APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN PEACE SUPPORT OPERATIONS: A CASE STUDY OF UNITED NATIONS MISSION IN MALI

BY
Emmanuel Onyekachi UGWU
P16LAPU9006

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

FEBRUARY, 2021

APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN PEACE SUPPORT OPERATIONS: A CASE STUDY OF UNITED NATIONS MISSION IN MALI

BY

Emmanuel Onyekachi UGWU
P16LAPU9006

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRAGUATE STUDIES AHMADU BELLO UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY PhD IN LAW

DEPARTMENT OF PUBLIC LAW
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

FEBRUARY, 2021

DECLARATION

I declare that this Thesis, titled "Application of International Humanitarian Law in Peace Support Operations: A case Study of United Nations Mission in Mali" has been written by me in the Department of Public Law. The information derived from different sources has been acknowledged in the text and a list of references provided. No part of this Thesis was previously presented for another degree or diploma at this or any other institution, to the best of my knowledge.

Emmanuel Onyekachi UGWU _____ _____

Signature Date

CERTIFICATION

The thesis titled "**Application of International Humanitarian Law in Peace Support Operations: A Case Study of United Nations Mission in Mali**" by Emmanuel Onyekachi UGWU meets the regulations governing the award of Doctor of Philosophy of Laws (Ph.D) of Ahmadu Bello University, Zaria, and it is approved for its contribution to knowledge and literary presentation.

Prof. M. T. Ladan **(Chairman, Supervisory Committee)**	_____ **Signature**	_____ **Date**
Dr. S. A. Apinega **(Member, Supervisory Committee)**	_____ **Signature**	_____ **Date**
Dr. I. Shehu **(Member, Supervisory Committee)**	_____ **Signature**	_____ **Date**
Dr. S. B. Magashi **(Head, Department of Public Law)**	_____ **Signature**	_____ **Date**
Prof. SaniAbdullahi **(Dean, Postgraduate School)**	_____ **Signature**	_____ **Date**

DEDICATION

This Thesis is dedicated to my mother, late LoloanyiOburuAjibo – Ugwu, who toiled round the four market days of Afor, Nkwo, Eke and Orie to see me through primary and secondary education after the death of my father and who equally inspired me to get to the highest level of Education.

ACKNOWLEDGEMENTS

I am grateful to all those who contributed in making this thesis and the entire programme a success. As always, God comes first in all my affairs hence I thank God almighty, who lifted me from a very humble beginning to my present level. Without his grace, I would not have been able to successfully pass through all the obstacles. At a point in this course, I was driving from Jos, Kaduna and Abuja at different times to Zaria, sometimes in the dark, to attend classes and return. I also flew from Mali, and Congo to Nigeria severally to present my seminars, passing through several airports. Words are not enough to express my gratitude to God for his mercy. I am grateful to my supervisors, Prof MT Ladan, Chairman Supervisory Committee, Dr SA Apinega and Dr I Shehu, members of the supervisory committee, who painstakingly supervised my work. Their speed of supervision was legendary. I thank the former Deans Faculty of Law, Ahmadu Bello University, Zaria, Prof Y.Y. Bambale, Prof AM Madaki and the former HOD Public Law, Prof AI Bappah, for their leadership. My gratitude also goes to all the Faculty of Law lecturers and non-academic staff for their dedication and industry. I appreciate my parents, Mr and MrsUgwuObuniyi of blessed memory for laying a foundation for me to build my academic pursuit on.

I must thank my students from Azerbaijan, Burkina Faso, Cameroun, Czech Republic, Egypt, Estonia, Fiji, Guatemala, Kenya, Lithuania, Macedonia, Maldives, Mali, Moldova, Mongolia, Morocco, Nepal, Nigeria, Papau-New Guinea, Philippines, Poland, Republic of North Macedonia, Rwanda, Sierra Leone, Slovakia, Slovania, Tanzania, Togo, Ukraine, USA, Vietnam and Zambia at the Defense Institute of International Legal Studies, Rhode Island USA, where I am an Adjunct Lecturer on Legal Aspects of Peacekeeping. Their contributions in class enriched this thesis. I thank the Nigerian Army which has provided a platform for me to improve myself for several years. My family has remained a strong pillar for me. I thank my wife, LoloanyiFelicitasNgoziUgwu, my children, Nnenna, Ebubechukwu, Onyekachi Jnr and Obianuju who have made it possible for me to continue to study by enduring my absence. May God reward you all.

LIST OF ABBREVIATIONS

ADEMA - *Alliance Pour le Democratie au Mali*- (Alliance for Democracy in Mali).

AFISMA – African Stabilisation Mission in Mali.

AFP - Agence France Press.

AG - Armed Groups.

APA - Algeria Peace Agreement.

APC - Armour Personnel Carrier

AQIM - Al-Qaida in the Islamic Maghreb.

AU - African Union.

BH - Boko Haram

CAG - Compliant Armed Group.

CMFPR – *Coordination des Mouvementset Forces Patriotic de Resistance* (Coordination for Movement and Patriotic Force for Resistance).

CPA - *Coalition du Peuple de l'Azawad. (*Coalition of Azawad People).

DNPEF – National Child and Family Protection Directorate.

DRC - Democratic Republic of Congo.

ECOMOG – ECOWAS Monitoring Group.

ECOWAS – Economic Community of West African States.

EOD - Explosive Ordnance Disposal.

FAMa – *Forces ArmeeMalienne.(*Malian Armed Forces.)

GATIA – *Grouped'Auto-defenceTouaregImghadet Allies. (*Group for Auto-Defence of ImghadTouaregs and Allies).

GSPC - *Groupe Salafiste Pour la Predication et le Combat.*(Salafist Group for Preaching and Combat).

HCUA – *Haut Conseil pour l'Unite de l'Azawad.* (Supreme Council for the Movement of Azawad).

HQ - Headquarters

IAC - International Armed Conflict.

ICC - International Criminal Court.

ICJ - International Court of Justice.

ICRC - International Committee of the Red Cross.

ICTY - International Tribunal for Yugoslavia.

IDF - Indirect Fire.

IED - Improvised Explosive Device.

IHL - International Humanitarian Law.

IHRL – International Human Rights Law.

ISAF - International Security Assistance Force.

JNIM – *Jama'atNusrat al- Islam walMuslimin.* (Group for the Support of Islam and Muslims).

JOC - Joint Operations Centre.

KIA - Killed in Action.

LOAC – Law of Armed Conflict.

MAA – *Mouvement Arab de l'Azawad.* (Arab Movement for Azawad).

MIA - Missing in Action.

MILOB – Military Observer.

MINURCAT – United Nations Mission in Central African Republic.

MINUSCA – United Nations Multidimensional Integrated StabilisationMision in Central African Republic.

MINUSMA – (*Mission multidimensionnelleintegree des Nations unies pour la stabilization du Mali)* United Nations Multidimensional Integrated Stabilisation Mission in Mali.

MISMA – International Support Mission for Mali.

MNA - MouvementNationale de l'Azawad.(National Movement for the Azawad).

MNLA - *Mouvement Nationale pour la Liberation d'Azawad. (*National Movement for the Liberation of Azawad).

MOC – Military Operations Centre.

MPA – *Mouvement Populaire pour l'Azawad.* (Azawad's Peoples Movement).

MUJAO - *Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest. (*Movement for Unity and Jihad in West Africa).

NATO - North Atlantic Treaty Organisation.

NCAG – Non-Compliant Armed Group.

NGO – Non-Governmental Organisation.

OIOS – Office of Internal Oversight Services.

PKO - Peacekeeping Operations.

PSC – Peace and Security Council.

PSO – Peace Support Operations.

QRF - Quick Response Force.

ROE – Rules of Engagement.

RPG – Rocket Propelled Machine Gun.

SBIED – Suicide Borne Improvised Explosive Devices.

SIU - Special Investigation Unit.

SOFA – Status of Forces Agreement.

SOP – Standard Operating Procedure.

SRSG – Special Representative of the Secretary General.

ST/SGB – Secretariat/Secretary General's Bulletin.

TCC – Troop Contributing Country.

TTP- Tactics, Technics and Procedures.

UN – United Nations Organisation.

UNDPKO – United Nations Department of Peacekeeping Operation

UNESCO – United Nations Educational, Scientific and Cultural Organisation.

UNGA – United Nations General Assembly.

UNICEF – United Nations Children's Fund.

UNISFA – United Nations Interim Security Force in Abyei.

UNMIL - United Nations Mission in Liberia.

UNMIS – United Nations Supervision Mission in Syria.

UNMISS – United Nations Mission in Republic of South Sudan.

UNOG - United Nations Office at Geneva.

UNPOL – United Nations Police.

UNSC – United Nations Security Council.

VBIED – Vehicle Borne Improvised Explosive Devices

VOIED – Victim Operated Improvised Explosive Devices.

WIA – Wounded in Action.

TABLE OF CASES

Pages

Prosecutor v Tadic, Case No 160 (ICTY Appeals Chamber 2 October 1995…….. 14

RDC v Rwanda, ICJ Judgment, Armed Activities on the Congo, 6 February 2006…… 15

RDC v Uganda, ICJ Judgment, Armed Activities on the Congo, 19 December 2005 …….. 15

The Prosecutor v Ahmad Al Faqi Al Mahdi ICC-CPI-2016-PR1242…….. 97

The Prosecutor v RamushHaradinaj, IdrizBalaj, LahiBrahimaj, Case No T-04-84- bis-T, Judgment 29 November 2012 …… 91

The Public Against Torture v The State of Israel HC. 5100/94 (Israel 1999) …… 94

TABLE OF STATUTES

Pages

Accord Pour la Paix et la Reconciliation au Mali, Algiers, 1 March 2015

(Accord for Peace and Reconciliation in Mali) …… …….18

Common Article 3 of the Geneva Convention ……..**17**, 52,56

Convention on the Safety of UN and Associated Personnel 1994 …… **39,** 40

Convention on the Privileges and Immunities of the UN 1946 ……. **39,** 40

Geneva Convention 1949 ……**.4**, 14,24,31,32

MINUSMA Rules of Engagement 2013…….. **6**, 17, 50

MINUSMA Standard Operating Procedure (SOP) on Detention 2015 …….. **53**, 54

Security Council Resolution 2364 (2017) of 29 June 2017 …… 101

Secretary General's Bulletin on the Observance by the United Nations' Forces of International

Humanitarian Law, ST/SGB/1999/13 ……**2,** 121, 126

United Nations' Charter 1945 …….**2**,44,45

United Nations' Security Council Resolution 2100 of 25 April 2013 …….**2**

United Nations' Status of Forces Agreement …….. **40**, 54

Universal Declaration of Human Rights by UN General Assembly 1948 ……. **27**, 36

Pages

TABLE OF CONTENTS

TITLE PAGE ..... **Error! Bookmark not defined.**
DECLARATION iii
CERTIFICATION iv
DEDICATION v
ACKNOWLEDGEMENTS vi
LIST OF ABBREVIATIONS vii
TABLE OF CASES xi
TABLE OF STATUTES xii
TABLE OF CONTENTS xiii
ABSTRACT xviii
CHAPTER ONE 1
GENERAL INTRODUCTION 1
1.1 Background to the Study 1
1.2 Statement of the Research Problem 5
1.3 Aim and Objectives of the Research 6
1.4 Scope and Limitation of the Research 6
1.5 Research Methodology 7
1.6 Justification of the Research 7
1.7 Literature Review 8
1.8 Organisational Layout 25
CHAPTER TWO 28
CONCEPTUAL AND HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW 28
2.1 Introduction 28
2.2 Nature and Scope of IHL 28
2.3 Sources of International Humanitarian Law 31
2.4 Simultaneous Application of Human Rights Law and IHL 32
2.5 Concept of Peace Support Operation 34
2.6 Legal Status of UN and Associated Personnel in Peace Support Operation 36
2.7 Peacekeeping 38

2.7.1 Robust peacekeeping 39
2.8 Peace Enforcement 40
2.9 Peace Making 41
2.10 Peace Building 42
2.11 Conflict Prevention 43
2.12 Humanitarian Operations 44
2.13 War 45
2.14 Detention 46
2.15 Concept of Armed Conflict 46
2.15.1 International armed conflict 47
2.15.3 Non international armed conflict 48
2.16 Rules of Engagement 48
2.17 Standard Operating Procedure 49
2.18 Status of Forces Agreement 50
2.19 Terrorism 50
2.20 What Qualifies a Conflict to be International or Non-International Armed Conflict? 51
2.21 Does IHL apply to Non-International Armed Conflict in Mali? 52
2.22 Does IHL apply to the Peacekeeping Force in Mali? 52
CHAPTER THREE 54
BACKGROUND TO THE MALIAN CONFLICT 54
3.1 Introduction 54
3.2 Brief History and Politics of Mali 54
3.3 Geography of Mali 57
3.4 The Problem: Social, Political and Economic Factors Responsible for the Malian Conflict from 1980 to 2018 60
3.5 Armed Groups in Mali and their Areas of Operation 63
3.5.1 Compliant Armed Groups in Mali and their Areas of Operation 64
3.5.2. Non-Compliant Armed Groups in Mali and their Areas of Operation 65
3.5.3 Merging of Armed Groups 70
3.6 The Intervention of the African Union 71
3.7 Other Non-Operational Challenges 74
3.8 United Nations Intervention in Mali 75
CHAPTER FOUR 79
THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN PEACE SUPPORT OPERATIONS AND THE ROLE OF MINUSMA 79

4.1 Introduction 79
4.2 Conditions under which IHL Applies to UN Operations 80
4.3 The Beginning and End of IHL Applicability 81
4.4 Geographic Reach of IHL Applicability 83
4.5 The Applicability of IHL to Terrorism and Counter terrorism 84
4.6 Principles of Distinction between Civilians and Combatants 85
4.7 Means and Methods of Warfare 88
4.8 Treatment of Civilians and Persons *Hors de Combat.* 89
4.9 Treatment of Detained Persons 90
4.10 Protection of the Wounded, the Sick, Medical and Relief Personnel 91
4.11 MINUSMA's Mandate 92
4.11.1 Protection of Civilians and Stabilization, Including Against Asymmetric Threats 94
4.11.2 Countering Asymmetric Attacks in Active Defence of MINUSMA's Mandate 94
4.11.3 Protection, Safety and Security of United Nations Personnel 94
4.11.4 Promotion and Protection of Human Rights 95
4.11.5 French Forces Mandate 95
4.12 MINUSMA's Rules of Engagement 97
4.12.1 International Law including Law of Armed Conflict 97
4.12.2 Self Defence 98
4.12.3 Military Necessity 98
4.12.4 Alternative to the Use of Force 98
4.12.5 Duty to Challenge and Warn 99
4.12.6 Duty to Identify Target – Observed Fire 99
4.12.7 Duty to Use Minimum and Proportional Force 99
4.12.8 Avoidance of Collateral Damage 100
4.13 Specific Rules of Engagement for MINUSMA 101
4.14 Standard Operating Procedure for MINUSMA Detention 102
4.15 Lessons Learnt from Similar United Nations Operations in ECOWAS Region where IHL was Applicable 108
CHAPTER FIVE 111
CHALLENGES AND PROSPECTS OF THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW BY THE UNITED NATIONS MISSION IN MALI 111
5.1 Introduction 111
5.2.1 Lack of Reciprocal Application of International Humanitarian Law in the Mission Area by Some Non-State Armed Groups 112

5.2.2 Lack of Detention Facilities and Resources to Cater for Detention of Arrested Persons 117
5.2.3 Weak Judicial System on the Part of Malian State 118
5.2.4 Different Legal Jurisdictions of MINUSMA Troops 119
5.2.5 Delay in the Investigation of Breach of IHL by MINUSMA Troops 120
5.2.6 Poor Attitude of Some Officers towards Training on International Humanitarian Law .. 120
5.2.7 Classification of MINUSMA as a Party to the Malian Conflict 123
5.2.8 Wrongly Tagging Acts of Warfare by Non-State Armed Groups as Terrorist 125
5.2.9 Inability of the State to Meet Basic Needs of Civilians 126
5.2.10 Requirement to Destroy Dangerous Items Recovered from Arrested Suspects 127
5.2.11 Lack of Cooperation from Malian Locals with MINUSMA 128
5.2.12 Non-State Armed Groups Operating Within Populated Areas 128
5.2.13 Implications of the Challenges of the Implementation of IHL in MINUSMA 129
5.3 Prospects of the Application of International Humanitarian Law in MINUSMA 130
5.3.1 Improvement of Training on International Humanitarian Law 130
5.3.2 Promulgation of Measures for Protection from Breach of IHL by Parties to the Conflict 131
5.3.3 Full Implementation of Peace Enforcement by the UN in Mali 132
CHAPTER SIX 134
SUMMARY AND CONCLUSION 134
6.1 Introduction 134
6.2 Summary 134
6.3 Findings 137
6.3.1 No Reciprocal Application of IHL by Some Non-State Armed Groups 137
6.3.2 Weak Judicial System on the Part of the Host State 137
6.3.3 Different Appreciation of IHL by MINUSMA Troops 138
6.3.4 Unclear Definition of when IHL should apply to Peacekeepers 138
6.3.5 Poor Attitude of Some MINUSMA Military Officers towards Training on International Humanitarian Law 139
6.3.6 Non-State Armed Groups Operating Within Populated Areas 139
6.4 Recommendations 140
6.4.1 Full Implementation of Peace Enforcement by MINUSMA 140
6.4.2 Need to Build the Capacity of the Malian Judicial System 140
6.4.3 Need for Harmonization of the Provisions of IHL with Troop Contributing Countries .. 141
6.4.4 Need to Clarify the Protection Available for Peacekeepers where IHL Applies 141
6.4.5 Enhancement of Pre-deployment and In-Mission Training of Peacekeepers on IHL 141

