

**A Study of Contemporary Non-International Armed Conflicts  
and the Applicability of International Humanitarian Law:  
Issues and Challenges**

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**Research Guide**

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## **1. Introduction**

**There seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes.**

***-Navi Pillay***

**It would be easy to define terrorism as attacks against human rights and international humanitarian law forbids attacks against innocent non-combatants which is often the definition used for terrorism.**

***-Joichi Ito***

Our generation is not just fighting the war at the front, but also on the table! These two statements, the first made by a lady who has served as a United Nations High Commissioner for Human Rights from 2008 to 2014 and the other by a Japanese activist, entrepreneur, venture capitalist, and a professor at Harvard Law School, reflect the dichotomy of the current times. These statements reflect that how, in our contemporary times that are brimming with violence, conflict and blood we are unable to define these conflicts in order to address them. We are fighting wars so complex in nature that our legal system developed half a century ago is unable to curtail the loss and take a strong humanitarian action.

Acknowledging the fact that conflicts have become unavoidable, however not losing out at establishing peace, mankind developed a set of principles that would try to humanize the terrifying effects of war. In order to alleviate the suffering caused by war and to protect the weak during conflicts, nation states formulated some principles and practices recognized as *Laws of War*, most prominently known as International Humanitarian Law, articulated in the four Geneva Conventions of 1949 and their four additional protocols of 1977 and 2005. These are the body of rules that, in wartime, protects persons who are not or are no longer participating in the hostilities; and seeks to limit the methods and means

of warfare while preventing human suffering in times of armed conflict and stipulate that civilians and wounded or captured combatants must be treated in a humane manner.<sup>1</sup>

An important aspect here is the International Humanitarian Law in its current form is of a very recent origin. Although it emanates from the customary principles of *jus in bello* which with *jus ad bellum* forms part of the Laws of War. Before the adoption of the Geneva Conventions of 1949 after which the humanitarian law was formalized, war was governed by two sets of principles, *jus ad bellum* and *jus in bello*. The former comprised of lawful criteria that were to be considered by States before waging a war against the other. It was imperative that States were waging a just war. The latter was the law that governed the way in which warfare was conducted, irrespective of whether or not the cause of war is just, currently found in the Geneva Conventions and known as the International Humanitarian Law. It works to humanize war, and protect civilians by creating distinctions between who and what may be targeted in conflicts, how this targeting is executed, weapons allowed, and the rights and obligations of combatant forces.<sup>2</sup>

Thus by governing how military operations must take place, the International Humanitarian Law tries to curtail the effect of war on the civilians and non-combatants. Through the principles of distinction and proportionality, it guides the armed forces to take precaution and cause minimum effect to the civilians.

Another important aspect that a student of international law is taught is the distinction between two types of armed conflict—International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs). The International Armed Conflicts are fought between at least two States, and Non-International Armed Conflicts are those that do not involve two States as opposing parties to the fighting. The intention to incorporate this distinction was to widen the scope and applicability of International Humanitarian Law

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<sup>1</sup> International Committee of the Red Cross, "Discover the ICRC," ICRC (2005) [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0790.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0790.pdf), 15.

<sup>2</sup> Schmitt, Michael, "21st Century Conflict: Can the Law Survive?" *Melbourne Journal of International Law* 8 no. 2 (2007): 444

and to extend its jurisdiction to as many instances as possible, so it may reduce humanitarian violations at all levels of armed conflict.<sup>3</sup>

The drafters of the Geneva Conventions, with the very fresh experience of the two world wars and keeping in mind the wave of independence spread along the globe had taken the decision to include even internal conflicts of higher gravity under the jurisdiction of International Humanitarian Law.

However, the Second World War not just gave birth to the formalized set of humanitarian principles but also the era of cold war. Some significant developments took place during the decades post the two dreadful wars. Firstly the States lost their monopoly over war, and secondly conflicts and casualties by non-state armed groups escalated. These have often been identified as the ‘Fourth Generation of Warfare’. The Four Generations can be traced during the Peace of Westphalia in 1648, the treaty that ended the Thirty Years’ War, which marked the First Generation. With that treaty, the State established a monopoly on war. Previously, many different entities had fought wars—families, tribes, religions, cities, business enterprises—using many different means, not just armies and navies. Now, State militaries find it difficult to imagine war in any way other than fighting State armed forces similar to themselves. The second generation developed in the First World War; and the third generation in the Second World War. The world survived the scourge of two dreadful World Wars but realized the necessity of a mechanism that could minimize their ferocity. The existing legal framework situates its existence as a response to the dreadful World Wars and attempts to humanize future conflicts.

It was during the cold war and the post- cold war era, arising after World War II saw the emergence of the fourth generation of warfare which involves loose networks that become more powerful and resilient through information technology. During these times, sporadic instances of one State using force against the other have been found. However,

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<sup>3</sup> Mack, Michelle, "Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts," ICRC, Geneva, 9 (2008).

all over the world, State militaries find themselves fighting non-State opponents such as al-Qaeda, Hamas, Hezbollah, and the Revolutionary Armed Forces of Colombia. Almost everywhere, the State is losing.

The legal implication of the advent of the fourth generation on the International Law in general and International Humanitarian Law in particular is that the traditional concept war is diluting, the classical State-centered paradigm is shifting and the fighters are no longer the agents of the State. These have been replaced by “ad-hoc warriors”, non-state actors have taken up arms and asymmetric and irregular warfare has now become the trend.<sup>4</sup>

This trend is multifarious and has diverse characteristics which have continuously kept on evolving. The most common of these new-age conflicts is that they are frequent but have low-intensity occurring primarily in a failed or weak State where local militias have ample scope to remain active. Crimes like looting and trafficking, extortion and kidnapping become profitable economic activities in such an environment. Other feature is the extraterritorial military intervention and foreign military presence in a State example of these being in Afghanistan and Iraq in the first decade of the 21st century, as well as ongoing occupations such as the Gaza Strip by Israel. Even the contemporary conflicts have not remain aloof from the impact of emerging technologies, specifically advances in cyber capabilities, and thus, the threat of cyber-attack as a means for warfare—has proven to be an imminent threat and will undoubtedly have major implications for the future of applicable humanitarian laws. Whether they be denial-of-service attacks on an entire population, as evidenced by the 2008 cyber-attacks on Georgia, or unmanned aerial vehicles, such as the “drones” used by the United States military, humanitarian laws created in the 1900s do not entirely reflect the reality of technology in the 21st century. Another notable trend is the blurring of the lines of distinction between ideological and non-ideological confrontations, with non-State armed groups arising from organized criminal activity. Furthermore, the existence of

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<sup>4</sup> Wippman, David. “Introduction: Do New Wars Call for New Laws?” In *New Wars, New Laws?*, edited by David Wippman and Mathew Evangelista, Ardsley, New York: Transnational Publishers, (2005)1.

transnational networks and multinational conflict is enabled by the evolution of globalization in the 21st century; and a heightened focus on the importance of information intelligence in a world that revolves around complex communication and information systems such as the Internet, is undeniably key to the development of modern warfare.<sup>5</sup>

Apart from having these distinct characteristics, for the purposes of International Humanitarian Law the fourth generation of warfare is predominantly classified as Non-International Armed Conflicts.

