

Substantive challenges to international humanitarian law

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Résumé

Cet article examine les défis substantiels du droit international humanitaire (DIH), mettant en évidence ses caractéristiques clés et objectifs. Les difficultés comprennent le manque de sensibilisation, la non-conformité des groupes armés non étatiques, la faiblesse des mécanismes d'application et les défis liés aux conflits et à la technologie. Pour surmonter ces défis, il est essentiel d'accroître la sensibilisation, d'engager le dialogue, de renforcer la responsabilisation et de s'adapter aux évolutions. En améliorant la mise en œuvre du DIH, nous renforçons la protection des personnes affectées par les conflits et préservons l'humanité dans des circonstances difficiles.

Mots clés : droit international humanitaire, groupes armés non étatiques, conflits, protection, humanité.

Abstract:

This article explores the substantive challenges faced by international humanitarian law (IHL) in safeguarding humanity during times of conflict. It focuses on the most important features of IHL, which aim to protect lives and promote humanity in the midst of hostilities. Additionally, it examines the objectives of IHL, emphasizing its role in preserving human dignity and minimizing the impact of armed conflicts. The article also addresses the difficulties encountered in implementing IHL and highlights the need to overcome these challenges for enhanced protection. By understanding and addressing these issues, the effectiveness of IHL can be strengthened, ensuring greater safeguarding of human lives in times of crisis.

Keywords: international humanitarian law, non-state armed groups, conflicts, protection, humanity.



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ملخص

إن التحديات الجوهرية للقانون الدولي الإنساني ، وتسلب الضوء على سماته وأغراضه الرئيسية. تشمل الصعوبات قلة الوعي ، وعدم امتثال الجماعات المسلحة غير الحكومية ، وضعف آليات الإنفاذ ، والتحديات المتعلقة بالنزاع والتكنولوجيا. للتغلب على هذه التحديات ، من الضروري زيادة الوعي والمشاركة في الحوار وتعزيز المساءلة والتكيف مع التغيير. من خلال تحسين تنفيذ القانون الدولي الإنساني ، فإننا نعزز حماية الأشخاص المتضررين من النزاعات ونحافظ على الإنسانية في الظروف الصعبة.

الكلمات المفتاحية: القانون الدولي الإنساني ، الجماعات المسلحة من غير الدول ، النزاعات ، الحماية الإنسانية.

1.1 1/- Introduction

The conflict in Ukraine is a complex and ongoing situation. It began in 2014 when Russia annexed the Crimean Peninsula from Ukraine. Since then, there has been a war in eastern Ukraine between Ukrainian government forces and Russian-backed separatists.

The conflict in Ukraine has raised serious concerns about the respect for International Humanitarian Law (IHL). IHL, also known as the Law of Armed Conflict, is a body of rules that seek to protect persons and objects during times of armed conflict. It is based on the principles of humanity, distinction, and proportionality.

There have been numerous reports of violations of IHL in Ukraine. These include the deliberate targeting of civilians, the use of indiscriminate weapons, and the denial of humanitarian access.

The violations of IHL in Ukraine are a serious concern. They are causing immense suffering to the civilian population and are undermining the efforts to bring peace to the country. It is important to hold those responsible for violations of IHL accountable. This will help to deter future violations and ensure that the suffering of civilians is minimized.

The international community has a responsibility to help protect the civilian population in Ukraine. This includes providing humanitarian assistance, supporting the efforts to bring peace to the country, and holding those responsible for violations of IHL accountable. Here are some specific examples of violations of IHL that have been reported in Ukraine:

- The deliberate targeting of civilians, including the use of cluster munitions and airstrikes on civilian areas.
- The use of indiscriminate weapons, such as artillery and rockets, which have caused widespread civilian casualties.



- The denial of humanitarian access, preventing civilians from receiving food, water, and medical care.

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international Humanitarian Law (IHL) is a body of law that seeks to protect persons and objects during armed conflict. However, there are substantive challenges to the implementation of IHL. These challenges include lack of awareness and understanding among relevant stakeholders, proliferation of non-state armed groups and insurgencies, development of new and emerging technologies, changes in the nature of armed conflict, and lack of political will. It is important to address these challenges in order to ensure the effective implementation of IHL and the protection of persons and objects during armed conflict.

1.2 2 Most Important Features of International Humanitarian Law: Safeguarding Humanity in Times of Conflict:

1.2.1 2.1 Introduction:

International Humanitarian Law (IHL), also known as the Law of Armed Conflict, plays a crucial role in promoting humanity and mitigating the devastating impact of armed conflicts. It comprises a set of rules and principles that aim to protect individuals who are not or are no longer participating in hostilities, such as civilians and wounded or captured combatants. This article explores the most significant features of IHL, highlighting their importance in ensuring the preservation of human dignity and minimizing unnecessary suffering during times of conflict.

