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Indigenous African Conflict Resolution and Modern International Humanitarian Law: Convergence, Divergence, and Cultural Integration

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Abstract

This Article examines the interplay between pre-colonial African conflict resolution systems and modern International Humanitarian Law (IHL). Through comparative analysis of indigenous practices—such as the Acholi mato oput ritual in Uganda, Tallensi battlefield protocols in Ghana, and Nupe warfare codes in Nigeria and IHL treaties (Geneva Conventions 1949, Additional Protocols 1977), the Article identifies significant convergences: protection of non-combatants, humane treatment of prisoners, and restorative justice principles. Divergences arise in codification, enforcement, and gender inclusivity, with traditional systems relying on oral customs and elder mediation while IHL emphasizes universal codification and ICC enforcement. The study argues for culturally sensitive IHL implementation via traditional leaders (e.g., Sierra Leonean chiefs collaborating with ICRC), leveraging their authority to enhance compliance in non-international armed conflicts under Common Article 3. Case studies demonstrate that integrating African restorative traditions with IHL's punitive accountability strengthens humanitarian protection in plural legal landscapes.

Keywords: *Jus in Bello*, Africa, Customary Law, Geneva Conventions and Protocols, Legal Pluralism

Introduction

International humanitarian law (IHL) and indigenous African conflict systems share foundational humanitarian objectives but diverge in structure and enforcement.¹ Modern IHL, codified through the Geneva Conventions of 1949 and their Additional Protocols (1977/2005), prioritizes universal principles: distinction between combatants/civilians (Article 48 AP I), proportionality (Article 51(5)(b)), and humane treatment (Common Article 3).² Conversely, pre-colonial African societies governed warfare through uncodified restorative practices, such as the Acholi *mato oput* reconciliation in Uganda or Tallensi casualty evacuation in Ghana.³ This paper contends that despite divergences in *codification* and *enforcement*, synergies in humanitarian values, observed in prisoner treatment among the Ngoni of Central Africa or civilian protection in Kenya's Maasai conflicts, offer pathways for culturally attuned IHL implementation.⁴ However, even before the modern principles and treaties of IHL that are obtainable today emerged, various African societies operated indigenous conflict resolution systems.⁵ Humanitarian traditions, culture, religion, and communal ethics characterised these systems. Although they were uncodified, they, to a great extent, reflected a normative order that prioritised peace, reconciliation, and the humane treatment of others.⁶ Nonetheless, modern IHL tends to reflect a positivist outlook, prioritizing formal enforcement procedures and uniform applicability.⁷ It is therefore pertinent to understand the convergence and divergence between the traditional system of regulating armed conflict and the modern tenets and principles of modern IHL.

The coexistence of the traditional African norms and prevalent international humanitarian law is worthy of examination, given that they both have areas of intersection and divergence. Traditional African societies usually employed community-based dispute resolution mechanisms that were restorative rather than punitive. Authority to resolve disputes and settle armed hostilities was vested in the elders, chiefs, and traditional rulers. This Article seeks to analyse the overlap between indigenous African conflict resolution and IHL, examine their divergences, and explore the role of culture in implementing humanitarian norms. This work also

¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, r 1.

² Geneva Convention IV (1949), art 27; Additional Protocol I (1977), art 75(1).

³ Luc Huyse and Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict* (IDEA 2008) 41–43.

⁴ E. E. Evans-Pritchard, *The Nuer* (OUP 1940) 125–28

⁵ Darlington Tshuma, 'African Customs and Traditions and the Indigenization of International Humanitarian Law in Armed Conflict' (International Review of the Red Cross, 2024)

<<https://international-review.icrc.org/articles/african-customs-and-traditions-and-the-indigenization-of-ihl-926>> accessed 30 October 2024.

⁶ *ibid*

⁷ ICRC Report, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' *Cambridge University Press* [2024] 106(927)

evaluates how traditional leaders can contribute to IHL compliance, examining case studies across African jurisdictions.

Conceptualizing International Humanitarian Law (IHL)

International humanitarian law (IHL) is a body of legal norms that exists to regulate armed conflict, protect persons not participating in hostilities, and restrict the means and methods of warfare. It means international rules or customs established by treaties or custom that limit the right of parties to the conflict to use the means and methods of warfare of their choice.⁸ The universality that these rules have gained today are rooted in universalist values that attend the conception of human rights.⁹ It is a set of rules that seeks to limit the effect of armed conflict.¹⁰ IHL is primarily, through the Geneva Conventions of 1949 and their Additional Protocols, guided by four key principles: the Principle of Distinction, the Principle of Proportionality, the Principle of Necessity, and the Principle of Humanity. International Humanitarian Law, also called the law of armed conflict, governs the conduct of parties during war and armed conflict. Its primary objectives are: to minimise human suffering, protect persons not participating in hostilities, and regulate the means and methods of warfare. The present-day humanitarian principles are built upon the fundamental principles enunciated by Jean Jacques Rousseau.¹¹ This was acted upon in the 1860s when international conferences were convened to conclude treaties dealing with specific aspects of the law of war.¹² From such humble beginnings, two distinct, though never entirely separate, trends in the law of armed conflict, each characterized by its particular perspective, emerged: The Law of Geneva¹³ and the Law of Hague.¹⁴