In the event of a Non-International Armed Conflicts the existing legal framework provided in Common Article 3 of the Geneva Conventions 1949 and Protocol II is applicable under which parties to the conflict are expected to apply minimum humanitarian provisions whereby they must provide protection to persons not taking part in conflicts.<sup>6</sup> However, in practicality Non-International Armed Conflicts are less visible than International Armed Conflicts and thus application of laws becomes problematic. The difficulty in application of laws to any Non-International Armed Conflict is manifold. Apart from the fact that the rules provided under Additional Protocol II are few, rudimentary and less detailed, for any conflict to be qualified as a Non-International Armed Conflict, one of the threshold under Common Article 3 is that the violence must “reach a certain level of intensity”.<sup>7</sup> International Humanitarian Law makes a distinction between situations of internal violence and a Non-International Armed Conflict. International Humanitarian Law does not apply to situations of “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.”<sup>8</sup>

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<sup>5</sup> International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts," ICRC, 31IC/11/5.1.2, Geneva, 6(2011).

<sup>6</sup> International Committee of the Red Cross, "International Humanitarian Law: Answers to Your Questions," Geneva, 2004.

<sup>7</sup> "Intensity" indicative factors as assessed by international jurisprudence include the number, duration, and intensity of individual confrontations, the type of weapons used, the number of persons involved and munitions fired, types of forces partaking in the fighting, the number of casualties, extent of destruction, and number of civilians fleeing combat zones, ICRC, "International Humanitarian Law and Challenges," 8-9.

<sup>8</sup> Additional Protocol II, Article I, paragraph 2.

This has given rise to a debate that challenges the effectiveness of International Humanitarian Law to internal conflict. This legal dilemma illustrates the increasing difficulty in classifying armed violence for the purposes of International Humanitarian Law, and it is argued by some scholars that the very term “armed conflict” is insufficient for the purpose of regulating much of the internal violence today.<sup>9</sup>

Taking into account developing complexities in war, combined with the fact that humanitarian norms are less stringently and explicitly applicable to the most common type of conflict experienced today (NIACs), the obvious reaction is that International Humanitarian Law is rendering less and less relevant in instances of contemporary violence. This poses a question on the successful application of International Humanitarian Law on the contemporary Non-International Armed Conflicts. In the past few decades, one of the distinct developments of these conflicts is the rise of “multinational Non-International Armed Conflicts” where complexity of participants is so heterogenous that makes the classification of the armed conflicts difficult.<sup>10</sup> The situation is worsened due to the increasing complexity arising from the multitude of parties and their conflicting relations. On the State side, the number of foreign interventions in many ongoing armed conflicts contributes substantially to the multiplication of actors involved. In many situations, third States and/or international organizations, such as the United Nations (UN) or the African Union (AU), intervene, sometimes themselves becoming parties to the conflict. This intervention – in support of States or of non-State armed groups – poses extremely complex questions concerning conflict classification. These often arise because of a lack of precise information about the nature of the involvement of third parties but also when third parties do not acknowledge their participation in the hostilities at all. In terms of the territorial span, the spillover of conflicts into neighbouring countries, their geographical expanse and their

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<sup>9</sup> Sassoli, Marco, "The Implementation of International Humanitarian Law: Current and Inherent Challenges," *Yearbook of International Humanitarian Law*, 64 (December 2007).

<sup>10</sup> International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts," ICRC, 31IC/11/5.1.2, Geneva, 10 (2011).



regionalization also appear to have become a distinctive feature of many contemporary armed conflicts – partly as a consequence of foreign involvements.

Further, the applicability of International Human Rights Law which is deemed to apply at all times (and thus constitutes the *lex generalis*) together with the International Humanitarian Law which is triggered by the occurrence of armed conflict (thus constituting the *lex specialis*) to a Non-International Armed Conflicts and to both State and non-State actors have already been settled. However, this premise has yet not been confirmed in International Law. The first question is the extent of applicability in cases of Non-International Armed Conflicts and also the extent to which the non-State actors would be bound by it. Challenges are both legal and practical. Secondly, with civilians being the immediate target of the growing contemporary Non-International Armed Conflicts their vulnerability is aggravated due to the derogation of the human rights.

Thus, in recent years, advances in technology, globalization, and the proliferation of internal conflicts have contributed to an increasingly complex international system in which International Humanitarian Law created during the post-WWII era, was not originally intended to operate. There exists a deficient body of law that has given rise to the International/Non-International Armed Conflict dichotomy. Moreover, the idea of “New Wars” has not been legally conceptualized and hence there is no mechanism available to deal with it. Instead they are been accommodated in the existing framework creating confusion. Henceforth, it is important to recognize these occurrences affecting modes of modern war and to ponder upon the idea that “New Wars” pose challenges to International Humanitarian Law and should not be seen differently to the idea that “New Wars” require “New Laws”.

Hence the title of research is as follows,

**A Study of Contemporary Non-International Armed Conflicts and the Applicability of International Humanitarian Law: Issues and Challenges**

## **2. Rationale of the Study**

- 2.1 Emerging trends in armed conflicts.
- 2.2 States have lost monopoly over war and dominance of Non-State actors in the contemporary conflicts is evident.
- 2.3 Mixed conflicts are now fought around the globe.
- 2.4 Distinction between the International Armed Conflict and Non-International Armed Conflict is becoming obsolete.
- 2.5 Asymmetric nature of contemporary armed conflicts and emergence of 'New Wars' pose challenge to the application of the International Humanitarian Law.
- 2.6 Growing complexity of armed conflicts is being linked to the fragmentation of armed groups and asymmetric warfare; the regionalization of conflicts; the challenges of decades-long wars; the absence of effective international conflict resolution; and the collapse of national systems have made the conflict trend more acute.
- 2.7 International intervention and lack of proper legal framework leads to a 'conflict trap' and multiplication of conflicts.
- 2.8 International Humanitarian Law, comprising of customary rules and formalized principles under Geneva Conventions of 1949 and the Additional Protocols, has become ineffective with respect to 'New Wars' and contemporary Non-International Armed Conflicts which are the product of 21st century and fourth generation of warfare.
- 2.9 In most of these mixed conflicts, civilians continue to bear the brunt of the hostilities, especially when fighting takes place in densely populated areas or when civilians are deliberately targeted. Thousands of people are being detained, often outside any legal framework and often subject to ill treatment or inhuman conditions of detention. The number of internally displaced persons (IDPs), refugees and asylum seekers uprooted by ongoing armed conflicts and violence worldwide has soared in the past two years and this negative trend has continued as conflict situations deteriorated.

