

# Challenges for Implementing International Humanitarian Law (IHL) in the Contemporary Landscape

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## Abstract

War was, war is and war always will be. However, war should be humane. War has limits and war can be humane as well. Apart from few blurred issues IHL contains numerous provisions encompassing, *inter alia*, the protection of the war stricken population and the means and methods of warfare. However, implementation of IHL has been a big challenge. In the last century the dimension of warfare was under great transformation. Hence, the scope of IHL also expanded and it's still going on. War has monstrous effects and most commonly the rules of IHL are violated indifferently. However, enforcement of IHL has been a challenging task and it has been seen to be enforced partially. The violators of the losing side may be brought to book; however, the violators of the winning side may not be so. Hence, might is right is reflected in the enforcement of IHL. Implementation of IHL in non-international armed conflicts is more challenging than that of international armed conflicts. Sometimes legal vacuum is formed when a given situation cannot be brought under the auspices of IHL. Moreover, the culture of impunity prevails in the IHL regime due to the indifference of the parties. Many perpetrators remain at large. Insensitive violations of the rules of IHL by the belligerents postulate the haplessness of the entire regime. The article analyzes the challenges in implementing IHL in the changed backdrop and it looks for the measures which are essential to overcome those challenges.

**Keywords:** Asymmetric Warfare, Direct Participation in Hostilities, Cyber Warfare, War on Terror, Automated Weapon System, Principle of Distinction.

## Introduction

IHL does not prohibit war rather prohibits some means and methods of war and conduct of hostilities. It seeks to minimize the sufferings of the victims of war. The question is can IHL confront with the new challenges emerging from new dimensions of war? Is the international humanitarian law regime complete itself? States will engage in armed conflict for their necessity

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sometimes for wealth and sometimes to uproot the government. In all types of war whether for self-defence or for right to self determination, whether illegal or against terrorists, whether to maintain international peace and security, IHL applies and must be respected. However, IHL could not stop the killing of the civilians during hostilities and the torture of the prisoners of war as the belligerents do not comply with it. Though IHL, being not practicable to be implemented, cannot be a panacea for the ghastly consequences of war, however, compliance and respect for IHL would significantly reduce human suffering on both sides, and would help restore confidence and ultimately offer the best chance of preparing the ground for a peaceful resolution of the conflict.<sup>1</sup>

In the modern warfare advanced weapons are launched from remote place without involving men, war is conducted from distance. They are primarily characterized by attacks on the civilian population and by extreme brutality.<sup>2</sup> Warfare has become asymmetric confrontations and there is high degree of fragmentation of the armed groups involved. Direct hostilities have become rare. Taking hostages of innocent people and killing the civilians are new strategies of combat. The upheaval in Syria and Iraq in the last few years, the rise of ISIS, ISIL have struck IHL in the heart. Civilians have been killed indiscriminately, prisoners including journalists and aid workers have been beheaded. The famous quote by Rousseau, that “[war] is not [...] a relationship between man and man, but between State and State”<sup>3</sup> is no longer as accurate as it once was: today war is perhaps more of a relationship between State and man.

The rules of IHL are described by the International Court of Justice (ICJ) as “intransgressible”. States have the duty to respect the rules of IHL. It is a self-evident principle of international law that obligations must be respected. Without respect, rules become meaningless.<sup>4</sup> Needless to say, the legal obligation to ensure respect cannot be met by a textual commitment alone.<sup>5</sup> The purpose of humanitarian law is to lay down a series of inviolable standards of humanity, as well as to preserve and safeguard core values even in the midst of horrendous violence.<sup>6</sup> Enforcing the violations of the rules of

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<sup>1</sup> Maurer, Peter, Challenges to International Humanitarian Law: Israel’s Occupation Policy, *International Review of the Red Cross*, Volume 94, Number 888, Winter 2012, p.4.

<sup>2</sup> Thurer, Daniel, *International Humanitarian Law: Essence and Perspectives*, SZIER/RSDIE 2/2007, p. 8.

<sup>3</sup> Rousseau, Jean-Jacques, *The Social Contract*, 1994 (originally published in 1762), Book I, ch. IV, p.51.

<sup>4</sup> *Accountability for violations of International Humanitarian Law: An Introduction to the Legal Consequences Stemming from Violations of International Humanitarian Law*, October 2013, Daiakonia, p.1.

<sup>5</sup> *Ibid*, p.4.

