# ADDRESSING NON-INTERNATIONAL ARMED CONFLICTS VIS-À-VIS INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS REGIME

**Md. Hasnath Kabir Fahim**
School of Law, Chittagong Independent University
*fahim.law22@gmail.com*

**Mohammad Aktarul Alam Chowdhury**
School of Law, Chittagong Independent University
*aktarlawcu@gmail.com*

**Abstract**

In contrast to traditional wars fought between States, most armed conflicts under international law have been fought within the boundary of States. Non-international armed conflicts (NIAC) are those internal wars or armed conflicts that occur inside the border of a State and include conflict between the government of a State and armed groups or only between armed organizations. Since these internal armed conflicts mirrored war between States in nearly every way, a need arose for a set of laws that might put efforts to 'humanize' their conduct at the same level as the laws regulating international armed conflict (IAC). This article highlights the significant debate between international and non-international armed conflicts and whether the difference has been virtually removed. This paper then discusses how NIAC is governed by the body of laws known as international humanitarian law (IHL). Lastly, this research looks at the debate on the difference between international and non-international armed conflicts from the standpoint of international human rights law (IHRL) to understand the characterization of armed conflicts under IHL. Indeed, there is a great deal of ambiguity in borderline circumstances due to the sliding scale for applying IHL and IHRL in NIAC, which also imposes differing obligations on the government and armed groups. Adopting a harmonious and cooperative approach may prevent any detrimental effects on the development of IHL and IHRL.

**Keywords:** Non-International Armed Conflict; War; Internal Armed Conflict; International Humanitarian Law; Human Rights Law

**Introduction**

There is no denying that, compared to legal rules governing IAC, the body of law regulating internal armed conflicts inside the border of a specific State has grown more slowly. Historically, states have held the philosophy that entrusting international law to govern internal armed conflicts would endanger their sovereignty and make it more challenging for them to manage their internal affairs.[1] Nevertheless, it is also evident that, since World War II, most of the armed conflicts governed by international law have taken place within the borders of States rather than in the manner of traditional wars between States.[2] Internal armed conflicts that "occur within the boundary of a State involve a confrontation between the authorities of a State and armed groups or among armed groups and are referred to as non-international armed conflicts."[3] It is pertinent to highlight that civil commotion, minor, isolated violent acts, or other similar disorders are not considered to be NIAC. Moreover, conflicts involving two or more States engaged in hostilities do not constitute NIAC. Since practically every aspect of these internal conflicts mirrored war between States, it became necessary to develop a set of guidelines that could attempt to 'humanize' their behavior.[4] To address the issue of the virtual elimination of the dissimilation between international and non-international armed conflict, it is vital to understand the mechanism to govern non-international armed conflict under the IHL and characterize both IAC and NIAC under international law.

Since many States were opposed to the conception of acknowledging a fresh segment of international law that would ascribe to their national affairs, the rules concerning internal armed conflicts

[1] S. Sivakumaran, "Re-Envisaging the International Law of Internal Armed Conflict," *European Journal of International Law* 22, no. 1 (February 1, 2011): 219–264.

[2] Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles," *International Review of the Red Cross* 99, no. 906 (December 20, 2017): 995–1018.

[3] Michael N. Schmitt, Charles H.B. Garraway, and Yoram Dinstein, *The Manual on the Law of NonInternational Armed Conflict With Commentary* (Sanremo: International Institute of Humanitarian Law, 2006).

[4] Elizabeth Wilmshurst, *International Law and the Classification of Conflicts* (Oxford University Press, 2012).

were very underdeveloped and did not appear in international instruments until the reasoning of Article 3 of the 1949 Geneva Conventions.[5] Only after 1949, with the resort of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II of 1977, were internal armed conflicts placed into an international legal framework. Consequently, it is necessary to analyze the idea of NIAC in light of Article 3 of the 1949 Geneva Conventions and Additional Protocol II.[6]

## Research Methods

The methodology employed in this research work is a doctrinal method. A doctrinal methodology is a black-letter approach to legal research that is purely theoretical. It is used to analyze NIAC in the light of IHL and international human rights law. In doing so, primary and secondary data sources such as Conventions, Treaties, judicial authorities, textbooks, journals, and articles from internet sources are utilized to achieve the study's objectives.

