becomes a simple phenomenon, "addicted to it". As French political and social philosopher Proudhon says,

"It is not necessary to tell humans how war is physically or by experience, because everybody can imagine war by experience; some by sight, some by participation, some by presence in the battlefields, etc. indeed, such questions and criticisms could occur but it must not be forgotten that law is considered as the only main reference of organizing human behaviour, and this is a fixable and unchanged rule, and the human history has proved it"¹.

I was 19 years old when I went to Vietnam as a 4th grade Ram soldier, I was trained to kill, but killing a man is really different from a training world and just pressing the trigger ... I did not know I was going to do this. I knew there would be women and

¹ Pierre-Joseph Proudhon, what is property? An inquiry into the principle of right and of government, Vol. 1. (BR Tucker 1876).

children but I did not know I was going to kill them until it happened. I did not know I was going to kill anyone. I did not want to kill anyone. I was not raised to kill.

She was running parallel to a row of trees carrying something I did not know if it was a weapon or something else. I knew she was a woman and I did not want to shoot a woman, but I was ordered to do. When I turned her over she found her carrying a child, Four times and penetrated by bullets and killed her son and heart and I saw that half the face of the child has disappeared, I was terrified, I was trained and programmed to kill and I started to kill... Farnardo Simpson, an American soldier who participated in the Vietnam War in 1968²

This is a real story of an American soldier who participated in Vietnam War in 1968. Certainly, after reading such example, we face debates and questions, and we can ask the American soldier, as he says he did not intend to kill anybody but he raised his weapon against children, women and innocent people though he knew they were not part of the war. Why that is the soldier was not aware that civilians have the rights to live and are not part of any disaster that occurs in war, bloodshed and conflicts, that they are not members of direct war and are not in the framework of war? What is the reason of this? Does soldiers' lack of awareness and unfamiliarity of human principles as well as lack of humanity make them obedient to the commanded laws and rules? Is it necessary for soldiers' to always carry out orders or commands that given by their leaders? What are the legal and illegal behaviours in the battlefields? What is the significance of being familiar with such soldiers' behaviour? What is necessary to be done to familiarize soldiers with human rights and freedom laws, and to care about human rights principles in order not to raise their weapons against innocent civilians and victims of war?

There is a belief that the benefits of civilization should have an effect of alleviating as many calamities of war as possible and that the only legitimate objective which States should endeavour to accomplish during war is to weaken the military forces of the enemy and that it is possible to disarm a huge number of militants³. However,

² David Donovan, Once a warrior king: Memories of an Officer in Vietnam, in Exploring Humanitarian Law, Education Modules for Young People (ICRC 2001)

³ Declaration denouncing the Use in Terms of War, Explosive Projectiles Under 4000 Grams Weight, Saint Petersburg, 29 November 1868.

this objective has a lot of limitations in the sense that the use of arms will uselessly aggravate the sufferings of disabled men or render their death inevitable and the employment of such arms can, therefore, be considered to be contrary to the laws of humanity.

1. CHAPTER: INTRODUCTION

1.1 Background to the Study

International humanitarian law mainly has a vital role in organizing human behaviour concerning war and discordance in the context of the concept (even war has a limit), also in indicating mission and rights of war soldiers in terms of laws and principles of war that are included in international humanitarian law (IHL). It also reiterates that human and civilian rights, dignity and holiness must be protected in the battlefield. Furthermore, the effective roles of international humanitarian law can work together to promote peace as a mechanism of settlement after war and discordance as much as possible by engaging to the law.

What we are going to discuss which is the essential point of our research of investigating and questioning a sensitive and significance topic concerning protecting and defending human rights besides evaluating and familiarizing soldier as a direct member in the battlefield to the laws and means of protecting human rights and intellectualizing warrior not to violate but to defend human fame and affirming the love of humanity in every member of a militant group, or anyone who's armed and has a direct role in the battlefield under the umbrella of the international humanitarian law and legal roles and positions of the international organizations, because the importance of teaching human rights and the role of teaching in development of respecting human freedom and rights nationally and internationally, are from those significance statements, deals, protocols and declarations that are been reiterated by the United Nations and other human rights agencies. On the other hand, countries' internal laws and constitutions, international protocols and agreements which are based on protecting human rights will be discussed. Moreover, the importance of countries' military agencies in engagement to legally intellectualize and familiarize fighters with the primary basis of protecting human rights and reputations, besides human fame and existence will be discussed in our research.

1.1.1 Soldiers' Legal Awareness

The concept of soldiers' legal awareness in this context refers to the education of soldiers about law concepts, matters and restrictions that govern their behaviour and actions during war and international armed conflicts (IACs). There is a general perception that soldiers are generally trained to fight and little has been done to educate them about legal matters that surround any international battles which they may be engaged in⁴. As a result, much of the effects of war are considered to be as a result of soldiers' lack of know-how of legal matters such as international humanitarian law⁵. Thus, the attack of civilians, destruction of civilian property, crimes against humanity, grave crimes and other human rights violations (HRVs), repercussions and reiterations by opponents can be eased if soldiers are fully informed of legal matters that govern armed conflicts⁶. With such ideas in mind, this study seeks to examine how soldiers' legal awareness has been influencing armed conflicts by looking at international events and incidences that have taken place around the world.

1.1.2 Human Rights Protection in An Armed Conflicts

The notion of human rights protection has been a dominating issue in international headlines and its impact continues to be felt internationally. One of the areas in which gross HRVs have been observed is in armed conflicts⁷. This follows ideas which have been established which showed that armed conflicts are associated with huge loss of innocent civilian life⁸. Other established ideas also show that there are a lot of inhumane activities such as torture, kidnappings, rape and slavery that are bound to take effect in armed conflict⁹. While others have linked human rights protection to be based on the need to control methods of war which have of late been observed to be having widespread effects as noted from Yemen, South Sudan and Somalia where a lot of children were abused, tortured and killed as a form of

⁴ Liesbeth Kalshoven, Frits & Zegveld, *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, Vol 1 (2015) <https://www.loc.gov/rr/frd/Military_Law/pdf/Constraints-waging-war.pdf>. Accessed on November 2017.

⁵ Ibid, 3.

⁶ Ibid, 4

⁷ Ibid.

⁸ Ibid, 6.

⁹ RJ Toney and SN Anwar, 'International Human Rights Law and Military Personnel: A Look Behind the Barrack Walls' (1998) 14 American University International Law Review 519.

bargaining power and much of them constituting violations of Protocol I and of the Geneva Conventions¹⁰. The United Nations Human Rights (UNHR) outlined that 217 civilians fell victim to rape in Juda, South Sudan and part of it believed to have been committed by soldiers¹¹. The magnitude of the effect of these acts can proliferate if they are not controlled and hence there has been direct calls for the need to protect human rights in armed conflicts.

Much of the HRVs in armed conflicts have been linked to the roles played by soldiers with some scholars outlining that soldiers have an influence on human rights protection¹². This is because soldiers are believed to be having a direct influence on war and hence have an ability to decide what is wrong and right. This can be supported by ideas given by Gaggioli which showed there is a greater ability to promote human rights during armed conflicts by improving soldiers' legal awareness¹³. This is based on the idea that when soldiers are fully aware of legal statutory institutes that govern their armed behaviour and responses during armed conflict they will desist from engaging in inhumane activities which lead to HRVs¹⁴. This can also be reinforced by ideas that even the attack on civilian property and non-combatants will decline as soldiers will fully become aware of what is right and wrong¹⁵.

1.2 Research Problem

Armed conflicts are considered to be an event that has widespread effects that can cause huge destruction not only to property but also a violation of human rights and a loss of civilian life. There is a major problem that exists in very armed conflict circumstance is that conflicting parties to an armed conflict have been noted to blame each other not only about the causes of the conflict but about the actions and behaviour of each party during an armed conflict. For instance, it has been outlined that an attack of the civilian property has necessitated an intensity and prolonged

¹⁰Human Rights Council Office of the High Commissioner, *International Legal Protection of Human Rights in Armed Conflict* (2011).

¹¹ Ibid.

¹² Ibid, 10.

¹³ Ibid. Robert Sloane, 'Puzzles of Proportion and the "Reasonable Military Commander": Reflections on the Law, Ethics, and Geopolitics of Proportionality' (2015) 6 Harvard National Security Journal.

¹⁴ Office of the High Commissioner.

¹⁵ Ibid.

armed conflicts with a significant influence being observed to be related to the human rights violation¹⁶. Conflicting parties to an armed conflict have hinted that soldiers of each party are responsible for the perpetrations of HRVs that take place in armed conflicts¹⁷. This follows ideas which have shown that soldiers are incapable of upholding human rights protection laws¹⁸. Others have hinted that human rights protection in armed conflict is a difficult task since soldiers lack legal awareness of human rights protection, suggesting that promoting soldiers' legal awareness will aid in the protection of human rights¹⁹. Contrasting ideas have however shown that it is a difficult task to enhance human rights protection by promoting soldiers' legal awareness because there are a lot of factors that must be put into considerations. This implies that if such conditions can be identified, then "we" can successfully utilise soldiers' legal awareness to improve and enhance human rights protection in armed conflict. As a result, there are no common points of agreement as to how exactly soldiers legal awareness will influence human rights protection in armed conflict. This study, therefore, seeks to examine how soldiers' legal awareness influences human rights protection in armed conflicts.

1.3 Research Objectives

This study was undertaken with a chief motive of examining how soldiers' legal awareness and familiarity of human rights laws, principles and freedom influences human rights protection in armed conflicts and whether it guarantees a reduction in the violations of the human rights in war and conflicted circumstances. The study also seeks to attain the following targets;

- a. To identify conditions that can warrant an effective use of the impact of soldiers' legal awareness to influence human rights protection in armed conflicts.

¹⁶ UNHR, 'A Report on Violation and Abuses of International Human Rights Law and Violations of International Humanitarian Law in the Context of the Fighting In Juba, South Sudan, In July 2016' (2017) <<http://www.ohchr.org/Documents/Countries/SS/ReportJuba16Jan2017.pdf>> Accessed 17 November 2017.

¹⁷ Ibid, 15.

¹⁸ Noam Lubell, 'Challenges in Applying Human Rights Law to Armed Conflict' (2005) 87, 737.

¹⁹ Gloria Gaggioli, 'Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law' (2014) 96 International Review of the Red Cross 503 Available on <http://www.journals.cambridge.org/abstract_S1816383115000211>. Accessed 17 November 2017.

- b. To identify Parties that are responsible for promoting soldiers' legal awareness to protect human rights in armed conflicts.
- c. To examine the extent to which international organisations have influenced and contributed to human rights protection in armed conflict through the promotion and use of soldiers' legal awareness.
- d. To analyse if soldiers' awareness and familiarity with human rights laws, principles and freedom become a guarantee to reduce violations of the human rights in war and conflicted circumstances.

1.4 Significance of the Study

Human rights protection is an important task as it helps to safeguard individuals' health, wellbeing, property and lives and hence by promoting soldiers' legal awareness of human rights in armed conflict, efforts to attain peace, preserve property and lives will thus become an achievable task. This study also helps to enhance the role played by international organisations such as the UN to preserve human rights in armed conflicts. Moreover, it can be used to devise violent free strategies to deal with armed conflicts. It is also a platform upon which other future studies can be developed.

1.5 Organisation of the Study

In order to execute this study, a four-chapter framework was used and this framework can be decomposed into the following chapters;

- Chapter -1- Background to the study.
- Chapter -2- Armed conflicts and human rights.
- Chapter -3- Soldiers' Legal awareness as a method of controlling HRVs during armed conflicts.
- Chapter -4- Soldiers' legal awareness in compliance with international conventions and treaties.
- Chapter -5- Conclusions and recommendations

2. CHAPTER: WAR, ARMED CONFLICTS AND HUMAN RIGHTS.

2.1 Insights About War

There are various ideas that can be given to describe war but the notable distinction lies in the relationship that exists between war and armed conflicts. It is therefore important to give a description of what is war and how it connects to what is now termed armed conflicts.

Foremost, war is generally defined as conflicts between various groups within a State or between two or more States²⁰. It can also be known as a form of conflict that involves the use of armed forces either by air, sea or land, between various groups within a State or between two or more States²¹. Despite the existence of these definitions, there are studies which point to the idea that war is not restricted to military activities or confrontations between two Parties. This can be supported by ideas which have shown that war is categorised into many different types but its objective is in most cases the same²². As a result, war can also be categorised as belief or religious wars such as the one between Shia and Sunni, Protestants and Catholics in Ireland, and Muslims and Hindus in India²³. It can also be in the form of an economic blockade whereby political authorities impose controls on raw materials such as an oilfield or control certain markets and their operations²⁴. The most common type of war has been considered to be the one which has different slogans such as democracy but with hidden aims which can include occupying a State or controlling it.

Researchers such as Von Clausewitz have shown that at least one-third of the world countries are engaged in some form of a war and that there is always one country that forces another country to war²⁵. This can be noted from their insights which for instances demarcates that;

²⁰ Andreas Paulus and Mindia Vashakmadze, 'Asymmetrical War and the Notion of Armed Conflict: A Tentative Conceptualization' (2009) 91 International Review of the Red Cross 95.

²¹ Based on the writings of Dr Salar Basira which concentrated on war in history of mankind and the relationship of war with politics and economy, Political and scientific report, 2011.

²² Ibid.

²³ Dr Salar Basira, War in Human History and its Relations with Politics and Economy, A Political, Economy and Social Research, 2011.

²⁴ Ibid.

²⁵ See C von Clausewitz 'On War', P. Paret, Sir Michael Howard (trs), (Princeton 1976), p.121.

“....war, is a continuation of politics by other means and an attempt should be made to understand war as an event in which a party tries to impose its objectives on the other party. War is a kind of action aiming at limiting or controlling an opponent. War just like peace, is politics and peace is politics without war. War is politics by war and blood shedding. War is an art of getting benefit from the circumstance for self-interest. We would be able to understand the content of war if we study dual policy of that war prior to it taking place. War is not merely an armed conflict between the parties, but it is an economic, political and ideological form of violence and dispute among the participants, (Von Clausewitz, 1780)²⁶.

Kurt Tucholsky (1931) asserts that humans have done little to deal with war and have not been capable of using existing media, cinemas, mosques, churches and schools to launch campaigns against the war²⁷. He also contends that human beings have a tendency to forget previous incidences of war and always end up engaging in similar incidences that will necessitate another war²⁸.

It is unfortunate that in most cases war does not always easily end in peace and there is always a Party or State that suffers at the end of it. Actually, WAR is the most undesirable and ugliest word because the enemy is not a human during the war, they are shots mark that should be targeted²⁹.

It is, however, important to note that war and armed conflicts are regarded as the same. For instance, war can be considered to be a severe armed conflict situation between two or more States³⁰. Thus, armed conflicts can be said to be a resultant effect and product of war.

2.2 Armed Conflicts

When a war has intensified to an extent that it becomes so extreme, the resultant outcome has been established to be known as an armed conflict. An armed conflict

²⁶ Von Clausewitz 1 June 1780 – 16 November 1831, was a Prussian general and military theorist. He was famous of his notable book about war, talking about war theory, strategy, technic and philosophy

²⁷ Kurt Tucholsky, <http://www.dw.com/en/kurt-tucholsky-enigmatic-author-and-satirist/a-16179470>. Accessed 17 November 2017.

²⁸ Ibid.

²⁹ Ideas taken from a novel by Oriana Fallaci entitled A Man written in 1979 and aims to highlight war issues and resultant effects in relation to man's activities.