- 2.10 International Human Rights Law is not the *lex specialis* in times of armed conflict and therefore cannot be solely relied in times of Non-International Armed Conflicts.
- 2.11 Ineffectiveness of the current International Humanitarian Law framework has shifted the focus of international engagement from conflict resolution to humanitarian activities.
- 2.12 Although much energy has been spent on negotiations about humanitarian access, humanitarian pauses, local ceasefires, evacuations of civilians, humanitarian corridors or freezes, etc, role of UN in addressing the Non-International Armed Conflicts has not been satisfactory.
- 2.13 While achieving consensus about humanitarian access and the provision of assistance to those in need is to be welcomed, the political antagonisms that often accompany such debates carry the risk of tarnishing the very notion of impartial humanitarian action and run counter to its object and purpose. Convening policy debates and engagements towards strengthening humanitarian actions without politicizing it has turned out to be one of the biggest challenges for the humanitarian agencies like ICRC.
- 2.14 The incapacity of the international system to maintain peace and security has made it evident that the current legal framework is inadequate to recognize the dichotomy in categorization of the contemporary Non-International Armed Conflicts and New Wars. 'New Wars' require 'New Laws'

### **3. Object**

The main object of the research is to analyze the nature of contemporary conflicts and study the challenges posed by these conflicts for International Humanitarian Law. The researcher has the following objectives:

- 3.1 To provide an account of the changing character of the contemporary violent conflict and related crises and to address theoretical debates, political approaches and the law on the changing landscape of contemporary Non-International Armed Conflicts.

- 3.2 To provide an overview of the challenges posed by contemporary Non-International Armed Conflicts and New Wars for International Humanitarian Law.
- 3.3 To outline the challenges to the application of International Humanitarian Law in contemporary conflict zones and the inherent inadequacies in the law.
- 3.4 To generate broader reflection on those challenges and outline the ongoing or prospective actions under International Humanitarian Law.
- 3.5 To study past instances representing various emerging kinds of armed conflicts and take into account how these problems were addressed by UN and other international and regional agencies.
- 3.6 To provide a comprehensive assessment of the current legal framework of the International Human Rights Law and its implementation with respect to its reliability during Non-International Armed Conflicts.
- 3.7 To study the difference that would have been made towards victim redressal if different definitions had been applied.
- 3.8 To understand the rigidity vis-à-vis flexibility of the existing International Humanitarian Law framework so as to accommodate the contemporary Non-International Armed Conflicts.
- 3.9 To provide preliminary conclusions towards a normative and policy framework that could sufficiently address the challenge posed by contemporary armed conflicts.

#### **4. Scope and Delimitation**

The study concerns itself particularly to the Non-International Armed Conflicts, specifically the emerging trends in contemporary armed conflicts that cannot be placed strictly in the International Armed Conflicts and are therefore looked upon as asymmetric war or mixed conflicts. The research will try to locate these Non-International Armed Conflicts in the current legal framework and the law that is relied during crises and applicability of International Humanitarian Law. Although the researcher will look into the cases decided by the International Criminal Courts however will not look into the classification of conflicts provided under the

International Criminal Law systematically. Case study method has been applied to analyse the applicability of international Humanitarian Law in conflict areas. Further, to limit the scope of the study the researcher has taken into account only four case studies, viz. Al Qaeda, Syria, Kashmir and Naxalism, which reflect the contemporary Non-International Armed Conflicts. All these four studies depict a distinct nature of contemporary Non-International Armed Conflicts.

## **5. Hypothesis/ Research Questions**

- 5.1 Whether the various forms of contemporary Non-International Armed Conflict need significant attention and legal definitions?
- 5.2 Do 'New Wars' pose challenge to the application of the International Humanitarian Law?
- 5.3 Whether 'New Wars' and contemporary Non-International Armed Conflicts fit in existing framework of the International Humanitarian Law?
- 5.4 Whether the role of UN in addressing the Non-International Armed Conflicts has been satisfactory or not?
- 5.5 Whether the dichotomy and categorisation of armed conflicts has posed biggest challenge to rights of victims?
- 5.6 Whether International Human Rights Law can be relied in times of Non-International Armed Conflicts?
- 5.7 Has the distinction between International Armed Conflict and Non-International Armed Conflict become insignificant?
- 5.8 Whether the difference in definition of Non-International Armed Conflicts leads to difficulty in implementing International Humanitarian Law?
- 5.9 Do they need to be addressed with a set of new laws?

## **6. Methodology**

The study is based on secondary data. The secondary data is be library based, collected from various research, journals, articles, books and publications. The present study is a doctrinal study. The foundation of the study rests on the

International Humanitarian Law and the decisions of the international tribunals. Hence, an analysis of the current legal framework, its application and the judicial decisions is discussed. Apart from legal analysis the research also comprises of examination of situation of armed violence as case studies in order to explore the ways of classification and its consequences.

Not only this, but research conducted by various international scholars and legal luminaries has been examined in detail while conducting the study. International opinion and approach towards the issue plays a major role, so various International Conventions and Reports have been referred.

## **7. Review of Literature**

For this study researcher has reviewed various books, research works, journals and publication to get the proper understanding of the basic principles of international humanitarian law, place of Non-International Armed Conflict, concept of new wars and mixed conflicts, interplay between international humanitarian law and international human rights law during the conflict situations.

Some of the related literatures are as follows:

**7.1 Wilmshurst (2018)** –This *‘International Law and the Classification of Conflicts’* is an important book. It brings an empirical discipline and normative rigour to the examination of an issue that has its roots deeply embedded in the structure of international humanitarian law, the differentiation between international armed conflicts and non-international armed conflicts and the distinction between these and other situations of armed violence. The book discusses classification and also provides a collection of studies of armed violence viewed through the lens of international humanitarian law, giving historical background, context and an examination of relevant legal issues. The book has attempted to be consistent in the terminology used by its different writers while recognizing that it is not possible always to succeed. It uses synonymously the ‘law of armed conflict’ and ‘international humanitarian law’, while usually preferring the latter. The

book is empirical in nature as it has some selected jurisdictions that are indulged in conflict and has tried to analyze the kind of conflict that is going on that jurisdiction. Being one of the very recent and extensive book written on the subject matter, the work highlights the issues of contemporary non-international armed conflicts, challenges due to the changing nature of warfare and the road ahead.

**7.2 Sassoli (2015)** –In this work *'The Convergence of the International Humanitarian Law of Non-International and International Armed Conflicts - The Dark Side of a Good Idea'* the author has shown that nevertheless the IHL regulating IACs has come much closer to that regulating IACs in the last 20 years, and has also described many advantages of this development, reason being they are uncontroversial. However, the focus of this work is mainly on two disadvantages: first, IHL becomes less realistic for armed groups; and second states have taken advantage of this development initiated by humanitarians to reciprocate by invoking in NIACs rights they allegedly had under the traditional IHL of IACs, to the detriment of those affected by NIACs. One of the highlights of this work is that these two disadvantages have been rarely mentioned in scholarly writings of neutral commentators. Sassoli also admits that these two disadvantages are not the reason why many states remain skeptical about this development or try to evade it by denying the existence of any armed conflict on their territory and has tried to show possible ways to overcome those disadvantages through a completely new approach to NIACs. Apart from the “Geneva-type-rules” and human rights based approach”, he proposed “zone approach” based on “individualized threat requirement”, a least-harmful-means test, and meaningful procedural safeguards for lethal targeting and law-of-war detention that take place outside zones of active hostilities for humanization of contemporary conflicts.