6.4.6 Need for Strict Application of the Principle of Distinction in IHL 142
BIBLIOGRAPHY 143
APPENDIX 147

ABSTRACT

International Humanitarian Law which is made up of rules established by treaties or customs that limit the rights of parties to a conflict to use the methods or means of warfare of their choice and protects persons who do not take part in a conflict, is principally meant to reduce the impact of war on humanity. The United Nations Organisation is mandated to observe the provisions of International Humanitarian Law in its operations but instead of helping to reduce the impact of conflict on humanity in Mali where the United Nations Mission is keeping peace, the application of the law has worsened the impact of the conflict on civilians and United Nations personnel inclusive, due to challenges facing it. The various armed groups in Mali see the strict observance of the International Humanitarian Law by the United Nations peacekeeping force in Mali as a weak point which they have continued to exploit to inflict heavy casualty on Malian population that the peacekeeping force is meant to protect and on the civilian and military peacekeepers alike. This is because the peacekeeping force has remained defensive and less proactive. The situation is not getting any better. Over 10,000 peacekeeping troops from 50 countries are deployed in Mali in the Mission that began in 2013, meanwhile almost 200 peacekeepers, including military and civilian personnel have been killed since the inception of the mission and hundreds of unarmed Malian civilians have been killed. Even as this research was ongoing, the killing continued. For instance, on Saturday, 23 March 2019, about 134 civilians were killed in central Mali by armed groups while on 9 June 2019, about 95 civilians were also killed in central Mali, including 24 children. All these made the United Nations to classify the United Nations Mission in Mali as the most dangerous United Nations' mission in the world. This research was therefore aimed at establishing how International Humanitarian Law is meant to apply in peacekeeping operations, with particular reference to Mali. The objective among others was to determine the steps to be taken to ensure compliance with International Humanitarian Law in the Malian conflict, which will make the law to achieve the purpose for which it was made, with particular reference to Mali. This work is based on doctrinal and teleological research methods. In terms of doctrinal research methodology, the researcher made use of conventions and United Nations Charter as primary sources and textbooks, journals and articles as secondary sources. With regard to teleological research methodology, this researcher made use of his practical experience as the Force Legal Adviser of the United Nations Mission in Mali between 2015 and 2017. This involved training United Nations and state armed groups on the provisions and applications of International Humanitarian Law. The research found among others that there is no reciprocal application of International Humanitarian Law by some non-state armed groups in Mali, there is poor attitude of some peacekeepers to training, the judicial system in Mali is weak and non-state armed groups operate within populated areas thereby endangering the lives of civilians and making the observance of International Humanitarian Law in those areas difficult. As a way of solving the problem, the research recommended full implementation of peace enforcement by the United Nations Mission in Mali, the need to build the capacity of Malian judicial system, enhancement of pre-deployment and in-mission training of the peacekeepers and the need for strict application of the principle of distinction in International Humanitarian Law in the operations in Mali. The researcher believes that if these recommendations are executed, the application of International Humanitarian Law in the United Nations Mission in Mali will be highly enhanced, and several human lives will be saved and the law would have achieved the purpose for which it was made in the first place.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Conflict has been a part of man since creation and man has always tried to solve the problem of conflicts or reduce the effect on humanity. The whole essence of International Humanitarian Law (IHL) came about in order to limit the effects of armed conflicts.Humanity has since discovered that it may be difficult to completely eliminate conflicts, including armed conflicts, hence the need to have laws that can limit their devastating effects on human beings. The formation of the League of Nations on 10th January, 1920[1]and the United Nations Organisation(UN) on 24thOctober 1945,[2] helped in reducing wars among nations but there remains the monster of internal conflicts in nations which from all indications, was not well anticipated by the founders of those organisations.

The UN used to embark on traditional peacekeeping where the conflict was usually between states but after the cold war, the nature of peacekeeping changed. The conflicts changed more to intra-stateand the nature of the warfare equally changed to asymmetric style. The UN began to face armed groups in non-international armed conflicts within a state and instead of peacekeepers being protected, they became targets of attack. Boutros Ghali pointed out the problem in his agenda for peace thus:

> Many of today's conflicts are within states rather than between states…and thereis a rash of wars within newly independent states, often of a religious or ethnic character and often involving unusual violence and cruelty…interstate wars havebecome infrequent. The main features are that they are usually fought not only byregular armies but also by militias and armed civilians with little discipline and withill-defined chains of command. They are often guerrilla wars without clearfrontlines. Civilians are the main victims and often the main targets. Humanitarianemergencies are common place and the combatant

[1] UNOG Library, Registry, Records and Archives Unit.www.un.org accessed on 12th June 2017.
[2] Ibid.

> authorities, insofar as they can be called authorities, lack the capacity to cope with them.[3]

The UN began its first peace support operation in the Middle East in 1948 and since then, it has embarked on 68 peacekeeping missions in the world.[4] The United Nations Multidimensional Integrated Stabilization Mission in Mali *(Mission multidimensionnelleintegree des Nations unies pour la stabilization du Mali)* (MINUSMA) is one of the youngest UN missions, established under Chapter VII of the UN Charter to support political processes in that country and carry out a number of security related tasks.[5]

The Battle of Solferino, referred to in Italy as the Battle of Solferinoand San Martino on 24 June 1859 brought to the fore, the urgent need to take care of the wounded in battle and to reduce the impact of armed conflict on humanity.[6] That suffering of the wounded and other negative impacts of that battle which formed the major bases for the formation of the International Committee of the Red Cross (ICRC) also shaped the nature of what IHL would eventually become. IHL applies to MINUSMA on the authority of 'Secretary General's Bulletin on the Observance by United Nations forces of international humanitarian law.'[7] The application of IHL in the UN mission is supposed to limit the effect of the armed conflict on human beings in the area. It is however sad to note that between July 2013 when the mission was established and June 2017, 120 UN troops have died, out of which 80 were killed by hostile elements.[8] In addition, 300UN troops were wounded, 12 UN civilian workers killed and 20 wounded by the non-compliant armed groups in the country.[9]Among the non-state armed groups, that have been causing the carnage have only lost about 5 persons, whose deaths were neither caused by the UN nor the armed forces of Mali but by themselves as they drove

[3] Ibid.
[4]UN Fact Sheets. www.un.org/en/peacekeeping/resources/statistics accessed on 12 June 2017.
[5] United Nations Security Council Resolution 2100 of 25 April 2013.
[6] Brooks, R. (2009), Solferino 1859. The Battle for Italy's Freedom. Osprey Publishing, p.57
[7]ST/SGB/1999/13.
[8]UN Fact Sheets.www.un.org/en/peacekeeping/resources/statistics/fatalities.shtml accessed on 12 June 2017.
[9]MINUSMA U3 Branch Brief as at 12 June 2017.

improvised explosive device borne vehicles on suicide missions into UN camps and detonated them.[10]The effect of these attacks on the Malian civilian population has been devastating. Aside from killing them, these attacks have equally weakened the UN troops' capability to protect them. IHL prohibits all means and methods of warfare which fail to discriminate between those taking part in the fighting and those, such as civilians who are not, cause superfluous injury or unnecessary suffering and those that also cause severe or long-term damage to the environment.[11]The International Committee of the Red Cross (ICRC) acknowledges the difficulty in the application of the IHL. It states that "given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty."[12]There are therefore myriads of challenges confronting the application of IHL in MINUSMA. Some of the challenges include the lopsided application of the law wherein MINUSMA Force personnel adhere to the provisions of the law while some of the non-state armed groups breach the rules with impunity without repercussions. Others are the classification of MINUSMA as a party to the armed conflict in Mali by the ICRC.[13]There is also the issue of whether IHL applies to peacekeepers, whether or not they are a party to the conflict and the realistic definition of IHL in the context of Malian armed conflict. The underlying causes of the conflict in Mali which diminish the effect of the application of IHL pose challenges as well. There is equally the need to re-examine the jurisprudence of IHL in line with the nature of armed conflicts in the world of today with particular reference to Mali.

Ladandefines IHL as"international rules established by treaties or customs which limit the rights of parties to a conflict to use the methods or means of warfare of their choice or which protects states not party to the conflict or persons and objects that are or may be affected

[10] Ibid.
[11] ICRC's Advisory Service on IHL. *What is International Humanitarian Law?p.2. icrc.org accessed on 25 April 2017.*
[12] Ibid.
[13]Gahigi, S in his introductory remarks during Annual ICRC-DPKO Workshop in New York on 27 February 2017 restated that MINUSMA had been declared a party to the Malian armed conflict since December 2014.

by the conflict."[14]Arto points out that "IHL is being directly challenged by the new concept of global war waged against an unidentified and geographically dispersed enemy."[15] Though Article 3 of the Geneva Convention applies to non-international armed conflict, there is a problem with the application in Mali because majority of the non-state armed groups do not comply with it. In addition, though the UN Mission in Mali is operating under Chapter 7 of the UN Charter which implies the use of all necessary means to achieve its mandate, it is not yet operating as a peace enforcement mission thereby giving room for the non-state armed groups to operate with impunity and without regard to the tenets of IHL.

Ladan[16]in another work defines peace support operations, (PSO) while citing Wilkinson and Mackinlay as "multifunctional operations in which impartial military activities are designed to create a secure environment and facilitate the efforts of civilian elements of the mission to create a self-sustaining peace. PSO may include peacekeeping, peace enforcement as well as conflict prevention, peace-making, peace-building and humanitarian operations." PSO include operations carried out under United Nations Command and Control[17] such as MINUSMA.The armed conflict in Mali is multifaceted and sprang up from allegation of neglect of the northern region by the central government.[18] The struggle for autonomy by the Tuaregs in northern Mali predated the Malian independence of 1960.[19] The African Stabilization Mission in Mali (AFISMA) was rehatted(transformed) to form MINUSMA.[20]

[14]Ladan, M.T. (2007) *Materials and Cases on Public International Law,*Ahmadu Bello University Press, Zaria, .p.200.
[15]Arto, R. "Internatioal Humanitarian Law Challenged by Today's Military Operations*" Journal of International Institute of Humanitarian Law, Rome,* 27 March 2008.p.87.
[16]Ladan, M.T. "The Challenges of Military Justice and Discipline in Peace Support Operations." A lecture delivered at Nigerian Army Law Seminar, Abuja, on 14 August 2011.
[17]Ferraro, T. "International Peace Operations and International Humanitarian Law" *Institute of International Humanitarian Law Journal, Rome,* 27 March 2008, p.54.
[18]Oluwadare, AJ. (2015) "The African Union and the Conflict in Mali: Regional Influence and Limitations of Regional Actor*." Journal of International and Global Studies, Volume 6,*Number 1, p.112.
[19] Ibid.
[20] Ibid.

1.2 Statement of the Research Problem

The research problem is whether or not the application and observance of IHL by only UN peacekeepers and compliant armed groups in Mali without the non-compliant armed groups' adherence to IHL poses a challenge to the application of the law. The compliant armed groups include MouvementNationale pour Liberation d'Azawad (National Movement for the Liberation of Azawad (MNLA), MouvementArabe de l'AZAWAD (Arab Movement for the Azawad) (MAA) and Haut Conseil pour l'Unité de l'AZAWAD (Supreme Council for the Movement of Azawad) (HCUA). The non-compliant armed groups include AnsarEddine and Al-Mourabitoun among others.[21]This is also in view of the classification of MINUSMA as a party to the armed conflict in Mali by the International Committee of the Red Cross (ICRC).[22] Another aspect of the research problem is whether there is any prospect in the application of IHL in the Malian armed conflict with regard to the current lopsided observance of the law.ICRC and other international bodies strive to ensure that the UN, Government forces and compliant armed groups comply with the provisions of IHL but do not do the same with the non-compliant armed groups. Over 10,000 troops from 50 countries[23] are deployed for PSO in Mali and the situation is not getting any better.MINUSMA has been classified as the most dangerous UN mission in the world, [24]in spite of the number of troops deployed therein. The non-compliant armed groups have continued to launch several indirect fire attacks of mortar and rockets into MINUSMA camps using villages occupied by civilians as their base, killing several peacekeepers.[25]They have also been killing innocent civilians who are not involved in combat. In obedience to IHL, MINUSMA Force is prohibited from returning fire in those instances in order to avoid killing civilians. The MINUSMA Rules of Engagement (ROE)

[21] www.minusma.unmission.org accessed on 31 March 2017.
[22] Khalil, M. (2014).*Humanitarian Law & Policy in 2014: Peacekeeping Missions as Parties to Conflicts.* http://phap.org/thematic-notes/2014/humanitarian-law-policy-2014/humanitarian missions-parties-conflicts.Accessed on 8 April 2017.
[23] www.un.org
[24] Ibid.
[25] MINUSMA U3 List of incidents as at 31 March 2017.

provide that "positive identification of hostile forces prior to engagement is required. Unobserved indirect fire is prohibited."[26]The Mission in an effort to comply with the application of IHL in the face of non-compliant armed groups that do not care about the law has continued to lose UN personnel and civilians to those armed groups in the country hence the need to deeply study these challenges and proffer solutions.

In view of the foregoing, the following research questions are raised:

a. What are the mandatory rules of engagement in PSO under IHL?

b. How do the armed groups in Mali carry out their operations?

c. What are challenges to the application of IHL in the Malian armed Conflict?

d. What are the needed steps to be taken to ensure compliance with IHL in the Malian armed Conflict?

e. What is the responsibility of MINUSMA in entrenching IHL in Mali?

1.3 Aim and Objectives of the Research

Arising from the statement of the research problem, this work aims at establishinghow IHL is meant to apply in PSOs with particular reference to MINUSMA as a case study. This is meant to achieve the following objectives:

a. To examine the mandatory rules of engagement in PSOs under IHL.

b. To examine how the armed groups in Mali carry out their operations.

c. To examine the challenges to the application of IHL in the Malian armed Conflict.

d. To highlight the needed steps to be taken to ensure compliance with IHL in the Malian armed Conflict.

e. To suggest better ways to apply IHL in MINUSMA for a quicker resolution of the armed conflict in Mali.

1.4 Scope and Limitation of the Research

This work covers the application of IHL in MINUSMA. This will include challenges and prospects. In terms of legal framework, it covers the provisions of IHL and all other legal

[26] MINUSMA Rules of Engagement March 2017, p. 4.

instruments applied in the PSO in Mali. The geographical scope covers Mali wherein the MINUSMA is operating. In terms of time, it covers pre-MINUSMA period as a background to the conflict and up to 2017 and beyond in certain circumstances. This study will equally touch on diverse views of many scholars with regard to the application of IHL in PSO, especially the heated argument as to whether IHL should even apply to a peacekeeping mission, making the peacekeepers lawful targets, where the Force plays a defensive role as it does in Mali. In terms of limitations, while it was possible to know the demands and mode of operation of the compliant armed groups that were signatories to the Algiers Peace Accord,[27] those of the non-compliant armed groups were hardly known. It was not possible to visit the camps of the non-compliant armed groups to study their mode of operations except to experience their devastating acts of violence after they had occurred. These were major limitations to the research.

1.5 Research Methodology

This work is based on doctrinal and teleological research methods. In terms of doctrinal research methodology, the researcher made use of conventions and UN Charter as primary sources and textbooks, journals and articles as secondary sources. With regard to teleological research methodology, this researcher made use of his practical experience as MINUSMA Force Legal Adviser between 2015 and 2017. This involved training UN and state armed groups on the provisions and applications of IHL especially concerning the Secretary General's Bulletin on the Observance of IHL by UN troops.

1.6 Justification of the Research

Harzards of war in Mali have been devastating to the citizens of the country. The northern part of the country has been without significant government presence. This research will be of great benefit to the Malian populace, the UN, the ICRC, academics in the field of

[27] Accord Pour la Paix et la Réconciliation au MaliIssu du Processus d'Algier, 24 July 2014.

IHL and students. This is achieved by clearly bringing out what IHL expects from UN troops, state armed groups and non-state armed groups in Malian armed conflict, highlighting what they are doing so far and recommending the way forward. The non-state armed groups have been exploiting the gap of non-full implementation of peace enforcement mandate of MINUSMA under Chapter VII of the UN Charter to cause havoc in Mali. The outcome of the study will also be available for other PSOs to emulate in order to make IHL easily practicable and ultimately reduce the effect of armed conflict on humanity. It will also be of great benefit to all those who seek for quick resolution of armed conflicts which are springing up in most countries in Africa and around the world. So many armed groups in Mali, especially the non-compliant armed groups are killing peacekeepers and civilians at will, knowing that while they do not observe any law, MINUSMA is highly restrained from acting while trying to comply with the tenets of IHL hence the need to proffer solutions to the problem.

1.7 Literature Review

The application of IHL in peace operations has generated a lot heated arguments among scholars and many of the views are divergent. Many of the writers, while leaning heavily on protecting their own side of the story left the spirit behind IHL which is to reduce the effect of armed conflict on humanity. If armed conflict is stopped, that completely removes the suffering experienced in war for both combatants and non-combatants alike so any solution that stops or reduces armed conflict will equally be in line with the spirit of IHL. This work examines several literatures in this regard.Paradoxically, soldiers are trained to fight, using lethal weapons, yet they are used to restore peace in conflict zones. That was why the former Secretary General of the UN stated that "peacekeeping is not a job for soldiers but only soldiers can do it."[28]Observance of IHL by troops in a PSO is more restraining than its observance in a conventional war. It requires extra training and sometimes, the troops become paranoid about

[28]Hammarskjöld, D. former Secretary General of the UN in his famous "paradox". www.un.org.accessedon 20 May 2017.

even keeping the peace just to avoid breaking IHL rules. The UN has continued to observe IHL in all its missions. The list of the 68 missions in which the UN has engaged in, including that of Mali, containing the period the mission began and ended and those ongoing are contained in this Thesis.[29]

Ferraro[30] observed that:

> There is therefore a general assumption that multinational forces are boundby IHL rules in the same manner as their adversaries and that the principleof equality between belligerents remains valid in the armed conflicts in which they are engaged. Abandoning the principle of equality betweenbelligerents or nuancing it, would have adverse effects on parties' respect for IHL, since non-state armed groups would have little incentive to comply with IHL if all attacks on peace forces were deemed unlawful.