³⁰ See Annex B of BDD for a short description of the Laws of Armed Conflict.

can thus be defined as a form of conflict between States involving the use of arms by armed forces³¹. However, this definition does not, however, limit the environment under which armed conflicts occur. This is because armed conflicts can also occur between groups within a State as one ethnic or religious group tries to impose its own will on another State. Thus making it difficult to impose limits on crime, terrorism, conflict, armed conflict, war and peace. As a result, changes from war to peace may not be clearly established³².

Whether one prefers to call war an armed conflict, it remains known that war involves violence and that violence results in improbability, uncertainty and emotions which affect military operations³³. In addition, Clausewitz considers that 'frictions of war' or simply factors affecting war as necessary because there is a belief that it is difficult under normal circumstances during the war to attain moderate results and hence this calls for frictions to help achieve such results³⁴. Factors that influence war or the 'frictions of war' are hostile terrain, geography, weather, logistic limitations, human inefficiencies and imperfections.

Since this chapter has outlined that armed conflicts are a functional effect of war, it, therefore, shows that the intensity of an armed conflict is relatively determined by the levels of warfare armed forces may choose to use during periods of armed conflicts. This can be supported by ideas given by Clausewitz which showed that the grand strategy level of warfare has huge implications on an armed conflict as opposed to other levels of warfare such as operational level and military strategy³⁵. With such in mind, there are four levels of warfare States may adopt during an armed conflict and these levels of warfare have an important implication on military activities. The four levels of warfare are;

- **The Tactical Level:** This level is concerned with the planning of engagements, how forces are to be deployed and battles are to be fought³⁶. It is possible to avert wars into escalating into an armed conflict at this stage but

³¹ Andreas Paulus and Mindia Vashakmadze, 'Asymmetrical War and the Notion of Armed Conflict – a Tentative Conceptualization' (2009) 91 International Review of the Red Cross 95.

³² Ibid.

³³ Mary Ellen O'Connell, 'Defining Armed Conflict' (2008) 13 Journal of Conflict and Security Law 393.

³⁴ Frederick, 'The Nature of War and Armed Conflict' (Garden City 2013).

³⁵ United Nations, 'Armed Conflicts and Their Consequences' (2013).

³⁶ Ibid.

opposition Parties and States often embark on this level of warfare as a way of intimidating their opponents and force them into a point of compromise³⁷.

- **The Operational Level:** Deals with the use of military resources for military purposes and includes activities such as major military operations and campaigns³⁸. This is supervised by joint task force commander or operational level commander who sets military targets and deploys military forces into battle. It is during this stage that war or armed conflicts are considered to be at an infancy stage but slowly advancing into an extreme situation³⁹.
- **Military Strategy:** A military strategy level of warfare uses military resources to offer support so as to fulfil grand strategy objective⁴⁰. Under this situation, military objectives are based on political circumstances and the allocation of military resources not only to attain grand strategy goals but to attain certain political targets. The major problem with this strategy is that it has resulted in intense armed conflicts between groups within a State⁴¹.
- **Grand Strategy:** This level of warfare involves the use of national resources to support national policy targets⁴². This level of warfare focuses on the entire war strategy and involves combined military, political, industrial and economic support. It is at this stage or level that armed conflicts can be said to be having huge implications and consequences.

Nevertheless, the number of incidences of armed conflicts has been on a high rise and available data has shown that between the period 1989 to 1997, 33 active conflicts were recorded in the year 1997 in 69 locations and the highest number of conflicts to ever being recorded during that time reached 103⁴³. This can also be supported by insights which have shown that about 33.33% of the United Nations

³⁷ Ryan Dowdy and others, 'Law of Armed Conflict Deskbook International and Operational Law Department' 253 <http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015.pdf> Accessed 17 November 2017.

³⁸ James G Stewart, 'Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict' (2003) 85 *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 313.

³⁹ Georg Schwarzenberger, 'The Law of Armed Conflict'.

⁴⁰ *Ibid.*

⁴¹ Balendra Natasha, *Defining Armed Conflict*, (2008), 1-56.

⁴² *Ibid.*

⁴³ Wallenstein, Peter, and Margareta Sollenberg, *Armed Conflict and Regional Conflict Complexes*, (1989) 97, *Journal of Peace Research*, vol. 35, 621, 634.

(UN) members have been in more than one incidence of armed conflict⁴⁴. The rate of incidences declined soon after 1992, the number of incidences of armed conflicts rose from 27 to 36 between the periods 1998 and 1999⁴⁵.

There has also been a significant change towards armed conflict patterns and a lot of cases of armed conflicts that have been recorded are intra-State conflicts as compared to inter-State conflicts⁴⁶. This can be reinforced by arguments which contend that only one incidence of international armed conflict between States was recorded between 1989 and 1997⁴⁷. The decline in the number of cases of inter-State conflicts has however not been in proportionate to the increase in the number of cases of intra-State conflicts. The latter has however been on a huge increase and such changes have come in the wake when most States are now finding it difficult to come up with effective peaceful solutions that can deal with internal or intra-State conflicts.

Much of the internal States conflicts that have been observed have been as a result of political circumstances in which citizens within a States have been fighting for change⁴⁸. These types of conflicts are more common in Africa which is characterised by ethnic clashes but have also been growing in observation in Europe and Asia⁴⁹. This can also be illustrated by notable examples such as the breaking free of Eritrea from Ethiopia while Herzegovina, Bosnia, Croatia and Slovenia broke free from Yugoslavia towards the end of 1992⁵⁰. Only a few cases were characterised by peaceful resolution of State conflicts such as that of East Timor and the Yugoslav Republic of Macedonia⁵¹.

Another notable feature that can be noted with intra-State armed conflicts is that they sometimes involve a certain group of armed individuals who intend to fight a legit government with a sole aim of seizing power and overthrowing it. These groups are

⁴⁴ Bouvier Antoine and Lanholtz Harvey, *International Humanitarian Law and the Law of Armed Conflict* (2012), pp. 1-31.

⁴⁵ *Ibid.*

⁴⁶ Yoram Dinstein, 'Protection of the Environment in International Armed Conflict' (2001) 5 *Max Planck Yearbook of United Nations Law* 522.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Yoram Dinstein, 'Protection of the Environment in International Armed Conflict' (2001) 5 *Max Planck Yearbook of United Nations Law* 522.

⁵⁰ Sten Verhoeven, 'Institute for International Law Working Paper No 107 – March 2007 International and Non-International Armed Conflicts'.

⁵¹ *Ibid.*, 46.

usually motivated by greed and lust for personal enrichment with money and resources and empowerment such as what has been the situation with the accused extremist group the Islamic State of Iraq and the Levant (ISIL)⁵². On the other hand, such conflicts are surrounded by civilians and militias who fight with improperly defined chains of command and little discipline. Studies have shown that these types of conflicts often do not have clear front lines and use the guerrilla type of warfare⁵³. The bad effect of these types of armed conflicts is that they target the judiciary and the police which crumbles governmental effectiveness and influence thereby causing banditry and chaos activities, and a breakdown of law and order. To make matters worse, State assets may also be destroyed in the process, experienced and skilled personnel may flee the country or get killed in the process⁵⁴.

There are no limits to the magnitude of damages that is posed by armed conflicts and they can range from violence to genocides. If not controlled, armed conflicts can extend to affect neighbouring countries which are being utilised by the parties involved in a conflict as a hideout or supply route. There is also no limit to the type of weapons that are used in an armed conflict and it has been revealed that armed conflicts are characterised with the use of armoured vehicles, mortars, grenades, machine guns with machetes being commonly used in the intra-State armed conflict⁵⁵. What fuels armed conflicts is the method through which the weapons are acquired. Most weapons are acquired using the 'parallel financing' facility which involves the use of hard currency but unconventional ways such as the use of products such as coffee, timber, oil and diamonds have been a major factor fuelling armed conflict. This has been dominant especially in Africa with nations such as Democratic Republic of Congo, Sierra Leone and Liberia being implicated against the use of diamonds to unconventionally acquire weapons and promote uprisings against other ethnic groups⁵⁶. This can also be pointed to what has been taking

⁵² Ibid, 47.

⁵³ Adam Roberts, 'The Laws of War: Problems of Implementation in Contemporary Conflicts' (1995) 6 Duke Journal of Comparative and International Law 11.

⁵⁴ International Committee of the Red Cross, 'ICRC Opinion Paper, March 2008 1 How Is the Term "Armed Conflict" Defined in International Humanitarian Law? Opinion Paper' (2008) 21.

⁵⁵ Ibid.

⁵⁶ Scott Gates and others, 'Development Consequences of Armed Conflict' (2012) 40 World Development 1713.

place in Iraq and Libya in which inter-state conflicts are assumed to be as a result of the need to control oil reserves in Iraq and Libya⁵⁷.

Unfortunately, we cannot conclude that war will end one day and this can be supported by a famous quote established by Plato which reads, "Only the dead have seen the end war"⁵⁸. But this contradicts with other assertions and thoughts. For instance, there is a saying which says that "nothing lasts forever", the same can be said to armed conflict and this means chances are very high that war will continue to exist in the world and also at the same time there is a high probability that any armed conflict has a good chance of being resolved.

The first way of ending an armed conflict is through a cease-fire agreement and this is often supported by peace agreements signed by parties to an armed conflict. The other way involves what is known as an outright victory which involves one party emerging victorious over the other. There are however cases whereby an armed conflict ends as a result of having prevalent for a quite a long period of time⁵⁹.

However, changes have also been observed between armed conflicts that took place in the traditional era and the twentieth century. This can be noted from findings which have been established which showed that the armed conflicts that took place in the twentieth century were now being characterised by the use of civilians as primary victims and main combatants⁶⁰. This is evidenced by findings which also outlined that more than 50% of the war deaths registered in 1996 were accounted by civilians and this figure represents a drop from the 1980s and 1960s figures of 74% and 63% respectively⁶¹. It can be established that much of the civilian deaths that have been during recorded as a result of armed conflicts are not as a result of armed conflicts between States but rather armed conflicts within States. The other thing to reckon with is that villages are now being used battlefields which military targets have changed to include churches as evidenced by the Boko Haram incidences in Nigeria

⁵⁷ Ibid.

⁵⁸ See also Brumbaugh Robert, "Plato for the Modern Age", (University Press of America, Lanham, Maryland 1991), p.198.

⁵⁹ Kwakwa, Edward K. The International Law of Armed Conflict: Personal and Material Fields of Application. (Martinus Nijhoff Publishers, 1992). 32.

⁶⁰ Ruth Leger Sivard, World Military and Social Expenditures, (World Priorities, Washington D.C. 1996), pp.18-19

⁶¹ Ibid.

and hospitals⁶². The damages posed by armed conflicts has also grown to include schools and agricultural crops which are destroyed in the process of the conflict.

On the other hand, one can also point out that the major reason why armed conflicts have been on the rise is the ease of access and availability of arms. Light and small arms are usually cheaper to acquire and hence civilians have easy access to them⁶³. Moreover, manufacturers of arms have also been blamed for selling arms to developing nations as a way of boosting the arms sales⁶⁴. What disturbs the most is that children are now being used in armed conflicts as soldiers. Reports have shown that between 1995 and 1996, more than 250 000 children had been used as armed soldiers in the 33 reported cases of armed conflicts⁶⁵. The role of children in these armed conflicts has not been limited to messengers, porters and cooks but has been including being informers and spies and in most cases as combatants and assassins. What makes it different is that children would be recruited to fight when there are few men to fight the war but nowadays it is no longer an option. This can be evidenced by what took place in Somalia, Sri Lanka, Afghanistan and Angola in which armed conflicts lasted for 7 years, 11 years, 17 years and 30 years respectively⁶⁶. The reason why children are easily recruited into armed conflicts is believed to be the idea that they can easily be trained into ruthless soldiers, they complain less and are more docile. What matters is the effects that these children suffer from brutal indoctrination which leaves them with psychological and emotional pain especially when they are used to commit atrocities and witness mass killings and atrocities as with what was seen in Sudan, Mozambique and Cambodia⁶⁷.

2.3 The Concept of International Armed Conflicts

The International Criminal Tribunal for the former Yugoslavia (ICTY) defines an IAC as a conflict that involves the use of armed force between States⁶⁸. Article 2 of the

⁶² McCoubrey, Hilaire, and Nigel D. White. *International law and armed conflict*. (Dartmouth Pub Co 1992). 11.

⁶³ Sivakumaran, Sandesh. *The law of non-international armed conflict*. (Oxford University Press 2012). 56.

⁶⁴ *Ibid*, 55.

⁶⁵ Based on reports made by the Swedish Save the Children Fund.

⁶⁶ *Ibid*, 60.

⁶⁷ *Ibid*

⁶⁸ D. Schindler, 'The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols', *Recueil des cours, Hague Academy of International law (RCADI)*, Vol. 163 (1979), p 131.

Geneva Convention (1949) contends that IACs occur when two States engaged in armed clashes⁶⁹. This implies that the Geneva Convention on IAC applies whenever arms are used in any conflict situation between two States. However, this has to conform to the laws that govern inter-state conflict and this particularly relates to the *jus ad bellum* principle. It is also important to note that an IAC also occurs whenever a State uses armed force on another State irrespective of the fact that the confronted States may choose not to respond⁷⁰.

There is also an idea of 'the first shot theory' which asserts that once a first shot has been fired by an armed force during an armed conflict between States, the matter should be treated as an IAC. However, a case in which an armed personnel fires a shot across a border is not part of an IAC and this can be supported based on rulings made which can be noted from the *Tadić* case⁷¹. However, a situation whereby one state occupies another State without the use of military force is still classified as IAC under Article 2 of the Geneva Convention. There is a problem with this idea and the International Committee of the Red Cross (ICRC) outlines that the word occupation has been vaguely defined and explained under the Geneva Convention⁷². This can pose problems on dealing with IAC issues as debates can ensue concerning on whether a certain occupation should be classified as an IAC. Regulations of the Hague Convention of 1907 set out that a State is considered to be under occupation when a hostile State's army has assumed control of it⁷³. Moreover, the use military force by a State on another State's territory with total consent is not classified under IAC and this can be illustrated using North Atlantic Treaty Organization (NATO) role in States like Afghanistan. This can be evidenced by a situation that transpired in Ukraine in which the Ukrainian President Viktor Yanukovych is said to have given a 'green light' to Russia to intervene in the affairs of Crimea through a letter which was written on the 1st of March⁷⁴. As a result, there was a misunderstanding on whether such should be classified as an IAC and

⁶⁹ H.-P. Gasser, 'International Humanitarian Law: An Introduction' in H. Haug (ed), *Humanity for All: The International Red Cross and Red Crescent Movement*, (Paul Haupt 1993), pp 510–11.

⁷⁰ *Ibid*

⁷¹ ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment (Merits), 27 June 1986.

⁷² *Ibid*, 58.

⁷³ *Ibid*, 59.

⁷⁴ See Euromaidan Press, 'Russia Provides UN Security Council with Appeal by "Legal President" Yanukovych', 5 March 2014.

arguments were also levelled against Ukrainian President that at the time he made such authorization, he was not yet in control of any military or police activities and hence was not in total representation of the Ukrainian State⁷⁵. Further arguments, however, showed proof that Russia had actually made an attempt to annex Crimea⁷⁶.

Cases, where a non-state actor from another state actor gets significant support from another State such that the level of support is so high to an extent that it looks like total control of the non-state actor, are again a form of IAC⁷⁷. An IAC can also be considered to be taking place when citizens of a State are fighting against racist regimes, alien occupation and colonial domination which may be against their rights⁷⁸. Table 1 provides a list of notable IACs that took place in the year 2016.