**7.3 ICRC (2015)** –This work is a report on *"International Humanitarian Law (IHL) and the Challenges of Contemporary Armed Conflicts"* and provides

a brief overview of current armed conflicts and of their humanitarian consequences, as well as of the operational realities in which challenges to IHL arise and focuses on a few issues related to the applicability of IHL that have generated legal debate over the past few years. The first issue is how to determine the beginning and end of IHL applicability, whether in international or non-international armed conflicts: a question of obvious legal and practical significance. The second is the geographic reach of IHL, particularly in light of the extraterritorial use of force against individuals. The relationship between IHL and the legal regime governing acts of terrorism is also addressed to inter alia reiterate the need to differentiate between them, and to recall the aspects of IHL that are relevant to the “foreign fighters” phenomenon. Also talked about IHL and multinational forces, an increasing number of which are being deployed in conflict environments or are given mandates likely to involve them in ongoing armed conflicts and outlines a legal test for determining when multinational forces become a party to an armed conflict. In many contemporary armed conflicts, armed forces are increasingly expected to conduct not only combat operations against the enemy, but also law enforcement operations for the purpose of maintaining or restoring public security, law and order. The report addressed the interplay of the conduct of hostilities and law enforcement paradigms in situations of armed conflict. It examined a range of issues related to means and methods of warfare.

- 7.4 Sudhakar (2014)** –This research work *‘Protection of Human Rights in Non-International Armed Conflicts and the Emerging Trends in International Law’* being one of its kind comprises of research on protection of human rights during non-international armed conflicts. The research has focused on the growing incidence of internal armed conflicts and resulting human rights violations. The study surveyed the existing network of treaty law and customary law and the growing convergence of International Human Rights and International Humanitarian Law. The study focused on institutional



mechanism for implementation of the law and constitution of various tribunals for the conduct of proceedings under the internal armed conflicts. However, the study focused on the internal conflicts and not on the emerging trends of the non-international conflicts that are not purely internal in character.

- 7.5 Carrasco et al (2014)** –In this work *‘Report On The Survey Study On Human Rights Violations In Conflict Settings’* the author has provided a comprehensive assessment of the European Union external policies in response to conflicts and crises situations, exploring ways to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/ rule of law principles. The report has tackled the complex relationship between conflicts and human rights, taking into account the complex and multifaceted nature of conflicts in the modern world. The report provides a comprehensive survey of the various patterns of human rights violations related to conflict and violent crises situations with a specific focus on the rights of vulnerable groups, as well as the role of non-state actors as key players in the context of new forms of violence and war. It identifies trends in the current landscape of conflict and violent crises and examines the interaction between human rights violations and conflict. This interplay is studied from a multidisciplinary perspective: legal and non-legal approaches taking into consideration conflict analysis discussion and peace and conflict databases. It focuses on the impact of conflicts/crises situations of the rights of selected vulnerable groups, including women, children, refugees and internally displaced persons and indefinitely displaced persons. It identifies patterns, perpetrators and trends of serious human rights violations committed against them on the basis of the information provided by existing databases and human rights reports. The structural discrimination of vulnerable groups is presented, along with human rights abuses they suffer. The report has offered preliminary conclusions on how prevention of such violations and protection of the selected vulnerable groups might be strengthened.

**7.6 Sivkumaram (2012)** –The author in this work *‘The Law of Non-International Armed Conflict’* has taken a view that the issue of NIACs has taken center stage and the international law has not remained static but has adapted itself to be applied in such situations. In similar vein, the book underscores the equality of obligations of the parties to a NIAC, irrespective of the asymmetry in the positions of the government forces and the insurgent armed groups. The author would like to invest courts established by these armed groups with a greater degree of legitimacy, recognizing them as a proper “forum for prosecution when none would otherwise exist”. A more traditional position taken by the author is a repudiation of the argument that there are so called “transnational” armed conflicts, which are neither NIACs nor IACs. The book does not address the more momentous issue of foreign recognition of an insurgent regime as a state’s government. The book shows that, in some specialized niches, NIAC IHL can offer greater protection than IAC IHL.

**7.7 Vacca and Davidson (2011)** –The work *‘The Regularity of Irregular Warfare’* is a critique to the term “irregular warfare” used by several commentators to describe the contemporary conflicts. The term “irregular warfare” reinforces a false and dangerous divide in how war is thought about and planned for. The strategic aim of war, the use of force to compel others to our will, is the same. Tactical concepts, including the use of cover and concealment, local concentrations of force, and the avoidance of decisive engagements, are the same. It is only the peculiar tactical systems which vary, and which may be asymmetric. By promoting irregular warfare, analysts set it up as something distinct from regular warfare. Once separated, this leads to deductive and inductive logical failures. Deductively, analysts fail to apply the general body of knowledge about warfare to the specific situation at hand. This can include the failure to properly evaluate and manipulate political advantages, a failure to understand the political objective of an adversary, a failure to resort to previously established tactical lessons, and to pursue

tactically expedient actions which complicate political solutions. Inductively, analysts fail to place the specific war into the accumulated body of general knowledge about warfare. Lessons, painfully learned through experience, are not reincorporated into the broader understanding of warfare. The author argues that by treating our current experience as “irregular,” and somehow disassociated from “regular” warfare, we diminish our understanding of both.

**7.8 UNHR (2011)**—The current work *‘International Legal Protection of Human Rights in Armed Conflict’* has addressed the complementary application of these two bodies of law. It has not covered all relevant aspects, instead provided an overview of their concurrent application and the necessary legal background and analysis of the relevant notions to better understand the relationship between both bodies of law, as well as the implications of their complementary application in situations of armed conflict. It outlines the legal framework within which both international human rights law and international humanitarian law apply in situations of armed conflict, identifying some sources of law, as well as the type of legal obligations imposed on the different parties to armed conflicts. It explains and compares the principles of both branches and also analyses that the duty bearers are of the obligations flowing from international humanitarian law and international human rights law. It analyses the formal requirements for the concurrent application of international human rights law and international humanitarian law, particularly from the perspective of the existence of an armed conflict and its territorial scope. It also deals with their limitations in such circumstances and discusses the problems resulting from their concurrent application. It has examined selected United Nations practice in applying international human rights and humanitarian law in situations of armed conflict, including practice by the Security Council, the Human Rights Council and its special procedures, the Secretary-General, and the Office of the High Commissioner for Human Rights. And has shown that the United Nations has a well-established practice of simultaneously applying international human rights law and international

humanitarian law to situations of armed conflict, including in protection mandates for field activities, and has provided numerous examples.