There is a gap in this view which this work will fill. The belligerents in Mali, especially the non-compliant armed groups do not respect IHL. They target peacekeepers even without being provoked.[31] No international organization has any overt meeting with them and if one is talking of equality of application of IHL rules, there should at least be a contact with the other party and for non-compliant armed groups in Mali, there is no such overt contact. The view above is equally classifying multinational forces as belligerent forces when he averred that the principle of equality which applies to belligerents should apply to multinational peacekeeping forces. These forces were selected by the world body to restore peace in the area. Classifying them as belligerent does not suit the purpose for which they were deployed.

In terms of whether IHL applies to the peace operation in Mali, involving multinational forces, this researcher agrees with Ferraro in his support-based approach wherein he submitted that IHL applies in Non-International Armed Conflict (NIAC) when the following conditions are met:

---

[29] See Appendix A to this work.

[30] Ferraro, T. (2014).*The Applicability of International Humanitarian Law to Multinational Forces.*International Review of the Red Cross.p.11. http://journals.cambridge.org.

[31] MINUSMA U3 Force Headquarters Force Commander's Morning Brief on 15 February 2016 indicated that seven peacekeepers from Guinea were killed in Kidal by a suicide bomber who drove into the MINUSMA Camp. There was no provocation before the attack.

> There is a pre-existing NIAC ongoing in the territory where multinational forcesintervene; actions related to the conduct of hostilities are undertaken by multinationalforces in the context of that pre-existing conflict; the multinational forces' militaryoperations are carried out in support of a party to that pre-existing conflict and theaction in question is undertaken pursuant to an official decision by the TroopContributing Country (TCC) or international organization in question to support apartyinvolved in that pre-existing conflict.[32]

There is no doubt that IHL applies in the conflict in Mali in line with the above observation because the conflict in that country was ongoing before the deployment of MINUSMA in 2013. The PSO itself is undertaken by the multinational forces in the context of the pre-existing conflict. The operation is in support of Malian Government which is a party to the pre-existing conflict. This point is made clearer by the provision of the MINUSMA Mandate, which states among others, on protection of civilians and stabilization, including against asymmetric threats thus:

> In support of Malian authorities, to stabilize the key population centres and other areaswhere civilians are at risk, notably in North and Centre of Mali, and in this regard,to enhance early warning, to anticipate, deter, and counter threats, includingasymmetric threats, and to take robust and active steps to protect civilians, includingthrough active and effective patrolling in areas where civilians are at risk, and toprevent the return of armed elements to those areas, engaging in direct operationspursuant only to serious and credible threats.[33]

In this work, as pointed out by the ICRC and Red Crescent, it is necessary to point out that there appears to be a growing tendency among States to consider any act of violence carried out by a non-State armed group in an armed conflict as being 'terrorist' by definition even when such acts are lawful under IHL.[34]While the legal frameworks governing terrorism and IHL may have some common ground, IHL expressly prohibits most acts that are criminalized as 'terrorist' in domestic legislation and international conventions dealing with terrorism. However, IHL does not confer legitimacy on a non-State armed group that is a party

[32]Ferraro, T. Op cit p.24.
[33]SCR 2295(2016), p.8.
[34]Report of the 32nd International Conference of the Red Cross and Red Crescent on *International Humanitarian Law and Challenges of Contemporary Armed Conflicts, Geneva, October 2015.p.17.*

to a non-International Armed Conflict (NIAC). IHL prohibits both specific acts of terrorism committed in armed conflict and as war crimes a range of other acts of violence when committed against civilians or civilian objects. If states choose to additionally designate such acts as 'terrorist', under international or domestic law, this will duplicate their criminalization.[35] This researcher agrees with the ideas in the above report and further points out that this work will further elaborate on the acts of the non-compliant armed groups that are prohibited by IHL. Though the word terrorist is sometimes loosely used to describe some of the non-compliant armed groups, they are basically treated as parties to the armed conflict in Mali. There is equally the difficulty in properly classifying them as in some situations, some armed groups termed to be compliant have links with the non-compliant ones.

On the applicability of IHL to peace operations, Zwanenburg,[36] points out that:

> The undertaking by troop contributing states to ensure that their contingentsrespect IHL norms was included in the Model Agreement between the United Nations andMember Statescontributing personnel and equipment to United Nations peacekeepingOperations (Model Agreement) submitted by the UN Secretary General to the UNGeneral Assembly in 1991. The Model Agreement states in its Art 28 that the peace operation shall observe and respect theprinciples and spirit of the generalinternationalconventions applicable to the conduct of military personnel and that thetroop contributing country shall therefore ensure that the members of itsnational contingent serving with the UN peacekeeping operation be fully acquaintedwith the principles and spirit of these conventions.[37]

Zwanenburg went further to point out that both the UN Security Council (UNSC) and the UN General Assembly (UNGA) have in addition to declaring IHL applicable condemned specific states or armed group for violation of the law. The UN Security Council has passed many resolutions wherein such violations were condemned.[38] Though he expatiated a lot on UN and

[35]Ibid.p.18.
[36]Zwanenburg, M. (2015).*United Nations and International Humanitarian Law*. Oxford Public International Law, Max Planck Encyclopedia of Public International Law. p.2.
[37] Ibid.
[38] Concerning former Yugoslavia UNSCR 771(1992) 13 August 1992, Security Council Official Records (SCOR 47th Year 25), 780 1992 6 October 1992, SCOR 47th Year 36, 787 (1992) 16 November 1992, SCOR 47th Year 29,

IHL, he did not dwell much on the challenges of the application of IHL in PSO. This work will cover that gap albeit concentrating on Mali.

Porreto and Vite[39] agree that IHL is applicable to peace operations but did not elaborate on the challenges of the application. They state thus:

> The UN position concerning the applicability of IHL to internationalorganisations,especially its own forces, is now clear. Recent practice shows that the Organisationhas resolutely turned away from the original, vague and prudent position underwhich it only considered itself bound by the principles and spirit of IHL conventions.The current discourse no longer concerns the applicability of IHL as such but theadaptation of particular norms to the specific structure of international organisations.[40]

This work will fill the gap the authors left with regard to the challenges and prospects of the application of IHL in PSO.

Bugnion[41] asserted that IHL being a product of the International Committee of the Red Cross (ICRC) has been working effectively well and that parties to conflicts, both International and non-international conflicts are made to comply with the provisions of IHL. He used the case of *Prosecutor v Tadic*[42]to illustrate his point thus:

> In *Prosecutor v. Tadic*, the Appeals Chamber of the International Criminal Tribunalfor the Former Yugoslavia expressly acknowledged the ICRC's

---

818 1993, 16 April 1993, SCOR 48th Year 7 820 1993, 17 April 1993, SCOR 48th Year 6, 824 1993 6 May 1993, SCOR 48th Year 11, 827 1993 25 May 1993, SCOR 48th Year 29, 836 1993 4 June 1993, SCOR 48th Year 13, 844 1993 18 June 1993, SCOR 48th Year 15, 859 1993, 24 August 1993, SCOR 48th Year 16, 913 1994, 22 April 1994, SCOR 49th Year 26 941 1994 23 September 1994, SCOR 49th Year 30, 1009 1995 10 August 1995, SCOR 50th Year 34, 1034 1995 21 December 1995, Concerning Rwanda UNSCR 912 (1994) (21 April 1994), SCOR 49th Year 4; concerning Sudan and South Sudan: UNSCR 1547 (2004) 11 June 2004, SCOR 1 August 2003-31 July 2004 148, 1556 (2004) 30 July 2004, concerning the Democratic Republic of Congo: UNSCR 1843 [2008] 20 November 2008, 2015; **concerning Mali: 2164 [2014 25 June 2014, SCOR 1 August 2013 – 31 July 2014, 2227 [2015] 29 June 2015, 2295 [2016] 29 June 2016;** concerning Iraq: 2169 [2014] 30 July 2014, SCOR 1 August 2013 – 31 July 2014, 2233 [2015] 29 July 2015 and concerning Libya: 2174 [2014] 27 August 2014, 2213 [2015] 27 March 2015, 2238 [2015] 10 September 2015.

[39]Porreto, G and Vite, S. (2006). *The Application of International Humanitarian Law and Human Rights Law to International Organisations*, University Centre for International Humanitarian Law Journal, Geneva. p.23.

[40] Ibid.

[41]Bugnion, F. (2004).*The International Committee of the Red Cross and the Development of International Humanitarian Law.* Chicago Journal of International Law, Chicago, Vol 5, Number 1, Article 14, 2004, p. 208.

[42] Prosecutor v Tadic, Case No 160 (ICTY Appeals Chamber, 2 Oct 1995), in Marco Sasso1i and Antoine A. Bouvier, eds, How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law 1159, 1185-86, 109 (ICRC 1999).

> contribution tothe development of customary international humanitarian law: As is well known,the ICRC has been very active in promoting the development, implementationand dissemination of international humanitarian law. From the angle that is ofrelevance to us, namely the emergence of customary rules on internal armed conflict,the ICRC has made a remarkable contribution by appealing to the parties toarmed conflicts to respect international humanitarian law. It is notable that,when confronted with non-international armed conflicts, the ICRC has promotedthe application by the contending parties of the basic principles of humanitarianlaw. In addition, whenever possible, it has endeavoured to persuade the conflictingparties to abide by the Geneva Conventions of 1949 or at least by theirprincipal provisions .... The practical results the ICRC has thus achieved ininducing compliance with international humanitarian law ought therefore to be regarded as an element of actual international practice; this is an element that hasbeen conspicuously instrumental in the emergence or crystallization ofcustomaryrules.[43]

This researcher agrees with Bugnion that the ICRC has done a lot in the development of IHL and appeals to some parties to armed conflict to abide by the provisions of IHL but the situation in Mali is different and the difference is what this research will bring out. Some parties to the conflict in Mali are not overtly visible which makes it difficult for ICRC to appeal to them. The non-compliant armed groups attack both military and civilian targets at will without regard to the provisions of IHL.[44] That is one of the major challenges of the application of IHL in Mali which may have made Bugnion to use the expression 'whenever possible' in terms of appealing to parties to a conflict. This work will cover that gap by bringing out this challenge fully especially what happens to the application of IHL when some of the parties to the conflict cannot be reached and the prospects of the application will be explored.

In the words of Decaux,[45]

> A new trend…is the accent put on the idea of justice. It was evident within therecent ICRC consultations on the role of sanction in ensuring greater respectfor IHL. It concerned the appropriate forms of reparation from victims of serious violations of IHL. It concerned alsoaccountability for the perpetrators,individuals, groups or states. But with the overlapping of IHL and Human RightsLaw, new difficulties arise, as stressed by the International Court

[43]Bugnion, F. Op cit. p 208.
[44]MINUSMA U3 Brief on 15 May 2017.
[45]Decaux, E. (2008). International Peace Operations and International Humanitarian Law. *International Institute of Humanitarian Law Journal*, Rome, 27 March. p.81.

> of Justice (ICJ)case law, *RDC vs Uganda*[46] *and RDC v Rwanda*.[47] The ICJ speaks for the firsttime of *'juscogens'*, in a very important legal development, but the implicationof the law on state responsibility are still unclear.

Decaux's observation on the accountability of perpetrators while largely true,left a gap on the asymmetric nature of the current armed conflicts in many parts of Africa. Mali is an example wherein the non-compliant armed groups cannot be reached in order to ensure that they comply with the provisions of IHL and where they are hardly arrested which makes imposition of sanctions a mirage. He did not also point out prospects in the midst of this enormous challenge. This work will fill that gap.

One of the leading lights in IHL, Bugnion, F.[48] expressed fears of the protection afforded to victims of non-international armed conflicts by IHL. He states thus:

> Finally, while it is widely accepted that the law applicable to internationalconflicts generally meets the protection needs of the victims of those conflictsprovided the rules in force are respected, it is equally certain that the rulesapplicable to non-international armed conflicts offer the victims of thoseconflicts only minimal protection. To be convinced of this, one has only tocompare the draft Protocol II that the ICRC submitted to the DiplomaticConference on the Reaffirmation and Development of InternationalHumanitarian Law (1974-77) with the text finally adopted by the Conference.An enhancement of the protection afforded to the victims of those conflictswould be desirable and could, for example, take the form of a set of minimumprovisions that would be applicable in all circumstances and all armed conflicts,regardless of their status. It remains to be seen, however, whether states areprepared today to accept a tightening of the rules applicable to non-internationalarmed conflicts.

Bugnion left a gap with regard to a situation, like in Mali where some of the armed groups do not respect the rules. He did not suggest a way forward in this kind of situation. States accepting the tightening of the rules is not the issue currently but how to deal with the situation where some parties to the armed conflict do what they like without being checked by anybody. This work will cover that gap.

[46] ICJ Judgment *Armed Activities on the Territory of the Congo* 19 December 2005.
[47] ICJ Judgment *Armed Activities on the Territory of the Congo* 6 February 2006.
[48]Bugnion, F. (2004).*The International Committee of the Red Cross and Development of International Humanitarian Law,* Chicago Journal of International Law, Volume 5, Article 14, p. 211.

Greppi[49] captures the challenges of the application of IHL further when he stated that:

> Going back to the issue of legitimacy, one of the key factors is the nature of the conflictand then as a consequence, the status of those who are expected to act on the fields… States are placed under international law rules because they are bound by existing normsand customary international law. In both situations, states and their organs are fullyaccountable. International humanitarian law and human rights law are applicable.Problems mainly arise on the side of the other actors. Who is accountable? And to whichextent?[50]

This researcher agrees with Greppi. Though Greppi suggested ways out of the problem like training, this work will proffer some practical solutions based on situations on ground in Mali. Raty[51] succinctly pointed out one of the major challenges faced by peacekeepers in the application of IHL. He stated that "Military leaders face high expectations from the population as well as from their superiors tasking the mission. The operation may be run in an environment where you cannot identify the parties to the conflict. The insurgents may take refuge among the general population or refugees"[52] This situation makes the application of IHL very difficult especially in an operation like Mali where the non-compliant armed groupsfire indirect weapons like mortar to the UN camps and the peacekeepers are prohibited from firing when a target is not identified.[53] On 8June 2017, belligerents fired rockets into UN Camp in Kidal which resulted in three Guinean soldiers being killed and eight others wounded.[54] The pictures of the effect of the indirect fire attack of that day in Kidal are contained herein.[55]While this researcher agrees with Raty that the challenges are enormous, he did not propose practical solutions out of it. This work will do so.

---

[49]Greppi, E. (2008). *Some Reflections on he Challenges Which International Humanitarian Law has to Face in Contemporary Armed Conflicts.* Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March. p.84.
[50] Ibid.
[51]Raty, A. (2008).*International Humanitarian Law Challenged by Today's Military Operations.* Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March. p.89.
[52] Ibid.
[53] MINUSMA Rules of Engagement, March 2017, p.C-11. On 15 May 2017, two mortar bombs fired by non-compliant armed groups dropped at the compound of Nigerian Level II Hospital, Timbuktu, Mali injuring one Nigerian soldier.
[54]MINUSMA Sector North Flash report dated 8 June 2017.
[55] See Appendix B.

Furthermore, Pomper[56] exposed one of the major challenges of the application of IHL with regard to not being in tune with modern trends when he stated that:

> The bulk of those conventions were framed decades ago, with a view towardsregulating traditional armed conflicts between States- not cross-border conflictsbetween Statesand often clandestine terrorist groups that may be operating halfa world away. Indeed, only one provision of 1949 convention speaks aboutconflicts of a non-international character. And while that provision-CommonArticle 3-affords baseline humane treatmentguarantees and proceduralsafeguards for non-international armed conflicts, it does not answer some ofthe important and challenging questions that arise in the conflicts that we findourselves facing.[57]

This researcher agrees with Pomper that many of the provisions of IHL are truly outdated. He also made far reaching suggestions on the way forward like "seeking for a common approach that will lend greater certainty, cohesion, and legitimacy to international efforts to meet common threats that the international community will need to face together."[58] This work will make additions to his suggestions on the prospects of the application of IHL in PSO.

Lazzarotto[59] added his voice to the challenges of IHL when he stated thus:

> I would like to address what I consider as one of the main current challenges:The issue of so-called asymmetric warfare. The term asymmetric warfareis not defined legally. It is used to describe a growing phenomenon wherebyarmedconflicts are not fought among States and traditional armies any morebut between a variety of actors involving States and non-State alike. The asymmetry can occur in the choice of means and methods of warfare. Today'sconflict environment is increasingly characterized by such asymmetric warfare. Asymmetry generally calls for more brutality and less respect for therule of law. On the one side, the more powerful party is tempted to disregardIHL especially the fundamental principles of distinction and proportionality,arguing that different rules should apply in order to deter for instance urbanwarfare. On the other side, the technologically disadvantaged party to theconflict is also tempted to resort to practices prohibited by IHL.[60]

[56]Pomper, S. (2008).*Remarks on the Future Development of International Humanitarian Law*.Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March. p.91.
[57]Ibid.
[58] Ibid.p.95.
[59]Lazzaroto, S. (2008). *Current Challenges of International Humanitarian Law.*Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March. p.97.
[60] Ibid.