Another important aspect of determining the existence of an IAC is in terms of geographical scope. IAC has a broader geographical scope as opposed to non-international armed conflict (NIAC). The *jus ad bellum* concept makes it so clear that any military involvement that triggers an armed response between two States is enough to constitute an IAC⁷⁹.

The major difference between an IAC and NIAC is that a NIAC is associated with severe and regular armed violence between organised armed non-governmental groups and a State army⁸⁰. The other thing that distinguishes an IAC from a NIAC is that a NIAC can also occur as a result of severe violence between organised armed groups within a State.

2.4 Consequences of International Armed Conflicts on Human Rights and the Society

The effects of armed conflicts on the society have varied significantly and such variations can be noted to be huge when comparisons are made between intra-State and inter-State conflicts. Much of the effects of intra-State armed conflicts have

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Levie, Howard S. The code of international armed conflict. Vol. 1. (Oceana Publications 1986). 31.

⁷⁸ See proposal for UNICEF engagement on the Rights Up Front action plan.

⁷⁹ Scott Gates and others, 'Development Consequences of Armed Conflict' (2012) 40 World Development 1713.

⁸⁰ Ibid.

increasingly affected civilians than those posed by international armed conflicts. This is because civilians have increasingly being targeted as strategic objectives in armed conflicts⁸¹. More so, intra-State conflicts have been known to be so capable of violating Geneva Conventions on the rules of war and humanitarian norms and have been noted to pose severe restrictions on the ability of humanitarian workers to offer treatment to victims of armed conflicts, and in most cases, they are often abducted or held as hostages⁸².

The most common way the society suffers from the effects of IAC is through the severe death tolls that occur as human life is lost. It is estimated that 56 000 people lost their lives following severe IAC that was observed in the 42 IAC that took place in 2008 and much of the death tolls were as a result of insurgent group attacks that took place in Syria and Iraq⁸³. Figure 1 provides a detailed list of the number of active conflicts and fatalities that were observed between the periods 2008 and 2012⁸⁴.



Figure 2.1: Number of conflicts and fatalities of IAC⁸⁵

⁸¹ Ibid.

⁸² Ibid.

⁸³ Richard Norton Taylor, Global Conflicts Becoming More Deadly, Major Study Finds, The Guardian, Wednesday 20 May 2015, <<https://www.theguardian.com/world/2015/may/20/armed-conflict-deaths-increase-syria-iraq-afghanistan-yemen>> on 27 January 2018> Accessed 23 September 2017.

⁸⁴ Ibid.

⁸⁵ Ibid, 65.

It is also important to note that children and women tend to suffer a lot from IACs and this can be supported from a study which showed that close to two million children were killed in IACs over the last decade⁸⁶. The number of children and women who were psychologically scared permanently disabled or seriously injured as a result of IACs is considered to be three times more than this figure⁸⁷.

What hurts most is that most women and children have been forced to watch incidents of atrocities such as mass killings and in most cases, they have been forced to participate in violent activities. Such tends to cause a lot of insecurities and trauma and one can thus contend that IACs tend to leave a terrible legacy. IACs also cause psychological and emotional stress as homes are destroyed, families are separated and loved ones are killed. There is a study which showed that a lot of people especially children have been suffering from diminished future orientation, depression, heightened aggression, social isolation, nightmares and flashbacks as a result of IACs⁸⁸. It was noted that 20 percent of children in Angola were left separated from their families while in Rwanda 100 000 were left without a single family member⁸⁹. This psychological functioning and mental health problems tend to last for a long period of time even after the IAC has ceased a long time ago. Though governments and international organisations may be applauded for bringing peace after an IAC, they do not often consider the emotional and psychological damages that took place afterwards⁹⁰.

⁸⁶ United Nations, Impact of Armed Conflict on Children: Report of Graça Machel, Expert of the Secretary-General of the United Nations (Selected Highlights) New York, 1996, p.7

⁸⁷ Ibid

⁸⁸ Ibid, 68.

⁸⁹ Ibid, 94.

⁹⁰ Williams Ayers, A World Flying Apart? Violent Nationalist Conflict and the end of the Cold War, (2000) 1 Journal of Peace Research, Vol. 37, 105, 117.



Figure 2.2: Consequences of IACs

Source: (a)⁹¹, (b)⁹²

IACs have been noted to pose devastating effects on civilians as most are killed in the process while others are displaced from their homes. This can be evidenced by figure 2, in which (a) shows civilians that have been displaced from their homes in Rohingyans while (d) shows destruction to property and house from the use of weapons of mass destruction in Syria.

The development of conflict-free zone came a long way in alleviating children from harmful situations such as those caused by armed conflict. This can also be supported by ceasefire agreements which are periodically signed by the government to allow children to get medication from diseases such as tetanus, diphtheria, measles and polio. This strategy has managed to bring about a positive outcome in nations such as Sudan, Afghanistan, Lebanon, Uganda and El Salvador⁹³. But more effective programs were carried out by UNHCR and UNICEF when they attempted to locate separated children and unify them with their parents⁹⁴.

⁹¹ Maliha Karim, Outlining ethnic human rights violations against Rohingyas, The Independent, 11 October, 2017, <http://www.theindependentbd.com/post/118275> Accessed on February 26, 2018.

⁹² UN Says All Syrian Parties Committed Human Rights Violations, Libyan Express, Thursday 2 March 2017, <http://www.libyanexpress.com/un-says-all-syrian-parties-committed-human-rights-violations/>. Accessed on February 26, 2018.

⁹³ Ibid.

⁹⁴ Armed Conflict Report 1993, 1995 and 1998, Project Ploughshares, Institute of Peace and Conflict Studies, Waterloo, Ontario (Canada).

Sexual violence is one of the bad human rights violation that takes place during an IAC. This occurs when Parties to an armed conflict start to engage in sexual slavery and rape of women and underage girls. Such incidences have been so common in Rwanda, Herzegovina and Bosnia⁹⁵. Incidences of rape have an ethnic damage to society as young girls and women are ostracised and humiliated for carrying an enemy's children. What makes it worse is when there are laws which prevent women from aborting babies conceived as a result of rape incidences. This can be noted with what happened in Herzegovina and Bosnia as women were forced to deliver children made from incidences of rape⁹⁶. Women and young girls are sometimes forced to trade sexual favours in return for shelter, protection and food. This can pose huge negative consequences especially considering that the world we are now living in is associated with high rates of HIV and AIDS cases.

Starvation is also another consequence that States stand to bear as IACs destroy not only agricultural land and crops, industries and shops but also stops production of goods and services as investors and factory owners fear of losing their investments. Food production and supplies are in most cases disrupted and this has been a preferred strategy by opponents as they seek to force the other State into a point of compromise and possibly accept defeat⁹⁷.

IACs also have an adverse and dangerous effect on the society in the sense that they tend to reduce social movements of both people and livestock. This is because Parties to an armed conflict may resort to 'planting' of landmines. It is recorded that more than 1 million people in Angola, Mozambique, Afghanistan, Cambodia, Croatia, Herzegovina and Bosnia have lost their lives to landmines⁹⁸. IACs will always continue to threaten lives even after the conflict has ended and this follows that 2 to 5 million landmines are planted each year and that close to 120 million landmines have been planted in 71 States around the world⁹⁹. To make matters worse some States have more than 10 million landmines that are planted within their geographical boundaries and these States are Cambodia, Angola and

⁹⁵ Ibid.

⁹⁶ Ibid, 69.

⁹⁷ Ibid, 71.

⁹⁸ Center for Disease Control and Prevention, National Center for Environmental Health; <<http://www.cdc.gov/nceh/programs/internat/ierh/pub/1997/mmwr/landmine.html>> Accessed 27 January 2018.

⁹⁹ Ibid.

Afghanistan¹⁰⁰. As a result, most arable land that is conducive for cultivation will be rendered out of use and such land is often strategic with a lot of natural resources such as water and minerals. This tends to affect not only economic growth and development but also healthy standards of the people. This normally occurs when they fail to access premium drinking water which is not available in areas with landmines causing people to suffer from malnutrition and water-borne diseases.

The costs of dealing with the damages and effects of IACs are so huge. For instance, the issue of landmines requires a lot of money to mine them. It is reported that landmine clearing costs range from US\$300 to US\$1000 while the costs of dealing with victims of landmines disasters are between the ranges of US\$3000 to US\$5000¹⁰¹. It is not every nation that is capable of meeting landmine clearance and rehabilitation costs. Most of the landmine clearance and rehabilitation activities are funded by non-governmental organisations and such funds are to some extent difficult to secure.

States that are involved in an IAC have to a large extent deal with a lot of displacement problems as members of the society begin to relocate from regions of States that are affected by the conflict. This situation normally leads to a refugee problem which imposes burdens on other States. A State that is receiving refugees often has to deal with cases of contagious diseases, criminal offences and a huge expenditure of trying to ensure that the refugees have an equitable supply of basic needs. This can be evidenced by what transpired in most European nations as they had to deal with the Syrian refugee problem following the Syrian armed conflict. Evidence collected from secondary sources revealed that more than 30 000 refugees migrated to Tanzania from Burundi¹⁰². The role of the UNHCR in handling the refugee situation is limited and this further complicates the situation as refugees will fall victim to abuse, torture and killings.

¹⁰⁰ Ibid.

¹⁰¹ Ibid

¹⁰² Ibid, 12.

2.5 Triggers of HRVs During International Armed Conflicts

The major of IAC and HRVs is the need to control key natural resources. This problem has caused a widespread increase in IAC and most IACs that have been recorded were as a result of the need to have access to resources such as oil, gold and diamond¹⁰³. A notable number of IAC and HRVs have been observed to have been more dominant in areas that have vast amounts of strategic natural resources such as in Sub-Saharan region¹⁰⁴. This can be evidenced by UNITA rebel IAC in Angola which seized diamond production which was capable of generating around US\$3.7 million dollars of revenue between 1992 and 1998¹⁰⁵. This allowed the rebel group to consolidate its stronghold while the Angolan government had to rely on oil sales to finance its military needs. The issue of control strategic natural resources has affected a lot of African countries such as Libya and the Democratic Republic of Congo. But huge IACs have been highly linked to DRC where a more than six States became part of the conflict so as to gain from huge gold and diamond reserves¹⁰⁶. Diamonds are a major cause of HRVs in and IACs and this can also be supported by incidences observed in Sierra Leone in which the Armed Revolutionary Force seized diamond mines and began to use the proceeds to acquire weapons¹⁰⁷. Conflicted parties are more willing to violate human rights by either killing, torture, abuse or rape so as to just control strategic natural resources.

It can be pointed out that the other cause of HRVs in IAC is disputes over territorial boundaries between two States. This type of a problem has been a huge cause of IAC between States around the world. Notable examples can be drawn from the North Cyprus and South separation issue which has drawn States like Turkey, Greece and other third Parties into the conflict¹⁰⁸. The other IAC that has been fuelled by land control disputes is the Karabakh and Nagorno region conflict which started in the early 1980s¹⁰⁹. Most of the IACs caused by incidences of territorial

¹⁰³ Global Witness, A Rough Trade: The Role of Companies and Governments in the Angolan Conflict; <<http://www.oneworld.org/globalwitness/reports/Angola/role.html>> Accessed 23 September 2017.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ See Armed Conflict Report 1993, 1995 and 1998, Project Ploughshares, Institute of Peace and Conflict Studies, Waterloo, Ontario (Canada)

¹⁰⁷ Ibid.

¹⁰⁸ Ibid, 81.

¹⁰⁹ Ibid, 77.

disputes have been to a high number of sexual abuses of women and children so as to inflict harm and disrespect on the opponent¹¹⁰.

It can also be pointed out that IACs are also caused by conflicts between two or more ethnic or religious groups within a States¹¹¹. With this in mind, an intra-State conflict can thus be said to be another problem that causes both HRVs and IACs. Hence, factors behind the cause of intra-State conflicts can also be given as causes of IACs. These factors are herein discussed as follows;

- **Failure by the government to offer good protection and governance:** Citizens often engage in disputes with their governments when they feel that they are being oppressed and that the government is doing little to ensure that protection and meet their needs and wants¹¹². This can also be as a result of corrupt activities by the government such as what happened in Zimbabwe in November 2017 in which the army overthrew the ruling president Robert Mugabe accusing him of corruption and other HRVs¹¹³.
- **Inequalities between ethnic and religious groups:** When members of the society within a State are unequally treated, they often engaged in conflicts between each other and not with the governments. This is an essential element and cause of intra-State conflicts which have grown into inter-State conflicts. This can be evidenced by the intra-state conflicts in Yemen and Syria which have grown into IAC¹¹⁴. The Boko Haram conflict in Nigeria is a good example of an intra-State conflict but it never grew to a stage where it can be called an IAC. Though poor countries are more likely to engage in conflicts, social inequalities are a major problem and their effects are sometimes more than those caused by poverty. Social inequality is in different forms which can either be by economic class, national identity, religion or ethnic group. Most ethnic groups believe in ethnic cleansing and hence can engage in mass killings and sexual abuse of women and children of another ethnic group. Different ethnic groups are in most cases forced to acquire

¹¹⁰ Ibid, 95.

¹¹¹ Ibid, 29.

¹¹² Ibid, 75.

¹¹³ Zimbabwe Court: Military Takeover Was Not A Coup, VOA News, November 25 2017, <https://www.voanews.com/a/zimbabwe-judge-military-action-legal/4136259.html>> Accessed on 27 January 2018.

¹¹⁴ Ibid, 116.

weapons from other States or enter into agreements with other States using national resources such as minerals and wealth so as to acquire weapons which they can use to protect themselves from the enemies¹¹⁵. It is estimated that more than 7 million light weapons were sold to the West African States while a total of 500 million light weapons are in circulation around the world¹¹⁶.

Irrespective of the nature of the cause of armed conflicts whether IACs or NIACs, the effects have in most cases be the same. This is because of the number one effect of an armed conflict in a loss of human life. As noted earlier on in this chapter, it has been established that more than 100 000 of civilians have lost their lives as a result of armed conflicts¹¹⁷. The other issue that pertains to the effect of armed conflict on human rights is sexual abuses of women and children. Women and children tend to suffer a lot from the effects of an armed conflict and are in most cases forced to exchange sexual favours in return for protection, shelter and food. What hurts the most is when children are forced to participate in atrocities such as mass killings and rape and some are used as soldiers against their will and that of their parents. It can also be reckoned that a huge human right violation is when an armed conflict situation results in innocent civilians being abducted and killed mostly by being used as human shields or targets¹¹⁸.

2.6 Statutory Instruments of Dealing with Armed Conflicts and Human Right Abuses

In this study, the focus will be placed on looking at the law of armed conflict (LOAC) also known as the IHL and how it deals with human rights problems that are created during IACs.

¹¹⁵ Ibid, 109.

¹¹⁶ United Nations Integrated Regional Information Network, Workshop on Small Arms Trafficking in Africa, 9 August 1999.

¹¹⁷ Ibid, 94.

¹¹⁸ Ibid, 95.

2.6.1 The Law of Armed Conflict and the International Human Rights Law (IHRL) Protection

The Law of armed conflict (LOAC) is also known as the IHL dwell on the *jus in bello* whose main aim to control activities that take place in an armed conflict¹¹⁹. This law also stipulates conditions based on the *jus ad bellum* on which it can be considered necessary to intervene in an armed conflict¹²⁰. In other words, it seeks to strike a balance between humanity and military necessity by place a distinct demarcation between military objectives and civilian objects. It, however, prohibits reciprocity and treats all parties to an armed conflict as equal¹²¹.