## Idea of Common Article 3 of the Geneva Conventions 1949

Application of Common Article 3 is "*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties*."[7] Firstly, by mentioning an armed conflict that lacks an international element, this clause subtly alludes to Common Article 2, which applies to armed conflicts between States.[8] NIAC is not specifically defined in Common Article 3; instead, it only makes a demarcation between what constitutes an armed conflict and what does not, and this disparity is narrated to emerge in situations that arrive at a certain threshold of intensity before being categorized into one type of

[5] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford University Press, 2012).

[6] Robert Kolb, "The Relationship between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions," *International Review of the Red Cross* 38, no. 324 (September 23, 1998): 409–419.

[7] The Geneva Conventions of 12 August 1949, common article 3, https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

[8] Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations," *International Review of the Red Cross* 91, no. 873 (March 10, 2009): 69–94.

conflict or another.[9] A non-international armed conflict has a lower level of intensity than an international one.[10] The intensity of the violence and the organization of the parties are considered to be the two main components of a NIAC.[11] The intensity of the hostilities reaches a certain point "when the hostilities are collective or when the government is obliged to use military force against the insurgents, instead of mere police forces."[12] Besides, armed groups taking part in the conflict shall be indicated as 'parties to the conflict,' which refers to the fact that "they should have a minimum level of organization, some sort of a command structure, and the capacity to sustain military operations."[13] Each situation must be examined individually in light of the aforementioned variables relating to the parties' organization and level of intensity because they do not necessarily have to coexist. Last but not least, Common Article 3 only applies to armed conflicts on the soil of a country that is a party to the Convention.[14] This observation is typically taken to rule out the occurrence of NIAC in the territory of two or more States. It is thus read as indicating a limit to the application of Common Article 3.[15] It is even claimed that the phrase "occurring in

[9] Theodor Meron, "The Humanization of Humanitarian Law," *American Journal of International Law* 94, no. 2 (April 27, 2000): 239–278.

[10] Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of Non-International Armed Conflicts (AP II), https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

[11] Aurel Sari and Sean Aughey, "Targeting and Detention in Non-International Armed Conflict: Serdar Mohammed and the Limits of Human Rights Convergence," *International Law Studies* 91 (April 15, 2015): 59–118.

[12] 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?'(International Committee of the Red Cross (ICRC) Opinion Paper, March 2008), https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf, p. 3 accessed 4 August 2023.

[13] 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?'(International Committee of the Red Cross (ICRC) Opinion Paper, March 2008), https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf, p. 3 accessed 4 August 2023.

[14] The Geneva Conventions of 12 August 1949, common article 3, https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

[15] Aisling Reidy, "The Approach of the European Commission and Court of Human Rights to International Humanitarian Law," *International Review of the Red Cross* 38, no. 324 (September 23, 1998): 513–529.

the territory of one of the High Contracting Parties" was made to express explicitly that Common Article 3 only applies to States that have ratified the 1949 Geneva Conventions.[16] Another justification for applying this interpretation of Common Article 3 is to uphold the essence of humane treatment, acknowledged in international and non-international armed conflicts. Besides, limitations to its applicability are also required to safeguard the binding character of the basic rights outlined in Article 3.[17]

**Non-International Armed Conflicts and the Additional Protocol II of 1977**

The Additional Protocol II, in its Article 1(1), states that this Protocol applies only to non-international armed conflicts "*which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.*"[18] Additional Protocol II is not applicable in situations of internal unrest and disorders, much like Common Article 3.[19] Notably, the Additional Protocol II specifies a number of more specific requirements for its applicability than Common Article 3. Expressions such as responsible command, authority over a portion of the territory, and prolonged and combined military operations are used in Article 1(1) of the Protocol, and they undoubtedly point to a higher level of organization in the hands of the non-state armed forces.[20] In accordance with Common Article 3, Non-State Armed Groups are required to demonstrate some

[16] Wilmshurst, *International Law and the Classification of Conflicts*.