**7.9 ICRC (2011)** –The report on *"International Humanitarian Law (IHL) and the Challenges of Contemporary Armed Conflicts"* provided an overview of some of the challenges posed by contemporary armed conflicts for International Humanitarian Law, to generate broader reflection on those challenges and to outline ongoing or prospective ICRC action, positions and interest. This report only addressed a part of the ongoing challenges to International Humanitarian Law such as new technologies in warfare or the drafting of the new Arms Trade Treaty. The analysis identifies four areas of International Humanitarian Law in which, in the view of the ICRC, humanitarian concerns are not adequately addressed by existing International Humanitarian Law and where International Humanitarian Law should therefore be strengthened - namely the protection of detainees, of internally displaced persons and of the environment in armed conflict, and the mechanisms of compliance with International Humanitarian Law.

**7.10 Naftali (2011)** – The edited work *'International Humanitarian Law and International Human Rights Law'* has several contributions that have tried to explore the interaction between international humanitarian law (IHL) and international human rights law (IHRL) and its functioning in practice. The collection opens with an essay where the author illustrates how after the 11 September 2001 attacks there was a shift from what he calls the 'law and order' paradigm, which considered terrorism simply as a criminal phenomenon, to what in his words is the 'armed conflict' paradigm, according to which terrorism is 'a threat equivalent in its magnitude to an inter-state war', having a dramatic consequences for the respect for human rights in the fight against terrorism. Further, the second essay focuses on the role of IHL and IHRL in the allegedly new types of armed conflicts where the asymmetric conflicts, conflicts in failed states, the 'war on terror', and peace operations

conducted or authorized by the UN have been considered. The author argues that nearly all these types of conflicts, if they are armed conflicts at all, are not of an international character, because the fighting forces do not belong to different states. In the author's opinion, both IHL and IHRL contain rules applicable to many issues arising in such conflicts. The rule that is to be applied in a certain case should be determined according to the *lex specialis derogat legi generali* principle. Further contributions focus on the conflicts between IHL and IHRL norms and the methods of avoiding or resolving them. The final chapter sheds light on the role that law, as interpreted and applied by the Israeli authorities, has played in legitimizing and perpetuating Israel's regime of occupation of the Palestinian territories.

- 7.11 Gat (2011)** –This chapter '*The Changing Character of War*' establishes that how ever since the Cold War and over the last decade the rise of insurgents and non-State actors in war, and their readiness to use terror and other irregular methods of fighting, have led the scholars coin the term 'new wars', assumed on the basic premise that the 'old wars' were waged solely between states, and were accordingly fought between comparable and 'symmetrical' armed forces. The author contends that these views and commentaries lack context or sophistication and are bounded by norms and theories rather than messiness of reality. In this book, he argues that the 9/11 attacks have made scholars talk about some trends more than others without being historically aware of them and have further failed to consider many of the other dimensions which help us to define what war is — legal, ethical, religious, and social. In this book, the author has drawn together all these themes in order to distinguish between what is really changing about war and what only seems to be changing. His contention is that character of a war is a product of its own times and that the character of each war is always changing. However, he argues that even though the character of war is in flux, there remains some internal consistency intact. Each war generates its own dynamic and therefore spirals in directions which are never totally predictable and very strongly

forwards his idea that war is both utilitarian, the tool of policy and dysfunctional.

**7.12 Berdal (2011)** – In this chapter *‘The “New Wars” Thesis Revisited’* which is a part of a book titled *Changing Characters of War* the author has focused on the so-called ‘new wars’ which according to him have emerged in the late twentieth century. It examines the proposition that contemporary wars are ‘substantively distinct’ from older patterns of armed conflict and, as such, the ‘new wars’ reflect a new reality. Two related aspects to this general proposition are considered. The first concerns the idea of a historical disjunction between ‘old’ and ‘new’ wars and the accompanying argument that links the emergence of ‘new wars’ to two fundamental processes of change: globalization in the late twentieth century and the end of the Cold War. The second aspect concerns the actual features of the ‘new wars’ and the way in which ‘they differ from earlier wars in terms of their goals, the methods of warfare, and how they are financed’. The most interesting of these relates to the economic underpinnings of contemporary intra-state armed conflicts.

**7.13 Kaldor (2010)**–The article *‘Inconclusive Wars: Is Clausewitz still Relevant in these Global Times?’* argues that the core Clausewitzian proposition that war tends to extremes no longer applies in contemporary wars. Instead an alternative proposition is put forward that war tends to be long lasting and inconclusive. The article adopts the Clausewitzian method and derives this proposition from the logic of a redefinition of war. It also shows the relevance of many of Clausewitz’s central tenets if reinterpreted. Thus contemporary wars are about politics, not policy; they are instrumental and rational but not reasonable (in the sense of being in accordance with universal values); and they bring together a trinity of motivations (reason, chance and passion) but not a trinity of the State, the generals and the people since new wars are fought by a range of non-State actors. The article in particular recommends

that, international missions in crisis zones should take seriously what Clausewitz says about the importance of political control, the character of the commander and the crucial significance of moral forces.

**7.14 Mary O’Connell (2010)** – In 2005, the International Law Association decided that a study of the concept of armed conflict should be undertaken to determine the meaning of this term in international law. Despite the importance of the issue over the years, as highlighted by the U.S. “declaration” of a “war on terror” in 2001, the meaning of armed conflict in international law has not been the subject of comprehensive analysis. The Committee found that the term “armed conflict” had become especially significant with the adoption of the U.N. Charter in 1945 when the term “war” declined in importance. Nevertheless, neither the Charter nor any other important treaty currently defines armed conflict despite the fact that in many subfields of international law it is critical to determine whether or not a situation is one of armed conflict. The Committee, therefore, undertook extensive research into hundreds of violent situations since 1945 and it is *‘Final Report of the Meaning of Armed Conflict in International Law’* identified significant state practice and *opinio juris* establishing that as a matter of customary international law a situation of armed conflict depends on the satisfaction of two essential minimum criteria, namely:

- the existence of organized armed groups
- engaged in fighting of some intensity

The Committee’s assessment of this evidence is confirmed directly or indirectly in many judicial decisions and in scholarly commentary. These sources also indicate that the following conclusions respecting the concept of armed conflict are confirmed in customary international law:

- In international law the concept of armed conflict has largely replaced the concept of war. Further, the earlier practice of states creating a *de*

*jure* state of war by a declaration is no longer recognized in international law.

- Declarations of war or armed conflict, national legislation, expressions of subjective intent by parties to a conflict, and the like, may have evidentiary value but such expressions do not alone create a *de jure* state of war or armed conflict.
- Also, the *de jure* state or situation of armed conflict depends on the presence of actual and observable facts, in other words, objective criteria.
- The accurate identification of a situation of armed conflict has significant and wide-ranging implications for the discipline of international law. Armed conflict may have an impact on treaty obligations; on U.N. operations; on asylum rights and duties, on arms control obligations, and on the law of neutrality, amongst others. Perhaps most importantly states may only claim belligerent rights during an armed conflict. To claim such rights outside situations of armed conflict risks violating fundamental human rights that prevail in non-armed conflict situations, i.e., in situations of peace.