The IHL can thus be said to be an instrument that reduces damages and sufferings created as a result of an armed conflict. Such includes curbing unjust and inhumane treatment, torture and slavery and much if the effort is to protect civilians who are not part of the conflict. When it comes to the idea of prisoners of war, the IHL contends that they should not be enslaved but rather treated accordingly with respect to available legal frameworks¹²². In IAC, the IHL prevents the use of aggression and killing of prisoners of war who have been captured by an opposing State. The IHL also places huge attention towards the protection of families together with their children and as well their human rights. This is done in accordance with the 1949 Geneva Convention and the additional protocol¹²³.

The violation of LOAC by one party to a conflict does not justify the right of another party to violate it too by engaging in HRVs. If such a situation occurs, then both States are held accountable for HRVs¹²⁴. Every person is entitled to inherent human rights as stipulated by the International Human Rights Law (IHRL). The IHRL can thus be said to be a statutory instrument that covers all people and takes effect in situations of armed conflict and peacetime¹²⁵. The IHRL does not suspend human rights against degrading or inhumane treatment and torture but it can be limited in some circumstances according to certain strict rules.

¹¹⁹ S.C. Res, 955, U.N. SCOR, U.N. DOC. S/RES/955 (1994).

¹²⁰ Ibid.

¹²¹ Ibid, 31.

¹²² Statute of the International Criminal Tribunal for the Former Yugoslavia. S.C. Res. 827.

¹²³ Human Rights Committee, General Comment No. 31, U.N. Doc. HRI/GEN/1/Rev.6 (2004).

¹²⁴ Ibid

¹²⁵ Ibid

The major difference between LOAC and the IHRL is that LOAC is confined to cases of an armed conflict while the IHRL is always in force so as to ensure that fundamental human rights are protected and that authorities are respecting the law¹²⁶.

It is, however, important to ensure that all States comply with the LOAC so as to adhere to the four basic principles of¹²⁷;

- Creation of common values and ground on which human rights can be protected
- To enhance professionalism by the State.
- To address chivalry elements
- To instal and enforce conscience among the State and its members

But it more important to note that abiding by the requirements of LOAC helps to enhance military effectiveness and at the same time curbing HRVs. In addressing HRVs, LOAC ensures that HRVs do not worsen in the case that one party to an armed conflict has violated LOAC by preventing further violations of LOAC and the IHRL. LOAC can also be contended to promoting criminal liability of perpetrators and hence any party that has violated the IHL by engaging in gross HRVs can easily be held accountable¹²⁸. On the other hand, it can also be noted that LOAC helps to protect the domestic and international reputation of States engaged in an armed conflict which helps to reduce the armed conflict from escalating into a deeper and intense IAC¹²⁹.

The LOAC plays an important role in controlling soldiers' behaviour in both an IAC and NIAC because it forbids them from attacking civilian objects and property. The ability of LOAC to regulate military behaviour in an armed conflict also extends to instil rationality and conscience in soldiers by allowing them to rethink of their actions before attacking a military object. This is because it requires that they weigh the damages or costs of attacking a military object before launching an attack¹³⁰. Such in the future helps to ensure that civilians have access to human rights in terms of

¹²⁶ Hуго Valiente, *Military Service and Human Rights*, IV Paraguay Rep. 1989-95.

¹²⁷ Rachel Brett & Margaret McCallin, *Children: The Invisible Soldiers* 86 (1996).

¹²⁸ *Ibid*, 6.

¹²⁹ *Ibid*.

¹³⁰ *Ibid*, 7.

shelter, clean water and energy such as electricity. Thus, it reduces collateral damages caused during an armed conflict. One can also contend that LOAC prevents soldiers from using unlawful methods and weapons during an armed conflict and this helps to curb unnecessary loss of human life¹³¹. In most cases, LOAC has been observed of encouraging that dead and wounded be cared for and treated in a good way whether they are enemies or friends¹³². It has also to a large extent helped to prevent unnecessary displacements of civilians from their homes which helps to make sure that the right to shelter is not compromised especially for women and children. But in overall LOAC helps to prevent unnecessary loss in human life as it prevents the use of humans as shields, ensuring that the fundamental rights of all people be respected and that all people are treated humanely. This also extends to include the human rights of caregivers and other humanitarian agencies by ensuring that their lives and human right are not compromised during the act of assisting victims of an armed conflict.

¹³¹ Ibid, 9.

¹³² Ibid, 13.

3. CHAPTER: SOLDIERS' LEGAL AWARENESS AS A METHOD OF CONTROLLING HRVS DURING ARMED CONFLICTS

3.1 Insight into the Idea of Legal Awareness

Basically, the term legal awareness has been coined to offer explanations about the extent to which individuals are conscious about the existing legal culture and empowered about issues regarding war¹³³. This definition is however limited in the sense that it does not include society's participation in activities involving the formulation of the rule of law and laws. In this study, legal awareness can thus be redefined as the extent to which individual members of the society are informed and have become fully conscious about their State's legal culture, empowered about war issues and are allowed to participate in matters pertaining to the formulation of the rule of law and laws. In most cases, public legal education has been simultaneous to mean legal awareness. Despite the term legal awareness being also referred to legal literacy and confined to the idea of ensuring that members of the public are legally conscious of the existing legal culture, justice system and laws governing them and their inherent rights, it can also be extended to include members of the armed force¹³⁴.

Armed forces in this study refer to soldiers that are directly engaged in armed combat or battles. This study, therefore, seeks to examine whether soldiers are legally aware of international agreements and HRLs that govern their conducts in IACs and how such legal laws require them to comply with ensuring that they uphold human rights standards and principles.

3.2 Soldiers' Legal Awareness in Armed Conflicts

In this study, the term soldiers' legal awareness will be referring to the extent to which military personnel engaged in combat or military activities in armed conflicts are informed or are conscious about the existing legal culture and empowered about issues regarding war and the protection of human rights. The effort will be placed towards the soldiers' legal awareness of international agreements such as the IHL,

¹³³ Alexander Kees, Regulation of Private Military Companies. (2011) 3 Goettingen Journal of International Law 1, 199, 216.

¹³⁴ Ibid.

IHRL, Geneva Convention and Additional Protocols and how they govern their conduct and enforce them to comply with human rights observation and protection mandates. The need to promote legal awareness is justified by the number of atrocities that are committed by soldiers and the magnitude of environmental, psychological damages that are created during armed conflicts. This can be evidenced by negative sentiments expressed towards war which asserts that;

"We were eighteen and had begun to love life and the world, and we had to shoot it to pieces. The first bomb, the first explosion, Bombardment, barrage, curtain-fire, mines, gas, tanks, machine-guns, hand-grenades - words, words, but they hold the horror of the world, burst in our hearts. We are cut off from activity, from striving, from progress. We believe in such things no longer, we believe in the war." — Erich Maria Remarque¹³⁵.

It is impossible to look at legal awareness in the context of military personnel or soldiers without first looking at the ideas or knowledge that is imparted on soldiers during their initial recruitment days. Such an idea is supported by establishments which have been made which showed a soldier's behaviour is usually as a result of the military training activities that he or she undergoes upon recruitment¹³⁶. This is because soldiers are widely known for going through painful training, harsh conditions and even go for long hours without food and proper sleep¹³⁷. This is based on the belief that by in order to produce powerful, strong and invincible soldiers, you have to let them undergo severe training and pass them through strenuous living conditions¹³⁸. This, therefore, shows that the ability of soldiers to withstand tough times, fight intensively and defeat the enemy is, in this case, a product of the training that the soldier receives. We can draw strong evidence by the quote below which was made by an American soldier;

I was fathered by the devil, born by a mother who was an M-16 and lived in a crater of bombs. The more I live, the greater the chances of your life being threatened¹³⁹.

¹³⁵ A novel by Erich Maria Remarque, a World War 1 veteran entitled *All Quiet on the Western Front*, 1929.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Gary D Solis, 'Law of Armed Conflict: International Humanitarian Law in War' [Http://Assets.Cambridge.Org/9780521870887/Excerpt/9780521870887_Excerpt.Pdf](http://Assets.Cambridge.Org/9780521870887/Excerpt/9780521870887_Excerpt.Pdf).

¹³⁹ Ibid.



(a)

(b)

Figure 3.1: HRVs by soldiers

Source: (a) Sajjad Shaukat (2015)¹⁴⁰, (b)¹⁴¹

Soldiers have been established to be the major perpetrator of HRVs in IACs and quite a number of allegations have been raised against soldiers in connection with brutal beatings, killings, unnecessary arrest¹⁴². This can be noted from figure 3.1 in which it can be seen soldiers brutalising civilians. Hence, there has been a huge need to establish centres and facilities that are aimed at educating members of the armed forces about human rights protection during IACs. An example of such is the establishment of the office of the IHL and human rights in the Lebanese army in 1951 but was formally established in 2009 whose primary objective is to spread awareness and knowledge among military personnel¹⁴³. The programme uses information drawn from all the Geneva Conventions to promote awareness among members of the armed forces. Awareness programs among members of the armed forces have been adopted in several countries with nations such as India, USA, Germany and France constitution the list of nations with programmes aimed at promoting human rights protection not only of armed forces but also of civilians¹⁴⁴.

¹⁴⁰ Sajjad Shaukat, India's Human Rights Violations in Kashmir, <<http://www.shoah.org.uk/2015/12/07/indias-human-rights-violations-in-kashmir/>>. Accessed 26 February 2018.

¹⁴¹ Master Papers, Human Rights Violations, <<https://www.papermasters.com/human-rights-violations.html>>. Accessed 26 February 2018.

¹⁴² Ibid, 145.

¹⁴³ Therese Mansour, Office of International Humanitarian Law and Human Rights in the Army. <<https://www.lebarmy.gov.lb/ar/content/>> Accessed on 23rd January 2018.

¹⁴⁴ Ibid.

There are a lot of ideas which focus on the violation of children's rights in armed conflicts but little has been done to examine how soldiers both trained and untrained have been posing severe threats to human rights protection. We can see that most HRVs such as sexual abuses, torture and mass killings have been a common feature in IACs with more than 100 000 civilians losing their lives as a result of armed conflicts ¹⁴⁵. There is, however, a strong need to distinguish between HRVs caused by trained soldiers and untrained soldiers. The main difference that separates these two categories is the level of military and human rights knowledge these two groups possess. Basically, trained soldiers are more informed about the need to observe and protect human rights, unlike untrained soldiers who primarily concerned about destroying their enemy¹⁴⁶. But either way, all of them are soldiers and have been blamed for severe human rights abuse and violations and hence, we can ask the following question;

Is the problem of HRVs in IACs with trained soldiers or with untrained soldiers such as child soldiers?¹⁴⁷

In this study, the focus will be directed to both trained and untrained soldiers, and the main emphasis is to try to see if there are any significant differences in HRVs in IACs between these two groups.

A trained soldier can be noted to be a military personnel who has gone through formal recruitment and training exercises while an untrained soldier is one who has never been formally trained and recruited but has been recruited into war by informal ways as a result of adverse circumstances¹⁴⁸.

Children are innocent when they do not engage in violent activities but when they get involved in IACs and activities involving bombings and killings, they become a terrible threat to humanity and human rights protection. This can be evidenced by figure 3.2 which armed child soldiers with AK-47s in Congo and RPGs in Sri Lanka. In such cases, legal awareness becomes a mandatory act not only for soldiers but

¹⁴⁵ Ibid, 125.

¹⁴⁶ Ibid.

¹⁴⁷ This follows deductions made in this study that it remained unexplored about the different effects posed by either trained soldiers or untrained soldiers (such as child soldiers) in IACs. Sometimes the way soldiers behave or respond to human rights protection in IACs is a function of the training they have received.

¹⁴⁸ Ibid, 144.

also in schools. A notable human rights violation by soldiers involved in IACs is that they have also been established to have a tendency of recruiting children against their will into armed forces to fight severe armed battles¹⁴⁹. This place severe concern on the need to promote legal awareness not only to soldiers but also to members of the public.



Figure 3.2: Child soldiers recruited into armed conflict in (a) Congo (b) Sri Lanka

Source: (a)¹⁵⁰; (b)¹⁵¹

3.3 Legal Obligations of Members of the Armed Forces (Soldiers)

The LOAC does not only apply to State parties involved in an armed conflict but it also extends to both civilians and armed forces. Hence, all these parties are entitled to observe and respect the LOAC¹⁵². What is therefore implied is that soldiers involved in an IAC are required to obey stipulations made by the LOAC and any act of disobedience may attract legal action on the responsible State. This also extends to include engaging in unlawful acts, and soldiers are required to disobey any order which might be considered to be unlawful¹⁵³. An unlawful order is defined as any

¹⁴⁹ Ibid, 156.

¹⁵⁰ Child Soldiers, Rights or Wrong. Available at <<http://rightsandwrongs.pbworks.com/w/page/8788542/Child%20Soldiers>>. Accessed on February 26, 2018.

¹⁵¹ Human Rights Violations in Sri Lanka, Mt Holy Yoke. Politics and Human Rights <https://www.mtholyoke.edu/~perer20p/classweb/Politics%20-20World%20Politics/humanrights.html>. Accessed on February 26, 2018

¹⁵² 1 CILS, 154 / ICC Stat., 33

¹⁵³ Ibid.

command which might result in the orchestration of a war crime¹⁵⁴. In the event that any given order will result in HRVs as stipulated by the IHL, such an order must be disobeyed by the soldiers involved in an armed conflict. This is because HRVs are part of war crimes and committing such an offence considered to be a breach of not only the IHL but also of the Geneva Convention. In the event that a war crime has been committed by a State's soldiers, may result in the soldiers being held liable for war crimes and punishment¹⁵⁵. Soldiers are thus required to observe statutory laws especially those recommended by the Geneva Conventions, IHL and LOAC whether in their national boundaries or in other States¹⁵⁶.

The notable feature is that an individual soldier arrested for violation of legal obligations will be individually held for such offences. There are also no limits that can be imposed in terms of prosecution and the International Criminal Court (ICC) can level punishment for any war crime committed in relation to what may be deemed as fair, just and suits the criminal offence committed¹⁵⁷. Soldiers have been among the list of notable human rights violation perpetrators with a lot of incidences of sexual abuse, harassment, torture and mass killings being levelled against members of the armed force¹⁵⁸. The simplest idea can be shown using figure 3.3, 3.4 and 4.5.

¹⁵⁴ Ibid.

¹⁵⁵ GCIV, 146.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Martin John Paul. "Self-help human rights education handbook." Center for the study of Human Rights: (Columbia University 1996) 1.

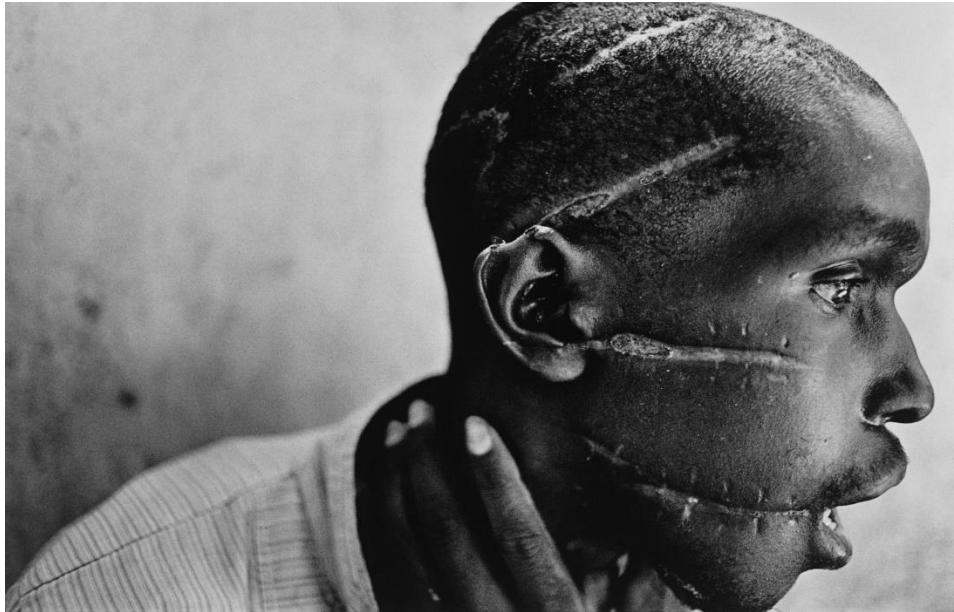


Figure 3.3: A civilian tortured and scared by Hutu rebels

Source: James Nachtwey¹⁵⁹



Figure 3.4: Homeless and parentless children being driven away by soldiers during the Vietnam War in 1966¹⁶⁰.