The codification of IHL can be traced back to 1859, which was the aftermath of the Battle of Solferino. Henry Dunant, a man of Swiss origin, witnessed the battle. Appalled by the number of casualties, he started collecting and caring for the sick and injured. This act led to the establishing of the International Committee of the Red Cross (ICRC) and, subsequently, the Geneva Conventions. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the cornerstones of modern IHL. The Geneva Conventions are:

⁸ Ladan MT, *Introduction to International Human Right and Humanitarian Laws* (Ahmadu Bello University Press Ltd, 1999) 132

⁹ Olalekan Moyosore Lalude and Nsongurua Udombana, 'Universality and Particularity: Why Universalism Should Be the Standard for Human Rights' (2022) 9 *Legal Issues Journal* 17

¹⁰ Haggler Okorie, *Law of Armed Conflict IHL* (Princeton & Associates Publishing Co. Ltd, 2021) 1

¹¹ Rosseau J.J., 'A Treatise on the Social Contract, 1762' cited in *Constraints on the Waging of War*

¹² Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August, 1864; Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the use of Certain Projectiles in Wartime.

¹³ Legislation on the condition of war victims who have fallen into enemy hands such as prisoners of war or interned civilians

¹⁴ Relating to the conduct of war in itself and the permissible means and method of war

- a. Geneva Convention I- The Treatment of Wounded and Sick in the Field;
- b. Geneva Convention II- The Treatment of Wounded, Sick, and Shipwrecked at Sea
- c. Geneva Convention III- The Treatment of Prisoners of War
- d. Geneva Convention IV- The Protection of Civilians

Common Article 3 of the Geneva Conventions applies to non-international armed conflicts. This provision, by its nature, is of particular relevance to African conflicts, which predominantly fall within this classification.

IHL Principles

The cornerstone of IHL is the principle of distinction. It is based on recognizing that the States should endeavour to weaken the enemy's military forces. In contrast, the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.¹⁵ Therefore, the parties to an armed conflict must always distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.¹⁶ Where the infliction of incidental harm on civilians or objects cannot be avoided, it is subject to the principle of proportionality. Accordingly, those who plan or decide to launch an attack must refrain from launching any attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive concerning the concrete and direct military advantage anticipated.¹⁷

The principle of distinction also entails a duty to avoid or, in any event, minimise the infliction of incidental death, injury, and destruction on persons and objects protected against direct attack. Accordingly, IHL requires that in military operations, constant care shall be taken to spare the civilian population, civilians, and objects.¹⁸ This applies both to the attacking party, which must do everything feasible to avoid inflicting incidental harm as a result of its operations (precautions in attack),¹⁹ and to the party being attacked, which, to the maximum extent feasible, must take all necessary measures to protect the civilian population under its control from the effects of attacks carried out by the enemy (precautions against the effects of attack).²⁰

¹⁵ Additional Protocol I, Article 51(1); Customary International Humanitarian Law, Rule 1.

¹⁶ Additional Protocol I, Article 48; Customary International Humanitarian Law, Rules 1 and 7

¹⁷ Additional Protocol I, Articles 51(5)(b) and 57(2)(a)(iii); Customary International Humanitarian Law, Rules 14, 18 and 19

¹⁸ Additional Protocol I, Article 57(1); Customary International Humanitarian Law, Rule 15

¹⁹ *ibid*

²⁰ Additional Protocol I, Article 58; Customary International Humanitarian Law, Rule 22.

One of the most fundamental rules of IHL is that all persons who have fallen into the enemy's power are entitled to humane treatment regardless of their status and previous function or activities. Accordingly, Common Article 3, which is considered to reflect a customary "minimum yardstick" for protection that is binding in any armed conflict, provides that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.²¹ Although IHL expressly permits parties to the conflict to take measures of control and security in regards to persons under their control as may be necessary as a result of the war,²² the entitlement to humane treatment is absolute and applies not only to persons deprived of their liberty but also, more generally, to the inhabitants of territories under enemy control.