<sup>6</sup> *Supra* note 2, p. 3

## Challenges for Implementing International Humanitarian Law (IHL)

IHL is an essential part of implementation of IHL. Punishing the violators responsible for the suffering of the victims of war will set example for the future and will compel the states and the armed forces to abide by the rules of IHL. Effective implementation is key to greater protection of victims of armed conflict.<sup>7</sup> The adequacy of IHL has on occasion been challenged not only in terms of its ability to encompass new realities of organized armed violence within existing classifications, but also in terms of the existence of a sufficient body of substantive norms and its applicability in a given situation.<sup>8</sup>

### **Development of International Humanitarian Law: An Uneasy Adventure**

International Humanitarian Law (IHL) is a branch of Public International Law which is intended to alleviate human pain and suffering resulting from armed conflicts.<sup>9</sup> The development of IHL is well documented and known to all from Solferino and afterwards. The first Convention came in 1864 which marks the beginning of IHL. Common Article 3 of the four Geneva Conventions of 1949 deals with non-international armed conflicts. Customary international law provides rules of international humanitarian law which are activated, as far as applicable, when a situation does not fall within the purview of the Conventions. There are three additional protocols to the Conventions which deal with three different issues. Besides there are other documents which contain rules of IHL like the Convention on Genocide 1948, the Convention on Land Mines 1997, The Rome Statute etc. International courts and tribunals have played role to develop IHL. On several occasions the International

Court of Justice has considered the basic issues of IHL. ICRC is the cornerstone of the International Red Cross and Red Crescent Movement, which also plays a role in the development of IHL.<sup>10</sup> It prepared the draft of the four Geneva Conventions and the additional Protocols. The International Institute of Humanitarian Law was established in 1970 which operates to develop IHL and works for its implementation.

### **Challenges in Implementing International Humanitarian Law**

The single most important factor in creating problems regarding the implementation of the law in the twentieth century was clearly the dramatic changes in the technology of warfare.<sup>11</sup> With the introduction of aerial

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<sup>7</sup> The Domestic Implementation of International Humanitarian Law: A Manual, ICRC National Implementation database, p. 5.

<sup>8</sup> International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, ICRC, October 2011 p. 12.

<sup>9</sup> Kalshoven, F., Constraints on the Waging of War, Geneva, ICRC, 1987, p.1.

<sup>10</sup> Emanuelli, C., The Contribution of International Bodies to the Development and Implementation of International Humanitarian law (IHL), p. 148.

<sup>11</sup> Doswald-Beck, Louise, Implementation of International Humanitarian Law in Future Wars, International Law Studies, Volume-71, p. 42.

bombardment and missile warfare, the rules limiting attacks to military objectives and requiring proportionality are not always easy to respect.<sup>12</sup> The non-application or selective application of IHL, or the misinterpretation of its rules for domestic or other political purposes, can – and inevitably does – have a direct effect on the lives and livelihoods of those who are not or are no longer waging war.<sup>13</sup> The so called Arab spring gave rise to many humanitarian concerns in mixed situations encompassing internal armed conflict in which international forces took part. The persistent crisis in West Bank and Gaza strip is an outlasting threat for the humanitarian agenda.

There may be continuing breach of IHL like the wall constructed by the Israeli authority in the occupied Palestine is breach of IHL. However, no one can seem to do anything about it. Israeli authority's settlement policy also amounts to a violation of IHL.<sup>14</sup> The fact is that implementing IHL depends to a large extent on the political will of States, despite the fact that the Geneva Conventions contain a mechanism for monitoring by the States Parties not directly involved. This mechanism consists of a system of protecting powers (which, it is true, has never been implemented).<sup>15</sup> The international political community did not manage to save the Muslim men in Srebrenica from massacre, or to remedy the anarchy in Somalia, or to prevent civilians in Darfur from being killed, tortured, raped, driven from their homes and having their property destroyed.<sup>16</sup> The report of ICRC namely 'Strengthening Legal Protection of Victims of Armed Conflict' identifies four areas of IHL in which, in the view of the ICRC, humanitarian concerns are not adequately addressed by existing IHL and where IHL 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 IHL. Whether the IHL classification of armed conflicts into international and non-international is sufficient to encompass the types of conflicts taking place today.<sup>17</sup> It is noted that the more asymmetric a conflict is, the more difficulties arise for implementation of IHL and for humanitarian action, as both sides are convinced that they must violate or at least 'reinterpret' IHL to suit their needs.<sup>18</sup>

<sup>12</sup> Ibid, p. 49.