Source: Nick Ut

¹⁵⁹ A Hutu man at a Red Cross hospital in Nyanza, Rwanda. His face was mutilated by the Hutu 'Interahamwe' militia, who suspected him of sympathizing with the Tutsi rebels.

¹⁶⁰ Events covered during the Vietnam War in 1966 which saw a lot of children becoming homeless and parentless.



Figure 3.5: South Vietnamese Brig. Firing a shot at an unarmed civilian in 1968.

Source: Eddie Adams¹⁶¹

Figure 3.3, 3.4 and 3.5 provide strong evidence of the human rights atrocities that are perpetrated by members of the armed forces. One can thus question whether soldiers 'have a heart' or is it simply because there are performing their duties. Even so, do they have to go to an extent of harassing innocent civilians? Driving away homeless and parentless children into the streets? Can one argue and say such conduct is as a result of lack of legal awareness by soldiers? Either way, all these provide strong evidence why it is necessary to impose legal obligations on soldiers and ensure that they are enforced and complied with.

Another thing to consider is that the level of capacity of the soldiers whether being an army commander or generally does not serve as a base upon which he can be exempted from being held liable for HRVs or war crimes committed¹⁶². This means that the accused soldier is obligated to face the wrath of the law for perpetrations committed during an IAC and no leniency will be made based on his military position. Army commanders are only exempted from facing judgement on the basis that they were not specifically and directly involved in the perpetrations, that is, when they do not commit a war crime. For example, in the event that an *host de combatant* gets murdered by an army commander, then a criminal offence of murder will be

¹⁶¹ South Vietnamese Brig. Gen. Nguyen Ngoc Loan, chief of National Police, fires his pistol at Viet Cong officer Nguyen Van Lem. In Feb. 1, 1968.

¹⁶² ICC Stat., 27.

individually charged against the commander. The circumstance also extends to include joint crimes committed by the commander and other soldiers or armed forces¹⁶³. Furthermore, all the Geneva Conventions expressly make it obvious that if commanders give a command that will result in grave breaches of human rights then the Court has the right to hold the commander criminally responsible for such offences.

There are also conditions that can cause army commanders to be held responsible for violations of legal obligations and under such circumstances, it is legally possible to hold them liable for criminal offences committed irrespective of the fact that they were not directly involved in the act. The ICC Stat., 25, therefore, offers conditions under which army commanders can be held responsible for the criminal offence they did not directly participate in¹⁶⁴. These conditions are known as failure to prevent (command responsibility)¹⁶⁵. The command responsibility principle, therefore, asserts that an army commander should be held responsible for criminal conducts perpetrated by his follower soldiers when;

- If he was fully aware that followers were planning to commit a criminal offence;
- He does not take proper action to stop his subordinates from committing the criminal offence and yet he has effective power to control the situation or,
- Does not notice or report the matter to responsible authorities.

It can thus be established that both soldiers and their commanders or leaders have an obligation to observe given laws be it the Geneva Conventions, IHL or LOAC and any act of offence which violates such laws is considered to be punishable. Deductions can also be made that soldiers who have violated human rights or committed war crimes are liable for criminal offences irrespective of their position. Thus, making sure that soldiers are held responsible for criminal offences they have committed offers a platform upon which future HRVs and other war crimes can be alleviated.

¹⁶³ ICC Stat., 25.

¹⁶⁴ Ibid, 159.

¹⁶⁵ Ibid, 158.

3.4 The role of Legal Advisors in Armed Forces as a Human Rights Protection Mechanism

One of the key implications of the ratification of the Additional Protocols of 1977 of the Geneva Convention of 1949 is that States are obliged to uphold all the statutory instruments in each and every circumstance. The Additional protocol 1's Article 82 recommends that legal advisors be engaged in armed forces activities¹⁶⁶. The reason being that legal advisors help to facilitate the spread of information which is important to foster compliance with the IHL. But the need to include legal advisors in armed forces activities is strongly presumed to have been compounded by the growing technical and legal complexities of hostilities¹⁶⁷. As a result, propositions were made that legal advisors be engaged in armed forces activities so as to assist military commanders in applying the IHL¹⁶⁸.

What makes it feasible to protect HRVs during armed conflict is that in the event of an armed conflict, States are totally obligated to ensure that legal advisors are involved and are capable of offering legal advice to military commanders on how they can apply the Convention. This also regulates the military conduct of armed forces as instructions are sent to them on how they should conduct military operations in line with the legal advisors' advice. This, therefore, shows that soldiers' legal awareness is has been in practice but the problem is that it remains unexplored and this is what this study hopes to accomplish. However, it can be noted that military commanders are tasked with the mandate of ensuring that soldiers are taught how to conduct themselves during armed conflicts in line with the requirements of the Geneva Conventions.

The idea that soldiers' legal awareness has been in practice can, however, be questionable because of the high number of HRVs such as atrocities and sexual abuses that are recorded during an IAC. Hence, it can be asked as to whether such HRVs are as a result of the lack of awareness by soldiers or not? This is because if soldiers are fully aware of the legal restrictions that govern their conduct or behaviour during an armed conflict, then why is that they engage in HRVs during armed conflicts? Can this be an issue of personal behaviour and attitude of the

¹⁶⁶ Additional Protocol I, Article 82 of the 1949 Geneva Convention.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

soldiers or it is because of the way they are trained? Can we also say that efforts to promote soldiers' legal awareness are not effective or possibly there exist challenges that are undermining such efforts?

Either way, it can be noted that legal advisors have an important role to play in ensuring that information is disseminated to military commanders who are in turn responsible of passing such information to their soldiers and regulate their soldiers' behaviour in line with the proposed measures that confine with the requirements of the Geneva Conventions.

On the other hand, Article 82 also implies that parties involved in an armed conflict are the ones who should make sure that they engage the services of legal advisors. In order to ensure that this requirement is adhered to, States must, therefore, to come up with statutes that prohibit armed forces from coming up with their own legal advisers¹⁶⁹. This must be accompanied by efforts by States to spread IHL information during military training programmes¹⁷⁰.

Concerning the roles of legal advisors, Article 82 posits that the principal role of legal advisors is to offer advice to army commanders on how best they can apply the Additional Protocol 1 of the Geneva Convention¹⁷¹. The other role is to offer assistance towards designing teaching programmes that are meant to educate armed forces¹⁷². These two roles are so important and they tend to complement each other and this is because offering proper training to armed forces will result in effective measures towards promoting peace during IACs. But in order to ensure that this remains effective and that no obstacles are encountered, then it is important that contracting Parties have specified their roles and circumstances under which such roles are to be performed. Challenges can, however, be encountered when considerations are made that it does not impose strict requirements that the legal advisors possess IHL expertise. With such in mind, can the effectiveness of legal advisors be warranted and is there any guarantee that promoting soldiers' legal awareness will be attained? Deductions can be made that the lack of compulsory

¹⁶⁹ Magdalena Sepúlveda Carmona and Carly Nyst, *The Human Rights: Approach to Social Protection* (2012).

¹⁷⁰ *Ibid.*

¹⁷¹ Office of the United Nations High Commissioner for Human Rights, 'Handbook on National Human Rights Plans of Action' 115.

¹⁷² *Ibid.*, 162.

mandate of having qualified legal advisors can be the possible limitation or cause of human rights abuses by soldiers in IACs. Therefore, propositions can be made in line with this observation that there is greater need to ensure that legal advisors are professionally trained with prevailing Geneva Conventions and IHL principles and how they can be applied in situations of IACs. Such contentions can be made in line with Article 6 of Protocol I which requires that additional training is given so as to foster an effective use of the Convention¹⁷³.

Further observations can be made that legal advisors tend to play an important role in influencing soldiers' actions in IACs. This is because Article 36 commands them to conduct an intense analysis of warfare methods and inspections on the weapons that are being used in the armed conflict¹⁷⁴. Consequently, this tends to regulate the use of methods of warfare and weapons that can exacerbate HRVs and atrocities such as mass killings and genocides. Hence, it helps to instil discipline and a sense of rationality within the soldiers' mind which in turn helps them to choose between what is ethically right and wrong rather than just fighting to win the war. In overall, it can thus be noted that legal advisors tend to play an important role towards the application and observation of both the IHL and the Geneva Conventions. By offering advice to commanders and conducting assessment and inspections on methods of warfare and types of weapons used in an armed conflict they can help to alleviate HRVs.

3.5 The Importance of Human Rights Education of Soldiers

Basically, the term human rights has been taken to mean freedom to participate in government activities and programmes, movement, press, religion, assembly, speech, thought, rights to education, healthcare, shelter, food and freedom from invasion of privacy, uncommon punishment, unfair trial, torture and, arbitrary arrest and imprisonment¹⁷⁵. The approval of the UN Declaration of Human Rights (UNDHR) in 1948 managed to reinforce attempts to protect human rights. This follows other statutory laws such as the International Covenant on Economic Social and Cultural

¹⁷³ Gates and others, *Development Consequences of Armed Conflict*, World Development, 2012.

¹⁷⁴ Ibid.

¹⁷⁵ UN General Assembly, 'Convention on the Rights of a Child' (1989) 1577 United Nations, Treaty Series 1 <<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>> Accessed 18 September 2017.

Rights and the International Covenant on Civil and Political Rights. Their formulations were solely based on the need to protect human rights irrespective of religion, language, sex or race¹⁷⁶. With respect to IACs the following rights are mostly violated, that is, the right to¹⁷⁷;

- Art. 3: Security, liberty and life,
- Art. 4: Against slavery,
- Art. 5: Prohibit unjust punishment, improper treatment or torture,
- Art. 8: Take proper action against breaches of fundamental rights which also guard against sexual abuses,
- Art. 12: A fair trial,
- Art. 13-1: Move freely and seek

What makes the issue of human rights violation so important to consider when deciding on efforts to regulate soldiers' behaviour is that human rights are usually considered not to be a priority¹⁷⁸. This is because most effort and focus is usually placed on displacing, arresting or killing the enemy and hence things like human rights are considered to be second options. This is highly evident especially when the IAC is so intense and involves elements of terrorism and insurgents such as the Boko Haram and ISIL or ISIS¹⁷⁹. The nature of the IAC also influences the extent to which soldiers will react against the enemy and it is civilians who mostly suffer in such exercises. Civilians have of late being sexually violated and, used as shields and targets either to force the other Party into a point of compromise or to depict dominance¹⁸⁰

It is also imperative to note that HRVs during IACs tend to take a lot of forms and methods, and all this involves the role played by soldiers. For instance, the vehicle searching and the search and cordon exercise may be subject to harassment and activities that violate people rights a, will or privacy¹⁸¹. Is it, therefore, important for soldiers to understand these things so that they can regulate their conduct in a manner that will help preserve these rights? Molestation and rape are also a

¹⁷⁶ Ibid.

¹⁷⁷ Human rights specified by the UNDHR and all Parties especially those involved in an IAC are expected to observe them.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid, 167.

¹⁸⁰ Ibid, 61.

¹⁸¹ Ibid.

common feature which soldiers have been accused of and this has also been supported by substantial evidence. A lot of incidences of custodial deaths have also been noted to exist in IACs as soldiers resort to torture just to retrieve information from a suspect¹⁸². With bombing incidences by soldiers occurring in nations like Syria and Yemen, one can also question such conducts and the awareness of the need to protect human lives¹⁸³. Not only is a human life lost, but also civilians are displaced from their homes and thus depriving them of the right to shelter and protection as they can wander off the street without a home to stay.

Efforts to promote human rights protection awareness among soldiers or armed forces have in the past and of late managed to create new and better peace and human rights standards. A lot of constitutional changes have been enacted to regulate military conduct and curb human rights abuses¹⁸⁴. In some cases, militants have been observed to have been going through self-examination procedures so as to ensure that their obligations are in line with the changing environment. Having soldiers undergo human rights education and training, therefore, helps to ensure that they continue to execute their duties in line with constitutional demands¹⁸⁵. In addition, this also helps to ensure that they remain committed to human rights protection. But human rights education programmes tailored for soldiers require that they are implemented at national level. That way they tend to cover broad areas, gunner more support and improve in terms of their effectiveness to achieve the required results.

3.6 Human Rights Education and Training Mechanisms to Improve Legal Awareness

There are various ways that can be used to develop human rights training programmes (HRTPs) specifically formulated for soldiers. States are free to adopt any strategy which they feel will bring the best results for them but the effectiveness of each strategy lies in determining which methods best suit the prevailing conditions. For instance, the effectiveness of a training mechanism can be

¹⁸² Ibid, 60.

¹⁸³ Ibid, 92.

¹⁸⁴ UN General Assembly, 'Convention on the Rights of a Child' (1989) 1577 United Nations, Treaty Series 1 <<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>> Accessed 23 September 2017.

¹⁸⁵ Ibid.

influenced by the availability of funding and the inherent features of the soldiers' camp. States must, therefore, implement HRTPs that are tailor-made to suit soldiers' conditions and what the State desires to achieve. The available mechanisms that States can use to promote and improve soldiers' legal awareness herein be given as follows;

3.6.1 Collegial Presentations

This approach involves discussions between soldiers themselves rather than having a commander or legal practitioner teach the soldiers¹⁸⁶. This, however, does not mean that legal practitioners are not important. The duty of a legal practitioner is, therefore, to provide resources to the soldiers which they can use to engage in discussions¹⁸⁷. The benefits of using this type of an approach are that it allows one to draw much information about the cultural elements that influence each type of soldiers involved. The effectiveness of collegial presentation requires that there be a trainer who monitors the discussions. The trainer is also responsible for sourcing the required resources from legal practitioners and distributing them to the soldiers.

3.6.2 Participatory Forums

Soldiers can be encouraged to participate in discussions and presentations on IAC and human rights protection so as to further clarify on IAC and human rights protection issues¹⁸⁸. When it comes to human rights protection, participatory forums will have a huge advantage of allowing ideas to be translated into real life situation and actual practice. But this requires presenters be fully equipped with IAC and human rights protection information¹⁸⁹.

3.6.3 Panel Discussions

A panel can be drawn from representatives from human rights protection organisations and legal advisors to present on human rights protection and governing rules and laws. Panel discussions have a high tendency to generate effective results especially when the involved representatives have a

¹⁸⁶ Ibid, 180.

¹⁸⁷ Ibid.

¹⁸⁸ Ram, Samay. Tackling insurgency and terrorism, (Manas Publications 2002).

¹⁸⁹ Ibid.

high degree of expertise on human rights protection¹⁹⁰. But this must include a facilitator whose is capable of addressing the needs and concerns of the soldiers and a high participatory rate and there must be a direct exchange of human rights and IAC information or ideas between the soldiers and the representatives.