[17] Jelena Pejic, "The Protective Scope of Common Article 3: More than Meets the Eye," *International Review of the Red Cross* 93, no. 881 (March 5, 2011): 189–225.

[18] Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of Non-International Armed Conflicts (AP II), https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

[19] Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of Non-International Armed Conflicts (AP II), https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

[20] Orna Ben Naftali, *International Humanitarian Law and International Human Rights Law*, ed. Orna Ben-Naftali (Oxford University Press Oxford, 2011).

degree of organization, but it is not a requirement that they be able to control a portion of the territory.[21]

As a result, there may be disagreement regarding how Additional Protocol II should be interpreted in light of Common Article 3. However, each situation must be evaluated individually to determine the level of territorial control over the territory.[22] The new provisions included in Additional Protocol II (fundamental guarantees, protections for prisoners, guarantees of a fair trial, conservation of cultural property, etc.) not only broaden but also complete Common Article 3; however, they refrain from altering the core tenets of the Geneva Conventions.[23] As a result, the additional constraints outlined in Article 1(1) merely specify the applicable area of Additional Protocol II and do not include the entirety of the law of NIAC. Thus, Common Article 3 maintains its independence and applies to various situations.[24]

**Necessity of Categorizing Armed Conflicts**

As previously stated, since 1949, international law has followed a long path in dealing with the issue of NIAC, which is now governed by a substantial set of laws.[25] However, the variety of conflicts that have taken place since 1949 (apart from those that are international and those that are not) and the widespread application of IHL (which evaluates every circumstance considering the laws governing armed conflict) have sparked a debate about how to categorize armed conflicts in international law. At this point, the center of the debate is "Should there be a distinction between international and non-international armed conflict?".[26] Prior to analyzing the aforementioned narration, it is important to emphasize a crucial distinction between international and

[21] Heleen Hiemstra and Ellen Nohle, "The Role of Non-State Armed Groups in the Development and Interpretation of International Humanitarian Law," 2019, 3–35.

[22] Emanuela-Chiara Gillard, "Reparation for Violations of International Humanitarian Law," *International Review of the Red Cross* 85, no. 851 (September 25, 2003): 529–553.

[23] Elizabeth Wilmshurst, *International Law and the Classification of Conflicts*, 1st ed. (Oxford University Press, 2012).

[24] Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations."

[25] Ibid.

[26] Sivakumaran, "Re-Envisaging the International Law of Internal Armed Conflict."

non-international armed conflict yet again. Non-international armed conflicts are usually fought between a State and a non-state armed group or between armed groups, as opposed to international armed conflicts, which are fought between States.[27] Now that both treaty and custom have acknowledged the difference between the two kinds of conflicts, shouldn't there still be a difference in how the law is applied to each of them? And is it appropriate to apply legal standards from IAC to NIAC in light of this distinction? Some academics believe that to eliminate any ambiguity in the interpretation of the law, a unified body of international humanitarian law standards, akin to international human rights law as well as international criminal law, must be adopted. Furthermore, a significant step in that direction is the structure of internal armed conflict along the pathways of the laws on IAC.[28] It is also expressed that "As per the traditional view, it is the law of international armed conflict which represents the high watermark and the standard to aim. It is simply a matter of common sense that the relevant rules should be equally applicable in international and non-international armed conflicts".[29]

The line separating international from non-international armed conflicts has also turned out less explicit due to the practice of the States in the infliction of international humanitarian law, regardless of the type of conflict.[30] According to some scholars, the concept of international and non-international armed conflicts needs to be reconsidered in light of the severity of the violence, the instability it causes, and the need to respect humanitarian standards. The only way the international community can effectively act to safeguard conflict victims is by changing how it perceives IHL.[31] Since the laws governing IAC have

[27] Mohammad Aktarul Alam Chowdhury and Md. Hasnath Kabir Fahim, "The Rise and Codification of International Humanitarian Law: Historical Evolution," *CIU Journal* 4, no. 1 (2021): 72–86.