In Mali, the reverse to the first part of this narrative is the case. The peacekeeping mission made up of 50 countries should be more powerful but suffer more casualties while observing the tenets of IHL. While this researcher agrees with Lazzaroto that some parties to the armed conflict resort to practices prohibited by IHL, he does not agree with him on his proposition that "normative development of IHL is neither desirable nor necessary since IHL offers appropriate framework to contemporary conflicts and their new challenges."[61] He did not suggest how to deal with a situation where some parties to the armed conflict which disrespect the provisions of IHL can be made to conform to it. This work will make that suggestion.

The ICRC itself pointed out another serious challenge to the application of IHL in contemporary armed conflict. It states that:

> Another difficult situation that may arise in which the status, conduct or functionof a person appearing to pose a threat or disrespecting a military order is notimmediately evident, for example, a person approaches a checkpoint, a militaryinstallation or an area restricted for military reasons. It is submitted that lack ofrespect for a military order alone is not sufficient to permit the use of lethal orpotentially lethal force. In case of doubt as to whether that person is a lawful target,the ICRC considers that he/she must be presumed to be protected against attack.An escalation of force procedure must thus be applied…It should be noted, howeverthat the application of IHL requirement to take all feasible precautions to verifythat a target is a military objective would lead to a similar need for an escalationin measures until the status of the target has been ascertained.[62]

The position of ICRC in the report cited above is followed on ground in PSO. It is however important to note that the incident in Mali where a suicide bomber approached the gate in UN Camp in Kidal on 12 February 2016 following the principle of ascertaining whether the vehicle was a military target, the suicide bomber forced his way into the camp and got the vehicle exploded inside the accommodation area of Guinea Battalion. The incident led to the death of seven Guinean troops, including a female soldier and of course the suicide bomber.[63]The troops

[61]Ibid .p. 100.
[62] Report of the 32nd International Conference of the Red Cross and Red Crescent on *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts.*Geneva, October 2015, p. 36.
[63] MINUSMA Sector North Flash Report dated 12 February 2016. This researcher left that Camp less than 24 hours before the incident after training the troops on how to observe IHL.

began to feel doubtful while being told to observe utmost care in order not to attack a non-military target after the incident especially as the attackers do not reciprocate in the respect of IHL. The report did not suggest how to overcome this type of challenge, but this work will fill the gap while discussing the prospects of the application of IHL in such a difficult terrain.

The ICRC equally observed that:

> A recent challenge for IHL has been the tendency of States to label as 'terrorist' allacts of warfare committed by non-State armed groups against them, especially innon-international armed conflicts. While armed conflicts and acts of terrorism aredifferent forms of violence governed by different bodies of law, they have come tobe perceived as almost synonymous due to constant conflation in public domain.The use of the term 'terrorist act' in the context of armed conflict causes confusionbetween the two separate bodies of law and many lead to a situation where non-Statearmed groups disregard IHL norms because of a perception that they have noincentive to abide by the laws and customs of war. The designation of some non-Statearmed groups as 'terrorist' groups' also has significant implications for humanitarianengagement and may impede humanitarian action.[64]

The nomenclature of some armed groups in Mali is actually one of the challenges in the application of IHL as observed by ICRC in this overview. Whatever name you give some groups, civilians and those out of combat continue to be a part of their target. The Overview did not suggest how this problem could be overcome. This work will make some suggestions which is aimed at saving the human beings faced with these attacks and to make IHL more goal oriented.

Kellenberger[65] highlighted the need for IHL to protect peacekeepers while noting some challenges. He observed that:

> The recent tragic attack against UN peace forces in Darfur is a painful reminder of howrisky their mission can be. As evidenced by the corresponding war crime under the 1998Rome Statute of International Criminal Court, IHL contains a clear prohibition of attacksagainst personnel and objects involved in a peacekeeping mission in accordance withthe charter of the United Nations, as

[64]ICRC Overview of Contemporary Challenges for IHL.2013.http://www.icrc.org accessed on 1 April 2017.
[65]Kellenberger, J. (2008). Keynote Address at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p. 31.

> long as those objects and personnel are entitledto the protection given to the civilians and civilian objects under IHL.[66]

The complex question of when soldiers in UN mission should be entitled to the protection given to the civilians and civilian objects was not adequately highlighted in this address by the ICRC President. The fluid nature of who is a party to the armed conflict and when can UN troops be regarded as a party to the armed conflict and stripped of the protection of IHL is one of the issues not addresses by Kellenberger and this work will attempt to address it.

Kunz[67] on the importance of the observation of IHL in PSO asserted that:

> The rule of law is also the important pillar of any modern peace operation. Thisrequires of course that international humanitarian law and human rights are respectednot only by the local populations and authorities, but also by the internationalcommunity and its representatives, both in their professional and private conduct in
> theatre.

Kunz, like many other writers and commentators on the application of IHL in PSO lays emphasis on the peacekeepers and seem to ignore the armed groups and especially those of them that refuse to sign any peace agreement and make the conflict environment extremely hostile. That is one aspect that this work will examine and proffer solutions.

Bisogniero[68] highlighted the problems that face the North Atlantic Treaty Organization (NATO), with regard to the application of IHL, just like in UN operations. He stated that:

> Avoiding civilian casualties has been and will remain a key concernof the alliance…This clearly differentiates NATO from its Taliban opponentswho are not ashamed of deliberately attacking targets or using civilian dwellingsto hide, plan and launch operations against the International Security AssistanceForce (ISAF), putting innocent people at risk…those who seek to developInternational law must keep in mind that the deployment of force is always anextraordinary measure with considerable room for things to go wrong. In otherwords, there will always be a gap between the law as it is written and itsimplementation in practice.

---

[66] Ibid.
[67] Kunz, R. (2008) in his contribution at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p.44.
[68] Bisogniero, C. (2008) in his contribution at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p.42.

Bisogniero captures the problem especially because many people who think that the application of IHL in a practical situation is as easy as it is said have not had a practical experience in an armed conflict zone especially in an asymmetric situation. It is that gap between theory and practice that this works will strive to fill.

Certain semantic issues arise in the application of IHL. For instance, Engdahl[69] states that:

> If there is an armed conflict in the area of operation and the laws of war apply, theparties to the conflict are obliged to treat the peace operation personnel as civiliansunder the law of armed conflict – as long as they do not participate in the conflict... This protection is offered to everyone irrespective of what task they might performor their position in the operation – as long as they do not take part in the conflictin question.

The writer did not specify what he meant by not taking part in the conflict. Does self-defence or assistance to the armed forces of the host nation form part of 'taking part' in the conflict? Are the peacekeepers expected to remain in one place to be captured by the belligerents? While protecting the civilians and there is an attack from the armed groups on the civilians, will their defence which may entail using deadly force against the perpetrators of such an attack make the peacekeepers to be considered as taking part in the conflict? These questions which are germane to the subject were not answered by the writer. This work will make effort to provide answers to them.

What happens in current PSO is different from what some writers knew about peacekeeping. In the words of Bothe,[70] "a PKO (peacekeeping operation) contributes to the maintenance of law and order by a number of means. None of them involves actual fighting which is regulated by IHL. These activities of PKOs are much closer to police or law enforcement action than to conduct of hostilities." It is submitted that this view represents what

[69]Engdahl, O. (2008). *The Legal Status of United Nations and Associated Personnel in Peace Operations and the Legal Regime Protecting them.* 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p. 114.

[70]Bothe, M. (2008).*The Responsibility to Protect and International Humanitarian Law.* 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p. 196.

happens in normal peace keeping where the opposing armed groups are not ferocious and do not adopt asymmetric style of warfare. Currently in many non-international armed conflict situations, like that of Mali for example, it is more than being 'close to police action.' *Apache* Helicopters which are fighter helicopters, armoured personnel carriers (APC), mortars among other weapons are used by peacekeepers,[71] especially to show resolve and deter the belligerents.The nature of attacks directed at peacekeepers by non-compliant armed groups removes the situation from being a police action type.

Cario[72] paints a scenario of how IHL should apply with regard to punishment of combatants who are captured in an armed conflict. He did not however imagine a situation where in three years of an armed conflict, the casualty has been on the side of the civilians, Government and UN forces and no single member of a non-compliant armed group, to the knowledge of this researcher, has been captured or killed by the UN or Government forces. He states that "once captured, a combatant may not be punished for…having taken the life of other combatants. As a prisoner of war, a combatant may be detained, not for punishment, but for the sole aim of preventing him…from being able to return to participate in military operations." In a situation where the death toll is on one side and that same side in the armed conflict is the one keeping the peace and complying with the provisions of IHL, it calls to question the philosophy behind the establishment of IHL. This work will elaborate more on the need to take another look at IHL and probably have an addendum provision to adjust how it should apply in peace operations thereby covering the gap left by Cario in his article.

Lopez[73] supports the idea that there is a need to take another look at the IHL as currently codified. She states that:

---

[71] MINUSMA Weapon Table contained in the Rules of Engagement 2017.
[72]Cario, J. (2008). *Detention in Peace Operations. A Practical Approach.*31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p. 205.
[73] Lopez, L. (1994). *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts.* New York University Law Review. p.916.

> In a world where armed conflict has become almost exclusively an internal matter,the laws of war codified in the Geneva Convention are increasingly irrelevant. Havingjust experienced World War II, the designers of the 1949 Geneva Conventionconceived of war as a conflict between large nations in declared battles. Theycould have hardly have imagined that by 1994, all of the thirty five armed conflictsin the world would be civil, and one would be international.

This researcher agrees with Lopez that there is a need to inject current situations into IHL to make it realistic especially with regard to the asymmetric nature of the conflicts these days. This work will suggest ways to enhance the application of IHL by bringing in the situation as at 2017 in Mali.

Grenfell[74] raises one of the challenges faced by peacekeeping troops in UN missions. She points out that "under the Rome Statute, however, attacks against peacekeepers in situations of both international and non-international armed conflicts will not be considered 'war crimes' if the peacekeeping operation has become a 'party to an armed conflict'." The UN troops in this case face a dilemma of operating in a peacekeeping environment with all the necessary restraints but are made to become lawful targets to the armed groups. This writer suggested some ways forward but did not consider a situation where the armed groups facing the UN troops do not care about the application of IHL. This work will fill that gap.

Khalil[75] made what this researcher considers as a very good explanation of the negative implications of classifying a UN mission as a party to the conflict. In terms of MINUSMA, she stated thus:

> It is important for all concerned to understand that if and when MINUSMA (Mali)becomes a party to the conflict, in addition to their own obligations under IHL,its military personnel would lose their protected status and become lawfultargets under IHL and, to the extent that civilian lives could be lost as a

[74] Grenfell, K. (2013). *Perspectives on the Applicability and Application of International Humanitarian Law: The UN Context.*International Review of the Red Cross. 95 (891/892), p. 650.
[75]Khalil, M. (2014).*Humanitarian Law & Policy in 2014: Peacekeeping Missions as Parties to Conflicts.* http://phap.org/thematic-notes/2014/humanitarian-law-policy-2014/humanitarian missions-parties-conflicts.Accessed on 8 April 2017.

> resultof such lawful attacks, the presence of MINUSMA peacekeepers, could thuspose a clear and present threat to the very civilians it is meant to protect.[76]

Khalil however left a gap by not suggesting practical solutions to this problem in MINUSMA. She suggested sanctions against such armed groups in Congo DRC but the situation in Mali is different. This work will fill that gap.

In line with the thinking of Khalil, Higgins[77]points out that "Humanitarian law seeks to limit the casualties and damage caused by war. It is quite ironic, therefore, that it is those people who aim to preserve and maintain peace and to protect who were offered the least protection by this law." He did not however suggest practical ways to solve this problem. This work will attempt to suggest the way forward in this situation.

Mateja[78] emphasized on the dilemma of current peacekeeping when she pointed out that "the targets of peacekeeping actions are non-state actors that enjoy little international legitimacy due to their appalling human rights or war crimes records. As a result, no comprehensive peace agreements with them are sought before peacekeepers are deployed, something that is in stark contrast to both traditional and multidimensional peacekeeping." She was apt in this regard as in Mali, the biggest problem of violation of IHL comes from the armed groups that are not signatories to the Algiers Peace Agreement.[79] She did not however go into details concerning the situation in Mali. This work will fill that gap.

Guttry[80] expressed his views on the changing nature of PSO in Africa especially with regard to the security of the peacekeepers. This further exposes the atrocities committed against those deployed to keep the peace by those who do not consider adhering to the tenets of IHL. He stated thus:

---

[76] Ibid.

[77] Higgins, N. (2013). *The Protection of United Nations & Associated Personnel*.Journal of Humanitarian Assistance, 2003.http://www.jha.ac/articles/a116.thm. p. 43.Accessed on 8 April 2017.

[78]Majeta, P. (2015). *Between Doctrine and Practice: The UN Peacekeeping Dilemma*. Global Governance: A Review of Multilateralism and International Organizations: July-September 2015, Vol. 21, No. 3, p. 353.

[79] Accord pour la Paix et la Réconciliations au Mali Issu du Processus d'Alger, 1 Mars 2015.

[80]Guttry, A. (2014). *Recent Challenges to Peacekeeping Operations in Africa*.The International Training Programme for Conflict Management (ITPCM) International Commentary, Vol X, no 36, July.p.7.

> The issue of the security of the personnel participating in PK operations changes significantly aswell: in the past the PK were mostlyperceived, by the national publicopinion of the hosting State as "thegood guys" nowadays peacekeepers are often considered as very relevanttarget for criminal and terrorist activities.

The assertion of the writer is correct concerning attacks against UN forces. Though he did not specifically refer to Mali, several UN force personnel have been killed by armed groups that do not respect IHL in Mali. The writer suggested training as a panacea. This work will suggest more ways out of the challenge.

Scot and Case[81] though highlighted that IHL applies to peacekeeping operations when it has become a party to the conflict but that IHRL applies all through, while writing about the UN peacekeeping operation in the Democratic Republic of Congo, they equally submitted that it is not only while a group or body is a party to the conflict that IHL can apply. This researcher agrees with them. They did not however indicate why that should be so aside from citing the Secretary General's Bulletin[82] on it. This work will fill the observed gap with respect to the peacekeeping mission in Mali.

Ball, Veen and Price[83] point out that though the UN Security Council has increasingly agreed on robust mandates and rules of engagement being written to allow UN peacekeepers to take a proactive stance, and missions being appropriately equipped, this has not been accompanied by greater risk tolerance among Troop Contributing Countries (TCCs) or a

[81]Scot, S. and Case S. (2014). *The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo.* International Peace Institute Journal. p.6. www.ipinst.org accessed on 11 April 2017.

[82]Ibid. While it is generally accepted that the UN and its peacekeepers are bound by international human rights law, the precise *scope* of obligations of UN peacekeeping
operations is still unclear. See "We Are United Nations Peacekeeping Personnel" annexed to the memorandum of understanding between the UN and troopcontributingcountries, requiring compliance with relevant directives on IHL and the "applicable portions of the Universal Declaration of Human Rights as thefundamental basis of … standards [of conduct]," available at www.un.org/en/peacekeeping/documents/un_in.pdf ; and United Nations, *Report of the SpecialCommittee on Peacekeeping Operations and its Working Group on the 2007 Resumed Session*, UN Doc. A/61/19 (Part III), June 12, 2007, Annex, Annex H. See alsodiscussion in Scott Sheeran, "A Constitutional Moment?: United Nations Peacekeeping in the Democratic Republic of Congo," *International Organizations LawReview* 8, No. 1 (2011): 76–84.

[83]Ball, N et al. (2015). *Fighting for Peace: The Tricky Business of Using Greater Force in UN Peace Operations.*Clingendael.Journal of Netherlands Institute of International Relations.p. 8.

willingness to put their troops in harm's way. This researcher agrees with the writers and further states that this stance by some troops encourages the armed groups to attack them and violate IHL, believing that there may not be any commensurate response from the peacekeepers.

Sassoli, Bouvier and Quintin[84] state that the definition of IHL among other things presupposes that the parties to an armed conflict have rational aims andthat those aims as such do not contradict IHL. The assumption of these learned authors does not fit into the situation in Mali. Contrary to the assertion of the writers, non-compliant armed groups who are parties to the armed conflict in Mali attack civilians and use methods and means of warfare that contradict the tenets of IHL hence this research will suggest a rethink of the definition of IHL in line with the philosophy behind the law.

Morgan[85] acknowledges the difficulty in disseminating the provisions of IHL to non-state armed groups. He suggests the codifying of the protocols in two pages to enhance understanding. This researcher supports this idea, however, the writer did not properly cover a situation where some of these armed groups, especially the most violent ones, as it is obtainable in Mali, do not allow ICRC or other international bodies to advise them on means of warfare. They remain aloof and do whatever pleases them, mostly carrying out attacks against civilians and UN personnel. That is a gap that Morgan left, and this work will fill.

1.8 Organisational Layout

The research work is broken down into six chapters. Chapter one consists of the general introduction which includes statement of the problem, aim and objectives of the research and

[84]Sassoli, M. et al. (2012).*How Does Law Protect in War?* Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law.p. 2.https://www.icrc.org.../6739-how-does-law-protect-war-cases-document accessed on 11 April 2017

[85] Morgan, K. (2013). *Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare.*Independent Study Project (ISP) Collection.Paper 1618, p.29.http://digitalcollections.sit.edu/isp_collection/1618accessed on 15 April 2017.

justification. Others are scope of the research, research methodology, literature review and this organizational layout.

Chapter two treats conceptual clarification and development of IHL. These include nature and scope of IHL, concept of PSO and concept of armed conflict among others.

Chapter three treats the background to the Malian conflict leading to the intervention of the UN. This will include the history and geography of Mali, the political configuration of Mali, the armed groups and their areas of operation, the intervention of the African Union and the intervention of the UN which brought about the discussion of the application of IHL in the UN PSO there.