3.6.4 Working Groups

Soldiers can be divided into small groups and each can be given an IAC or human rights violation and protection issue to handle over a given period of time. These groups are recommended not to have more than six individuals so as to allow every member of the group to freely participate without any restrictions¹⁹¹. Results of each group are often collected and presented to the entire army of soldiers and discussions are made during the presentation exercise. This method allows a critical evaluation of each group's proposed solutions and hence it allows the drawing of sound solutions that are weighed against possible costs and repercussions¹⁹².

3.6.5 Roleplaying Techniques

Soldiers can be grouped into actors that mimic civilians and soldiers involved in an armed conflict in which human rights are being abused. By using role-playing, soldiers can be asked to play civilian, enemy, judge, witness and victim roles. Such situations can depict real-life situations that are observable during an IAC in which human life is lost, people are beaten mercilessly, tortured and killed¹⁹³. The main advantage of role-playing is that it helps soldiers to gain experience of how it feels to be affected by incidences of human rights violation in the sense that it can stimulate a lot of emotional responses and sensitivity of the soldiers¹⁹⁴.

3.6.6 Field Trips

Soldiers can have field trips to nations that are seriously facing severe HRVs and abuses. Among the list of nations, soldiers can be taken to as part of the

¹⁹⁰ Martin, J. Paul. "Self-help human rights education handbook." Center for the study of Human Rights (Columbia University 1996).

¹⁹¹ Ibid.

¹⁹² Ibid, 165.

¹⁹³ Ibid, 169.

¹⁹⁴ Ibid, 184.

field trip are Somalia, DRC, Yemen and Syria, which are torn by the effects of IACs and even NIACs. Soldiers can gain a lot of valuable insights about human rights violation and protection when taken on a field trip. But in order to make sure that the field trips are effective and successful, it is important to emphasise both the purpose and importance of the field trip to the soldiers¹⁹⁵. Soldiers are also encouraged to pay huge attention, observe and capture critical human rights information¹⁹⁶.

3.6.7 Practical Exercises

Soldiers can be involved in practical exercises in which they are asked questions about human rights violation and protection. Practical exercises include tests, examinations and other forms of question and answer segments. Practical exercises are so important because they test the soldiers' ability to demonstrate and apply what they have learned about human rights protection¹⁹⁷.

3.6.8 Visual Aids

Sometimes it is easy to educate soldiers about human rights abuse using films/videos, slides, photographs, flip charts, displayed objects, posters, overhead transparencies and blackboards. Visual aids can be taken from a number of IACs that have taken place around the world and these can be shown to the soldiers so that they can have a clear understanding of what it means to protect human rights and why it is important to do so. Visual aids have a compelling advantage and they can cause a huge positive emotional response from the soldiers as they sometimes cause them to cry when they see a depressing or heartbreaking human rights violation incidence¹⁹⁸.

3.6.9 Brainstorming or Problem-Solving Methods

Brainstorming and or problem-solving methods are used to find solutions to both practical and theoretical human rights violation problems¹⁹⁹. In this case, soldiers will be engaged in activities that require them to analyse human rights

¹⁹⁵ Ibid, 186.

¹⁹⁶ Ibid, 180.

¹⁹⁷ Ibid, 189.

¹⁹⁸ Hazel Fox and Michael A. Meyer (eds), *Effecting compliance*, British Institute of International and Comparative Law, London, 1993, pp. 3-13.

¹⁹⁹ Ibid.

violation problems and find the best probable solutions that possibly minimise or curb HRVs. Brainstorming and problem-solving techniques are important because they stimulate the soldiers' ability to come up with creative solutions²⁰⁰. Problem solving techniques have a high tendency of accepting and tolerating all responses but at the end of the exercise, all the responses are weighed against each other and final decisions are made at the end of the evaluation process. This helps to boost and maintain the soldier's morale and motivation levels to tackle direct and indirect human rights violation problems whether during or after an IAC²⁰¹.

3.7 Conditions Governing the Effectiveness of Human Rights Training Methods for Soldiers

As noted from the previous chapters, it has been established that it is important to come up with human rights training programmes (HRTPs) specifically formulated for soldiers so as to curb HRVs during IACs. However, there are factors that must be looked at before designing and implementing such programmes. These factors can be herein being given as follows;

3.7.1 Practical Strategies

When designing HRTPs, it is important to ensure that they encompass a high degree of practical situations. This is because most HRTPs have been condemned of failure to deal with real life situations especially those that transpire during an IAC²⁰². Hence, it is important to ensure that there exists a good platform upon which theoretical insights are converted into usable form and ideas which are capable of generating a huge effective response in terms of human rights protection. Practically can also be used as a strong base upon which HRTPs can be weighed in terms of their effectiveness to deliver the required results²⁰³.

²⁰⁰ Ibid, 194.

²⁰¹ Ibid.

²⁰² Ibid, 192.

²⁰³ Ibid.

3.7.2 Educating the Trainers

One of the most effective ways of promoting legal awareness is to ensure that the trainers are educated. This helps to ensure that the trainers will remain informed of current human rights issues taking place in the society and the international world²⁰⁴. Most importantly, the training exercises must include capacity building exercises which have a high potential to instil a lot of IAC and human rights protection knowledge into the trainers. Care must, however, be taken to emphasise that the effort is not just to train the trainers but to tell them that their responsibilities continue still after the training programme²⁰⁵. Trainers must, therefore, disseminate information which they have acquired to the soldiers at duty stations.

3.7.3 Interactive Pedagogical Techniques

These techniques help to offer a wide range of sound educative and informative human rights protection awareness strategies for soldiers²⁰⁶. Interactive strategies also help to promote creativity among the soldiers in handling human rights issues during IACs. The ICCR contends that interactive strategies have a high tendency to involve a wide number of participants in the training and awareness programmes²⁰⁷. When it comes to the issue of promoting and improving soldiers' human right awareness programmes, pedagogical strategies often involve the use of visual aids, round-table discussions, practical exercises, field trips, role-playing, brainstorming, problem-solving, case studies, working groups, panel discussions and presentations.

3.7.4 Audience Targeting

Not all HRTPs are effective and in order to ensure that each and every HRTPs is effective, efforts should be made to ensure that the training programmes are targeted at a specific army group. As a result, HRTPs can be developed to target specific types of soldiers especially those that are always

²⁰⁴ Ibid, 197.

²⁰⁵ Ibid, 185.

²⁰⁶ United Nations High Commissioner for Human Rights, 'Fact Sheet No.29' [2004] Human Rights Defenders: Protecting the Right to defend Human Rights 61.

²⁰⁷ Ibid.

directly engaged in IACs²⁰⁸. This helps to save time and other resources and it is more effective when it targets the exact soldiers who confront human rights protection situations during IACs. Targeted programmes have been well known for coming up with effective outcomes and in most cases, they are widely recommended in times of armed conflicts²⁰⁹.

3.7.5 Thorough Enforcement of Standards

This strategy involves the promotion of international standards. International standards stipulated by The United Nations Commission on Human Rights (OHCHR) can be introduced as part of awareness and training courses. It can be highlighted that standards that are in other foreign languages can also be translated for use in other States²¹⁰. IHL publications can also serve as an important source of information from which human rights protection standards can retrieve. Enforcing human rights protection standards helps to reduce unnecessary attacks on civilian population and non-military objectives²¹¹. It will also help to regulate warfare methods and the use of specific weapons which can compromise efforts to protect human rights during IACs²¹². Sensitivity training programmes can also be used to provide support to international standards enforcement training programmes. These kinds of programmes are designed to allow soldiers to be more sensitive to their own actions and conducts during IACs²¹³. This is because efforts to educate soldiers about human rights protection during IACs are sometimes ineffective when they do not cause a change in the conduct or behaviour of the soldiers. Sensitivity programmes are therefore to heighten soldiers' awareness and sensitivity to human rights protection by regulating their conduct and behaviour. Sensitivity programmes often assume role-playing which makes it so feasible to promote awareness of racial and gender biases²¹⁴. These programmes are more effective when IACs are being characterised by ethnic clashes between two or more racial groups and when there are high

²⁰⁸ Ibid.

²⁰⁹ Ibid, 187.

²¹⁰ UNHR, Principles and Guidelines for Human Rights Approach to Poverty Reduction Strategies, 2006.

²¹¹ Ibid.

²¹² Ibid, 170.

²¹³ Ibid, 206.

²¹⁴ Ibid.

incidences of sexual harassment and abuse of women and children as in the case of most African nations such as Somalia²¹⁵. Efforts to promote sensitivity to human rights protection can also include helping soldiers to understand the “degrading treatment” about how it is approached and addressed by different legal instruments, and how it can also be applied to cater for cultural and gender differences between men and women²¹⁶.

3.7.6 Establishing Flexible HRTPs

Just any other programme, the effectiveness of HRTPs will be attained when the programmes are highly flexible enough to cater for improvements and other environmental adjustments that may be deemed necessary²¹⁷. These programmes are similar to normal HRTPs but the major difference is that they are targeting at making flexibility improvements to the soldiers’ existing knowledge and understanding about human rights protection²¹⁸. In this case, adjustments are made in line with on-going armed conflict issues legal and environmental changes taking place. Flexibility HRTPs are more effective and should be done on a constant basis as they help to improve what soldiers know and understand about human rights and how they can be protected during IACs. This is an important element especially when formulating HRTPs and policies because some HRTPs are not effective because they are too rigid and can only be applied in only one circumstance²¹⁹. HRTPs must also be flexible for use by each and every soldier or armed force and this often requires that human rights trainers come up with specific programmes and training materials that match the actual reality of what is happening in that State or that deals with specific IAC issues being experienced.

3.7.7 Proper Evaluation Methods

Disagreements are usually encountered when it comes to the evaluation of programmes. Some scholars have argued that programmes such as HRTPs can be evaluated in terms of their effectiveness based on their ability to

²¹⁵ Ibid, 11.

²¹⁶ Ibid, 15.

²¹⁷ Advisory Service, ‘Legal Advisers in Armed Forces’, 1977.

²¹⁸ Ibid, 213.

²¹⁹ George Andreopoulos, ‘Human Rights Education and Training for Professionals’ (2002) 48 *International Review of Education/ Internationale Zeitschrift fr Erziehungswissenschaft/ Revue inter* 239 <<http://link.springer.com/10.1023/A:1020326030923>> Accessed 23 September 2017.

achieve stipulated goals or targets²²⁰. Other scholars also argue that effective evaluation should be determined by the ability to solve prevailing problems²²¹. Either way, it is important to ensure that any programme is effectively evaluated based on its objectives and accomplishments. This is important to ensure that proposed amendments and improvements can be made in the foreseeable future to enhance the effectiveness of HRTPs in curbing HRVs during IACs²²². When it comes to the issue of curbing HRVs during IACs, it is therefore important to come up with effective evaluation programmes. Hence, pre-post and post evaluation exercises should be used as part of the evaluation process and this can include the use of questionnaires and other forms of pilot studies that are capable of gathering information on the effectiveness of HRTPs.

3.7.8 Promotion of Self-esteem

Members of the army force especially soldiers who have been engaged in severe armed clashes in IACs and NIACs have been discovered to lack self-esteem in approaching human rights violation matters²²³. This can be noted from the following expression;

Whenever I see people being tortured during an armed conflict, am now scared to approach the person and tell him to stop. This is because I cannot stand watching someone being tortured or harassed and I do not have the necessary self-esteem to do so²²⁴.

Hence, it is important to ensure that there are HTPs that are designed to boost soldiers' self-esteem. On the other hand, human rights trainers in armed forces are also required to have a high level of self-esteem so that they can be capable to positively boost the soldiers' low level of self-esteem²²⁵.

²²⁰ Ibid, 208.

²²¹ Ibid.

²²² Ibid.

²²³ Ibid, 215.

²²⁴ Instructs obtained from a remark made by a Russia soldier engaged in the World War II.

²²⁵ UN & WHO, 'Human Rights, Health and Poverty Reduction Strategies.' International Review of Education, 2002.

3.7.9 Inclusion of Organisational Policies

Most HRTPs have been observed to fail as a result of the inability to include their goals to organisational goals be it off the defence or armed forces²²⁶. Hence, in order to ensure that effective HRTPs are tailored for soldiers, there is need to strongly incorporate all the army's recruitment and training exercises²²⁷. It is through this strategy that HRTPs will be capable of reflecting policies, armed response, combat approaches and operational conduct during IACs and hence help to ensure that HTPs are more effective in protecting human rights during IACs.

3.7.10 Follow-up Initiatives

Today's HRTPs no longer require the traditional teach and wave approach but now require that a lot of planned follow-ups and commitment. This is based on established ideas which show that improvements in the potential to accomplish the desired goals is relatively determined by the level of commitment demonstrated by human rights organisations, States and the international community²²⁸. Successful efforts to promote soldiers' legal awareness of human rights protection, therefore, require that quality checks be made on soldiers' efforts and accomplishments towards addressing human rights violation challenges. Hence, it becomes the mandate of human rights trainers to conduct follow-ups on soldiers' engaged in IACs.

3.8 Challenges that Can Undermine the Need to Promote Legal Awareness

Promoting legal awareness has a lot of challenges that make it difficult and this is because efforts to protect human rights themselves are considered to be difficult. This can be evidenced by remarks given by one of the humanitarian and political scholar²²⁹ Noam Chomsky which asserts that the term in place questions in mind of whether "humanitarian intervention" exists in reality²³⁰.

²²⁶ Ibid.

²²⁷ Ibid, 206.

²²⁸ Ibid, 213.

²²⁹ Noam Chomsky, Humanitarian Intervention (Boston Review December 1993)

²³⁰ Noam Chomsky was a renowned political analyst who was born on the 7th of December 1928 and held different qualifications in different fields such as social critic, cognitive science and history.

Doubts can, however, be placed on the feasibility of attaining an effective or desired legal awareness level. This is because efforts to promote legal awareness have also been surrounded with obstacles and with such obstacles in existence, one can thus question if soldiers' legal awareness will help to combat the effects of IACs. For instance, it is outlined by Cotula that most of the inhumane atrocities that are perpetrated by soldiers during armed conflicts leave you wondering if such soldiers are even aware of the word human rights²³¹.

When deciding on the best human rights education and training mechanisms to improve soldiers' legal awareness, considerations must be made to ensure that all the basic factors are incorporated into the programmes. This can be evidenced by ideas which have shown that most human rights training programmes (HRTPs) tend to fail because they tend to lack the basic factors that form the core structure or pillar of the programmes²³². Among such factors is the inability to incorporate the interests of all the stakeholders involved in the situation. When all the stakeholders are not included in the formulation of HRTPs tensions and conflicts can ensue and, in most cases, such programmes will end up lacking the required amount of success that will see them successful. Improper formulation of HRTPs is also another issue to reckon with when deciding on initiating efforts to develop and implement strategies to educate soldiers about human rights protection. It has been established that most HRTPs do not consider previously experienced that has been gained from historical HRVs observations made²³³.

There are ideas which also show that improper formulation of HRTPs can occur when such programmes are not tailor-made to suit the prevailing State conditions²³⁴. For instance, it can be noted that most HRTPs are formulated in European or Western economies such as Europe but they are highly applied in African and Middle East continents where HRVs are considered to be so high²³⁵. One can thus argue on the effectiveness of such programmes on the basis of failure to accurately mirror domestic conditions that are being experienced in that State. In other circumstances, the effectiveness of policies such as that of HRTPs has been

²³¹ Remarks made about human rights violations and atrocities of committed during armed conflicts.

²³² Ibid, 220.