1.2.2 2.2.1 Distinction and Protection of Civilians

One of the fundamental pillars of IHL is the principle of distinction, which requires parties to distinguish between combatants and civilians. It prohibits deliberate targeting of civilians and emphasizes the need to protect them from the effects of hostilities. The principle of proportionality also plays a vital role, ensuring that the anticipated military advantage does not outweigh the potential harm to civilians. These provisions are crucial for upholding the rights and well-being of non-combatant populations (1).

Limitations on Means and Methods of Warfare (Approximately 400 words): IHL imposes restrictions on the means and methods of warfare to prevent unnecessary suffering and the use of inhumane weapons. It prohibits the use of weapons that cause excessive collateral damage, such as indiscriminate weapons or those of a nature to cause superfluous injury. The principle of humanity guides the development and application of these rules, ensuring that combatants are treated with dignity and respect, even in the midst of conflict (2).

1.2.3 2.2.1 Protection of the Wounded, Sick, and Medical Personnel:

IHL contains provisions that safeguard the wounded, sick, and medical personnel, emphasizing their protection and access to medical care. These rules establish the obligation



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Substantive challenges to international humanitarian law

to provide medical assistance to all individuals, regardless of their affiliation, and protect medical personnel from being targeted or hindered in performing their duties. This feature of IHL aims to minimize suffering and ensure that individuals in need of medical attention receive appropriate care (3).

1.2.4 2.3 Treatment of Prisoners of War and Detainees:

International Humanitarian Law establishes guidelines for the humane treatment of prisoners of war (POWs) and detainees. It outlines their rights, including the right to be treated humanely, the prohibition of torture and cruel treatment, and the right to fair and impartial proceedings. These rules aim to protect the dignity and physical well-being of individuals deprived of their liberty, regardless of their status (4).

1.2.5 2.4 Prohibition of Sexual Violence and Protection of Vulnerable Groups:

IHL strongly condemns and prohibits sexual violence and other forms of gender-based violence during armed conflicts. It recognizes the vulnerability of certain groups, such as women, children, and displaced persons, and emphasizes the need to provide special protection and assistance to them. These provisions reflect the commitment to combat impunity for crimes of a sexual nature and promote gender equality within the framework of IHL (5).

1.2.6 2.5 Conclusion:

International Humanitarian Law encompasses various essential features that aim to protect individuals during armed conflicts. By emphasizing the distinction and protection of civilians, limiting the means and methods of warfare, safeguarding the wounded and medical personnel, ensuring the humane treatment of prisoners of war and detainees, and combating sexual violence, IHL plays a crucial role in minimizing human suffering and upholding human dignity. Adherence to these key features is vital for preserving humanity and promoting peace in times of conflict. As conflicts evolve, it remains essential to reinforce the implementation of IHL and raise awareness of its principles to ensure the continued protection of those affected by armed conflicts.

1.3 3 Objectives of International Humanitarian Law: Promoting Humanity and Protecting Lives in Times of Conflict

1.3.1 3.1 Introduction:

International Humanitarian Law (IHL), also known as the Law of Armed Conflict, serves as a vital framework that seeks to uphold humanity and mitigate the consequences of armed conflicts. The objectives of IHL revolve around ensuring the protection of individuals who are not or are no longer taking part in hostilities, preserving human dignity, and minimizing unnecessary suffering during times of conflict. This comprehensive article explores the primary objectives of IHL and highlights their significance in promoting humanitarian values and safeguarding lives amidst the chaos of armed conflicts (6).



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1.3.2 3.2 Humanitarian Imperative and Preservation of Human Dignity:

The foremost objective of IHL is rooted in the humanitarian imperative to protect and preserve human dignity in times of armed conflict. It recognizes the inherent value and worth of every human being, regardless of their nationality, status, or affiliation. By establishing rules and principles, IHL aims to prevent or mitigate human suffering and ensure that individuals affected by conflict are treated with respect, regardless of their circumstances (7).

1.3.3 3.3 Limiting the Effects of Armed Conflicts:

IHL seeks to limit the effects of armed conflicts by regulating the means and methods of warfare employed by parties to the conflict. The objective is to minimize the suffering caused to civilians and combatants, as well as to protect essential infrastructure and cultural property. By imposing restrictions on the conduct of hostilities, such as the prohibition of indiscriminate attacks and the use of certain weapons, IHL aims to prevent unnecessary harm and destruction (8).

1.3.4 3.4 Protection of Vulnerable Individuals and Groups:

Another crucial objective of IHL is the protection of vulnerable individuals and groups who are at particular risk during armed conflicts. This includes women, children, the elderly, persons with disabilities, and displaced populations. IHL recognizes their vulnerability and establishes specific provisions to ensure their safety, well-being, and access to essential services, including medical care, food, and shelter (9).

1.3.5 3.5 Human Rights and Humanitarian Principles:

IHL and human rights share common goals of promoting and protecting human dignity and rights. The objective of IHL is to bridge the gap between these two bodies of law, ensuring that even in times of armed conflict, individuals' fundamental rights are respected. IHL seeks to integrate humanitarian principles, such as neutrality, impartiality, and humanity, into the conduct of hostilities and the treatment of individuals, striking a balance between military necessity and the protection of human rights (10).