Chapter four delves into the application of IHL in PSO and the role of MINUSMA in Mali. Under this chapter, the broad conditions under which IHL applies to UN operation are discussed. These are the existence of an armed conflict of whatever nature in the area of its active engagement of the force in the conflict in support of either or neither side. The application of IHL also highlights the principles of distinction between civilians and combatants and between civilian objects and military objectives. It equally includes means and methods of warfare, treatment of civilians and persons*hors de combat* (outside combat), treatment of detainees, protection of the wounded, the sick and medical and relief personnel. On the aspect of the role of MINUSMA *vis-à-vis* the application of IHL in Mali, the work considers the Mandate, Rules of Engagement (ROE) and Standard Operating Procedures (SOP) of MINUSMA that are linked with the enforcement of IHL. This chapter also discussesthe difference between what is happening in MINUSMA about the application of IHL compared with the provisions of IHL. The effects of MINUSMA being a party to the conflict with respect to IHL is also discussed.

Chapter fivediscusses the challenges and prospects of the application of IHL in MINUSMA. The sub-topics discussed under this chapter include the challenges which

comprise the lopsided application of IHL in Mali, non-compliance with IHL by some armed groups in Mali and the attendant heavy casualty on the part of UN troops that comply with the tenets of IHL. This chapter further analyzesthe prospects of the application of IHL in MINUSMA. In doing this, it considers certain issues that can boost the application of IHL in the mission. These will include the UN Security Council placing an embargo on arms and ammunition against non- compliant armed groups, passing a UN Security Council Resolution to force all armed groups to comply with IHL or face the wrath of the UN. Other issues include the UN getting the Government of Mali to extend development to northern Mali to make the non-compliant armed groups feel a sense of belonging. One of the prospects of the application of IHL in Mali that will equally be discussed will be changing the mandate of MINUSMA to a full-fledged peace enforcement operation wherein the consent of the parties will not be required to maintain peace. The option of having an addendum to IHL provisions to empower peacekeepers to find, fix and strike non-compliant armed groups that do not comply with IHL and still be protected by IHL will be explored.

Chapter sixrounds off the thesis with summary and conclusion to be treated under the sub-heads of summary, findingsand recommendations.

CHAPTER TWO

CONCEPTUAL AND HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

2.1 Introduction

The study of International Humanitarian Law (IHL) and Peace Support Operations (PSO) naturally involves a lot of terms and historical developments that need to be explained in order to enhance the understanding of the topic. These are two separate subjects, though within the domain of Public International Law which are equally wide and have some terms that are peculiar to them. These terms are clarified in this segment of the research. They include the nature and scope of IHL, concept of PSO, concept of armed conflict, terrorism and war among others. Some words or terms within these listed terms are equally explained.

2.2 Nature and Scope of IHL

The three words that make up IHL have their separate meanings that still lead to a good understanding of the term, even before referring to established definitions. International humanitarian law is first a law that has an international dimension and as well humanitarian in nature. As a law, it regulates the actions of people in armed conflicts, it binds states and individuals concerned with an armed conflict which in a lay man's language could be referred to as war, though with some minor differences and it is concerned about the effect of such an armed conflict on human beings which makes it humanitarian. Ladan[1] explains IHL to mean "that branch of Public International Law which covers the protection of victims of armed conflict and lays down the international rules for the conduct of hostilities. The four Geneva Conventions of 1949 with their Additional Protocols of 1977 provide an extensive body of

[1]Ladan, MT. (1999). *Introduction to International Human Rights and Humanitarian Laws.*Zaria, Ahmadu Bello University Press Limited, p.281.

codified rules to that end" A practical example of Ladan's explanation is the current hostilities going on in Mali wherein the UN in its PSO is making effort to reduce the impact of the armed conflict in the area on the people by striving to ensure that its troops adhere to the tenets of IHL.

The International Committee of the Red Cross (ICRC), while explaining the nature of IHL posits that it regulates relations between states, international organizations and other subjects of international law. It states further that it is a branch of public international law that consists of rules that in times of armed conflict seek for humanitarian reasons to protect persons who are not or are no longer directly participating in the hostilities, and to restrict means and methods of warfare.[2] IHL consists of international treaty or customary rules which are rules emerging from state practice and followed out of sense of obligation that are specifically meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character.[3] International treaties including the Geneva Conventions are implemented in Nigeria by virtue of the Constitution which provides that: "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been domesticated by the National Assembly."[4] These treaties like the Geneva Convention regulates Nigerian troops deployed to UN missions including the UN Mission in Mali.

In terms of scope, IHL which can also be referred to as law of armed conflict is divided into two branches namely, the *jus ad bellum (right to war/what justifies war)* and the *jus in bello (laws of war).* The *jus ad bellum* concerns the reasons or lawfulness for beginning an armed conflict. In conventional wars between states, the principle of just war allows an armed conflict to begin in order not to breach the provision of Article 2 (4) of the Charter of the UN which prohibits the use or threat of the use of force by one state against another. On the other

[2]What is IHL? by ICRC https://www.icrc.org accessed on 21 January 2018.
[3] Ibid.
[4] Section 12(1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

hand, *jus in bello*which could also be referred to as 'the law in war' regulates the conduct of hostilities in armed conflicts when such an armed conflict can no longer be avoided. The *jus in bello* is further divided into two, namely; the Hague Law and the Geneva Law. The Hague Law of which the name is derived from the Hague Convention where the decision was reached, refers to the rules and regulations which limit the means and methods of warfare that can be used in an armed conflict. These include the types of weapons and usage and general conduct of operations. An example is "the prohibition of the use of asphyxiating, poisonous or other gases of biological methods of warfare and bullets which explode, expand or flatten easily in the human body."[5] The Hague Law also establishes the rights and obligations of belligerents in the conduct of hostilities.[6]

The Geneva Law on the other hand which also draws its name from the city of Geneva where the law was codified, is the body of rules that protects victims of armed conflict, such as military personnel who are *hors de combat (*who are no longer engaged in combat) and civilians who are not or no longer directly participating in hostilities.[7] All these are geared towards making armed conflicts less injurious to humanity especially to ensure that those who are not directly participating in hostilities are protected from the devastating effects of armed conflicts. This is also born out of the fact that in certain situations of the world of today, armed conflicts have become inevitable because of the quest for political and economic power, struggle to avoid being dominated and the indirect influence of arms and ammunition manufactures who would want to sustain their sales by using gullible individuals in mostly developing countries to cause armed conflicts.

It is necessary to point out that though IHL and Human Rights Law are different; there are similarities that need to be explained.

[5]Section 6, Secretary General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law.ST/SGB/1999/13. http://www.un.org.
[6] What is IHL?by ICRC https://www.icrc.org accessed on 21 January 2018.
[7] Ibid.

2.3 Sources of International Humanitarian Law

The major sources of IHL are treaties or conventions and customary international law.[8]Ladan defines treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[9] Usually, treaties cover fewer states while conventions cover more states but the terms are sometimes used interchangeably. The four Geneva conventions are the most outstanding sources of IHL. They are the wounded and sick on land (first Geneva Convention), the wounded, the sick and ship wrecked at sea (second Geneva Convention), prisoners of war (third Geneva Convention) and civilians (Fourth Geneva Convention.[10] The four Geneva conventions of 1949 are applicable in international armed conflict while one article; common article three, specifically applies in non-international armed conflict. All 196 signatory states are party to the four Geneva conventions of 1949, making them universal.

Customary international law which is another source of IHL is a body of rules that a state regards as binding under international law. This body of rules is identified by looking at the practice of states, including official accounts of military operations and other official documents, military manuals, national legislation and case law.[11] In the words of Ladan, "as far as customary standards are concerned, an examination of their actual significance suggests that they play the most important role in that part of IHL which is devoted to the protection of human rights during armed conflicts.[12] The fact that troops from different countries of the world operate together in several United Nations missions cement customary international law.

[8]ICRC https://www.icrc.org accessed on 18 June 2018.
[9]Ladan, MT. (2007). *Materials and Cases on Public International Law.*Zaria, Ahmadu Bello University Press Limited, p.11.
[10]ICRC https://www.icrc.org op cit.
[11] Ibid.
[12]Ladan, M.T. Op cit. p. 15.

So many things like how to treat detainees aside from being provided for in the Geneva Conventions have become common practice among states and this is good for humanity.

2.4 Simultaneous Application of Human Rights Law and IHL

International humanitarian law and international human rights law are two distinct but complementary bodies of law. They are both concerned with the protection of the life, health and dignity of individuals. IHL applies in armed conflict while human rights law applies at all times, in peace and in war.[13] The main difference in their application is that international human rights law allows a state to suspend a number of human rights if it faces a situation of emergency. IHL cannot be suspended except as provided in article 5 to the Fourth Geneva Convention.[14] A state cannot however suspend or waive certain fundamental rights that must be respected in all circumstances. Those rights include the right to life, right to prohibition of torture and inhuman treatment, the outlawing of slavery or servitude and the right to freedom of thought conscience and religion. States have a legal duty to respect and implement both IHL and human rights law.

IHL is based on Geneva and Hague Conventions, additional Protocols and a series of treaties governing means and methods of waging war. These include the ban of the use of land mines and other types of chemical and biological weapons. International human rights law on the other hand is more complex and unlike IHL includes regional treaties. The main global instrument is the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. Other global treaties include the International Covenant on Civil and Political rights, the International Covenant on Economic, Social and Cultural Rights as well as the treaties on the prevention and punishment of torture among others.[15] In situations of armed conflict, human rights law complements and reinforces the protection afforded by IHL.

[13]ICRC https://www.icrc.org accessed on 18 June 2018.
[14] Ibid.
[15] Ibid.

> Human rights can further be explained as the freedoms, immunities and benefits, that according to modern values (especially at international level), all human beings should be able to claim as a matter of right in the society in which they live.[16] Human rights law in ordinary sense is the law that regulates these freedoms, immunities and benefits and ensures that they are guaranteed for human beings. In the words of Cerone,[17] for much of the Twentieth Century, it remained unclear whether human rights law would apply to a state's conduct during armed conflict and occupation. Despite continuing objections on the part of handful of states, a consensus is evolving in favour of the view that human rights law applies alongside humanitarian law in times of armed conflict.

The International Court of Justice (ICJ) stated in its 1996 Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons that: "The Court observes that the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from, in a time of national emergency."[18] The Court went ahead to note in a subsequent opinion that "there are thus three possible situations: some rights may be exclusively matters of IHL; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law."[19] In view of this stance by the ICJ it will be safe to state that human rights law does not cease to apply by reason of commencement of armed conflict.

It is also important to note that both laws complement each other and they owe their inspiration to a feeling for humanity and these feelings are centred on the protection of human beings. One needs IHL in armed conflict in order to enforce human rights law and to that extent, except in serious situations of armed conflict where certain human rights are derogated, human rights law applies. Ladan capped it up by citing a statement made in 1968 World Human Rights Conference which was organized by the UN in Iran thus; "It is through IHL that the fundamental rights of human beings can be best protected in armed conflicts."[20] In Mali for

[16] Garner B.A,(2004), *Blacks Law Dictionary.* Dalas USA, Thomson Reuters, p.809.
[17]Cerone, J.P. (2008) "Peace Operations and the Complementarity of Human Rights Law and International Humanitarian Law" 31st Round Table on Current Problems of International Humanitarian Law, *Journal of International Humanitarian Law,*Sanremo, 4-6 September. p.104.
[18] Ibid.
[19] Ibid.
[20]Ladan M.T. (2007), *Materials and Cases on Public International Law.*Zaria, Ahmadu Bello University Press, p. 206.

instance, while IHL applies in the country because of the armed conflict, human rights law applies as well as everybody is not a combatant and not every part of the country is involved in armed conflict all the time. Even in areas where the armed conflict takes place, human rights law applies practically on ground.

2.5 Concept of Peace Support Operation

Peace Support Operation (PSO) is a multifunctional operation involving military forces, diplomatic and humanitarian goals or a long-term political settlement and conducted impartially in support of a mandate.[21] These operations include conflict prevention, peacekeeping, peace enforcement, humanitarian operations and peace building. Peace support and peacekeeping operations are closely related and they are both aimed at conflict resolution. The difference is that peacekeeping operation is an aspect of peace support operation which is like a phase that begins after peace enforcement and many people use the terms interchangeably. They are designed to achieve a long-term political settlement or other conditions specified in the mandate. PSO differ from war though PSO takes place in armed conflict and war situations but PSOs are complex operations that do not have a designated enemy but are designated as part of a composite approach involving diplomatic efforts and generally humanitarian agencies to achieve a long-term peace settlement.[22] PSO is therefore a mother term that gave birth to other terms that are used in peace operations like peace building, peacemaking and peace enforcement.

PSO are increasing in response to complex intra-state conflicts involving widespread human rights violations, especially in Africa. PSO force therefore deals with deadly conflicts among ethnic, religious, political and socioeconomic groups within a country or a region. In order to achieve peace, PSO does not begin and end with a military operation. There has to be

[21] Multinational Peace Force South Eastern Europe Brigade Handbook for Peace Support Operations (2000), p.9.
[22] Ibid.

the active participation and willing involvement of diplomatic and humanitarian agencies, civil police, host nation's government and other stake holders in order to achieve sustainable peace and to make it possible for such a country to sustain the peace when the PSO personnel leave.

A clear example of how difficult and complex PSO can be is the one in the Democratic Republic of Congo where the UN has maintained its presence since 1960.[23] Late Maj Gen AguiyiIronsi of Nigeria was a UN peacekeeper in Congo in 1960 and even as at 2018, Nigeria has troops and some civilians in the Mission. In the conduct of complex PSO, military activities are only one of several lines of operations within a wider strategy directed towards an agreed end-state as prescribed by the mandate of the mission. Some of the challenges that arise in PSO especially when multinational forces are involved, aside from IHL application are language barriers between the PSO personnel and locals and even among the different nationalities that make up the PSO. Other considerations include political issues, cultural backgrounds, military capabilities and training, equipment interoperability and logistic support system coordination.[24] The military forces usually provide secure and stable environment wherein the activities of other agencies are used to resolve the underlying causes of the conflict. There is hardly any PSO that starts with one phase like peace enforcement and ends in that same phase, for example in Liberia, the PSO began with the ECOWAS Monitoring Group, (ECOMOG) which was a regional peace enforcement operation. After the UN took over the mission, peace enforcement continued for some time before it was scaled down to peacekeeping. It was eventually scaled down to peace building until UN troops were eventually withdrawn from the country after the 2017 general election that produced George Weah as President. PSO is therefore a combination of all those peace efforts as described above.

[23]United Nations Mission in the Democratic Republic of Congo.www.monusco,org accessed on 3 February 2018.
[24]Ibid.p.10.

2.6 Legal Status of UN and Associated Personnel in Peace Support Operation

The term 'legal status of UN and associated personnel' is an important aspect of PSO because it relates directly to how IHL applies to them while serving in an area of armed conflict and how the rules protect them. In robust peace operations of today, PSO forces take part in actual combat aside from just self defence. The 1994 Convention on the Safety of the United Nations and Associated Personnel (Safety Convention) contains what is referred to as a 'switch' clause which states that when peace operation forces are engaged as combatants to an international armed conflict, they can no longer rely on the protection offered by the Safety Convention.[25] The Secretary General's Bulletin on the Observance of UN forces of IHL corroborates this assertion wherein it provides that the Bulletin "does not affect the protected status of members of peacekeeping operations under the 1994 Convention on Safety of UN and Associated Personnel or their status as combatants as long as they are entitled to the protection given to civilians under international law of armed conflict."[26] It therefore makes it clear that if UN troops are in a position of combatants or where they are not entitled to the protection given to civilians, they cannot be protected by the Safety Convention. In that case, they become lawful targets to the belligerents in such an armed conflict. There are three types of protection afforded personnel in PSO, namely; general protection, special protection and evolving regime against impunity.

The category of general protection is based on IHL and human rights law. The host state has the primary responsibility of securing the legal status of personnel in peace operation. The host state is under obligation to secure the fundamental human rights and freedoms to everyone in the operation, irrespective of their position in the operation in question in so far as

[25]Engdahl, O. (2008). "The Legal Status of United Nations and Associated Personnel in Peace Operations and the Legal Regime Protecting Them," 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, Italy.p.113.
[26]Section 1, Observance by United Nations Forces of International Humanitarian Law.ST/SGB 1999/13.

they come within the jurisdiction of the host state, in terms of human rights law.[27] The parties to the armed conflict are also under obligation in IHL to treat peace operation personnel as civilians if they do not participate in the conflict.[28] This appears to be the situation only in the ideal. There is hardly any peace operation especially where the military is involved that they may not use force to ensure the protection of civilians and for their self defence. In such situations, some parties to the armed conflict may simply see them as taking sides and attack them.

Special protection refers to the protection given to some categories of peace operation personnel depending on their roles. For instance, military observers and UN civil police are given the status of 'experts on mission' which is a protected category of personnel in the 1946 Convention of Privileges and Immunities of the UN. The military contingents are not usually covered by this Convention. Their legal status is rather derived from the 'Status of Forces Agreement' (SOFA) which is a bilateral agreement between the UN and the host nation when it is a UN operation.[29] The SOFA provides the military personnel with special privileges and immunities to enable them fulfill their tasks under the mandate of the mission. Some of the privileges include freedom of movement, right to carry firearms and the right to set up their own communication systems.[30] One of the most important provisions is, the provision that the contingent members fall under the exclusive criminal jurisdiction of their sending states.[31] The sending state investigates and tries such personnel. In some situations, the UN takes over the investigation if the sending state is not willing or hesitant to conduct a credible investigation. This is to ensure that the integrity of the mission is maintained and that its image is not destroyed by acts of peacekeepers. Even when the UN conducts the investigation, it is still the

[27]Engdahl, O.opcit. p.113.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] (2013) *Accord entre l'Organisation des Nations Unies et le Gouvernement de la République du Mali relatif au statut de la Mission multidimensionnelle intégrée des Nations Unies pour la stabilisation au Mali.* p.15.

duty of the sending state to prosecute but the UN can repatriate such a personnel if found culpable.