²³³ UN & WHO, 'Human Rights, Health and Poverty Reduction Strategies.'

²³⁴ Ibid.

²³⁵ Ibid.

criticised on the basis that others have seen them as a political manoeuvre by Western economies to control the activities of other States. The other States have hinted that international HRTPs are often imposed on other States which limits the ability of the State to specifically manipulate them to suit domestic elements characterising incidences of HRVs. States and other international human rights often come up with programs which they think are best according to their own views and clashes of interest in such cases are usually high. This can be supported by incidences in which the interests of the ICC have been considered to clash with those of other States when it comes to the issue of perpetrators of war crimes and IHL offences²³⁶.

With these ideas in mind, it can, therefore, be known that the effectiveness of coming up with HRTPs that will help raise and improve soldiers' legal awareness requires the total involvement of all the Stakeholders, and the inability to do so will undermine their effectiveness. It can also be deduced from these ideas that the formulation of international HRTPs requires that they include by all means the best interests of the States that are involved in the IAC.

²³⁶ Ibid, 226.

4. CHAPTER: SOLDIERS' LEGAL AWARENESS IN COMPLIANCE WITH INTERNATIONAL CONVENTIONS AND TREATIES

4.1 Introduction

This chapter seeks to examine efforts and commitment placed by international agreements notably the IHL, the Geneva Conventions and APs, and the Iraq Constitution to address military activities, soldiers' conduct during IACs so as to curb human rights violation problems. This chapter also looks at the effectiveness of the legal instruments, challenges and possible measures to improve their effectiveness in promoting legal awareness among soldiers' in curbing HRVs.

4.2 The IHL and the Regulation of Armed Conflicts

Basically, the main focus behind the IHL is to highlight restrictions to which Parties involved in an armed conflict are a support to confine to²³⁷. The IHL also places prohibitions on what Parties in an armed conflict are not supposed to engage in²³⁸. Such restrictions and prohibitions are not only confined to the IAC but also to the NIAC. From this, it cannot be noted that the main limitation of the IHL towards dealing with both IACs and NIACs is that it does not condemn violence. It places emphasis towards curbing violence and harm that occur during an armed. This hence implies that the use of the IHL towards dealing with human rights violation during IACs is limited. Therefore, it can be noted that the IHL is a legal instrument that tries to reduce the nature of HRVs during IACs.

Studies have also been conducted to examine how the main targets of the IHL influence its ability to curb armed conflicts. Notable deductions can be noted from statements made by Jean-Jacques Rousseau (1762) which asserts that;

²³⁷ Enrique Eguren, Protection Manual for Human Rights Defenders (2005) <www.frontlinedefenders.org> Accessed 23 September 2017.

²³⁸ Ibid.

*There are boundaries to which the effectiveness of the IHL can be ascertained as the IHL does not look at the legal grounds that caused the armed conflict and whose is legally right or wrong (Jean-Jacques Rousseau, 1762)*²³⁹.

However, other scholars have applauded the IHL for placing huge effort towards balancing between military goals and humanitarian needs²⁴⁰. This can be looked at by stating that either Party involved in an IAC will be defending itself together with its citizens from harm and damage inflicted by the other Party involved in an IAC. In this way, Parties to an IAC are considered to be having legal grounds to defend themselves irrespective of which State initiated the attacks. This consideration is also matched with efforts to ensure that humanitarian needs of the civilians are catered for as well. Hence, the ability of the IHL to strike a balance between military goals and humanitarian aspects also works towards the protection of human rights²⁴¹.

More so, IHL scholars greatly welcome the idea that the IHL is more effective when it comes to handling IACs as opposed to NIACs and internal conflicts²⁴². This greatly aligns with concerns which assert that much of the HRVs that are observed around the world are observed during IACs²⁴³. Thus, by placing significant effort to regulate IACs activities, the IHL will reduce the magnitude and nature of HRVs. In addition, the IHL can be applauded on the basis of its ability to cover a wide number of concerns. For instance, the IHL does not only seek to regulate activities of armed conflicts between States but also extends to include the handling of diplomatic relations, territorial boundaries, trade, space and sea issues, and human rights concerns²⁴⁴.

When looking at the ability of the IHL in dealing with IAC matters, effort should also be placed towards looking at the main principles that characterise the use of the IHL. This is because the effectiveness of statutory instruments such as the IHL is not always evaluated based on results but how such results are in line with its targets

²³⁹ Jean-Jacques Rousseau. "The Core Curriculum". <www.college.columbia.edu. Columbia University> Accessed 23 September 2017.

²⁴⁰ Ibid.

²⁴¹ Ibid, 145.

²⁴² Ibid, 169.

²⁴³ Elizabeth More, 'International Humanitarian Law and Interventions—Rwanda, 1994' (2007) 2 *Genocide Studies and Prevention* 155.

²⁴⁴ Ibid.

and principles²⁴⁵. As a result, studies have often criticised the IHL based on its accomplishments according to what its principles state. This often gives an inaccurate picture of how the IHL will address the issue of soldiers' legal awareness towards approaching HRVs during IAC. With such ideas in mind, it is therefore important to examine the principles of the IHL and how they approach human rights issues and soldiers' legal awareness concerns. Principles that govern the operations of the IHL can thus be listed as follows;

- The first principle of the IHL asserts that there is a need to place a difference between combatants and civilians²⁴⁶. The implication of this principle is that soldiers involved in an IAC are expected to know the difference between combatants and civilians²⁴⁷. This is where the issue of human rights applies and should be obligated to observe human rights laws but not attacking civilians. The major problem with the issue of soldiers violating human rights lies in the idea that soldiers have been using innocent civilians as targets²⁴⁸. Soldiers involved in IACs have not only used civilians as targets, most soldiers have gone to an extent of sexually abusing and harassing civilians and a huge number of sexual offences recorded under IACs are believed to have been perpetrated by soldiers²⁴⁹. However, both civilians and combatants are still considered to be legally liable for protection by the law as evidenced by ideas expressed by the following statement;

Despite, differences that are placed between civilians and combatants, they are both required by the law to be protected and none of these two should be deprived of the right to legal protection all because of their duties and conducts (Fyodor Martens, 1899)²⁵⁰

²⁴⁵ Ibid,

²⁴⁶ Sexual Violence Captured and Areas Controlled, “ Human Rights , Every Day , for All Iraqis ” Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL / or in Areas Controlled by ISIL in Iraq’ (22 August 2017).

²⁴⁷ David Wippman and Matthew Evangelista, *New Wars , New Laws ?* Applying the Laws of war in 21st century conflicts. (Transnational Publishers 2003).

²⁴⁸ Ibid, 128.

²⁴⁹ Ibid, 125.

²⁵⁰ Cassese, Antonio "The Martens Clause: Half a Loaf or Simply Pie in the Sky?", (2000) 11 European Journal of International Law, 1, pp. 187–216.

- The second principle asserts that *hors de combatants* are not to be attacked²⁵¹. Attacking enemy soldiers who are not capable of defending himself either because he has surrendered or has been incapacitated by injuries is considered to be a grave breach of Protocol II of the Geneva Convention²⁵². The problem with this principle is that it conflicts with military concerns. This is because soldiers are trained to kill an armed enemy during an armed conflict. Hence, attacking and killing *a hors de combatants* is sometimes a big sign of victory and much is considered to have been attained. The more enemies soldiers incapacitate or kill, the greater the chances of being victorious²⁵³. Soldiers on the other hand desire to be called powerful and as the best soldiers the State has or the world has ever seen. Hence, in order to achieve such a target, they will kill as many enemy soldiers as possible as they can²⁵⁴. In such case, the protection of human rights becomes of no concern and the issue of human rights violation disappears from their minds.
- The third principle contends that effort must be placed at all cost to curb unnecessary suffering during armed conflicts²⁵⁵. With this principle in question, one can ask whether the need to displace enemies constitute the necessity to violate human rights. The IHL, therefore, argues that costs and benefits must be weighed at all costs before launching an attack²⁵⁶. This is important because it limits the use of certain weapons which might cause massive destruction of property and HRVs such as mass killings. What can be reckoned on this matter is that the IHL does try by all means to ensure that soldiers are fully informed of HRVs. It, therefore, suggests that potential and observed HRVs by soldiers are in most cases as a result of military concerns and individual behaviour. Hence, international agreements such as the IHL cannot always be blamed for HRVs that take place during IACs. The other principle of the IHL pertains to proportionality and the requirement is that Parties to an armed conflict be it soldiers are not expected or required to unlawfully attack military objects if such an attack is to result in massive

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Wippman and Evangelista.

²⁵⁴ Ibid.

²⁵⁵ Ibid, 26.

²⁵⁶ Ibid, 250.

damage to property, injuries or death tolls²⁵⁷. Soldiers often consider it to be a military advantage to unnecessarily attack military objects and kill a huge number of people leading to massive HRVs. Not only are civilians killed, some are displaced from their properties and they end up becoming homeless as noted with Syrians and this deprives civilians of the right to property²⁵⁸.

- The last principle pertains to the principle of humanity offers complimentary support to the principle of necessity. This principle contends that efforts to achieve conflict targets should not people's health and safety standards²⁵⁹. This entails that soldiers in an IAC are not required to indulge in military activities and conducts that will result in unnecessary destruction, injury and suffering.

From all these principles, it can be noted that the IHL does try to contain HRVs by soldiers during IACs. Failure by soldiers to uphold these principles is thus out of the need to attain military targets and commands. It can also be noted that the lack of soldiers' awareness during IACs about how to approach and safeguard human rights is possibly not undertaken during military training. Hence, it is the responsibilities of army commanders and State officials to ensure that soldiers are well informed of human rights and international agreements such as the IHL and how they regulate their conduct during IACs. Principles of the IHL are also a base of highlighting weaknesses associated with the IHL and notable limitations point to the idea of effective regulation to curb violence and ability to promote compliance.

4.2.1 The IHL and International Human Rights Law

Both the IHRL and the IHL are two distinct bodies of international laws the main difference being that the application of the IHL is considered to be limited while that of the IHRL is considered to be non-ending²⁶⁰. This is because the IHRL is always in operating in the event of an IAC. The other things are that when it comes to the IHRL, certain aspects of protection given can be relaxed or withdrawn in the event of an IAC. This imposes limitations on the IHRL towards curbing HRVs by soldiers. There is no guarantee that armed forces will not take advantage of the relaxed protection measures so as to achieve their goals. The major similarity is that both

²⁵⁷ The Additional Protocol I of 1977, Article 51(5).

²⁵⁸ Ibid.

²⁵⁹ Ibid, 196.

²⁶⁰ Ibid, 129.

laws are applicable and entitle parties to protection in the event of an IAC but this is determined by the nature of circumstance characterising the armed conflict²⁶¹. For instance, when it comes to the issue of handling violence say against women during an IAC, the IHRL offers effective protection than the IHL. On the other hand, when an occupational incidence of an IAC ensues, the IHL is considered to be capable of offering more effective protection to curb displacement of civilians. The most important thing is that these two bodies of laws can be used to complement each other and thus rendering more effectiveness to the effort to protect civilians against HRVs by soldiers during IACs. In addition, these laws also play a major role towards promoting and enhancing soldiers' legal awareness of human rights protection.

4.2.2 Efforts to Ensure Compliance with the Requirements of the IHL

When it comes to the issue of ensuring compliance with the IHL it is important to look at the extent to which parties involved in IAC are potentially capable of complying. This can be supported by ideas which suggest that the IHL is an embodiment of fundamental standards and is not a body of laws²⁶². What this implies is that standards are not easily enforceable as compared to laws which compliance is mandatory. Hence, requiring soldiers to be legally aware of the need to preserve human rights during IACs is just a precautionary obligation, not a requirement. To make matters worse, laws attract legal punishment while standards can easily be compromised. This can also be supported by ideas which show that IAC standards set by the IHL are not usually followed and in most cases, they are violated²⁶³. This can be the best possible explanation as to why HRVs by soldiers during IACs are so high. When parties entangled in an IAC fail to observe the standards set by the IHL, it becomes so difficult to press for compliance for either Party and this will require that huge effort be placed towards achieving full if not significant compliance to the set standards of the IHL. Notable measures to promote compliance with the requirements of the IHL are enforced by the ICC and it helps to ensure respect against the need to protect human rights during armed conflicts.

²⁶¹ Ibid, 132.

²⁶² Gates and others. Development and Consequences of Armed Conflicts, (World Development 15 February 2012)

²⁶³ Ibid.

4.2.3 Enforcement of the IHL During IACs and NIACs

The idea of enforceability lies in the idea that violating an international agreement such as the IHL implies that there are victims which have suffered from such actions²⁶⁴. When such a case happens, one would, therefore, seek to ask the following questions;

- How are perpetrators of HRVs going to be treated under the requirements of the IHL?
- What possible measures should be put in place to ensure that victims of HRVs during IACs are compensated? (What kind of remedial action should be taken to reimburse human rights victims of IACs to their former position?).
- Who is responsible for enforcing IHL standards and ensuring that they are upheld to?
- Is such an organisational or international body responsible for enforcing IHL standards effective in achieving such obligations?
- What challenges are being faced by the organisational or international body responsible for enforcing IHL standards effective in achieving such obligations?
- What can be done to improve enforceability and compliance to the IHL and its efforts to curb HRVs during IACs?

Answers to the above questions lie in the idea embraced in the notion of enforceability. When looking at the idea behind enforceability, care must be taken to note that the IHL is considered to be a part of the public international law²⁶⁵. Implications are therefore that individuals and States are mandated to be responsible for enforcing and upholding the IHL. Efforts to improve enforceability of the IHL is supported by legal consequences that are set forth in the event of violations by third States and warring Parties.

4.2.3.1 Belligerent parties' Obligations to Enforce the IHL

All the parties that are at war in an IAC are required to observe all the legal rules stipulated by the IHL²⁶⁶. In the event of an IAC, huge attention is paid towards the respect of the IHL and this has to be done by all parties. By respect, it means that

²⁶⁴ Ibid, 253.

²⁶⁵ Gates and others.

²⁶⁶ Article 1 GCIV.

the stipulated Geneva Convention rules are strictly adhered to by all the parties to an IAC be it a body or individuals²⁶⁷. The prime role is to be played by the States who are tasked with a mandate to ensure that all the Conventions are upheld to. This also puts an obligation on States to education and pass information to its citizens and its armed forces. This mandate also includes the duty to look for those soldiers who would have committed war crimes to be prosecuted and possibly extradited to face judgement²⁶⁸. In addition, it is also the State's obligation to regulate the behaviour of its soldiers during IACs to ensure that the soldiers conduct confines with the stipulations of the IHL. Efforts to regulate soldiers' behaviour also applies to peacekeeping missions and soldiers are also required to ensure that they execute their peacekeeping duties effectively without any legal breach being performed. On the other hand, soldiers deployed in other States must also ensure that prisoners held are well protected too. In the midst of that, violations of the IHL have been observed, recommendations can be made that States are to desist from such violations and place efforts towards repatriating victims.

4.2.3.2 Third State's Responsibility to Enforce the IHL

One of the observable key challenges associated with the enforceability of the IHL is that not all States will be in a position to comply with the IHL. This is because IHL rules set on Parties engaged in IAC are often breaking these rules²⁶⁹. It is easy to see that this problem of enforcing the IHL was also prevalent and hence recommendations had to be strictly made in 1949 requiring that all parties to an armed conflict observe the standards of the IHL²⁷⁰. Third State parties thus come in as a supporting force that reinforces the importance of other States to observe and respect standards set by the IHL. Their roles are to check that there are no activities or conducts that are being done to undermine the requirements and use of the obligatory requirements made by the IHL. Article 1 thus recommends other parties that are not involved in the IAC to take either collective or individual action against States which do not observe and respect the IHL and its standards²⁷¹. This also puts obligations on third parties to look for perpetrators of war crimes and HRVs within

²⁶⁷ Ibid.