Responsibility for IHL violations

The obligations of IHL bind individuals directly, irrespective of their state laws. In the Trial of German Major War Criminals, it was held that crimes against international law are committed by men and women, not by abstract entities, and the provisions of international law can only be enforced by punishing individuals who commit such crimes.²³ Hence, Commanders and superior officers may be held liable for crimes committed by their subordinates. The rules of IHL provide that the principle of command responsibility will apply where the superiors know that their subordinates are committing such crimes and fail to prevent such acts or punish the perpetrators.²⁴

State Responsibility

An internationally wrongful act committed will be deemed to have been committed by a State where the wrongful act is attributable to the State and constitutes a breach of an international obligation of that State.²⁵ An act is attributable to a State when it is carried out by an organ of that State.²⁶

²¹ Geneva Convention I–IV, Common Article 3(1); Customary International Humanitarian Law, Rules 87 and 88.

²² Geneva Convention IV, Article 27(4)

²³ Hagler Okorie (n2)

²⁴ Additional Protocol I, Article 86(2); Statute of the International Criminal Court, Article 28

²⁵ International Law Commission Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001, Article 26

²⁶ International Law Commission Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001, Article 7

Conflict Resolution in African Traditional Societies

The African Traditional Conflict Resolution System refers to indigenous, community-based methods to manage and resolve disputes within African societies.²⁷ This system was rooted in ancestral customs, oral traditions, and communal values. The elders, chiefs, or spiritual leaders typically led the African Traditional conflict system. It is restorative and focuses on the preservation of social cohesion. The system, although largely uncodified, enforces pertinent principles found today in the modern International Humanitarian Law. The relevance of African traditional conflict systems rests in the fact that it is potent in areas where state authority is limited.²⁸

Causes of Traditional African Conflicts

In traditional Africa, what drove people into conflict was varied. Since the communities were small and remote, situations of armed conflict still came up among the communities from time to time. The causes of these conflicts varied from one territory to another. One notable cause that frequently led people to engage in armed conflict was the search for economic survival. The search for food or other basic human needs was a good reason for engaging in fierce battles. For instance, the Masai, the Kikuyu, and the Wakamba of Eastern Africa go into war due to the need to survive hunger. When cattle disease invaded the Masai villages and wrecked their livestock, necessities forced them to raid the stock of their neighbors to avoid hunger and death from starvation. Furthermore, in Kenya, the motive for fighting was only to capture enemy livestock and to kill those who offered resistance.²⁹

The Buganda people had a custom: invading surrounding natives for economic gains. The most affected by this action by the Buganda people were the Sebei-speaking groups, which belong to the Kalenjin people of West Kenya. Only when they surrendered their goods did the Buganda people set them free.³⁰ In Nigeria, the Hausa and the Fulani directed their political economies at the recruitment of enslaved people through war conquests and exploited them by assigning them to cattle rearing. War in Nupe in Northern Nigeria was a profession and a source of income. Villages and tribes engage in war with other kingdoms, either causing the wars themselves or being forced to take sides in the wars that the kingdom waged against other groups.

For the Mandingos of today's Mali, the principal causes of wars were sex, honour, or order of precedence, possession, or fortune. In Togoland, conflicts arose between races due to the slave trade. In 1860, such conflicts broke out in the old city of Agnadjiko

²⁷ A.T. Ajayi and L.O. Buhari, 'Methods of Conflict Resolution in African Traditional Society' African Research Review 8(2) 138

²⁸ Siegfried Modola, 'Traditional methods of conflict resolution' (Accord, 2019) <<https://www.accord.org.za/conflict-trends/traditional-methods-of-conflict-resolution/>> accessed 1 July 2024

²⁹ Kenyatta J, *Facing Mount Kenya* (Halloways Prints, 1961) 122

³⁰ Kagwa, A., *The Customs of the Buganda* Edel M. M (ed) Kaliba E.B (trans) (KLM Publishers, 1934) 92-93.

between the Ewes and the people of and the people of Anecho, descendants of the Mina Royal family. The cause of the war was a dispute concerning the sale of enslaved people on credit from one locality to another.³¹ In Upper Volta, the Mossis were warlike and waged war sometimes for nothing. Civil wars between Mossis arose generally at the death of a Naba, whose succession different persons claimed.