<sup>13</sup> International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, *International Review of the Red Cross*, Volume 89, Number 867, September 2007, pp. 720-721.

<sup>14</sup> See the Fourth Geneva Convention which contains provision prohibiting the transfer of part of the population of the Occupying Power to the occupied territory. Israeli citizens cannot be transferred to the occupied Palestinian territory.

<sup>15</sup> Supra note 3, p. 5.

<sup>16</sup> Bothe, Michael, *International Legal Aspects of the Darfur Conflict*, in: August Reinisch and Ursula Kriebaum (eds.), *The Law of International Relations-Liber Amicorum Hanspeter Neuhold*, Utrecht, 2007, pp. 1 ff.

<sup>17</sup> Supra note 9.

<sup>18</sup> Sassòli, Marco, *The Implementation of International Humanitarian Law: Current and Inherent Challenges*, *Yearbook of International Humanitarian Law*, 2007, vol. 10, p.58.

### **Lack of Respect**

In current armed conflicts, the problem is not a lack of rules, but a lack of respect for them.<sup>19</sup> IHL is humanitarian; thus, its respect is particularly difficult to obtain when the very aim of belligerents is inhumane.<sup>20</sup> Israeli occupation of Palestinian territory demonstrates its lack of respect for IHL. According to the Common Article one of the four Geneva Conventions the belligerents must respect all applicable rules of IHL in all circumstances. Respect must be taken in its widest possible sense. The obligation to respect the law demands positive protective steps along with to refrain from illegal conduct. IHL is based upon the assumption that both sides have equal rights. However, both sides also have equal responsibilities, and those remain even if one party would break the rules. This means for instance that if one party uses prohibited weapons, the other party is still under an obligation not to do so.<sup>21</sup>

### **Lack of Compliance Mechanism**

Recent developments in Mali, the Arab Spring uprisings, the persisting civil war in Syria and the endless crisis situation in Afghanistan are constant reminders of the need to focus on strengthening compliance with IHL, without forgetting the weaknesses in the existing mechanisms for the implementation and dissemination of norms and principles of humanitarian law.<sup>22</sup> International Fact Finding Commission has been inoperative; enquiry procedure has not been activated for quite long. The system of protecting power did not take effect. At present there is no effective compliance mechanism in the IHL regime.

### **Availability of Weapons**

There is a devastating human cost to the availability of weapons. There is also a political cost. Weapons fuel the parties' illusion that they can win this war, pulling them farther into battle and further away from the negotiating table. Those who supply arms to the various warring parties are not creating the ground for victory but rather the illusion of victory. This is a dangerous and irresponsible illusion as it allows the war to unfurl endlessly before us. As the conflict extends, it opens the door to further immense human suffering and the possible conflagration of an entire region.<sup>23</sup> Due to the

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<sup>19</sup> Supra note 14, p. 723.

<sup>20</sup> Supra note 19, p. 16.

<sup>21</sup> This fundamental principle is reflected in Common articles 1 and 3 to the Geneva Conventions, which stipulates that the parties to the convention are obliged to respect the rules "in all circumstances". This rule reflect customary international law and applies also in NIACs, see ICRC, Customary International Humanitarian Law, Volume I: Rules, 2005, rule 140, pp. 498-499.

<sup>22</sup> Pocar, Fausto, Respecting International Humanitarian Law: Challenges and Responses, International Institute of Humanitarian Law, September 2013, P. 9.

<sup>23</sup> Ibid, p. 55.

easy availability of the conventional weapons civilians suffer death, injury even after the armed conflict is over. The rapid expansion of the arms trade and the unregulated proliferation of weapons are matters of concern when the violation of IHL is the question. As long as weapons are too easily available, serious IHL violations will be made more likely and the provision of humanitarian assistance endangered.<sup>24</sup>

### **War on Terror**

Arguably one of the most controversial and ambiguous challenges to International Humanitarian Law in the 21st century is the development of the so-called War on Terror declared by the United States government following the attacks on September 11, 2001.<sup>25</sup> National governments, namely the US, frequently partake in activities strictly forbidden under IHL in the name of the allusive War on Terror<sup>26</sup>. The war on terror is endless in its nature; terrorism has always existed in one form or another and is likely to exist henceforth. This means that the detention of a civilian deemed as a terrorist risks becoming endless as well.<sup>27</sup> There has also been debate as to whether terrorist attacks carried out by terrorist organizations generally should be seen as reaching the minimum level of intensity or if this instead should be dealt with as criminal acts subject to a domestic law enforcement system.<sup>28</sup> Terrorism should not be a plea for attacking a country in which case there will be more violations of IHL. One example of a state using targeted killings to fight terrorism is Israel. Since 2000, hundreds of people have been killed in both successful and unsuccessful strikes. Several unsuccessful attempts of targeted killings have led to collateral damage where civilians have been wounded or killed.<sup>29</sup>