[28] Sivakumaran, "Re-Envisaging the International Law of Internal Armed Conflict."

[29] Ibid.

[30] EMILY CRAWFORD, "Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-International Armed Conflicts," *Leiden Journal of International Law* 20, no. 2 (June 21, 2007): 441–465.

[31] Liesbeth Zegveld, "Remedies for Victims of Violations of International Humanitarian Law," *International Review of the Red Cross* 84, no. 851 (September 25, 2003): 497–526.

been applied more broadly to NIAC, the distinction between the two norms of conflicts from a legal standpoint is now essentially inoperative. It has even been asserted that the legal demarcation only exposes room for two patterns of conflicts to be conceded by the law, passing out new forms of conflicts (such as those involving a government and an armed group that are fought on the territories of two or even multiple States, known as transnational armed conflicts, etc.) from being governed.[32] The distinction between the two armed conflicts is merely a policy error that needs to be addressed because it defaults to consider the various changes (in nature, for example) occurring in armed conflict, leaving numerous shortcomings in the imposition of humanitarian law.[33] The fact that common Article 3 does not indicate a perceptible definition of NIAC presents another issue about upholding the legal distinction.[34] The term in Common Article 3 is problematic in defining the underlying nature of what constitutes a NIAC since it is a negative definition. Even though Common Article 3 outlines several essential principles of the Convention, it lacks provisions that would specifically define the true context of an IAC.[35]

After the ruling in the Tadic case by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on the interlocutory appeal on the jurisdiction, the argument for abolishing the distinction between the two grades of armed conflict in IHL gained additional traction. Because of the rise in internal armed conflicts, particularly after World War II, the ICTY recognized in *the Prosecutor v. Dusko Tadic* case.[36] That States' perceptions of modern armed conflict had changed. Therefore, considering these variations, maintaining the legal disparity between international and non-international armed

[32] Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations."

[33] CRAWFORD, "Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-International Armed Conflicts."

[34] James G. Stewart, "Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict," *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 85, no. 850 (June 19, 2003): 313–350.

[35] Ibid.

[36] *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94–1-AR72, https://www.icty.org/x/cases/tadic/acdec/en/51002.htm, accessed 7 August 2023.

conflict is extremely irrational as the disparity itself has started to disappear.[37] However, the distinction between IAC and NIAC has not been abolished despite an intense debate among international law scholars over the matter. This is because there is a concern that doing so would leave gaps in the general observance of IHL and the protection of human rights.[38] Since it was simpler to apply present law to newer circumstances than to create an entirely new body of law, the law on NIAC was drafted along the same lines as the law on IAC, as was already mentioned. However, wielding internal armed conflicts according to the laws of IAC may present some unique challenges.[39] At this point, a few questions arise, such as "What happens in a case wherein the rules of international armed conflict are not sufficient to solve a situation specific to internal armed conflict or the rules of international armed conflict simply do not apply to a situation of internal armed conflict?" and "do we still try to somehow fit in every situation within the framework of international armed conflict just because this would lead to a single body of law or do we rethink the entire concept on international humanitarian law, especially the rules on armed conflict, to evolve rules that are specific to a particular category of armed conflict and not all?".[40] Here, the law relating to belligerent occupation can be utilized to illustrate the notion that specific principles on armed conflict cannot be made material to every type of conflict under IHL.[41]

General consensus holds that IAC is subject to the law of belligerent occupation. The relationship between the occupying power, the occupied State (wholly or partially), and the people of the State is

[37] *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94–1-AR72, https://www.icty.org/x/cases/tadic/acdec/en/51002.htm, accessed 7 August 2023.

[38] CRAWFORD, "Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-International Armed Conflicts."

[39] David Kretzmer, "Rethinking the Application of IHL in Non-International Armed Conflicts," *Israel Law Review* 42, no. 01 (2009): 8–45.

[40] Ibid.