Nevertheless, the usual theatre of war was the Bousanga areas. If any Bousanga woman enslaved by the Naba of Koupela escaped, he claimed her back. If this demand was refused, he waged war. Furthermore, the Mossis waged war over food and animals. The Ashantis of Ghana had war as a tradition and were known throughout the West Coast. In this part of Africa, war was essentially for conquest, and it was in that way that the Ashantis carved out for themselves a kingdom far more extensive than the Ghana of today. The Ashantis waged war against the Gans and the Fantis to maintain the kingdom.³²

Still on territorial expansion, as seen in the Ashanti, Chaka, the famous Zulu warrior-king in South Africa, consolidated his kingdom by waging war. King Chaka possessed an army whose duties involved securing and expanding the Zulu empire. For the Tallensi people, war was a product of tension between clans and rarely spread to involve the whole people. Wars involving all the people were infrequent, but when a general war did occur, it released the tension amongst the people and promoted solidarity and integration of the entire society. In pre-colonial Nigeria, villages and tribal sections were frequently involved in the kingdom's wars, either by rebelling and causing wars themselves or by being forced to take sides in the wars the kingdom waged. Hence, the people of Benin sided with Bida against the rebellious group from other sections. Nupe soldiers were known to help their allies. They were called upon twice in the 19th Century by the Emirs of Kontagora and Gwandu to put down rebellions in their countries that had arisen through internal tension.³³

Indigenous African Conflict Resolution and Humanitarian Practices

Traditional African societies have long developed conflict resolution systems rooted in communal values and oral traditions. These systems existed before the colonial regimes and are still applicable in many communities today. Some notable features of the African indigenous conflict resolution system include:

Mediation and Negotiation

When communities were at war in the past, the neutral elders, spiritual leaders, or clan heads usually facilitated a setting where the belligerent communities could mediate and negotiate peacefully and come to an agreement between themselves.

³¹ Diallo Y., 'African Traditions and Humanitarian Law, Geneva, ICRC' (1976) 4-5

³² Ibid

³³ Bello E., 'African Customary Humanitarian Law, Geneva, ICRC' (1980) 14

Public Confession and Reconciliation Ceremonies

For instance, the "*mato oput*" ritual, which is practiced among the Acholi people of Uganda, involves truth-telling and symbolic reconciliation.

Compensation (Restitution)

Where the conflict has been resolved and it is found that a person has committed an atrocity against another in the conduct of war, such offender may be made to compensate victims or their families in livestock, land, or labour. The practices obtainable under the African indigenous system emphasise communal relationships and harmony rather than punishment.

Indigenous African Resolution Systems and International Humanitarian Law (IHL)

To understand the practical African concepts, it is pertinent to locate oneself in what is obtained in the African context and to recognize the various values and customary laws inherent in the system.³⁴ Additionally, the psychological difference between Africans and Western societies must be borne in mind in any exercise of comparative analysis.³⁵ For instance, there were no centralized political organizations in some parts of Africa, as found among the Ibo peoples of Nigeria and the Nandi peoples of Kenya. The central elements for political organisation were the behavioural codes, the universal fear of the ancestral spirits, which compelled respect for the laws, and the clan system, which linked and identified in a significant way, persons scattered throughout the country.³⁶ As observed by Quincy Wright,³⁷ some African tribes had many laws, social rules and regulations and taboos and went to great length to enforce them, while others managed with fewer laws and were bothered less about applying them. While Africans shared many of the humanitarian principles found in international humanitarian law, the application of these principles varied from place to place.

The Wounded and Sick in the Battlefield

The principle expressed in the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armies in the Field, which is that the wounded and sick should be treated humanely and cared for by the parties in whose power they are,³⁸ can be found in the laws of armed conflict in tribal Africa. It was the custom in pre-colonial Africa that both the sick and wounded were cared for and

³⁴ Martha Gayoye, 'The Coloniality and Evolution of African Customary Law' (Onati Socio-Legal Series, 2024) <<https://opo.iisj.net/index.php/osls/article/download/1976/2434/13422>> accessed 28 June 2024.

³⁵ *ibid*

³⁶ *ibid* Bello E.

³⁷ Wright Q., *The Role of International Law in the Elimination of War*, (Manchester University Press, 1961) 18

³⁸ Geneva Convention 1949, Article 12

carried out at the end of every hostility. Whether these were wounded compatriots or sick fellow combatants, all were taken away and cared for. Some tribal African belligerents agreed that after conflicts, all invalids would be the responsibility of the adversary groups.

For instance, in the wars between the Masai and Kikuyu of Kenya, whenever the loss of lives occurred after the war, both sides would perform a brief ceremony symbolising friendship and exchange promises not to engage in further raids in one another's territory. The sick and the wounded would be humanely cared for, while the dead would often be abandoned in the Field to feed animals or fertilize the soil.