²⁶⁸ Article 146 GCIV.

²⁶⁹ M East, 'What Is International Humanitarian Law?' [2004] *Icrc.Org* 1.

Accessed from <<http://www.icrc.org/eng/resources/documents/misc/5kzf5n.htm>> Accessed 4 January 2018.

²⁷⁰ GCI 1949, Article 1.

²⁷¹ Ibid.

their national boundaries irrespective of whether the criminal offences were perpetrated within their States or not²⁷². Among the third parties that can enforce compliance with the IHL is the EU and this can be done by using UN Charter guidelines to impose sanctions on offending States. There are also other measures that can be used to ensure enforcement of the IHL²⁷³;

- Ensuring that there is no impunity for war crimes.
- Imposing sanction and other restrictive measures,
- Demarches.
- Political dialogues.

The Geneva Convention through what is termed the Geneva Call has been making frantic efforts to promote legal awareness not only to armed forces (soldiers) but also to members of the public. This has even gone to a large extent to which the Geneva Call has introduced a mobile game that seeks to portray armed forces as fighters and not killers²⁷⁴. With such an application in circulation, members of the armed force are made aware of other soldiers' legal rights in an entertaining manner. This mobile application also offers huge advantages in the sense that armed forces around the world can easily use it because it is made in both English and Arabic as denoted by figure 4.1.



²⁷² GCIV Article 146.

²⁷³ Ibid.

²⁷⁴ Geneva Call. FIGHTER, NOT KILLER: A mobile application to raise awareness of the law of war among armed groups, 19th May 2015 <<https://genevacall.org/fighter-killer-mobile-application-raise-awareness-law-war-among-armed-groups/>> Accessed 15 January 2018.

Figure 4.1: Fighter Not Killer – A mobile application to raise awareness among armed forces

Source: Geneva Call (2015)²⁷⁵

4.2.3.3 Responsibilities of Other Actors

Another limiting factor towards enforcing compliance with the IHL is that there is no commonly enforced international police force to handle cases of IHL violations²⁷⁶. Therefore, it is important for other actors such as UN, ICRC and other bodies that monitor international treaties to ensure enforceability. Other actors impose obligations on States to oversee and regulate the conduct and activities of its soldiers²⁷⁷. The army commander is also responsible for controlling the conduct of other soldiers to ensure that they are in line with stipulations made by the IHL²⁷⁸.

- **Fact-finding missions:** Whenever there are allegations that have been raised about HRVs, a fact-finding mission can be established to undertake investigations. The Organisation for Security and Cooperation in Europe, EU and UN are some of the players that are responsible for establishing fact-finding missions²⁷⁹.
- **The ICRC:** Offers visits to prisons and other prisoners of war to curb human rights abuses
- **The Geneva Convention (Protecting Power):** It takes a neutral stance between armed conflict issues between States and monitors how they observe and respect the IHL. This is because parties to an IAC do not always agree, hence, involving the IHL helps to curb such conducts²⁸⁰.
- **Media:** Local and international media are responsible for covering IHL violations and bringing to the light all human rights abuses during IAC²⁸¹.

²⁷⁵ Ibid, 275.

²⁷⁶ Ibid, 282.

²⁷⁷ Ibid.

²⁷⁸ International Committee of the Red Cross, 'The Geneva Conventions of 12 August 1949' Working Paper (2008) pp. 218-224.

²⁷⁹ API Article 190.

²⁸⁰ Office of the High Commissioner.

²⁸¹ Ibid..

4.3 Article 2 of the Fourth Geneva Convention of 1949 and IACs

This Article is one of the most important Article of the IHL and it contends that;

*“Prevailing conventions should be used to render effective support to additional Conventions that have been previously adopted and that both are applicable in the event that an armed conflict or any circumstance of similar nature has taken place between States irrespective of the fact that one state has been partially or totally occupied by the other with or without resistance”*²⁸²

The IHL, therefore, sets a tone about what constitutes an IAC and considered them to be those that are in opposition to States (High Contracting Parties)²⁸³. This implies that when States have resorted to the use of armed forces to settle their differences, that situation is known as an IAC. The IHL becomes applicable in such cases whether open hostilities have been witnessed or not. This does not also require that war be formally declared, once armed force has been used between States, a war situation is considered to be taking place and hence placing a huge need to observe IHL rules²⁸⁴. However, the application of the IHL is conditional on the actual situation that would have taken place. For instance, when an IAC ensues but the other government of the opposing Party is deemed not to be formally recognisable and hence resulting in differences between what can be termed a State²⁸⁵. Nevertheless, an IAC has been taken to include things like national liberation conflicts, the war against racism, alien invasion and colonial domination²⁸⁶.

4.3.1 Jurisprudence of the Article 2 of the Geneva Convention

The notion of jurisprudence lies in the need to establish a formal definition of IAC that can be formally used and recognised internationally by all States around the world. As a result, a ruling made by the Tribunal over the Tadic case by the International Criminal Tribunal for former Yugoslavia (ICTY) defined it as the use of armed force by States engaged in a conflict²⁸⁷. Ever since the inception of this definition, it has been in force and nations around the world and other international

²⁸² GCI Article 1.

²⁸³ Ibid.

²⁸⁴ Ibid, 282.

²⁸⁵ Governments and States involved in an IAC must be capable of recognizing each other and this is not the case, then the IHL cannot be deemed to be applicable.

²⁸⁶ AP1 Article, Para. 4.

²⁸⁷ ICTY, The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

organisations have been using it as criteria upon which they can determine the legality of an IAC.

4.3.2 Doctrine of Article 2 of the Geneva Convention

This doctrine is simply to offer a clear understanding of what constitutes an IAC and defines an IAC in line with the Article 2 of the Geneva Convention which asserts that an IAC is when States have resorted to the use of armed forces to handle their disagreements²⁸⁸. The most notable thing about this definition is that it does not specify the nature of weapons involved or that can be used for it to be called an IAC. This, therefore, implies that whether small or light weapons have been used by armed forces or the other State has used huge and devastating weapons such as intercontinental missiles or not, both are still considered to be acts of armed force and are necessary for an IAC when employed by States. The Geneva Convention through Article 2, therefore becomes immediately applicable and enforceable²⁸⁹. The decision not to consider it an IAC is not even based on whether the State that attacked the other first is resisting or not. It is therefore obligated to comply with the stipulations of the Geneva Convention.

4.4 The role of Iraq Constitution Towards Handling Human Rights Abuses during IACs.

Based on the chasings in my thesis with regard to what extension Iraqi military apparatuses giving importance to human rights issues and using it as a key base to educate military personnel or individuals serving in the militarily by making them familiar with human rights basics and mechanisms either through education system or workshops, seminars, particular classes of introducing human rights basics or teaching classes that are within the framework of the IHL.

One of the police colleges in Iraq is Erbil College Academy and under the studying section of the college, it can be seen that both human rights IHL are considered to be continuous studies of the defence's curriculum. Hence, it can be said that Iraq's Erbil Police College has relatively made the study of human rights a basic mandatory.

²⁸⁸ GC Art. 2.

²⁸⁹ Ibid.

I managed to hold an interview with Zakho Military College of Iraq's Ministry of Defence on the 28th of January 2018 with a sole aim of establishing whether they have legal awareness programmes to educate soldiers of human rights protection in IACs. It was established that the college at the present moment does not have specific methods of teaching human rights principles and affairs to promote awareness of human rights concepts to students at the college. It was also

Established that Iraqi's Ministry of Defence itself has not taken serious consideration of this subject and hence this is an issue that needs to be addressed and reinforces the need to have a programmer who is well informed with understanding of the relevant IHL ethics and human rights basics drawing also focus from the need to conduct humanitarian education programs to educate military personnel or any gunman in country.

When it comes to the issue of relevancy of the Iraq constitution and the protection of HRVs during IACs, the legal structure of the Iraq constitution will be used as a point of reference upon which evaluations will be made. Foremost, Article 9 of the Iraq Constitution under clause A, stipulates that the constitution is people-centred and that care should be taken to ensure that each individual is constitutionally awarded his or her legal rights without discrimination or any form of exclusion²⁹⁰. This clause also stipulates that all member of the defence forces is tasked with a mandate to protect Iraq nationals and that no leader such use them to oppress other members of the society²⁹¹. This implies that Iraq soldiers are to observe all prescribed human rights law whether in an armed conflict or not and without compromise. This also extends to imply that Iraq soldiers are to act in compliance with IHL and IHRL especially when given orders by their commanders will result in grave breaches or war crimes. Under no circumstances is it required that soldiers should execute any command given by their superior which leads to HRVs²⁹².

Clause D of the Iraq constitution also supports stipulations made against the use of armed forces to perpetrate HRVs as noted by what transpired during the Ba'ath era

²⁹⁰ UN Human and Rights Council, 'Iraq: Grave Human Rights Violations during the War and Occupation in Iraq' (March 2013).

²⁹¹ Ibid.

²⁹² Ibid, 172.

in which Iraq armed personnel were accessed of HRVs with a lot of genocide incidences being reported against these members of the armed forces and yet they are considered to be having the interest of the public at heart²⁹³. The challenge with Iraq's constitution when it comes to the issue of human rights protection is that it mentions and enforces soldiers to uphold human rights laws but it has not yet been approved. Hence, it is practically impossible to adopt and put it ineffective use. This is because every constitutional law in Iraq must be approved first before it can be used publicly. As a result, Iraq's Ministry of Defence cannot enforce such measures on their armed forces.

Sections 5 and 9 of Act No.67 of the 2004 draft outlines that acts of discrimination are prohibited and that the law should be respected at all costs²⁹⁴. However, there are laws such as military university law which outlines that it is the duty of military universities to educate military officers so that they can uphold and respect human rights during war and disputes. The structure of Iraq's Ministry of Defence is composed of two directorates, that is, Directorate of human rights and military principals whose sole is duty is to publish and circulate information about IHL and IHRL in military institutions²⁹⁵.

With the ongoing level of violence that is taking place, it is imperative that both formulating and using the Iraq constitution to handle human rights abuses is a long way to go. With the current 2005 constitution failing to bear many fruits, it is evident that little will be achieved by using the Iraq constitution to support efforts made by international agreements such as the IHL and the IHRL. The constitution itself is surrounded by a lot of inherent problems and its formulation has to a large extent being biased toward certain ethnic and region-based groups. The Iraq constitution can thus be said to be a base where power and legal authority are being conferred on the basis of political patronage and hence its approach towards human rights bias might be biased and not yield an effective result.

²⁹³ UN Assistance Mission for Iraq, 'Report on Human Rights in Iraq: January – June 2014'.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

5. CHAPTER: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusions

This study sought to examine how soldiers' legal awareness influences the protection and violation of human rights in IACs. This is based on observations that have been made which showed that the nature of atrocities perpetrated by members of the armed forces so-called soldiers, are so inhumane and will leave one questioning whether soldiers are fully aware of the existence of human rights.

Based on the established findings, it can thus be concluded that IACs have a high tendency to cause undesired consequences which include massive death tolls, high levels of sexual abuses of women and children, harassment, torture and mass killings. Much of the effects of IACs can be concluded to be attributed to motives that surround the IAC and these include failure by the government to offer good protection and governance and inequalities between ethnic and religious groups.

When it comes to the issue of human rights abuses by soldiers, conclusions can also be made that members of the armed force have been a key instrument behind HRVs as noted with unconventional war methods and weapons which they have been using in IACs. This is justified by efforts made by international agreements such the IHL and the IHRL which contends that weapons and methods used by soldiers need to be regulated so that they do not cause unnecessary suffering and damages (HRVs). This idea is supported by the existence of the principles of the IHL. Based on the evaluation that has been made, it can, therefore, be concluded that international agreements such the IHL including the Geneva Convention and Additional Protocols, and the IHRL do play a major role in ensuring that States play an essential role in educating their armed forces about human rights protection. Hence, incidences of HRVs are as a result of the conduct and behaviour of the soldiers with little being blamed on States for failing to adequately pass human rights information to promote soldiers' legal awareness.

The major challenges that can be observed with the use of the IHL and IHRL in combating HRVs by soldiers lie in their limitations and scope. This is because the IHL is an embodiment of fundamental standards and is not a body of laws while IAC

standards set by the IHL are not usually followed and in most cases, they are violated (compliance and enforcement challenges).

Lastly, based on discussions that have been made about the Iraqi Constitution, it has been established that an examination and evaluation of the Iraqi Constitution is necessary. It can thus be concluded that the Iraqi constitution does not contain any discipline categories that conform to stipulations made by International Treaties and this is a MUST for it to be used as a human rights protection mechanism during the war or armed conflicts. Conclusions can also be made that then the Iraqi constitutions should be a collection of legal responsibilities that abide by International Treaties and Conventions.

Iraq's international law researchers think that this is one of the most obstacles with the Iraqi convention and that this requires that more studies be undertaken to add a new code or article so as to solve this problem. This problem has been discussed in this thesis, and it has been established that there is a need to find a solution for the Iraqi Constitution that results in a code or article that abides by International Treaties is a MUST. Conclusions can also be about the Iraq constitution that the ongoing level of violence that is taking place in Iraq is threatening both the constitution formulation process and its use to handle human rights abuses is a long way to go. With regards to this matter, conclusions can also be made that the Iraq constitution itself is surrounded with a lot of inherent problems and its formulation has to a large extent being biased toward certain ethnic and region-based groups.

5.2 Recommendations

Based on the deductions that have been made in this study, recommendations will, therefore, be made to both army commanders, States and international human rights organisations. Army commanders are required to engage the services of legal advisors when designing programs that are made to deal with HRVs in IACs. Both soldiers and army commanders must be encouraged at all costs are required to obey stipulations made by the Geneva Convention, IHL and LOAC whether in their national boundaries or in other States and any act of disobedience must attract legal action. Accused soldiers must be obligated to face the wrath of the law for perpetrations committed during an IAC and no leniency will be made based on his

military position. There is greater need to encourage the applicability of the command responsibility principle to ensure that army commander responsible for HRVs are held responsible for criminal conducts perpetrated by either them or their follower soldiers. Apart from adopting international human rights protection measures, States are advocated to come up with their own human rights protection strategies that are tailored made to suit their environmental and legal circumstances. In the event of an IAC, States are recommended to cooperate with international human rights protection organisations such as the OHCHR. States are also advocated to observe international human rights laws and statutory standards in line with guidelines and recommendations of the IHL, Geneva Convention and UNDHR. The Iraq government is also advocated priorities the constitution-making process and ensure that there is an equitable distribution of authority among its social and political groups. There is greater need by the Iraq parliament to approve Article 9 on human rights protection by members of the armed force so that it can be affected into immediate in use. International organisations that are responsible for drafting human rights protection standards and statutory laws are encouraged to involve all the stakeholders at all costs irrespective of racial, cultural, geographical and political differences. When dealing with IACs issues, care must be taken to ensure that mediators that have a neutral mindset are involved to settle IAC disputes. Challenges to deal with IACs can be observed when mediating Parties are taking sides based on economic (e.g., OPEC), organisational (eg., OAU, NAFTA) or continental (eg., SADC, EU) affiliations and patronage. Amendments to international human rights protection should be made to reflect ongoing legal and political circumstances and deal with troublesome IAC challenges. The UN is strongly advocated to place primary responsibility and authority towards ensuring that authority is conferred to Iraq's constitution-making process and its institutions.

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