[41] Michael J Dennis, "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation," *American Journal of International Law* 99, no. 1 (2005): 119–141.

governed by the law of belligerent occupation.[42] Additionally, regulations governing the seizure of property do not directly apply to situations involving NIAC since they represent a complicated division of interests among the three actors.[43] Another area that academics believe to be unique to IAC exclusively is the law regarding belligerent occupation, which also covers the rules regarding combatant immunity and prisoners of war. There is no mention of combatant immunity or prisoners of war under the regulations on IAC.[44] Despite arguing against maintaining the division, even the ICTY underlined that "*the emergence of the general rules on internal armed conflict does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only several rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts, and (ii) this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts*." To categorize armed conflicts into one group or another and encourage more general adherence to IHL, the dichotomy is beneficial even if it is not crucial.[45]

## The interplay between IHL and International Human Rights Law

"Is it necessary to apply international human rights law in the same situation when there is already a different body of legislation, i.e., IHL, that governs armed conflict?" This is a broad question that is frequently asked.[46] It would be wise first to provide a basic summary of how these two branches of law apply before attempting to respond to the aforementioned question. First, international human rights law is an

[42] Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers," *European Journal of International Law* 16, no. 4 (2005): 661–694.

[43] Kretzmer, "Rethinking the Application of IHL in Non-International Armed Conflicts."

[44] Ibid.

[45] Christine Byron, "ARMED CONFLICTS: INTERNATIONAL OR NON-INTERNATIONAL?," *Journal of Conflict & Security Law* 6, no. 1 (2001): 63–90, http://www.jstor.org/stable/26294359.

[46] Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran, *International Human Rights Law* (Oxford University Press, 2010).

aggregation of laws designed to administer how a State interacts with its citizens. Under this law, individuals are protected from the problems they confront in their State.[47] In contrast, IHL, sometimes named as the law of war or the law of armed conflict, primarily governs the behavior of belligerents at war.[48] Humanity, i.e., the idea of treating combatants humanely by States during times of conflict, is the foundation upon which the principles of humanitarian law have been founded.[49] Therefore, IHL traditionally governed the relationships between States in international law at the time of armed conflict, whereas human rights law was deemed an internal issue for States.[50] However, the expansion of international jurisprudence has resulted in applying human rights treaties to circumstances involving armed conflict, leading to questions about how these two types of law interact.[51] Notably, the International Court of Justice (ICJ) has already recognized the application of international human rights rules during peacetime and armed conflict.[52] In the '1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the ICJ stated that "*The Court observes that the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. However, respect for the right to life is not such a provision. In principle, the right not arbitrarily to be deprived of one's life also applies in hostilities*".[53]

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[47] Boyd van Dijk, "Human Rights in War: On the Entangled Foundations of the 1949 Geneva Conventions," *American Journal of International Law* 112, no. 4 (2018): 553–582.

[48] Chowdhury and Fahim, "The Rise and Codification of International Humanitarian Law: Historical Evolution."

[49] A Alexander, "A Short History of International Humanitarian Law," *European Journal of International Law* 26, no. 1 (2015): 109–138.

[50] Cordula Droege, "Elective Affinities? Human Rights and Humanitarian Law," *International Review of the Red Cross* 90, no. 871 (2008): 501–548.

[51] Louise Doswald-Beck and Sylvain Vité, "International Humanitarian Law and Human Rights Law," *International Review of the Red Cross* 33, no. 293 (1993): 94–119.

[52] Anthony E Cassimatis, "International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law," *International and Comparative Law Quarterly* 56, no. 3 (2007): 623–639.

[53] Legality of the Threat or Use of Nuclear Weapons, ICJ, Advisory Opinion, 1996 ICJ 266 [25], https://www.icjcij.org/case/95#:~:text=The%20Court%20was%20led%20to,very%20survival%20of%20a%20State, accessed 7 August 2023.