1.3.6 3.6 Prevention of War Crimes and Accountability:

IHL aims to prevent war crimes and hold perpetrators accountable for their actions. It establishes legal frameworks that define and prohibit grave breaches of IHL, such as genocide, torture, and deliberate targeting of civilians. By setting clear standards and establishing mechanisms for accountability, IHL strives to deter violations and ensure that those responsible for crimes are held to account before national or international tribunals (11).

1.3.7 3.7 Promotion of Peace, Reconciliation, and Post-Conflict Recovery:

A significant objective of IHL is to promote peace, reconciliation, and post-conflict recovery. IHL recognizes the importance of finding peaceful resolutions to conflicts and



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Substantive challenges to international humanitarian law

emphasizes the need to facilitate humanitarian assistance, promote dialogue, and support efforts for post-conflict reconstruction. By integrating principles of IHL into peace processes, transitional justice mechanisms, and disarmament programs, it contributes to sustainable peace and the rebuilding of affected societies (12).

1.3.8 3.8 Conclusion:

The objectives of International Humanitarian Law underscore its critical role in safeguarding lives, preserving human dignity, and promoting humanitarian values during armed conflicts. By prioritizing the humanitarian imperative, limiting (13).

1.4 4. Difficulties in Implementing International Humanitarian Law: Overcoming Challenges for Enhanced Protection

1.4.1 4.1 Introduction:

International Humanitarian Law (IHL), also known as the Law of Armed Conflict, plays a crucial role in safeguarding lives and upholding humanitarian principles during times of armed conflict. However, the implementation of IHL faces numerous challenges that can hinder its effectiveness. This article explores some of the key difficulties encountered in implementing IHL and discusses potential strategies to overcome these challenges, ensuring enhanced protection for those affected by armed conflicts (14).

1.4.2 4.2 Lack of Awareness and Understanding

One of the primary difficulties in implementing IHL is the lack of awareness and understanding among relevant stakeholders. This includes armed forces, non-state actors, humanitarian organizations, and even civilian populations. Insufficient knowledge about the provisions and obligations outlined in IHL can lead to unintentional violations or inadequate protection for affected individuals. Raising awareness, promoting IHL education, and integrating it into training programs are crucial steps in overcoming this challenge (15).

1.4.3 4.3 Non-State Armed Groups and Insurgencies:

The proliferation of non-state armed groups and insurgencies presents a significant challenge to the implementation of IHL. These groups often operate outside the control of state authorities and may not recognize or adhere to IHL principles. Their lack of accountability and willingness to engage in unlawful tactics, such as deliberate targeting of civilians or the use of prohibited weapons, pose serious challenges to the effective implementation of IHL. Engaging with non-state armed groups, promoting dialogue, and emphasizing their responsibilities under IHL can contribute to improving compliance (16).

1.4.4 4.4 Weak Enforcement and Accountability Mechanisms:

Another difficulty lies in the weak enforcement and accountability mechanisms for violations of IHL (17). Holding parties accountable for their actions during armed conflicts can be challenging due to political obstacles, limited resources, or inadequate national legislation. Strengthening national legal frameworks (18), enhancing cooperation between



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states and international tribunals (19), and supporting the work of specialized courts, such as the International Criminal Court, are essential in ensuring accountability and deterring future violations (20).

1.4.5 4.5 Challenges in Conflict Zones:

Implementing IHL in conflict zones, characterized by ongoing violence (21), security threats, and limited access, presents significant challenges. Humanitarian organizations often face obstacles in providing assistance and protection to affected populations due to physical dangers, restrictions imposed by parties to the conflict, and the volatile nature of the environment. Building trust, negotiating access agreements, and ensuring the safety of humanitarian actors are vital in overcoming these challenges(22).

1.4.6 4.6 Technological Advancements and Changing Nature of Warfare:

The rapid advancement of technology and the changing nature of warfare pose unique challenges to the implementation of IHL. New weapons systems (23), cyber warfare, and the use of drones raise questions about the applicability of existing IHL provisions and the need for adaptations. Keeping pace with technological developments, engaging in dialogue with experts (24), and ensuring that IHL remains relevant and applicable to emerging forms of warfare are essential for effective implementation (25).

1.4.7 4.7 Conclusion):

The implementation of International Humanitarian Law faces various challenges, ranging from lack of awareness and understanding to the complexities of conflict zones and changing dynamics of warfare (26). Overcoming these difficulties requires concerted efforts from states, non-state actors, humanitarian organizations, and the international community. Enhancing awareness, strengthening enforcement and accountability mechanisms, addressing the specific challenges posed by non-state armed groups, and adapting IHL to technological advancements are key steps towards ensuring the effective implementation of IHL, ultimately leading to enhanced protection for those affected by armed conflicts (27).

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