The third aspect of protection is the evolving legal regime against the notion of impunity for crimes committed against personnel in peace operations. The most prominent set of rules within this category are set out in the 1994 Convention on the Safety of the United Nations and Associated Personnel.[32] This was made to check the incessant killing of PSO personnel. The host state is mandated to prosecute or extradite the belligerents in this regard.[33] This regime against impunity is very important especially in a PSO like Mali where UN personnel are killed frequently by hostile elements without any obvious consequences on the part of the perpetrators. In MINUSMA for example, a Chadian soldier that shot his commanding officer and the medical officer from Chadian contingent in 2016 was repatriated for him to be prosecuted by Chadian authorities in his home state of Chad.

2.7 Peacekeeping

Peacekeeping is defined as "the prevention, containment and termination of hostilities through the medium of a peaceful third party intervention organised internationally, using multinational forces to restore and maintain order".[34] UN peacekeepers consist of military personnel, civil police personnel and civilian personnel from many countries. In Mali for instance, the UN military personnel are over 10,000 drawn from 50 countries as at June 2017.[35] Their tasks included monitoring and observing peace processes that emerge in post conflict situations and assisting ex-combatants in implementing the peace agreements they have signed. A PSO following an agreement or ceasefire that has established a permissive environment

[32]Engdahl, O. Op cit. p.115.
[33] Ibid.
[34]Laitin, D.D. (1977), *Politics, Language and Thought.The Somali Experience*. Chicago, University of Chicago Press. p.86.

[35] G1 Branch Brief for Force Commander's Morning Brief, MINUSMA, Bamako, Mali, 22 June 2017.

where the level of consent and compliance is high, and the threat of disruption is low is also referred to as peacekeeping. The use of force in such operation is normally limited to self-defence. It is worthy to note that peacekeeping operations are conducted believing that it is a post conflict situation but in reality, armed conflict still continues in some of the peacekeeping missions like Mali where it is not yet a full- fledged peace enforcement operation.

A peacekeeping situation indicates that there is relative peace to keep but in reality, these days, there is hardly peace. In Central African Republic, South Sudan and Dafur for example, the missions are referred to as peacekeeping missions but in reality, the troops fight most times to protect their own lives and those of civilians. The situation easily degenerates to peace enforcement when the belligerents refuse to cooperate.

2.7.1 Robust peacekeeping

Robust peacekeeping is a new terminology in PSO that is used to describe a PSO that is higher than ordinary peacekeeping in terms of the response of the PSO troops to the activities of belligerents where force is used to achieve its mandate if need be. In robust peacekeeping, the issue of the application of IHL in PSO or not comes up because of the military action that tilts towards making the PSO troops appear as combatants. When undertaking robust peacekeeping, UN missions operate under Chapter VII of the UN Charter which permits them to judiciously apply the use of force for deterrence and coercion. The basis for robust peacekeeping is 'a strong presence, posture and profile', a hardening of the UN peacekeeping image.[36]

A clear example of intent to embark on a robust peacekeeping was demonstrated by Sergio Vieira de Mello, the Special Representative of the UN Secretary General in East Timor in 1999, when he stated thus; "we chose not to opt for the usual and classical peacekeeping

[36]Nadin, P, Cammaert, P and Popovski, V. (2015) *Spoiler Groups and UN Peacekeeping.*London, Routeledge, p.82.

approach: taking abuse, taking bullets, taking casualties, and not responding with enough force, not shooting to kill. The UN had done that before and we weren't going to repeat it here."[37] Robust peacekeeping is one of the concepts that bring peacekeepers close to being parties to the conflict because they support the host government and use all necessary means including deadly force to restore peace. IHL therefore comes in to bear as the peacekeepers play the role of combatants. In most situations of robust peacekeeping, peacekeepers even engage in direct operation against the insurgents. The Mandate of MINUSMA is an example wherein it provided for countering asymmetric warfare thus:

> In pursuit of its priorities and active defence of its mandate, to anticipate and deter threats and to take robust and active steps to counter asymmetric attacks against civilians or United Nations personnel, to ensure prompt and effective responses to threats of violence against civilians and to prevent a return of armed elements to those areas, engaging in direct operations pursuant only to serious and credible threats[38]

It will appear difficult to classify the troops who are carrying out this mandate as civilians yet following the provisions of IHL to leave them as lawful targets presents a dilemma for peacekeeping. The term 'robust peacekeeping' takes the form of peace enforcement in some instances.

2.8 Peace Enforcement

Peace enforcement involves a credible and impartial application of coercive force to maintain a peace agreement or ceasefire where the level of consent and compliance is uncertain or absent, and the threat of disruption is high.[39] It can also be described as the application of military force or threat of its use, normally pursuant to international authorization, to compel compliance with generally accepted resolutions or sanctions.[40] It can equally be described as

[37] Samantha, P. (2008) *Chasing the flame: Sergio Vieira De Mello and the Fight to Save the World*. New York, Pengium Press, p. 324.
[38] Security Council Resolution 2295 (2016).MINUSMA Mandate.
[39] Multinational Peace Force South Eastern Europe Brigade Handbook for Peace Support Operations (2000), p.67.www.seebrig.org accessed on 2 February 2018.
[40] Ibid.

the use of military force in a PSO to compel peace in a conflict generally against the will of the belligerents. The purpose of peace enforcement is to maintain or restore peace and support diplomatic efforts to reach a long-term political settlement. Peace enforcement operations are mandated by Chapter VII of the UN Charter. In most peace enforcement operations, some of the parties to the conflict did not accept a peace agreement hence the need to use force. IHL applies because the PSO troops use all necessary means including deadly force to restore peace and most times, they fight as combatants. An example is the Intervention Brigade under the United Nations Mission in the Democratic Republic of Congo.[41] Some of the tasks of PSO troops and other components of such a mission in peace enforcement include peace restoration, protection of humanitarian operations, establishing and protecting 'safe areas' or exclusion zones, and enforcing sanctions. Others are guarantee and denial of movement, establishing and enforcing No-Fly-Zone and protection of human rights. Peace enforcement is usually a very good option when the belligerents in an armed conflict refuse to come to the negotiating table and when they remain recalcitrant and refuse to sign any peace agreement and continue to attack UN personnel and civilians.

2.9 Peace Making

Peacemaking is a process of diplomacy, mediation, negotiation, or other forms of peaceful settlement that end disputes and resolve the issues that led to conflict under Chapter VI of the UN Charter.[42] It is one of the most peaceful aspects of PSO. The use of the military is highly reduced in peace making operations. It is mainly diplomatic and usually at a political level. The military activities in peacemaking operations include military to military relations and security assistance operations. There may also be military exercises and peace time deployments to enhance diplomatic process by demonstrating the engagement of peace forces

[41]United Nations Mission in the Democratic Republic of Congo.www.monusco.org accessed on 2 February 2018.
[42] Multinational Peace Force South Eastern Europe Brigade Handbook for Peace Support Operations (2000), p.67.www.seebrig.org accessed on 2 February 2018

with regard to ensuring atmosphere of cooperation, assistance and commitments. Military to military contacts and cooperation within the region where the peace building is carried out enhances diplomacy by influencing important groups in the region to promote a stable environment in order to achieve success in the diplomatic initiatives. Some of the tasks of PSO personnel in peace making operation include provision of good offices, liaison and negotiation, surveillance, sanctions and embargoes, mediation, conciliation and diplomatic isolation. [43] It is one of the last stages in PSO.

2.10 Peace Building

Peace building consists of post conflict actions, primarily political, social, diplomatic, economic and military measures that strengthen and rebuild civil infrastructure and institutions in order to redress the causes of a conflict and to avoid a return to conflict. It also includes mechanisms that advance a sense of confidence and well-being and support economic reconstruction.[44] Peace building is usually carried out after peacekeeping or peace enforcement. It is expected that during an armed conflict, the structure of the society would have been negatively affected in terms of burnt houses, destruction of institutions of judiciary, legislature and even the executive. So many families may also have lost their loved ones during the conflict which may have been checked through peacekeeping or peace enforcement.

Peace building as the name suggests involves rebuilding the society that may have been destroyed by armed conflict. IHL applies if there is resurgence of armed conflict otherwise Human rights law continues to apply. Peace building activities include restoring civil authorities, rebuilding physical infrastructure, and reestablishing commerce, schools, and medical facilities.[45] The role of the military at this stage is mainly assisting in selected areas as conduct of elections and demobilization of former members of armed groups that took part in

[43] Ibid.
[44] Ibid.
[45] Ibid.

the armed conflict. The military involvement at this stage also focuses on the provision of stable and secure environment. Other contributions by the military to peace building could be education and training of the host armed forces. Other components of PSO like the police, human rights bodies and civilian staff play more prominent roles at this stage than the military. In the absence of armed conflict and combat, human rights law continues to apply in the place of IHL. The UN Mission in Liberia (UNMIL) is an example of a recent peace building mission where the armed conflict has been over for some years but PSO continued with peace building activities which led to the peaceful conduct of Presidential Election and the swearing in of the former World Footballer of the Year 1996, Mr George Weah as the President of Liberia on 22 January 2018.[46] Nigerian soldiers were finally withdrawn on 8 February 2018 and the UN Mission's mandate ended on 30 March 2018 and Liberians have now taken charge of the fate of their country.

Some other tasks of PSO components in peace building include supervising the withdrawal of troops usually referred to as draw-down in UN, ensuring withdrawal of heavy weapons to interim or final locations, monitoring external borders, supervising exchange of prisoners and return of refugees and displaced persons. Others include assisting in the restoration of civil infrastructure, de-mining and Explosive Ordnance Disposal (EOD) Operations, support establishment of new political structures, assisting in restoration or establishment of civil administration and law and order. PSO components also supervise the relocation and demobilization of warring factions, regular and irregular forces.

2.11 Conflict Prevention

Conflict prevention is an activity that seeks to anticipate and forestall conflicts. It includes different activities under Chapter VI of the UN Charter, ranging from diplomatic initiatives to preventive deployment of troops, intended to prevent disputes from escalating into

[46] www.unmil.org accessed on 4 February 2018.

armed conflicts or from spreading.[47] Early warning, surveillance and stabilizing measures, sanctions and embargoes and non-combatant evacuation operations are embarked upon by different components of PSO to achieve conflict prevention. The resolution of the near constitutional conflict in the Gambia in 2017 was an example of where diplomatic efforts by the West African Sub region yielded results even before the intervention of the UN. The troops from Nigeria, Ghana, Senegal and other West African counties were deployed while diplomatic discussions were still ongoing. No single shot was fired but peace was achieved. There was no need for the application of IHL in that instance. The looming conflict was prevented. The saying that prevention is better than cure is very instructive in armed conflict situations especially in Africa. Continued armed conflicts go with hunger, starvation, several deaths and misery. Most times, the tactics of conflict prevention still gets resorted to in order to solve the problem in some instances after the armed conflict.

2.12 Humanitarian Operations

Humanitarian operations are the operations conducted in PSO aimed at assisting the refugees, displaced persons and vulnerable members of the society in an armed conflict zone. It is carried out simultaneously in almost every PSO. It requires a lot of resources to effectively carry it out. Some of the tasks carried out by components of PSO in humanitarian operations include supporting and protecting humanitarian aid convoys and transporting humanitarian aid, to include, air drops. Others include health and medical support, assisting in relocation or return of refugees and displaced persons, protection of human rights, disaster relief, maintaining, repairing and even creating routes and critical infrastructure.[48]

The operations also include programmes conducted to relieve or reduce the results of complex emergencies involving natural or man-made disasters or other endemic conditions

[47]Multinational Peace Force South Eastern Europe Brigade Handbook for Peace Support Operations (2000), p.70.www.seebrig.org accessed on 4 February 2018
[48] Ibid.

such as human pain, disease, hunger, or deprivation that might present a serious threat to life or may result in great damage or loss of property. Humanitarian operations supplement or complements the efforts of a host nation, civil authorities, or agencies that may have primary responsibility for such assistance to citizens of such country. Non-Governmental Organisations (NGO) like *medicine sans frontier* (Doctors without borders) and ICRCare usually involved in such operations.[49]

In humanitarian operations where armed conflict persists, IHL applies as appropriate. It is usually a very difficult aspect of PSO because the humanitarian aid workers are usually victims of hostile attack when they go to deliver aid to civilians. They are however usually escorted but that does not prevent their vehicles from hitting mines planted by belligerents. In Mali and DR Congo, aid workers get attacked and killed by members of different armed groups hence the devotion of troops to ensure the safety delivery of the humanitarian aid.

2.13 War

War is a state of armed conflict between different nations, states, or armed groups like the world war that was fought by allied forces and Germany.[50]Conflict, results from the tension and struggles between the forces of change and the forces for the maintenance of status quo which are dynamic features of every political system. War can also be defined as the deliberate application of violence occasioned by incompatibility in human interactions which take place as a last resort in defence of vital interests. As Momah said "Fighting a war can cost more blood and money than any other undertaking in which nations engage".[51] Therefore, war remains the greatest tragedy that befalls mankind, because to win a war it must be fought not as one may wish but as one must. The expression 'war' is mainly used in armed conflicts between

[49] Ibid.
[50]Rikye, I.J et al (1993). *The Thin Blue Line: International Peacekeeping and its Future.* New Haven, Hopkins, Yale University Press. p.11.
[51]Momah ,S. (1995).*Global Disorders and the New World Orders,* Second Edition, Lagos, Vision Books Ltd, p.12.

states also referred to as an international armed conflict. IHL applies in war situations. Emphasis has shifted from war between states to intra-state armed conflicts.

2.14 Detention

Detention is a concept that is familiar in IHL. Detention could mean incarceration, imprisonment, deprivation of freedom, being kept in custody etc. In PSO, the meaning of detention is a little different from what people generally believe it to be. Mere deprivation of freedom of movement no matter how brief is termed as detention and any person detained by UN personnel shall be released to local authorities within a period of 48 hours.[52] The essence of this provision is to comply with the Standard Operating Procedure of the Mission on detention, which is in tandem with the provisions of IHL. Detention is therefore allowed in PSO but with strict conditions of treating the detainees humanely and in accordance with the provisions of the Geneva Convention which makes it clear that detainees are to be treated humanely.

2.15 Concept of Armed Conflict

Armed conflict is a situation where armed groups use weapons to pursue their goals. It could be between a government force against another government force or between a government force and a non-government force in the same state. Generally, in armed conflicts, both combatants and non-combatants get killed, the fabric of the society gets destroyed and in many of the cases, the international community comes in to solve the problem in terms of deployment of PSO by the UN or a regional body like what ECOWAS did in Sierra Leone and Liberia before the intervention of the UN. IHL applies in all kinds of armed conflict. In the words of Ladan,[53] while enumerating the characteristics of the present situation in the theatres of armed conflict, "most armed conflicts are of an internal nature and most of the victims of

[52]MINUSMA Rules of Engagement 2017.
[53]Ladan, M,T. (2007) *Materials and Cases on Public International Law.* Zaria, Ahmadu Bello University Press.p.250.

those conflicts are civilians…the principles and basic rules of international humanitarian law remain a hard core of values universally accepted by the international community." Armed conflicts could be classified into three, namely, international armed conflict, internationalized armed conflict and non-international armed conflict.[54] These three types of armed conflict will be discussed subsequently.

2.15.1 International armed conflict

International armed conflict (IAC) as the name implies is an armed conflict involving two or more different states. The Geneva Convention 1949, Common Article 2 referred to an international armed conflict when it stated that all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of total or partial occupation…It therefore implies that an international armed conflict is a conflict between the legal armed forces of two different states. An example is the North Korea and South Korean war of 1950. IHL applies in IAC.

2.15.2 Internationalized armed conflict

The situation of internationalized armed conflict is when a conflict occurs between two different armed groups fighting internally but supported by two different states. An example was the armed conflict in the Democratic Republic of Congo (DRC) in 1998 when forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the DRC.[55] IHL applies in this type of armed conflict. This type of conflict easily destabilizes a country because the belligerents supporting armed groups in another country may not have the interest

[54]Chelimo, G.C.(2011). "Defining Armed Conflict in International Humanitarian Law" *Inquiries Journal, Social Sciences, Arts and Humanities*, Vol 3, No 04, p.1. www.inquiriesjournal.com accessed on 5 February 2018.
[55] Ibid.

of that country at heart but only their selfish ends to sell arms and or to overthrow the government of that nation to enhance their trade.

2.15.3 Non international armed conflict

Non-international armed conflicts (NIAC) as provided for, by Common Article 3 of the Geneva Convention are armed conflicts that are non-international in nature occurring in one of the High contracting parties. This implies that one or more of the parties are non-governmental in nature. Common Article 3 however states that it does not apply to other forms of violence such as riots, isolated and sporadic acts of violence. For a situation to be classified as a NIAC, it has to achieve two variables, first, the hostilities have to reach a certain minimum level of intensity and form in a collective character and second, there has to be a certain level of organization of the parties.[56] IHL applies in a NIAC. Most of the armed conflicts in the world today are non-international armed conflicts, for example, the armed conflicts in South Sudan is between the state and other armed groups within the same country. This is the same in Mali, Dafur, Chad, Congo DR among others.