**7.15 Vite (2009)** – The article *‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations’* has tried to highlight some major challenges that the current legal framework of international humanitarian law is dealing with due to the contemporary non-international armed conflicts. Although international humanitarian law has as its aim the limitation of the effects of armed conflict, it does not include a full definition of those situations which fall within its material field of application. While it is true that the relevant conventions refer to various types of armed conflict and therefore afford a glimpse of the legal outlines of this multifaceted concept, these instruments do not propose criteria that are precise enough to determine the content of those categories unequivocally. A certain amount of clarity is nonetheless needed. In fact, depending on how the



situations are legally defined, the rules that apply vary from one case to the next. By proposing a typology of armed conflicts from the perspective of international humanitarian law, this article seeks to show how the different categories of armed conflict anticipated by that legal regime can be interpreted in the light of recent developments in international legal practice. It also reviews some actual situations whose categorization under existing legal concepts has been debated. It sets out, first, to show how the different categories of armed conflict anticipated by that law can be interpreted in the light of recent developments in international legal practice. In that respect, it is appropriate to refer to the conceptualization efforts relating firstly to the law of international armed conflict and secondly to the law of non-international armed conflict. This article then goes on to examine various controversial cases of application. The reality of armed conflict is actually more complex than the model described in international humanitarian law – to the extent that today some observers question the adequacy of the legal categories. This review of the different forms of armed conflict in international humanitarian law has shown just how difficult it can be to classify situations of violence and hence to determine the rules that apply. These difficulties are partly related to the legal categories themselves, whose content is often imprecise in the treaty texts establishing them. In that respect, the development of international practice is essential as it enables those categories to be gradually expressed in concrete terms by assessing them in the light of real situations.

- 7.16 Hoffman (2009)** –In this work, *‘Hybrid versus Compound War—The Janus Choice: Defining Today’s Multifaceted Conflict’* the author has distinguished between ‘hybrid’ and ‘classic’ warfare. He begins by acknowledging the importance and policy implications of redefining war as organized violence and how international humanitarian law and international law are important form of policy negotiations. Hoffman has defined hybrid warfare as "*any adversary that simultaneously and adaptively employs a fused mix of conventional weapons, irregular tactics, terrorism and criminal behavior in*

*the battle space to obtain their political objectives.*" He has deduced this definition from the war of Hezbollah in Lebanon that began in the year 2006. Further, he cites Islamic State as a hybrid threat. In the next part of his work, he characterizes the distinction between classic wars and hybrid warfare. World Wars I and II are perfect examples of classic wars: battles between (a coalition of) nation-states fought by uniformed soldiers under strict hierarchical military command following a military strategy to fight clear and present military targets, conform international humanitarian law, *ius ad bellum* and *ius in bello* or laws of war (Geneva Conventions 1949). He contends that hybrid soldiers are no longer trained by the nation-state nor paid professionals, but are recruited from all over the world. Roots and military experience are irrelevant. The strict hierarchical military command structure has been replaced by loose, flexible and ever-changing networks of freelancers, individual combatants ('lone wolfs') or terrorist cells. You can call it the *democratization of war*. A civilian, combatant or cell has to follow orders of the leader or is free to commit an 'act of war' on his/her own, shouting 'Allahu Akbar'. Military targets have changed too. The protection of the civilian population is not important anymore. Military targets are civilian targets too: IS uses human shields to defend their combatants in the streets of Mosul. Further, the distinction becomes more evident as classic wars end with a total victory, an unconditional capitulation or a peace agreement. However, at what point does a hybrid conflict end is yet unanswered. Hybrid warfare needs a new definition of victory. In fact, a total victory over Islamic State might be an illusion. The best the West can do is to diminish the violence to acceptable proportions. How much violence will be tolerated in a society still worth living is also a question that needs to be determined?

- 7.17 Fleming (2009)** – Over the last 18 years or so, much of the debate about modern warfare has been about whether it should be described as 'old' or 'new'. However, there has not been a definitive answer as to which best reflects war in the modern world. Increasingly, the alternative arguments are

polarised into opposing camps. Indeed, it would be fair to say that there is little in the way of debate at all. By revaluating the strengths and weaknesses of each argument, this paper '*New or Old Wars?: Debating a Clausewitzian Future*' has tried to reinvigorate that discussion by examining whether changes in the way we understand war are really required. Finding that the ideas are not in fact mutually exclusive, it suggests that future research could benefit from a combined approach.

**7.18 Bartels (2009)** – The author in this article '*Timelines, Borderlines and Conflicts: The Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts*' has tried to find answers to the calls that have been made in recent years for the legal distinction between international and non-international armed conflicts to be removed. Also as of late, confusion regarding the applicable legal regime has been created by so-called transnational conflicts involving non-state entities. These situations do not fit naturally into the two traditional types of armed conflict recognized by International Humanitarian Law from 1949 onwards. This work centers on how the legal divide that still exists between international and non-international armed conflict can be explained historically. It aims to further the discussion on whether such a distinction is still relevant, as well as on how certain situations could be classified in the existing typology of International Humanitarian Law.

**7.19 Wilkinson (2008)** – This book '*Terrorism versus Liberal Democracy: The Liberal State Response*' examines the major trends in international terrorism and the liberal democratic response. Drawing key lessons from the recent experience of democracies, and in particular from the response of the US and UK to the events of 9/11, the author has offered a candid interim balance sheet on the success and failures of the 'War on Terror'. The book thus analyses the new role assigned to the military, the growing trend in hostage-taking and

sieges, the challenges faced by aviation security and the place of international cooperation in combating terrorism. It also highlights some of the major dangers, such as over-reaction, over-reliance on the use of military force in an effort to suppress terrorism and the adoption of measures that involve major curtailments of democracy, human rights and the rule of law, which could undermine the very democracy one, is trying to defend. The author argues that prior to 9/11 the general international response to terrorism was one of inconsistency and under-reaction. However, as resorting to full-scale war in the name of combating terrorism risks the sacrifice of far greater numbers of innocent lives than have ever been killed in non-state terrorist attacks, the author strives to outline a democratic strategy designed to avoid the dangers of both over-reaction and under-reaction while preserving democratic values, human rights and the rule of law.