### **Direct Participation in Hostilities (DPH)**

The term direct participation in hostilities is not defined in GC or the Additional Protocols. This is an inadequacy in IHL that of course risks creating uncertainty in military operations in civilian environments. Due to urban warfare the conventional distinction between combatants and civilians has become blurred. It is particularly hard to determine the direct participation in hostilities which is crucial to determine the humanitarian status of an individual and the annexed treatment. How can “real” civilians be protected when terrorists and insurgents immediately after having carried

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<sup>24</sup> Supra note 9, p. 45.

<sup>25</sup> Morgan, Kelley, Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare, Independent Study Project (ISP) Collection, SIT Study Abroad, Spring 2013, p. 22.

<sup>26</sup> Ibid, p. 23.

<sup>27</sup> Wippman & Evangelista, New Wars, New Laws?, 2005, p.4

<sup>28</sup> Even-Khen, Can We Now Tell What “Direct Participation in Hostilities” is?, 2007, p. 220.

<sup>29</sup> Ibid, pp. 213-214.

out an attack blend in with the rest of the population?<sup>30</sup> However, the belligerents have not observed the principle of distinction and have attacked the civilians in search for the combatants. It has been seen in the Syrian war that many civilians have been killed when attacks were launched targeting the ISIL fighters mingling amongst the civilian population. It may have been the case that the civilians did not directly participate in hostilities. Russian, American and the Syrian armed forces did not follow the ICRC guidelines while launching attacks in the civilian areas. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

### **Lack of Political Will to Implement Humanitarian Law**

The relevance of IHL in the 21st century is entirely dependent upon its perceived relevance by actors involved, and subsequently their willingness to comply with its stipulations.<sup>31</sup> Any actor attempting to increase respect for the law might face another significant challenge: a party may not have enough political will, or none at all, to comply with the provisions of humanitarian law. Not infrequently, a party to a non-international armed conflict — either a State or an armed group — will deny the applicability of humanitarian law, making it difficult to engage in a discussion on respect for the law.

### **The Privatization and Commercialization of War**

War has become business for arms, natural resources. For that purpose war has become protracted in nature. IHL rules are violated indiscriminately to that end. Private military and security companies are involved in warfare. There is an emerging norm that arms transfers should not be undertaken where there is a real risk that they will be used in the commission of crimes against humanity, violations of international humanitarian law or war crimes. In Syria, this risk is real. Influential States must recognize that further arms shipments to Syria are likely to be used in the perpetration of violations and crimes both by Government forces and its affiliated militia, and antigovernment groups.<sup>32</sup> If IHL has to be implemented in terms of means and methods of warfare arms and explosive business of certain types has to be shut down. Chemical weapons, biological weapons, incendiary weapons cannot be manufactured. Whether the states will patronize in doing so? That's a big question. In the capitalistic world order war is also privatized and commercial. In this setting we cannot expect to stop the use of those weapons in warfare.

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<sup>30</sup> Frida, Lindström, *Asymmetric Warfare and Challenges for International Humanitarian Law: Civilian Direct Participation in Hostilities and State Response*, p. 7.

<sup>31</sup> *Supra* note 26, pp.26-27.

<sup>32</sup> *Supra* note 23, p. 55.

## **Automatization of Warfare and Cyber Warfare**

Advanced technology in war creates difficulty in determining responsibility for violation as well as in complying with the methods of warfare. Use of drones and other high-tech weapons have given rise to multiple complexities. Reconciling the emergence of cyberspace as a new war-fighting domain with the legal framework governing armed conflict is a challenging task in several respects.<sup>33</sup> The emergence of cyber warfare creates difficulties in implementing IHL especially in identifying the attacker. There is no express IHL provision forbidding such warfare. Remote controlled weapons pose challenges for IHL since these weapons can cause incidental civilian casualties and damage. Likewise, automated weapon system may not make a distinction between the combatant and the civilian. Moreover, it is not clear how these weapons could assess the incidental loss of civilian lives, injury to civilians or damage to civilian objects, and therefore comply with the principle of proportionality.<sup>34</sup> The development of a truly autonomous weapon system that can implement IHL represents a monumental programming challenge that may well prove impossible.<sup>35</sup> This weapon system also poses challenges for the principle of distinction, principle of proportionality and precautions in attack. It is important to ensure informed discussion of the issues involved, to call attention to the necessity of assessing the potential humanitarian impact and IHL implications of new and developing technologies and to ensure that they are not employed prematurely under conditions in which respect for IHL cannot be guaranteed.<sup>36</sup> 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.<sup>37</sup> Modern technology has given wealthy State militaries an extraordinary advantage in combat—a reality that largely undermines compliance with IHL.<sup>38</sup>