2.16 Rules of Engagement

Rules of Engagement (ROE) are the guidelines that dictate the use of arms and force in operations. They also specify the dos and don'ts in an operation. Every operation where arms are used usually has ROE. All PSO where troops are deployed have their ROE that are specific to the mission. The document derives its authority from the mandate. For instance, the MINUSMA ROE as at 2017 derived legitimacy from the Security Council Resolution 2295 of 2016. They specify arms and the way they have to be used in the mission. They also provide for when force up to and including deadly force should be used and when force excluding deadly force should be used. ROE also provide for situations when alternatives to force should

[56] Ibid.

be used by troops to achieve their objectives.[57] ROE amplify the provisions of IHL and the breach of ROE provisions are investigated and can lead to a PSO personnel being repatriated from the mission or being prosecuted in his home country. ROE equally make provisions for weapon table of any mission. This means the specific kinds of weapons that are allowed in a mission for example, personal rifles, mortars and armour personnel carriers are used in MINUSMA Mali.

2.17 Standard Operating Procedure

Standard Operating Procedure (SOP) is a step by step instructions compiled by an organization to help its personnel to carry out complex routine operations. SOPs are aimed at achieving efficiency, quality output and uniformity of performance while reducing miscommunication and failure to comply with the regulations of the organization. In PSO, there are usually several SOPs to guide UN personnel, for example, the SOP on detention in MINUSMA specifies that on arrest of any national of Mali by UN personnel, he or she must be handed over to the local authorities within 48 hours except in situations where it may be extended to 72 hours by the authority of the Special Representative of the Secretary General.[58] In the case of minors, they are to be handed over to the department in charge of children in the presence of staff of the United Nations Children's Fund (UNICEF) and ICRC.[59] This SOP is meant to comply strictly with the provisions of IHL with regard to detention. The essence of the provision is to ensure that civilians and arrested persons generally are not maltreated and are made to undergo a normal judicial process in the host state. The implementation of the SOP on detention in MINUSMA for instance, lays more emphasis on the handing over or release of the arrested suspect than finding out the suspect's involvement in such a crime that led to his or her arrest.

[57]MINUSMA ROE 2017.
[58]MINUSMA Standard Operating Procedure on Detention dated 11 Dec 2015.
[59]Ibid.

2.18 Status of Forces Agreement

Status of Forces Agreement (SOFA) with regard to PSO is an agreement between a host country and the UN concerning the conditions of service and approved dos and don'ts of the UN troops. This agreement includes when and where to wear uniforms, how to deploy communication equipment, approved fly zones and responsibility for criminal jurisdiction with regard to the troops. For example, MINUSMA SOFA provides for arrest and custody of suspects, both locals and foreigners alike to be in line with the provisions of Geneva Convention.[60] SOFA guides all UN missions and each troops contributing country is aware of the SOFA to determine its limitation to her powers.

2.19 Terrorism

The term, terrorism was coined originally to describe state action, specifically that of the revolutionary regime of 1793 to 1794 in France, designed to consolidate the new government's power against all perceived subversives and dissidents.[61] Terrorism is known to evoke fear in the populace and the acts of terrorists are usually aimed at changing a government or making a government to succumb to its wishes. It makes the people to lose confidence in the government of the day by creating situations where the populace will feel that the government is incapable of protecting them. The term is sometimes used loosely especially when the person using it wants to tag a group and reduce its influence on the populace. While the legal frameworks governing terrorism and IHL may have some common ground, IHL expressly prohibits most acts that are criminalized as 'terrorist' in domestic legislation and international conventions dealing with terrorism. The defining feature of any act that is legally classified as terrorist, whether under domestic or international law is that it is always penalized as

[60] SOFA between MINUSMA and the Republic of Mali dated April 2013.
[61] Pokempner, D. (2002) "Terrorism and Human Rights: The Legal Framework" Seminar on International Humanitarian Law and Terrorism organized by the International Institute of Humanitarian Law in Cooperation with the George C. Marshall Centre, Sanremo, Italy. p.23.

criminal.[62] PSOs operate in some areas where armed conflict could have some elements of terrorism even when it is not clearly obvious. Even in such situations, the PSO troops still observe IHL whether the opposing armed groups observe IHL or not and there comes the challenge of how to deal with the situation because the state apparatus is not strong enough to hold them as criminals and PSO troops may not have the mandate for counter taerrorism operation.

2.20 What Qualifies a Conflict to be International or Non-International Armed Conflict?

An international armed conflict (IAC) is a conflict between two countries, like that of Nigeria and Cameroun in the past, which was eventually resolved at the International Court of Justice. Another example is that of India and Pakistan which led to the deployment of UN peacekeepers at the Indian and Pakistani border. Though IHL was made, mainly with IAC in mind, it equally caters for non-international armed conflict (NIAC) which is an intra-state conflict. NIAC is defined as a protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups, arising on the territory of a state. The Malian conflict is a clear example of NIAC as the Malian armed forces have been on a protracted armed conflict with different armed groups arising from the territory of Mali. Some of the armed groups include: Ansar Dine (Defenders of the Faith), Al-Qaeda in Islamic Magheb (AQIM), GandaKoy (Masters of the Earth, local Songhai militia) and GroupeSalafiste pour la Predication et le Combat (GSPC) (Salafist Group for Preaching and Combat). Others are Haute Conseil de l'Azawad (HCUA) (Supreme Council for Azawad), MouvementIslamique de l'Azawad (MIA) (Islamic Movement of Azawad), Mouvement National de l'Azawad (MNA), (National Movement of the Azawad, Mouvement National pour la Liberation de

[62] International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Report of the 32nd International Conference of the Red Cross and Red Crescent, Geneva, October 2015.p.17.

l'Azawad (MNLA) (National Movement for the Liberation of Azawad, MouvementPopulaire Pour de l'Azaouad (MPA) (Azaouad People's Movement) and Mouvement pour l'Unite et le Jihad en Afrique de l'Ouest (MUJAO) (Movement for Unity and Jihad in West Africa.

2.21 Does IHL apply to Non-International Armed Conflict in Mali?

It is established that the conflict in Mali is a NIAC and by virtue of Article III of the Geneva Convention, IHL applies to wrongful actions taken in a NIAC. Some of the criteria that qualify the application of IHL in NIAC are that the hostility must reach a minimum level of intensity. This may be when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of using the police. Secondly, the non-government groups involved in the conflict must be considered as parties to the conflict meaning that they possess organized armed forces under a certain command structure and have the capacity to sustain military operations. These principles were further elaborated in the case of ***R v Tadic*** wherein the Appeals Chamber of the International Criminal Tribunal for Yugoslavia (ICTY) came to the conclusion that customary international law imposes criminal responsibility for grave breaches of the common article 3 of the 1949 Geneva Conventions which is applicable to NIAC.[63] These qualifications match the situation of the armed conflict in Mali. The armed groups are organized and have different command structures and uniforms in certain cases. IHL therefore, obviously applies to the NIAC in Mali.

2.22 Does IHL apply to the Peacekeeping Force in Mali?

The UN Secretary General's Bulletin titled 'Observance by United Nations Forces of International Humanitarian Law which came into effect in 1999 provides that IHL is applicable in peacekeeping operations when the use of force is permitted in self defence. The rules of engagement of MINUSMA authorize the UN troops in Mali to use force in self defence and in

[63] www.trialinternational.org accessed on 25 August 2019.

many other situations when required. The thresh hold of conflict in Mali has equally reached what is required for IHL to apply considering the high intensity, protracted nature and level of casualties recorded among civilians and peacekeepers. IHL therefore applies to the UN troops in Mali though not without challenges.

In this conceptual clarification and historical development of IHL, the terms that are used in this work were explained with examples and some conceptual questions answered. The essence is to enable the reader to understand the terms as used in the context they were used. Peace support operation has been explained to include peacekeeping, peace enforcement, peace building, peacemaking and humanitarian operations. IHL applies for UN troops in all these phases of operation, except where armed conflict is no longer existing. Some of these terms are used interchangeably and unless one understands them, it may cause confusion while coming across them, hence the importance of their clarification.

CHAPTER THREE

BACKGROUND TO THE MALIAN CONFLICT

3.1 Introduction

The deployment of Peace Support Operations (PSO) in Mali was as a result of armed conflict which made the UN mission in Mali to be eventually classified as the most dangerous UN Mission in the world.[1] The armed conflict also brought about the discussion on the application of international humanitarian law (IHL) in Mali. The whole discussion around the application of IHL in United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) therefore revolves around the armed conflict in the area, hence the need to go to the root of the armed conflict in order to discover the remote and immediate causes and trace it to the current deployment of MINUSMA to properly position the discussion and if possible, find a way out of it for the benefit of not only Malian people but for humanity in general. This aspect of the work encompasses the brief history and Geography of Mali, political configuration of Mali, armed groups in Mali and their areas of operation, the intervention of the African Union and the intervention of the UN.

3.2 Brief History and Politics of Mali

The Mali Empire arose from a small kingdom based on the upper Niger River that expanded rapidly in the thirteenth century under the Malinké ruler Sundiata Keita. Sundiata led a Mande revolt against the Soso king and then unified a vast region of the western Sudan into the Mali Empire.[2] The empire reached the pinnacle of its power in the 14th century when it extended over a large area centered in the upper Niger and encompassed numerous vassal

[1]Leithead, A in a BBC News of 20 November 2015. https://www.bbc.com accessed on 10 February 2018.
[2] History of Mali, Library of Congress, Federal Research Division, January 2005. p.2.
https://www.loc.gov>profiles>Mali accessed on 11 February 2018

kingdoms and provinces. The most famous ruler of that century was Mansa Kankan Musa I (1312–37).[3] The Mali Empire's wealth in gold became renowned in both the Arab and Western worlds. Under the Mali Empire, the ancient trading cities of Djenné and Tombouctou (often referred to as Timbuktu) were centers of both trade and Islamic learning. Subsequently, the empire declined as a result of court intrigue and disputes over succession. Vassal provinces revolted in the late 14th century, and the Songhai Empire ultimately supplanted the Mali Empire in the 15th century.[4] As early as 14th century, Mali had started experiencing revolution.

The kingdom of Mali's empire has had a huge effect on the development of West Africa right up to the present day. The spread of Mande-speaking people over an area that extended from Gao in the east as far as the west coast, together with trade, conquest and the diffusion of Islam, has determined the historical, economic, ethnic and linguistic picture of most of this part of the continent.[5] In the colonial era, Mali fell under the control of the French, beginning in the late 1800s. By 1893, the French had appointed a civilian governor of the territory they called French Sudan, but active resistance to French rule continued.[6] By 1905, most of the area was under firm French control. French Sudan was administered as part of the Federation of French West Africa and supplied labour to France's colonies on the coast of West Africa. In 1958 the renamed Sudanese Republic obtained complete internal autonomy and joined the French Community. In early 1959, the Sudanese Republic and Senegal formed the Federation of Mali, which gained full independence from France as part of the French Community on 20 June, 1960.[7] Following the withdrawal of Senegal from the Federation in August 1960, the Sudanese Republic became the independent nation of Mali on 22 September, 1960, with ModiboKeïta as President. Keïta established a one-party state, withdrew from the French Community in 1962,

[3] Ibid.
[4] Ibid.
[5]The Wealth of Africa.The Kingdom of Mali.The CarAf Centre www.britishmuseum.org accessed on 22 February 2018.
[6] History of Mali, op cit. p.3
[7] Ibid.

adopted an independent African and socialist orientation with close ties to the Eastern bloc, and implemented extensive nationalization of economic resources. Following a progressive economic decline, however, Mali was forced to rejoin the Franc Zone in 1967.[8]

In November 1968, a group of junior army officers led by Lieutenant MoussaTraoré overthrew the Keïta regime in a bloodless coup and established a 14-member Military Committee for National Liberation with Traoré as president. The military-led regime attempted to reform the economy, but its efforts were frustrated by both political turmoil and a devastating drought in the Sahel lasting from 1968 to 1974.[9] Political and economic instability continued up to the 1990s. In 1990 cohesive opposition movements began to emerge, including the National Democratic Initiative Committee and the Alliance for Democracy in Mali (Alliance pour la Démocratie au Mali—ADEMA). The increasingly turbulent political situation was complicated by the rise of ethnic violence in the north in mid-1990.[10] The return to Mali of large numbers of Tuareg who had migrated to Algeria and Libya during a prolonged drought increased tensions in the region between the nomadic Tuareg and the sedentary population. Ostensibly fearing a Tuareg secessionist movement in the north, the Traoré regime imposed a state of emergency and harshly repressed Tuareg unrest. Despite the signing of a peace accord in January 1991, unrest and periodic armed clashes continued.[11]

The Traoré regime was overthrown in 1991 following a widespread protest against the government. The coup was led by Lt Col AmadouToumaniTraoré.[12] The military regime in conjunction with some appointed civilians produced a draft constitution approved by a national referendum in January 1992 which created a multi-party democracy that led to the birth of the Third Republic. The problem of unrest did not still end but some of the measures put in place to resolve the problems led to the government signing a peace deal with rebel forces in April

[8] Ibid.
[9] Ibid.
[10] Ibid. p.5.
[11] Ibid.
[12] Ibid.

2002. Among the measures agreed on were the creation of a new administrative region of Kidal, the incorporation of Tuareg fighters into the armed forces, the demilitarization of the north, and the implementation of programs designed to promote greater economic and political integration of the Tuareg.[13]

The roots of the conflict in Mali especially against the ruling elites can be traced to ethnic-political tensions which developed into a separatist movement in the northern part of the country. The tension came to a climax in 2012 when armed Islamist extremists joined the rebellion.[14] The 500,000 strong Islamic Tuaregs in the north felt that they had been marginalized since independence from France in 1960, alleging that the development needs of the northern region had been long neglected and that the region lacked representation in the central government of Bamako.[15] The situation was worsened by the collapse of the regime of Ghadafi in Libya which led to the influx of Tuareg fighters that were initially in Libya. It was this latest uprising that brought about the intervention of France, the African Union, and subsequently the UN which invariably necessitated the application of IHL in MINUSMA as a topic of discussion.

3.3 Geography of Mali

Mali is a landlocked nation in West Africa, located southwest of Algeria. The size of the country is about 1.2 million square kilometers.[16] The country shares a total of 7,243 kilometers of land boundaries with seven bordering states: Algeria (1,376 kilometers) to the north and northeast, Niger (821 kilometers) to the east, Burkina Faso (1,000 kilometers) to the southeast, Côte d'Ivoire (532 kilometers) to the south, Guinea (858 kilometers) to the

[13]Ibid. p.6.
[14]Oluwadare, A.J. (2014) "The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitations of a Regional Actor. *Journal of International and Global Studies,* Volume 6, Number 1. p.113. http://www.lindenwood.edu/files/resources/106-120.pdf accessed on 22 February 2018.
[15] Ibid.
[16] Library of Congress – Federal Research Division Country Profile: Mali, January 2005. p.4. https://www.loc.gov>profiles>Mali accessed on 22 February 2018.

southwest, and Senegal (419 kilometers) and Mauritania (2,237 kilometers) to the west.[17] The map of Mali is in this work.[18] The country is landlocked and its territory encompasses three natural zones, namely; the southern cultivated Sudanese zone, central semiarid Sahelian zone, and northern arid Saharan zone. The terrain is primarily savanna in the south and flat to rolling plains or high plateau (200–500 meters in elevation) in the north.[19] There are rugged hills in the northeast, with elevations of up to 1,000 meters. Desert or semi-desert covers about 65 percent of the country's area. The Niger River creates a large and fertile inland delta as it arcs northeast through Mali from Guinea before turning south and eventually emptying into the Gulf of Guinea.[20]

The principal and two largest rivers in Mali are the River Niger (with 1,693 kilometers in Mali) and River Senegal. The River Niger is generally described as Mali's lifeblood, a source of food, drinking water, irrigation, and transportation.[21] The climate ranges from subtropical in the south to arid in the north. The country is mostly dry, with four to five months of rainy season. In Bamako, at an elevation of 340 meters above sea level, temperatures generally range from 16° C to 39° C.[22] January is the coldest month, with temperatures ranging from 16° C to 33° C, and April is the hottest month, with temperatures averaging 34° C–39° C. Annual precipitation in Bamako averages 1,120 millimeters. The driest months are December and January with zero rainfall.[23] The wettest month is August, which averages 220 millimeters of rainfall. Most of the country receives negligible rainfall, and droughts are a recurring problem. During dry seasons, a hot, dust-laden harmattan haze is also common. Flooding of the Niger River occurs regularly in the rainy season (approximately June/July–November/December).

[17]Ibid.
[18]Appendix C to the Thesis.
[19]Libraray of Congress. Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.

In terms of natural resources, Mali is endowed with bauxite, copper, diamonds, gold, gypsum, iron ore, kaolin, limestone, lithium, manganese, phosphates, salt, silver, uranium, and zinc, but not all deposits are being exploited, and some may not be commercially viable. Mali also has ample hydropower.[24] These rich natural resources are a part of the problem as armed groups struggle to occupy those areas that have resources in order to exploit them. Foreigners equally develop interest and participate in the exploitation mostly in the name of assisting Mali to solve her problems. Sixty-five percent of Mali's land area is desert or semi-desert. According to estimates in 1998, only 3.8 percent of Mali's area can be classified as arable land, and less than 0.1 percent was planted to permanent crops in that year. Mali was estimated to have 1,380 square kilometers of irrigated land in 1998.[25] The mostly desert parts of Mali in the north like Kidal serve as illegal trade routes for criminals. These crimes include human and drug trafficking. The country faces numerous environmental challenges, including desertification, deforestation, soil erosion, drought, and inadequate supplies of potable water. Deforestation is especially a serious and growing problem. According to the Ministry of the Environment, Mali's population consumes 6 million tons of wood per year for timber and fuel. To meet this demand, 400,000 hectares of tree cover are lost annually, virtually resulting to destruction of the country's savanna woodlands. The time zone for Mali is Greenwich Mean Time.[26] Mali has a population of about 18.95 Million as at 31 March 2018, going by UN estimate.[27] The geography of Mali is a contributor to the armed conflict in the country in a way. The citizens in the north do not have arable land and the weather is very hot in the dry season and very cold in the rainy season. This may have also accounted for lack of government presence because government workers would like to work in a more conducive environment which Bamako, Timbuktu and Gao represent to a large extent. The arid zone in the north is a

[24] Ibid.
[25] Ibid.p.5
[26] Ibid.
[27] www.worldometres.info>mali-population accessed on 1 April 2018.

drug and human trafficking route. This trade is said to be a major source of revenue for the armed groups and one of the reasons why they do not want the presence of PSO troops in the area who they feel block their routes which sustain their insurgency. The armed conflict brought about the quest for the application or otherwise of IHL. The geography of Mali is therefore also linked with the application of IHL in Malian armed conflict as the zeal of armed groups to control drug routes in the arid north makes them extremely violent and probably one of the reasons for their refusal to comply with IHL.