It is worth noting that the Tallensi women participated in war during armed conflicts. They took part by taking water to the warriors and dragging away casualties to be cared for. They functioned like a relief society, like the International Committee of the Red Cross. In another development, in the Sahelian and forest regions of West Africa, the wounded and the sick of both camps were cared for so they could be assigned later to work in the fields.³⁹

Similarly, in modern IHL, it is a fundamental principle that the wounded and sick must be collected and cared for in any armed conflict.⁴⁰ It matters not whether they are partaking in the war or not. When an individual becomes sick or seriously wounded, he is entitled to care under IHL. The International Committee of the Red Cross is the body primarily charged with the duty of caring for the sick and wounded during armed conflicts.⁴¹

Treatment of Prisoners of War

The contemporary and Western principles of international humanitarian law enshrined in the 1949 Geneva Conventions Relative to the Treatment of Prisoners of War also found expression in the rural practices of tribal Africa during armed conflict. However, its application, observance, and the fate of the victims differed from place to place. Article 4 of the Geneva Conventions Relative to the Treatment of Prisoners of War 1949, listed out persons contemplated to wear the garb of prisoners of war. Furthermore, Articles 12 to 16 of the Convention⁴² dealt with the general protection

³⁹ Diallo Y. (n27)

⁴⁰ International Humanitarian Law Centre, 'Basic Principles of IHL' (IHL Centre for Experts on International Humanitarian Law, 2024) <<https://www.diakonia.se/ihl/resources/international-humanitarian-law/basdiaic-principles-ihl/>> accessed 5 July 2024

⁴¹ International Committee of the Red Cross, 'Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law' (Advisory Service on International Humanitarian Law, 2012) <https://www.icrc.org/sites/default/files/document/file_list/health-care-law-factsheet-icrc-eng.pdf> accessed 6 July 2024.

⁴² Geneva Convention Relative to the Treatment of Prisoners of War, 1949 referred to as "GC III"

accorded to such individuals. These include: humane treatment of prisoners,⁴³ respect for the person of the prisoner,⁴⁴ maintenance of and medical attention for prisoners,⁴⁵ equality of treatment of prisoners without adverse distinction,⁴⁶ and prohibition from transfer of prisoner of war to a power that will not apply the Convention.⁴⁷

In pre-colonial tribal Africa, some of the tribal groups made prisoners of war feel at home and relaxed, receiving them as members of the family particularly in the East and Central African societies. In other places, prisoners of war were protected but with different reasons; ranging from economic gain accruable from their sale and possession, to future military uses by the detaining power.

The African attitude of accepting a captured person as one of the family members with rights was in line with the modern principles contained in the Geneva Conventions. It also portrayed a deeper human feeling beyond the superficial observance of the type of treatment contained in the Convention. African cultural values and sense of humanity and hospitality were greatly imponderable. A captive or prisoner of war was received as a family member with all entitlements. By bestowing this highest honour, the prisoner thus received both the short and long-term benefits of the family unit. He enjoyed the right to do what he liked after being initiated into any institution exclusively reserved for the family, to marry and share a sense of total acceptance, and to return to his original homeland or tribal group if he later desired to do so.

It must, however, be noted that the treatment meted out to prisoners of war in pre-colonial Africa depended on their social status and their functions in the group.⁴⁸ As indicated earlier, the Ngoni people of Central Africa were law-abiding in their relationship with other persons due to their strong moral code. This ethical attitude was also extended to apply to their captives and prisoners of war, so their rights and obligations were determined reasonably according to the same laws that apply to the Ngoni aborigines. Article 49 of the Geneva Convention Relative to the Treatment of Prisoners of War provides that the detaining power could utilise the labour of prisoners of war who are physically fit to work. Article 50 lists the classes of authorized work prisoners were allowed to perform. It is worth noting that in keeping with the spirit of the Geneva Convention 1949, African tribal societies availed themselves of the benefit of labour for their captives, especially in agriculture.

⁴³ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 13

⁴⁴ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 14

⁴⁵ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 15

⁴⁶ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 16

⁴⁷ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 12

⁴⁸ Njoya A. N., 'The African Concept in International Dimensions of Humanitarian Law'

Protection of civilians in time of war

Articles 13 and 14 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 provide that the Convention is to apply to the population of all the countries in conflict without adverse distinction and that safety zones and localities are to be organized to protect people who are wounded, sick, aged or children under fifteen years, expectant mothers and mothers of children under seven years from the effect of war.

In pre-colonial tribal Africa, a similar code, though unwritten, applied and was reasonably observed by belligerents. Traditional African laws prohibited the killing of children and unarmed elders during warfare. Today, this norm is enshrined in Article 51(2) of Additional Protocol I to the Geneva Conventions. In Kenya, tribal warring groups rarely killed women and children. It was believed that for any warrior to kill such protected individuals in any armed conflict was a reckless and disgraceful act.⁴⁹ Warriors on both sides considered this a code of honour, albeit unwritten and not expressly agreed upon before the outbreak of hostilities. In another development, the Nuer tribe members, after a raid on one another, prohibited any act of ill-treatment of women, the aged, nursing mothers, and children. This code is strictly and religiously obeyed, for any derogation automatically invites retaliation from the opponent. This rule functioned as a code for the protection of defenseless persons from the unnecessary consequences and hardship of war, thereby preserving life.