## **Enforcement Mechanism of IHL**

Criminal accountability is one important aspect of the work needed to implement IHL and address violations of IHL when they have occurred. States who are party to the Conventions, Protocols and other humanitarian law instruments must prevent and put an end to acts contravening these instruments. In short, states must repress all violations and, in particular adopt criminal legislation for the punishment of those who commit grave breaches of the Conventions.<sup>39</sup> If international humanitarian law is to have any teeth, there must be consequences for conduct that defies its rules.<sup>40</sup>

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<sup>33</sup> Supra note 9, p. 37.

<sup>34</sup> Ibid, p. 39.

<sup>35</sup> Ibid, p. 40.

<sup>36</sup> Supra note 9, p. 40.

<sup>37</sup> Supra note 26, p. 10.

<sup>38</sup> Schmitt, Michael, "21st Century Conflict," pp. 460-65.

<sup>39</sup> Talmar-Pere, Annika, National Implementation of International Humanitarian Law: The Case of Estonia, ENDC Proceedings, Volume 15, 2012, p. 139.

<sup>40</sup> Supra note 23, p. 56.



International Criminal Court (ICC) was established to try and punish the violators of IHL. Such violations are called war crimes. Besides there have been many tribunals in different places to try and punish the war criminals in international and non-international armed conflicts. Some tribunals are international, some are national tribunals and some are hybrid tribunals. Nuremberg tribunal, Tokyo tribunal, International criminal tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone are worth mentioning. However, the violators of the mighty and winning states either do not face any trial at all or receives smaller punishment *vis a vis* the violators of the weak and losing state. For the victims' point of view, leaving accountability to the parties often leads to impunity.<sup>41</sup> The international tribunals definitely brought a lot to enforcement; however, they by nature only deal with the very top of the iceberg. At the same time, domestic criminal justice is, most of the time, malfunctioning in the case of international humanitarian law violations.<sup>42</sup>

### **Non-international Armed Conflict (NIAC)**

Non-international armed conflicts differ enormously from international armed conflict. They range from those that resemble conventional warfare, similar to international armed conflicts, to others that are essentially unstructured. This diversity, in conflicts and in those parties to them, makes it very difficult to formulate standard approaches or plans of action for increasing respect for humanitarian law. IHL is meant to strike a balance between military necessity and humanitarian considerations.<sup>43</sup> However, Non-international armed conflicts are not regulated in sufficient detail by treaty law. Though, this type of armed conflict takes place more than the international armed conflict especially after the Second World War. However, some states plagued by internal violence have declined to become party to the Additional Protocol II. Minimum humanitarian standards must be maintained during NIAC whatever the circumstances even if there is confusion regarding the exact status of the violence.

There has been an emergence of “multinational NIACs” in which two or more national forces may be fighting together against one or more organized group within the territory of the host state.<sup>44</sup> Due to lack of precision in defining non-international armed conflict, IHL cannot be applied in a warlike situation in which non-state actors are involved. It is perhaps readily apparent that one of the most prominent challenges to the effectiveness of International Humanitarian Law is the issue of non-compliance by the multitude of non-state actors.<sup>45</sup>

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<sup>41</sup> Supra note 5, p.3.

<sup>42</sup> Supra note 23, p.112.

<sup>43</sup> Supra note 2, p. 3.

<sup>44</sup> International Committee of the Red Cross, International Humanitarian Law: Answers to Your Questions, Geneva, 2004, [www.icrc.org](http://www.icrc.org). ICRC, Oct. 2002, 19.

<sup>45</sup> Supra note 26, p. 17.