The ICJ further emphasized the applicability of human rights treaties in armed conflict by mentioning that they remain to apply during wartime, except for the arrangements on derogation. This was stated in the advisory opinion on the 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.'[54] Numerous international and regional human rights organizations, like the European Court of Human Rights, the Inter-American Commission and the Court, the UN Human Rights Committee, etc., have also confirmed the application of human rights law during armed conflicts.[55] Now, the question is how these two legal systems interact with one another and how conflicts between them are resolved if both IHL and human rights law are applicable in situations of armed conflict. In the *Nuclear Weapons case*, the ICJ held that the maxim *lex specialis derogat legi generali* should be used to resolve a dispute involving the application of IHL and human rights law.[56] The *lex specialis* principle, which states that the specific law prevails over the general law in circumstances when there are two different branches of the law, is a helpful tool for interpretation in international law.[57] Following the ICJ's ruling, the Inter-American Commission on Human Rights declared that, when interpreting a particular right guaranteed by the "American Declaration of the Rights and Duties of Man" in an armed conflict, the more distinctive principles of IHL are more pertinent. The more specific rule, i.e., IHL, is preferred because it is more relevant to the certain subject matter (armed conflict) and has been prepared to take better account of the situation.[58] On the other hand, there is debate concerning the precise application of the *lex specialis* principle in the backdrop of IHL and

[54] A M Gross, "Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?," *European Journal of International Law* 18, no. 1 (2007): 1–35.

[55] Droege, "Elective Affinities? Human Rights and Humanitarian Law."

[56] A Orakhelashvili, "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?," *European Journal of International Law* 19, no. 1 (2008): 161–182.

[57] Marco Sassòli and Laura M Olson, "The Relationship between International Humanitarian and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts," *International Review of the Red Cross* 90, no. 871 (2008): 599–627.

[58] Kenneth Watkin, "Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict," *American Journal of International Law* 98, no. 1 (2004): 1–34.

human rights law.[59] However, if one bases their argument on the ICJ's conclusion pointing out the link between the two law patterns in the *Nuclear Weapons case*, one could contend that the IHL is the *lex specialis* when both human rights law and IHL are applicable.[60] According to the ICJ's analysis of the *Israeli Wall case*, there are three possible situations in which international humanitarian law and human rights law interplay: "*Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. To answer the question, the Court will have to consider both branches of international law, namely human rights law and, as lex specialis, international humanitarian law*".[61] Given the ICJ's ruling in the aforementioned judgments, it is obvious that human rights law applies even throughout times of hostilities. According to the ICJ, IHL tends to always predominate since it provides greater protection in practically every circumstance, including a precise set of regulations.[62] To put it another way, because IHL is a body of law that is specific to armed conflict situations, it should always be used as the basis for any decision made when attempting to resolve a conflict while taking into account a particular human rights law rule that also has application to IHL.[63] Applying a more specific rule that is more detailed and accurate relative to the problem and the context is always preferred.[64] Therefore, in light of the foregoing, it would not be wrong for States to assert that IHL

[59] R Bartels, "The Interplay between International Human Rights Law and International Humanitarian Law during International Criminal Trials," *Human Rights & International Legal Discourse (HR&ILD)* 12, no. 1 (2018): 44–62, https://www.jurisquare.be/en/journal/hrild/12-1/the-interplay-between-international-human-rights-law-and-international-humanitarian-law-during-inter/.

[60] Louise Doswald-Beck, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?," *International Review of the Red Cross* 88, no. 864 (2006): 881–904.

[61] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion, 2004 ICJ 136 [106], https://www.icj-cij.org/case/131, accessed on 7 August 2023.

[62] William Abresch, "A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya," *European Journal of International Law* 16, no. 4 (2005): 741–767.

[63] Noam Lubell, "Challenges in Applying Human Rights Law to Armed Conflict," *International Review of the Red Cross* 87, no. 860 (2005): 737–754.

[64] Françoise J Hampson, "The Relationship between International Humanitarian Law and Human Rights Law from the Perspective of a Human Rights Treaty Body," *International Review of the Red Cross* 90, no. 871 (2008): 549–572.