Regarding safety zones and localities, pre-colonial Africa was revealed to respect some areas in times of war. These areas are considered protected from the vagaries of war or from the area where hostilities were to be conducted. Some societies that were aware of the habits of one another respected specific sacred areas as prohibited zones not to be violated, no matter how cruel the battle was. So far as the treatment of non-combatants or civilian population was concerned, the ethical code of war ensured respect and protection for women, children, and older people. Respect for women was of great significance, for they represented the "origin" and the "source" of life, the child represented "innocence,". At the same time, older adults were considered to be close to the spirits of the ancestors. In Upper Volta, custom prohibited the killing of persons taking no part in the war. In some other tribes, civilians were left with no protection, and they were treated like prisoners of war. Some other tribes encouraged the total assimilation of civilians from the adversary by promoting marriage between young warriors and women of the enemy camp. Accordingly, both the African traditional practices and the modern IHL systems recognise the need to spare civilians from violence.

Weapons of Warfare

The rules of international humanitarian law impose restraints upon the means and methods of combat derived from customs and conventions such as the Hague

⁴⁹ Kenyatta J (n25) 122

Conventions.⁵⁰ The very principle of restraint stated in Article 22 of the Hague-Regulation is to the effect that the right of belligerents to adopt means of injuring the enemy is not unlimited. This also stems from the fact that suffering, injury, destruction, or damage should not be inflicted for personal reasons or punishment. It follows that those who inflict the least suffering, injury, destruction, or damage should be chosen among several available means of achieving a legitimate military aim. This is notably true of the prohibition of using means and methods likely to cause superfluous injury or unnecessary suffering.⁵¹

The above contemporary humanitarian principles can be found in the pre-colonial African warfare code. These rules determined the conduct of those engaged in armed conflicts, though their application varied from place to place. In some communities, there were rules forbidding the use of one or other weapons or prohibiting the use of a particular weapon. In armed conflict between the same communities, the weapons were limited to machetes, clubs, sticks, and stones, with the sole aim of reducing casualties. Only in wars between different tribal groups were guns allowed. Among the Nupe tribal society, guns, bows, and arrowsweres permitted. Swords, spears and lethal shields were all given to the royal horse troops. Nupe soldiers mainly were slaves, sons of slaves, freemen and mercenaries that included foreigners from Hausa, Bornu, and Yoruba. In Igbo land, armed conflict between the same tribe members, the use of weapons was strictly restricted to machetes and sticks; the motive was just to wound and not to kill. The use of firearms was forbidden, and anyone breaking the rule was sanctioned. But when the armed conflict was general, weapons such as Dane-guns, cap-guns, and sometimes rifles were used. Machetes at this level were carried merely for clearing bush paths and personal hand-to-hand fighting.⁵² Zulu warriors in the prosecution of their warfare only used spears so that casualties would be light. This was basically for dueling battles between small tribes and the struggle of subjugation for political expansion. However, for the battle of conquest, other weapons, such as short stabbing spears and enveloping tactics, produced very high casualties and resulted in the creation of an empire. Generally, in tribal Africa, armed conflict was subject to a genuine code of conduct observed by belligerents, and this code of conduct has progressed to forming part of what we have today as the Geneva Conventions and the Additional Protocols.

⁵⁰ Regulation Respecting the Laws and Customs of War on Land, The Hague, 18 October, 1907 annexed to Convention (IV) Respecting the Laws and Customs of War on Land. The Hague, 18 October, 1907.

⁵¹ Additional Protocol I to the Geneva Conventions, Article 35 (2)

⁵² Meek C. K, *Law and Authority in Nigerian Tribe*, (Oxford University Press, 1951) 28

IHL and Africa Conflict Resolutions

IHL aims to restore peace after conflict, as seen in post-conflict obligations like prisoner exchange and repatriation.⁵³ Also, the United Nations has a peacekeeping department that dispatches peacekeepers to help belligerent parties make peace with each other.⁵⁴ Similarly, African traditions prioritise reconciliation through ceremonies and public apologies to restore social harmony.

Use of Neutral Mediator

Just as the ICRC plays a neutral humanitarian role in modern IHL, African elders and spiritual leaders historically served as neutral peacemakers trusted by all sides. Although there are areas of intersection and alignment between traditional African conflict resolution systems and modern IHL, both systems also diverge significantly from modern International Humanitarian Law in various respects. These differences often stem from foundational distinctions in legal sources, enforcement mechanisms, and rights-based approaches.