- 7.20 Hoffman (2008)** – This work *‘Squaring the Circle? –International Humanitarian Law and Transnational Armed Conflicts’* acknowledges that even though the law of armed conflict traditionally recognizes only the dichotomy of international and non-international armed conflict applicable in the normative framework regulating armed hostilities, reality presents situations that do not readily fit into these categories. Foreign State involvement is almost habitual in contemporary conflicts and a significant number of conflicts rage between States and non-State actors not necessarily remaining within the confines of a country. In this paper, Hoffman has attempted to examine the legal classification of ‘transnational armed conflicts’, i.e. armed hostilities with a transboundary character that involve non-State actors and thus seemingly escape the classic division of international and non-international armed conflict. After a perusal of legal doctrine and State practice, he concludes that contemporary international humanitarian law is capable of regulating such conflicts and calls for an overhaul of the present system are premature.

- 7.21 Byron (2007)** – The author in this work '*A Blurring Of The Boundaries: The Application Of International Humanitarian Law By Human Rights Bodies*' has identified that the blurring of boundaries between different fields is a feature of modern international law. The article has examined this phenomenon with respect to the interaction between human rights law and international humanitarian law. Instead of discussing the influence of human rights upon humanitarian law, this article has concentrated upon how human rights treaty bodies are breaking down the barriers between the two areas of law by applying or referring to humanitarian law.
- 7.22 Kaldor (2006)** –The book '*New and Old Wars: Organised Violence in the Global Era*' is a path breaking book as the author has presented, what we think as war- war between states in which the aim is to inflict maximum violence- is becoming anachronism and in its place has come a new type of organized violence or '*new wars*', which she describes as a mixture of war, organized crime and massive violations of human rights where the actors are both global and local, public and private. The wars are fought for particularistic political goals using tactics of terror and destabilization that are theoretically outlawed by the rules of modern warfare. Kaldor's analysis offers a basis for a cosmopolitan political response to these wars, in which the monopoly of legitimate organized violence is reconstructed on a transnational basis and international peacekeeping is reconceptualized as cosmopolitan law enforcement. This approach also has implications for the reconstruction of civil society, political institutions, and economic and social relations. The author in the last chapter has also answered the critics of the New Wars argument and has shown how old war thinking in Afghanistan and Iraq greatly exacerbated what turned out to be, in many ways, archetypal new wars - characterised by identity politics, a criminalised war economy and civilians as the main victims. It is one of a good book to understand the fundamentals of contemporary war and conflict.

**7.23 Crane (2005)** – In this article '*Terrorists, Warlords and Thugs*' the author has focused on the current state of affairs related to international criminal law. According to him, humanity is in many ways at a crossroads and depending on the path we take, as a global community, will change the face of international criminal law, maybe forever. Apart from many challenges that we are facing, our task with terrorists, warlords, and thugs in West Africa-very much a forgotten part of the world and called this phenomenon as "*criminal warfare*". Crane contends that international criminal justice can be effectively and efficiently delivered within a politically acceptable time frame. The International War Crimes Tribunal in West Africa, the Special Court for Sierra Leone, has shown that it can be done. Regional hybrid arrangements are effective in delivering justice directly to the victims, their families, districts, and towns; and they can work in the paradigm of the Rome Statute that established the International Criminal Court. The author is affirmative of the tools in place to face down impunity wherever it rears its ugly head and believes that we must continue to ensure that the rule of law is the guiding principle for good governance and a world at peace. The article is very relevant for the debate as it brings to forefront a third perspective into discussion.

**7.24 Singer (2003)** –A path breaking book '*Corporate Warriors: The Rise of the Privatized Military Industry*' highlights the growing privatization of militaries and business executives that manage the war these days. The author has discussed the phenomenon where breaking out of the guns-for-hire mold of traditional mercenaries, corporations now sell skills and services that until recently only state militaries possessed. Their products range from trained commando teams to strategic advice from generals. The author has highlighted that how this new '*Privatized Military Industry*' encompasses hundreds of companies, thousands of employees, and billions of dollars in revenue. In this book, Singer provides the first account of the military services industry and its broader implications whether as proxies or suppliers, such

firms have participated in wars in Africa, Asia, the Balkans, and Latin America. More recently, they have become a key element in U.S. military operations. Private corporations working for profit now sway the course of national and international conflict, but the consequences have been little explored. The privatization of warfare allows startling new capabilities and efficiencies in the ways that war is carried out. At the same time, however, Singer finds that the entrance of the profit motive onto the battlefield raises a series of troubling questions for democracy, for ethics, for management, for human rights, and for national security.

- 7.25 Stewart (2003)**– The article *‘Towards A Single Definition of Armed Conflict In International Humanitarian Law: A Critique Of Internationalized Armed Conflict’* has tried to touch upon the very first things that the students of International Humanitarian Law are taught –the distinction between the international armed conflict and non-international armed conflict. By highlighting the inadequacies of the current dichotomy’s treatment of internationalized armed conflicts, namely, armed conflicts that involve internal and international elements Stewart criticizes that the strict division of the International Humanitarian Law and rules applicable to both these kinds of conflict and has tried to revive those dead calls that made an attempt to abandon the distinction at the every stage of negotiation of the Geneva Conventions and their Protocols. The articles proposes that the law developed to determine this “internationalization” has created convoluted tests that in practice are near impossible to apply. In any conflict, even once internationalized, it is difficult to determine the applicable law as relationships and military presences change. Moreover, the international/non-international dichotomy in international humanitarian law has proved susceptible to incredible political manipulation, often at the expense of humanitarian protection. Further the articles presents a need to consider substantive aspects of a single law of armed conflict as quintessential in the development of greater humanitarian protection during internationalized armed conflict.

**7.26 Provost (2002)** –By the work *‘International Human Rights and Humanitarian Law’* the author has tried to answer an important question as to how do international human rights and humanitarian law protect vulnerable individuals in times of peace and war. Provost has analysed systemic similarities and differences between the two to explore how they are each built to achieve their similar goal. He details the dynamics of human rights and humanitarian law, revealing that each performs a task for which it is better suited than the other, and that the fundamentals of each field remain partly incompatible. This helps us understand why their norms succeed in some ways and fail - at times spectacularly - in others. This study represents innovative and in-depth research, covering all relevant materials from the UN, ICTY, ICTR, and regional organizations in Europe, Africa and Latin America. The idea proposed by this work has later been criticized by others who believe that human rights regime can suitably be applied to conflict situations.

## **8. Implications of the Reviewed Literature**

The study of the existing literature shows that the confusion and difficulty that has crept in the applicability of International Humanitarian Law on Non-International Armed Conflicts has been either recognized or rejected by the writers. There is no uniformity in the opinion regarding the need of new regime for the contemporary Non-International Armed Conflicts. Various authors have proposed the difficulty in applying the existing International Humanitarian Law framework to the emerging Non-International Armed Conflicts. However, the international bodies and institutions have offered strict compliance to the existing framework as the better solution to the challenges posed by the contemporary Non-International Armed Conflicts rather than drafting new set of laws. However, authors who propose the existing framework to be sufficient fail to recognize the changing characterizations of the contemporary Non-International Armed Conflicts and try to accommodate them in the existing framework. The researcher intends to study the issue from the perspective that will firstly try to identify the characteristics of



contemporary conflicts, find similarities or distinguishing factors form the conventional Non-International Armed Conflicts and test the suitability of the application of existing framework to the contemporary conflicts.