(being the *lex specialis*) supersedes human rights laws when they are applied in the context of an IAC.[65] Additionally, to avoid conflicts, human rights provisions applicable in armed conflict must be modified to comply with IHL.[66]

Although the ICJ relied on the *lex specialis* standard in clarifying the kinship between the two sorts of law, this decision has come under criticism because the *lex specialis* principle does not demonstrate one form of law's dominance over the other.[67] The *lex specialis* principle, at best, serves as a mechanism for interpretation rather than a rule to resolve a disagreement between two norms because it does not refer to a hierarchy of norms.[68] Research says, "*Lex specialis* is a widely accepted maxim of legal interpretation and technique for the resolution of normative conflicts, and there is no specific legislative intention of the *lex specialis* maxim, highlighting its role as an informal part of legal reasoning that is of the pragmatic process through which lawyers go about interpreting and applying formal law."[69] Additionally, some academics believe that applying it to international law is inappropriate because the *lex specialis* principle was genuinely intended to be used primarily in domestic law.[70] Furthermore, the *lex specialis* principle fails to specify which of the two genres of law is the *lex specialis* and which is

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[65] Leslie C Green, "The 'Unified Use of Force Rule' and the Law of Armed Conflict: A Reply to Professor Martin," *Saskatchewan Law Review* 65, no. 2 (2002): 427–450.

[66] Terry D Gill, "Some Thoughts on the Relationship Between International Humanitarian Law and International Human Rights Law: A Plea for Mutual Respect and a Common-Sense Approach," in *Yearbook of International Humanitarian Law 2013* (The Hague: T.M.C. Asser Press, 2015), 251–266.

[67] Jean-Marie Kamatali, "The Application of International Human Rights Law in Non-International Armed Conflicts," *Journal of International Humanitarian Legal Studies*, vol. 4, no. 2 (2013), pp. 220-261.

[68] Lottie Lane, "Mitigating Humanitarian Crises during Non-International Armed Conflicts—the Role of Human Rights and Ceasefire Agreements," *Journal of International Humanitarian Action* 1, no. 1 (2016): 2.

[69] Martti Koskenniemi, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law* (Report of the Study Group of the International Law Commission, 2006), https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf, accessed on 6 August 2023.

[70] Anja Lindroos, "Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of Lex Specialis," *Nordic Journal of International Law* 74, no. 1 (2005): 27–66.

the *lex generalis*.[71] The *lex specialis* principle has frequently been criticized as ambiguous due to its use as a conflict-resolution tool, which could result in decisions being framed on the basis of political considerations rather than legal grounds. Thus, it would be appropriate to acknowledge some ambiguity regarding the exact meaning and applicability of the *lex specialis* theory, especially in the context of IHL and human rights law, given the different viewpoints among scholars.[72] Some scholars believe that a harmonious interpretation between the two segments of law is necessary to resolve the uncertainty over the applicability of the *lex specialis* principle because these two genres of law complement rather than conflict with one another.[73]

IHL and human rights law have the room to assist each other and offer a solid regulatory framework by the complementarity principle because they nearly entirely share the same values.[74] According to this theory, international law is one system, and the numerous norms that make up this system can coexist peacefully. In this way, IHL can be utilized for the interpretation of human rights and the other way around.[75] Additional evidence for this issue can be found in the European Court of Human Rights (ECtHR) verdict in *Hassan v. the United Kingdom*.[76] The ECtHR concluded that both international human rights law and international humanitarian law should be applied in this matter, rejecting the State's argument that one should take precedence over the other, mentioning that "*to accept the Government's argument on this point would be inconsistent with the case law of the International Court of Justice, which has held that international human rights law and international humanitarian law may apply concurrently. The Court has observed on many occasions that the*

[71] Nancie Prud'homme, "*Lex Specialis* : Oversimplifying A More Complex and Multifaceted Relationship?," *Israel Law Review* 40, no. 2 (2007): 356–395.

[72] Lawrence Hill-Cawthorne, "HUMANITARIAN LAW, HUMAN RIGHTS LAW AND THE BIFURCATION OF ARMED CONFLICT," *International and Comparative Law Quarterly* 64, no. 2 (2015): 293–325.

[73] Orakhelashvili, "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?"

[74] Cordula Droege, "The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict," *Israel Law Review* 40, no. 2 (2007): 310–355.

[75] Droege, "Elective Affinities? Human Rights and Humanitarian Law."