Codification

The African conflict resolution mechanisms are uncodified. This is a primary point of divergence, as detailed treaties, customary international law, and judicial interpretations govern IHL. In contrast, traditional African conflict norms are largely oral and customary, passed down through generations without written documentation.

Responsibility for Violations and Sanctions

International humanitarian law, particularly under the Rome Statute of the International Criminal Court (1998), holds individuals criminally accountable for war crimes, crimes against humanity, and genocide. Traditional mechanisms often lack formalised punitive sanctions; where they exist, they are usually compensatory or symbolic rather than retributive. Gender Bias and Social Hierarchies

Exclusion of Women

Customary dispute resolution processes often exclude women and youth from decision-making roles, reinforcing patriarchal systems which contradicts modern IHL and human rights law, which emphasize non-discrimination and equality, as seen in UN Security Council Resolution 1325, which underscores the role of women in peacebuilding. The principle of non-discrimination, a cornerstone of both IHL and

⁵³ Geneva Convention III, Article 118

⁵⁴ Claire Klobucista and Mariel Ferragamo, 'The Role of Peacekeeping in Africa' (Council on Foreign Relations, 2023) <<https://www.cfr.org/backgrounder/role-peacekeeping-africa>> accessed 20 June 2024.

international human rights law, is not always upheld in traditional mechanisms, which may marginalize certain ethnic or caste groups.

Lack of Uniformity and Territorial Variability

IHL is usually universally applicable; customary African norms vary widely across ethnic, regional, and cultural lines. For instance, practices in Maasai communities differ significantly from those in Igbo or Berber communities. This variability challenges humanitarian actors seeking to apply consistent standards, especially in multi-ethnic or transnational conflict zones.

Enforcement

IHL is enforced by domestic legal systems and international institutions such as the International Criminal Court (ICC) and the UN Security Council. Traditional systems often rely on community consensus and peer pressure rather than a neutral third-party enforcement mechanism, which weakens the impartiality and external accountability that modern legal systems rely on to address war crimes and grave breaches of IHL.

Implementation of IHL and Cultural Bias

Incorporating cultural sensitivity into the implementation of IHL is essential for its acceptance and effectiveness. In conflict-affected regions of Africa where traditional norms are highly valid and influential, cultural sensitivity ensures that humanitarian interventions do not undermine local legitimacy, while simultaneously maintaining the integrity of international legal standards. The success of legal norms often depends on their acceptance by the local population.⁵⁵ In African societies, traditional mechanisms are seen as legitimate due to their cultural roots and general acceptance by members of the society. It has therefore been submitted that engaging traditional authorities can increase compliance with humanitarian norms

Legal pluralism refers to the coexistence of multiple legal systems within a single geographic or social space.⁵⁶ Many African countries, including Nigeria, recognize customary law as part of their national legal frameworks, provided it does not conflict with existing statutory law.⁵⁷ The challenge for IHL is to integrate its norms within these plural systems, rather than override them. This approach is in line with Article

⁵⁵ Wolfgang Bilsky, Ingwer Borg and Dieter Hermann, 'Utilizing Personal Values to Explain People's Attitudes Towards Legal Norms' *European Journal of Criminology* [2022] 19(4) 632-652

⁵⁶ Sarah Lee, 'Understanding Legal Pluralism: A Comprehensive Guide to its Significance in Legal Theory' (Number Analytics, 2024) <<https://www.numberanalytics.com/blog/ultimate-guide-legal-pluralism-legal-theory>> accessed 5 July 2024.

⁵⁷ Evidence Act 2011, Section 18

27 of the Vienna Convention 1969, which allows for domestication of international norms in a culturally appropriate manner.

The Role of Customary Leaders in the Implementation of IHL

Traditional leaders occupy a central and authoritative position within many African societies, particularly in rural and conflict-prone areas. Their influence, derived from lineage, custom, and spiritual legitimacy, positions them uniquely to contribute to the dissemination and enforcement of International Humanitarian Law (IHL). IHL is predominantly codified in treaties and conventions. Its effective implementation, especially in non-international armed conflicts, is heavily dependent on local legitimacy and the community compliance mechanisms offered by the traditional leaders. In implementing IHL, the traditional leaders play specific roles in their local communities. One pertinent role is the role of the custodians of indigenous values and moral norms. They often mediate disputes and prevent cycles of violence. Their actions can be likened to the role of the ICRC as a neutral humanitarian intermediary and the peacekeepers deployed by the United Nations. However, rooted in customary rather than international legal authority. For instance, elders among the Karamojong in Uganda or the Emirs in Northern Nigeria have, on multiple occasions, intervened to halt communal clashes or tribal wars, urging restraint and dialogue.