## **9. Chapter Structure**

The basic tenet of International Humanitarian Law is to humanize wars by prescribing rules and regulations, rights and liabilities of the actors in the conflict. With an unprecedented rise in the conflicts the International Humanitarian Law is at the breaking point. There is wide gap between the need and the ability to provide humanitarian solution.

The current study will explore the provisions of International Law revolving around armed conflicts and would note how the international regime has addressed the issue. It will look at the international legal framework, its scope, area of concern and its authority to intervene in the cases of Non-International Armed Conflicts. As the fourth generation of warfare is encompassed all over the globe and has manifested itself majorly in the form of Non-International Armed Conflicts, the research will shed light on the emerging trends in these Non-International Armed Conflicts and the various forms in which these conflicts are been fought.

Keeping due importance to victim's perspective, the research will strive to find the applicability and reliability of the International Human Rights framework during the Non-International Armed Conflicts and its relation vis-à-vis International Humanitarian Law.

### **Chapter 1. Introduction**

This chapter discusses about the introduction or the synopsis for the research that has been carried out. It includes general introduction to the research topic, lays

out the object, scope, significance and utility of the research. It shall further review the existing literature available on the subject, analyse the research gaps and discuss its implication on the current study. The chapter shall also build and iterate the research questions, methodology adopted to answer the questions and the hypothesis of the research.

## **Chapter 2. Non-International Armed Conflicts: Their Place in International Law**

In the beginning of this chapter the researcher will examine the foundation and establishment of the term ‘armed conflict’ and how historically the transition from ‘war’ to ‘armed conflict’ took place in the field of International Law. Further, while discussing the development and definition of the concept of ‘armed conflict’ the chapter will navigate through the UN Charter of 1945 and the Geneva Conventions of 1949. The chapter will dig into the different kinds of armed conflicts recognized under the International Humanitarian Law i.e., International Armed Conflicts and Non-International Armed Conflicts and the legal regime of the two. Further, the chapter will deliberate into the causes of this distinction and its significance. The law pertaining to Non-International Armed Conflicts prescribed under Common Article 3 of the four Geneva Conventions, Additional Protocol II and the threshold provided under Article 8 of the Statute of International Criminal Court will also be looked into in a systematic and detailed manner. In all, the chapter will examine the provisions of International Law revolving around armed conflicts and examined the its scope, area of concern and its authority to intervene in the cases of Non-International Armed Conflicts.

## **Chapter 3. New Wars and Contemporary Non-International Armed Conflicts: The Emerging Trends and Challenges**

As the fourth generation of warfare is encompassed all over the globe and has manifested itself majorly in the form of Non-International Armed Conflicts, this chapter will throw light on the emerging trends in these Non-International Armed Conflicts and the various forms in which these conflicts are been fought. The research will first try to analyze the modern wars and their distinction with the Clausewitz's model of classical war. Further, the research will pursue to understand the changing characteristics of modern armed conflict where the features of regular, irregular, asymmetric war fares have been analysed. Hybrid wars and terrorism will also been discussed and deliberated upon. The chapter will also probe into the complications posed by international intervention to any armed conflict leading to an internationalized Non-International Armed Conflict. The chapter will further appraise various challenges that have been posed by these contemporary conflicts to the International Humanitarian Law.

#### **Chapter 4. Accommodating New Wars in Old Law: Case Study**

To illustrate the consequences of classification on the ongoing conflicts around the world and explore the challenges this chapter will identify several conflicts whose practical operation has been examined historically. The case studies to be chosen for this purpose are: the ongoing war in Syria, global war on terror or war against *Al-Qaeda*, Terrorism in Kashmir and Left-Wing Extremism/ Naxalism in India. The purpose of choosing these conflicts is that all the four are peculiar and all stand as a distinct example of contemporary conflicts that the world is currently facing. By studying the overview of the conflicts and the international intervention, the chapter will endeavor to understand not just the application of the legal principles, recent practice, the difficulties experienced in classifying the conflicts and the response to these challenges but also the difficulties. To understand these facets a special investigation would be made on the role of United Nations, its specialized agencies and other expert organisations like ICRC during the crises and evaluate their contribution in promoting humanitarian access and accountability under the law.

## **Chapter 5. Human Rights and Humanitarian Law: From a Victim's Perspective**

This chapter will attempt to find the applicability and reliability of the International Human Rights framework during the contemporary Non-International Armed Conflicts and its relation vis-à-vis International Humanitarian Law. The chapter will look into look this interface with a victim's perspective, the problems they face due to inadequacies in the international law during a Non-International Armed Conflict. The chapter will be premised on the understanding that although International Human Rights Law is general and universal in nature, its application with International Humanitarian Law becomes controversial during these new conflicts that have emerged recently. The chapter will scrutinize how even if International Human Rights Law did formally apply, why it has provided no more protection than International Humanitarian Law and thus needs to develop itself on this front.

## **Chapter 6. Conclusion and Suggestions**

This chapter will discuss the summary of all that been delved and deliberated in the various chapters. The whole study and research will been distilled in this chapter. This chapter will try to attempt to reach to conclusions to the hypotheses made in the introductory chapter. The later portion of the chapter will deal with all possible suggestions to provide a better international framework. Although the conclusion and suggestions will be based on the case studies discussed in the research, the conclusion could be generalized to understand the future of the law.

## **10. Major Findings of the Study**

The preliminary findings of the study can be summed up as under:

The research has substantiated that the fourth generation of warfare is encompassed all over the globe and its existence can't be denied. Most of the conflicts fought

around the world are of the nature of Non-International Armed Conflicts which are contemporary in nature.

Further, from being internationalised and affected by foreign intervention, the Contemporary Non-International Armed Conflicts acquire an asymmetric nature and become a mixed conflict. The current framework of International Humanitarian Law seems to be inadequate so as to regulate these New Wars which are of a recent origin.

The brimming challenges are reflected in the case studies dealt under the research. The study on *Al Qaeda* and War on Terror is a classic example of transnational armed conflict not falling under the definition of Non-International Armed Conflict provided under Common Article 3 of Geneva Conventions 1949. Similarly, the second case study dealing with Conflict on Syria is an example of multiple Non-State Actors fighting against the State and other foreign parties who have strong presence in the conflict. Third case study is about the Kashmir Conflict and cross-border implications affecting the conflict which again makes strict application of Common Article 3 difficult. The last case study is about Naxalism, where the non-state actors or the belligerents are farmers during the day and combatants at night which affect the threshold of the applicability of the Common Article 3.

Further, the research has analysed that sole reliance on International Human Rights Law will not help in resolution or mitigation of the crises situation. The study at the end will propose a paradigm shift for the applicability International Humanitarian Law, if required during the contemporary Non-International Armed Conflicts. The study will offer the re-shifting of focus to conflict resolution that is now merely concentrated on providing humanitarian access to the conflict areas.

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