## Urban Warfare

Civilians are the primary victims of violations of IHL committed by both state and non-state actors in contemporary armed conflicts.<sup>46</sup> The occurrence of battle in areas largely populated by civilians is an increasingly frequent phenomenon of modern warfare, and only makes it harder for the proper application of IHL to be implemented in combat; ultimately leading to the death of thousands of innocent civilians every year. One reason why combat in cities has become more common is that non-state actors benefit from it in terms of support and protection.<sup>47</sup> War spread in densely populated area has serious humanitarian consequences. ICRC considers that explosive weapons with a wide impact area should be avoided in densely populated areas.<sup>48</sup>

## Asymmetric Warfare

Asymmetric warfare was seen in Iraq, Afghanistan and Israel-Palestine situation which is responsible for the violation of IHL rules in the contemporary armed conflicts. Contemporary warfare has changed into a treacherous game in civilian environments where adversaries are trying to defeat each other by exploiting each other's weaknesses.<sup>49</sup> Asymmetric warfare is a broad term catching situations where a party to an asymmetric armed conflict is using illegal and not necessarily military, means and methods to overcome a military superior adversary.<sup>50</sup>

## Constraints of ICRC

International Committee of the Red Cross (ICRC) has a major role in implementing IHL. However, it does not have the power to impose sanctions upon the warring parties violating IHL. It can only censure such violations and request the parties to stop those violations. ICRC is regarded as the custodian of IHL. It can offer services to the parties of NIAC. However, if its offer is not accepted it cannot help the people especially the civilian. Getting the permission to work in a country, where NIAC is going on, is a challenge for ICRC. Normally, the belligerent parties do not bother about the humanitarian needs and concerns. ICRC becomes helpless.

ICRC along with other humanitarian organizations are facing growing dilemmas in working towards the implementation of IHL rules and in deciding how best to orientate their work in connection with armed conflict, whether in Israel and the Occupied Territories, or anywhere else in the world.<sup>51</sup> Access of the humanitarian organizations to the affected population is essential for humanitarian assistance like supply of foods and medicine,

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<sup>46</sup> Supra note 26, p. 15.

<sup>47</sup> Supra note 31, p. 7.

<sup>48</sup> Supra note 9, p. 42.

<sup>49</sup> Supra note 31, p. 6.

<sup>50</sup> Jeppsson, *Asymmetrisk krigföring – en aktuell krigföringsform*, 2005, pp. 32-33.

<sup>51</sup> Supra note 2, p. 8.

rescue of the civilians etc. However, such access may not be granted immediately thus thwarting the humanitarian needs of the suffering people. Without rapid and immediate access IHL cannot be implemented.

### **Lack of Co-operation of the States**

Some governments continue to deny that there are NIACs occurring within their territory and therefore that IHL applies, rendering difficult or impossible a dialogue with the ICRC on respect for their obligations under IHL. Certain governments have also been reluctant to acknowledge the need for the ICRC and other components of the Movement to engage non-state armed groups on issues relating to their security and access to victims, as well as to disseminate IHL and humanitarian principles, on the grounds that the armed groups in question are "terrorist organisations" or are otherwise outlaws.<sup>52</sup>

### **Conclusion**

The lack of political will by powerful government and military representatives is not an excuse for the continued human suffering that still takes place as a result of indifference toward internationally binding laws and treaties; and it is absolutely imperative that the State and its armed forces act in a way that exemplifies correct behavior in times of armed conflict, in order to encourage behaviors of positive reciprocity, if there is any hope of achieving compliance by violent non-state actors in the increasingly complex reality of contemporary warfare.<sup>53</sup> Without the co-operation of the states, IHL cannot be effectively implemented. Whether the states are really willing to give effect to the rules of IHL has been a fundamental question in the IHL regime. Many issues of IHL are still unsettled.

Stricter regulation of international transfers of weapons and ammunition is necessary to give effect to the rules of IHL. It strikes to the root causes of flagrant breaches of IHL and therefore can be considered as a preventive measure. Monitoring the manufacture and trade of weapons and regulating the availability of weapons is indispensable in this regard. There are no common international standards for the transfer of conventional arms. War crimes trials are another means of forcing the States to obey the rules of humanitarian law. Members of the armed forces and other persons who commit war crimes and crimes against humanity are liable to prosecution. We have heard of Nuremberg, Tokyo tribunals but not of Hanoi or Baghdad or Kabul tribunal. This demonstrates the partial implementation of IHL. ICC has played little role in enforcing IHL.

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<sup>52</sup> Supra note 9, p. 5.

<sup>53</sup> Supra note 26, pp. 33-34.

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