[76] Hassan v United Kingdom, [2014] ECHR 29750/09 [77], https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-146501%22]}, accessed on 8 August 2023.

*Convention cannot be interpreted in a vacuum. So far as possible, it should be interpreted in harmony with other rules of international law of which it forms part. This applies equally to Article 1 and the other articles of the Convention.*"

**Conclusion**

It is undeniable that formulating the rules based on the law of IAC has led to wider receiving of various issues regarding internal armed conflict, as was narrated in the previous sections, and that the regulation of NIAC has advanced significantly since 1949. However, the classification of armed conflict as IAC and NIAC, as well as its entire significance, has frequently been a topic of discussion among international law scholars. Some others have even gone so far as to call this distinction a 'policy error' that must be rectified immediately.[77] There is a potent belief against maintaining the legal dissimilarity between IAC and NIAC in international law, even though the rise in the number of internal armed conflicts since 1949 has altered how States view the concept of armed conflict. However, notwithstanding the arguments made against holding the legal dissimilarity, nothing similar has been accomplished. It is crucial to remember that simply because NIAC resembles IAC, it does not mean the two are equivalent.

There are significant divergences regarding the involvement of actors, the scope of application, and other factors that cannot be left unnoticed. Furthermore, if this legal difference is eliminated, how would conflicts that do not fit under either IAC or NIAC be governed? The arguments for a single body of international law on armed conflict may even ignore some of the fundamental distinctions between IAC and NIAC if they turn to other branches of international law, such as international criminal law as well as international human rights law. As a result, it is necessary to distinguish between IAC and NIAC by international law. Furthermore, it is undeniable that many of the worst atrocities performed today in international law have their roots in internal armed conflict; therefore, rather than adopting a one-size-fits-all method to regulation, it is pressing to adopt a practical mechanism for comprehensive regulation.

[77] Hassan v United Kingdom, [2014] ECHR 29750/09 [77], https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-146501%22]}, accessed on 8 August 2023.

In response to the question of whether IHL should serve as the *lex specialis* in place of international human rights law in every armed conflict, it can be determined from the foregoing arguments that not all experts in international law agree that IHL should take precedence over human rights law. With respect to the accurate meaning and implementation of the *lex specialis* theory, particularly in cases of IAC, there is still plenty of debate. Research says: "Generally speaking, international humanitarian law is considered to be *lex specialis* only for a limited purpose, and it in a way complements and not curtails the level of protection under human rights law."[78] It must be realized that the safeguard provided by human rights law during armed conflict does not become negligible by simply mentioning IHL as the *lex specialis*.[79] Apart from that, numerous principles of IHL, such as proportionality and military necessity, are better understood owing to the requirements of human rights law.[80] Therefore, a cooperative viewpoint to solve the problem would be preferable for the rigorous monitoring of IAC than attempting to alter or reform the principles of human rights law with those of IHL without considering the interplay between the particular principles of these genres of law.

In conclusion, given the growing prevalence of human rights laws in armed conflict, protecting individual rights simply through IHL seems problematic. The misunderstanding among scholars that one of the two genres of law deals with the relevant armed conflict without depending on the other can only be eliminated by embracing a harmonious strategy. As previously mentioned, it is a fact that the subjects regulated by one genre of law are additionally regulated by the other genre of law, demonstrating that the safeguard ensured by IHL and human rights law almost goes hand in hand concerning the regulation of IAC. On the other hand, it is still unclear how these two areas of law would interact harmoniously. To interpret the two different laws harmoniously, a framework must be established. However, only by

[78] Orakhelashvili, "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?"

[79] David Kretzmer, Rotem Giladi, and Yuval Shany, "International Humanitarian Law and International Human Rights Law: Exploring Parallel Application," *Israel Law Review* 40, no. 2 (2007): 306–309.

[80] Francisco Forrest Martin, "The United Use of Force Rule Revisited: The Penetration of the Law of Armed Conflict by International Human Rights Law," *Saskatchewan Law Review* 65, no. 2 (2002): 451–468.

adhering to the complementarity principle will both IHL and human rights law be explicated to enhance the safeguard of individual rights during armed conflict.

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