Another traditional leadership role is the reconciliatory role, which aligns with the IHL principle of humanity, which prohibits unnecessary suffering and mandates humane treatment of all persons. Through traditional rites, they reduce retaliation and emphasise restitution, which, in a way, indirectly fulfill the objectives of Common Article 3 of the Geneva Conventions, which provides minimum standards of humane treatment. Article 1 of the Geneva Conventions provides that the high contracting parties to the Convention must respect and ensure respect of the provisions of the Convention. This provision obligates parties to disseminate IHL as widely as possible.⁵⁸ In this respect, traditional leaders serve as informal agents of IHL education, especially in regions with limited state presence. Their role in religious, cultural, and social gatherings places them in the position to communicate humanitarian principles in vernacular languages that resonate well with the people. For instance, in Sierra Leone, the traditional chiefs collaborated with UN peacekeepers and the ICRC to educate villagers on the protection of civilians and the dangers of landmines during the post-conflict disarmament process.⁵⁹ In Northern Nigeria, Islamic and customary rulers have been involved in community dialogues

⁵⁸ Michael N. Schmitt and Sean Watts, 'Common Article 1 and the Duty to "Ensure Respect"' *International Law Studies* [2020] 96(16) 674-705

⁵⁹ Mark Malan, Phenyio Rakate and Angela McIntyre, 'Peacekeeping in Sierra Leone: UNAMSIL Hits the Home Straight' (Africa Portal 2023) <<https://africaportal.org/wp-content/uploads/2023/05/Mono68Full.pdf>>

discouraging attacks on schools and medical facilities.⁶⁰ This is in line with Article 14 of Additional Protocol II, which emphasizes protecting objects indispensable to civilian survival.

Conclusion

This Article explored the intersection between indigenous African conflict resolution systems and International Humanitarian Law (IHL), pointing out the areas of convergence, divergence, and potential collaboration. African traditional mechanisms have long upheld principles of humanitarian protection, non-combatant immunity, reconciliation, and dignity, long before the principles of modern IHL became prevalent. Modern IHL, on the one hand, is codified and grounded in treaty law, while African customary systems, on the other, are oral and rooted in spiritual and moral norms. These differences have frequently created friction in their implementations, mainly when international actors apply legal norms without cultural sensitivity or awareness of local dynamics. Nonetheless, both frameworks seek to mitigate human suffering during conflict and share a fundamental goal of prioritizing humanity. In an era where African warfare is characterised by internal armed conflicts, insurgencies, and violence, it becomes imperative that IHL moves beyond the courtroom and the battlefield. IHL must, by the traditional systems, enter the rural communities. By so doing, IHL will be implemented, localised, and sustained. The intersection of African traditional conflict systems and modern IHL reveals profound alignment in humanitarian objectives and critical operational divergences. Indigenous practices—such as the prohibition against harming children among Kenya's Nuer tribes or the assimilation of war captives as family members in Central Africa—prefigured core IHL principles like civilian immunity (Article 51 AP I) and humane detention standards (GC III). However, traditional mechanisms' oral nature, variable application, and exclusion of women contrast sharply with IHL's codified universality and ICC enforcement. Traditional leaders (*e.g.*, Northern Nigerian Emirs mediating school protections) provide culturally legitimate channels for IHL dissemination where state authority is weak. Bridging these systems requires neither assimilation nor hierarchy but *complementarity*, harnessing restorative traditions to amplify IHL's humanitarian goals.

Recommendations

Establishing IHL training for traditional leaders under ICC outreach programs, empowering them as mediators in non-international conflicts per Common Article 3, as evidenced in Sierra Leone's post-conflict chief-ICRC collaboration, will allow for a hybrid accountability mechanism for achieving world peace. Promoting a Gender – Inclusive Traditional Structure, reform elder councils to include women (aligning

⁶⁰ Michael Olufemi Sodipo, 'Mitigating Radicalism in Northern Nigeria' (Africa Center for Strategic Studies, 2023) <<https://africacenter.org/publication/mitigating-radicalism-in-northern-nigeria/>> accessed 4 July 2024

with UNSCR 1325), leveraging matrilineal systems like Ghana's Akan to advance IHL's non-discrimination principle. In the documentation of customary norms, national IHL committees should codify oral traditions (e.g., Nigeria's *Ndebele* ceasefire rituals) as supplementary IHL guidance under Article 43 of the Hague Regulations 1907. Translate IHL treaties into local languages and curate them with traditional leaders to ensure cultural resonance. The African Union should adopt a Protocol to the African Charter on Human and Peoples' Rights recognizing validated customs as IHL implementation tools under Article 61 of the Vienna Convention.