3.4 The Problem: Social, Political and Economic Factors Responsible for the Malian Conflict from 1980 to 2018

The causes of Malian conflict are multidimensional and traceable to social, political and economic problems. The current conflict is not new. Northern Mali is originally the homeland of the Tuareg, a people whose position in the Sahel was turned upside down by French colonialism.[28] The Tuaregs who were known to have once controlled the inter-Saharan trade routes and considered themselves as 'masters of the desert' suddenly became minorities in several new states. In Mali in particular, a minority ruled by the population they previously had viewed as inferior and historically had directed slave raids towards.[29] The Tuaregs have since the independence of Mali generally felt that they have lost out socially, economically and politically and used every opportunity to show their anger. The first Tuareg rebellion took place in the early 1960s, the second in the early 1990s, and as the National Pact of 1992 failed to produce tangible results on the ground, a new rebellion emerged in 2006.[30] These rebellions were relatively in a small scale until armed Tuaregs many of whom had lived in Libya for years started to return to Mali following the fall of the Gaddafi regime. Their arrival gave the

[28]Morten, B. and Utas, M. *The Malian Crisis: Causes, Consequences and Responses.*https://matsutas.wordpress.com/2013/05/07/the-malian-crisis-causes-consequences-responses-by-morten-boas-and-mats-utas/ p.1, accessed on 30 June 2018.

[29]Ibid.p.2.
[30] Ibid.

rebellion new momentum and yet another Tuareg rebel movement was formed, the Movement for the National Liberation of Azawad (MNLA).[31] While Tuareg rebellion was initially low scaled, based on their demands concerning power and positions, MNLA declared full independence of Azawad. The issue was no longer increased access to the spoils of the Malian state on the economic sphere, but to be independent and break away from the Malian State.

The credibility of the Tuareg rebellion waned and its unity negatively affected when MNLA fighters looted and plundered in the North and as the Malian army ran away, Salafist forces stepped in and effectively side-lined MNLA.[32] In all these, the Malian State and her population suffered the impact of the armed conflict.

Furthermore, when Mali gained independence from France in 1960, the new government had to assert its authority on a large territory, including desert regions where Tuareg and Arab communities directly challenged its authority.[33] Malian state officials resented certain sections of the northern population whom they regarded as the main obstacle to national unity which made it more difficult for the government at the centre to make steady progress. The southern elites resolved to focus their political and economic efforts on the 'useful' south of Mali, gradually marginalising the north of the country and imposing military rule on those regions. Even though peace agreements were signed and multiple demobilisationprogrammes implemented, none of them succeeded in normalising the relationship between the north and Bamako.[34] Those repeated failures are, in part, a direct consequence of the Malian state's strategy of taming the north. In order to prevent one group from gaining too much influence and posing a threat to central state authority, Bamako sought to divide the northern 'front' and

[31] Ibid.p.3
[32] Ibid.
[33]Chauzal, G and Van Damme, T. (2015) *The Roots of Mali's Conflict Moving Beyond the 2012 Crisis*.Clingendael, .Netherlands Institute of International Relations http://www.clingendael.nl/ p.8, accessed on 30 June 2018.
[34]Ibid.p.8.

exploit interethnic and sectarian tensions to impose its authority. [35]Among the instruments of this strategy were the use of electoral zoning to favour certain Tuareg tribes over other groups or the Arab community. Bamako also regularly employed ethnic-based vigilantes (Songhay and Fulani GandaKoy or GandaIso, and today the Grouped'auto-défenseTouaregImghadet allies (GATIA) movement) to counter the Tuareg and Arab threat. The direct and long-term consequences of this counter-insurgency strategy were deep animosity between northern populations, fierce resentment by communities towards the central state, and a very heterogeneous distribution of needs and demands that made inclusive peace talks and agreements far harder to reach. Indeed, Tuareg, Arab, Songhay or Fulani northern people all have different political agendas, and do not share the same culture, political history, languages or traditions.

They do not all recognise 'Azawad' as their common land, or the necessity of independence. Arabs and Tuaregs for instance, while not always opposed to Bamako, have long been in confrontation with the central state; the Fulani and the Songhay, on the other hand, have been far closer to Bamako, and have worked alongside the Malian regime for decades.[36] The divisions between northern populations is a crucial element in understanding the difficulty in converting post-conflict stability into anything like sustainable peace. Furthermore, intra-Malian tensions and community distrust have been aggravated by foreign interference and other, more passive, forces who have served to aid and abet tensions in the north. By taking advantage of the general weakness of the Malian state, these external actors have sought to build their influence primarily in the north. The north of Mali indeed became a prize in the eyes of countries like Libya and Algeria, two regional powers that have long sought to push their agenda for Sahelian influence as a step to broader geopolitical primacy. Late Colonel Qaddafi

[35] Ibid.
[36] Ibid.

attempted to garner the support of Malian Tuareg communities in order to fulfil his ambition of forming a League of Grand Sahara Tribes and impose himself as a continental leader.[37]

Ethnic manipulation and foreign meddling were also major causes of the Malian crisis and signs of a state whose presence in Mali's north was partial, partisan and unpopular with many groups. The Government of Mali and its foreign partners have focused mainly on fighting the insurgency in northern Mali, seemingly neglecting other necessary factors such as economic development or social grievances, thereby accelerating discontent and emblems of the negligence of public needs in the north. The aggregate of causes of Malian conflict and efforts of the Malian Government and the international community do not show a picture that the conflict ending soon. The grievances are still present and tussle for political power by the leaders of different armed groups and splinter armed groups do not indicate an early end of the conflict. IHL will therefore continue to apply in Mali for some time to come.

3.5 Armed Groups in Mali and their Areas of Operation

There are several armed groups operating in Mali. Some of them signed the Algiers Peace Agreement and some did not. Some of the armed groups include, Ansar Dine (Defenders of the Faith), Al-Qaeda in Islamic Magheb (AQIM), GandaKoy (Masters of the Earth, local Songhai militia) and GroupeSalafiste pour la Predication et le Combat (GSPC) (Salafist Group for Preaching and Combat).[38] Others are Haute Conseil de l'Azawad (HCUA) (Supreme Council for Azawad), MouvementIslamique de l'Azawad (MIA) (Islamic Movement of Azawad), Mouvement National de l'Azawad (MNA), (National Movement of the Azawad, Mouvement National pour la Liberation de l'Azawad (MNLA) (National Movement for the Liberation of Azawad, MouvementPopulaire Pour de l'Azaouad (MPA) (Azaouad People's

[37] Ibid.
[38] Cold-Ravnkilde, M. (2013) "War and Peace in Mali: Background and Perspectives" Danish Institute for International Studies Report. Copenhagen, Danish Institute for International Studies, p.4.

Movement) and Mouvement pour l'Unite et le Jihad en Afrique de l'Ouest (MUJAO) (Movement for Unity and Jihad in West Africa.[39]

The armed groups (AG) in Mali are classified into 2 categories based on the assent to Algeria Peace Agreement (APA). Those that attended and signed the peace agreement are referred to as Compliant Armed Groups (CAGs), while those that did not sign the agreement are referred to as Non-Compliant Armed Groups (NCAGs). This however does not preclude the fact that there are other AGs also operating in Mali, particularly those that recently fragmented from the CAG.

3.5.1 Compliant Armed Groups in Mali and their Areas of Operation

The CAGs include the MNLA, MAA and HCUA. The MNLA is founded on the 16 October 2011.[40] It has a secular or moderate Islamic ideology. Its aim is to establish autonomous state for the Tuaregs in Northern Mali, especially Timbuktu, Kidal, Gao and Mopti regions, to end marginalization of the Tuareg population. It is primarily constituted by Tuaregs, about 2,000 in strength many of whom are ex-Libyan soldiers. Among the key leaders are MahamadouDjeriMaiga, Bilal Ag Sharif and Mohammed Ag Najem. The major sources of financing include trafficking, taxation of contrabands and ransom from kidnappings. The stronghold of MNLA is Kidal, however MNLA also exists in Gao and Timbuktu. They have a conventional military organization with an efficient command and control system.[41]

The MAA on the other hand wasfounded in April 2013 and it also has a secular or moderate Islamic ideology. The aim of MAA is to protect the Arab community of Azawad as well as its business interests. It comprises mainly Berabiche Arabs and Tilemsi Arab tribes. The assessed strength is about 500 -1,000 fighters and the major stronghold is Lerneb.[42] The

[39] Ibid.
[40] www.minusma.unmissions.org accessed on 3 March 2018.
[41] MINUSMA U3 Force Commander's Briefing on 12 January 2016.
[42] Ibid

funding is also from trafficking and taxation of contrabands and other goods. The current leader is SidiIbrahim OuldSidati. Other key figures in MAA include Mahmoud Jeid, HenyOuldSidi Mohammed and Hussein Khoulam.[43]

i. Other Fragments of Compliant Armed Groups

This group refers to some CAGs that recently separated from the 3 principal CAGs that existed as at the time the peace agreement was signed. They include the *Coalition du Peuple de l'Azawad*CPA (Coalition of the Azawad People), a breakaway faction of MNLA, existing in Timbuktu, under the leadership of Ibrahim Ag Mohammed Assaleh. Others are the Coordination Des Movements et Forces Patriotiques De Resitance (CMFPR) 1 and 2, that emanated from MAA and existing in Timbuktu and Gao under the leadership of DjibrillaMoussaDiallo for CMFPR 1 and Ibrahim Abba Kantao for CMFPR 2, and *Grouped'AutodéfenseTouaregImghad et Alliés* (GATIA) formed in early August 2014 with the objective of stopping the advances of MNLA and MAA in Tilemsi Valley. The GATIA armed group is alleged to have serious sympathy for the Malian Government.

3.5.2. Non-Compliant Armed Groups in Mali and their Areas of Operation

On the other hand, there are 3 NCAGs operating in Mali. The Al-Qaida in the Islamic Maghreb (AQIM), AnsarEddine and Al-Mourabitoun.[44] In general, the NCAGs tactics, techniques and procedures (TTPs) are fairly similar. They operate in small, independent and mobile sub-groups which allow them to operate in an area wider than what they could dominate by static deployment. They often use improvised explosive devices (IEDs), mines and indirect fire (IDF) from mortars and rockets to attack MINUSMA, Barkane (French forces), Malian Defence and Security Forces (MDSF) and civilians.[45] The NCAGs also conducted some complex attacks where combinations of IEDs/mines, small arms fire or suicide bombers and

[43] Ibid
[44]MINUSMA U3 Force Commanders Conference Brief on 12 January 2016.
[45] Ibid.

IDF were used. They tactically exploit the terrain by using remote parts in rural areas of Mali as safe havens. They also conduct information operations, such as using leaflets, posting statements on social media, releasing videos on jihadist websites and to some extent, publicly claiming spectacular attacks. The map of Mali showing AGs' areas of dominance is in this work[46] and a pictorial representation of the organisational structure of AGs in Mali is equally contained herein.[47] Individual NCAGs are discussed further.

i. AQIM

The AQIM is an operational branch of world-wide Al Qaida that descended into Mali from Algeria. The overall aim of AQIM is to introduce an Islamic Caliphate in the Sahel region and as such, the aim in Mali is to implement a moderate Sharia Law in the country.[48] The overall commander of AQIM is Emir Abu Musab Abdel Wadoud, aka AbdelmalekDroukdel while the commander in Mali is YahaAbou Al-Hammam, also known as DjamelOkacha.[49] The group is organized into 4 sub-groups otherwise called the 'Katibas', namely Al Furqan, Al Ansar, TarekIbnZiad and Youssef Bin Tachfin. The Katibas could be likened to battalions even though they do not have the manpower and equipment status of a conventional battalion.[50] The main Area of Operation of AQIM is the general area around Aguelhok and Tessalit in northern Mali, especially in the mountains of the Adrar Des Ifoghas up to the border of Algeria. It was however reported in 2015 that AQIM had expanded its area of operations to the South West of Mali into Timbuktu, Segou and Mopti regions. According to different sources from the Forces ArméeMalien (FAMa), Katiba Al Furqan is operating in different groups in Timbuktu, Mopti and northern Koulikoro regions. One group is based between the Wagadou Forest and Nara. Another group has its main Area of Operation 60 km

[46] Appendix D
[47] Appendix E.
[48] Ibid.
[49] Ibid.
[50] Ibid.

north of Diabaly in the area between the village of Tili and Diorua.[51] There is another group operating in the area east of Tenekou while an unknown number of fighters have also been reported to be operating in the area north and northwest of Timbuktu, towards the Mauritanian border. [52]

The AQIM adopts asymmetrical tactics for combat, including the use of Improvised Explosive Devices (IEDs), Indirect Fire (IDF) and sophisticated complex attacks. AQIM has claimed several attacks using mines, victim operated improvised explosive devices (VOIEDs), (also known as booby traps), vehicle borne improvised explosive devices (VBIEDs) and suicide born improvised explosive devices (SBIEDs). One of such use of an IED by AQIM was the claimed attack on a MINUSMA Force Commander's convoy on 28 May 2015, 25km east of Timbuktu in which 3 MINUSMA troops were wounded in action. The AQIM also claimed responsibility for the 2 July 2015 armed attack on a MINUSMA convoy along Goundam – Timbuktu axis, and later released a video depicting the attack on 1 September 2015. In the attack, six Burkinabes were killed in action (KIA) while five others were wounded in action. (WIA). Some civilians were also killed. [53] The group equally kills innocent civilians who are perceived to give information on their activities.[54]

Their weapons include AK 47 assault rifles, Light and Heavy Machine Guns, rocket propelled guns (RPGs) and rockets. However, due to their links to other armed groups in Mali and inflow of weapons into Mali from Libya, it cannot be ruled out that the group could easily get possession of more advanced weapons. Sources of funding include international drug trade, human trafficking and ransom gotten from abductees.[55] It was once reported that almost all AQIM's victims of kidnapping in the Sahel, if not being kidnapped in Mali, have ended up in

[51] Ibid.
[52] Ibid.
[53] Ibid
[54]Ibid.
[55] Ibid.

northern Mali. The deteriorating security situation and the vast uncontrolled areas offer northern Mali to AQIM as a hiding place for their hostages during negotiations. They do not bother about the provisions of IHL in their operations.

ii. ANSAR EDDINE

AnsarEddine, meaning Defenders of the Faith, is a Tuareg dominated NCAG that ensued in Northern Mali as a result of the fall of Ghadaffi in Libya. The influx of Tuaregs supported a restive Tuareg political movement in northern Mali which turned into a new rebellion in January 2012.[56]Iyad Ag Ghaly, a prominent Tuareg political figure ordered Tuareg officers and enlisted personnel in the MDSF to desert and join the insurgency. The desired end state of AsarEddine is to establish Sharia law and an Emirate across northern Mali.[57]Iyad Ag Ghaly is the leader of the group supported by 2 deputies, Abdul KarimTargi and Al Gabbas. There is no elaborate detail about the hierarchical structure of AnsaEddine, especially the levels below Iyad Ag Ghaly and his deputies.[58]

The AnsarEddine like other NCAGs is also able to operate in areas outside their Areas of Operation, for example in Tessalit. There were instances of reports on the presence of AnsarEddine in southern parts of Mali.[59] The southern Katibas of AnsarEddine are said to be operating in the area of Nara, Koulikoro region and south of Sikasso region. AnsarEddine has demonstrated the ability to conduct complex attacks. Notable among their several claimed attacks was the attack against MINUSMA/BARKHANE base and MDSF installations in Tessalit, Kidal from 29 – 31 Dececember 2014 and on 1 Jan 2015. In these 3 days, 17 mortars and rockets were fired towards the camp. Another was the attack of 27 June 2015, when

[56]Cold-Ravnkilde, M. op cit. p.5.
[57] MINUSMA U3 Force Commander's Conference Brief on 13 January 2016.
[58] Ibid.
[59] Ibid.

approximately 30 fighters attacked Nara in Koulikoro region to free prisoners from the local prison. Several civilians died in the attack.[60]

Their weapon holding includes varieties of assault rifles and MGs, 81mm mortars, as well as 107mm and 122mm rockets. They also possess radio frequency jamming equipment. Their major source of financing is trafficking of narcotics and illegal sale of weapons between Mali and Algeria. It is also reported that AnsarEddine is financed by Islamists organization from Qatar. This connection was said to have possibly been established during Iyad Ag Ghaly's time in Saudi Arabia, where he allegedly made contact with radical Islamic groups.[61] This group does not respect the tenets of IHL in their operations.

iii. AL-MOURABITOUN

Al-Mourabitoun, meaning 'those who sign in blood' was a coalition of the former Ahmed Al-Tilemsi led *Mouvement pour l'Unicité et le Jihad en Afrique de l'Ouest* (MUJAO) and MokhtarBelmokhtar led a breakaway faction of AQIM. The coalition emerged in August 2013 as a result of ideology and strategy differences in AQIM, fuelled by quarrel over financial gains, which resulted in the expulsion of MokhtarBelmokhtar from AQIM.[62] Al-Mourabitoun's overall aim is to unify all Muslims from the Nile to the Atlantic, towards the formation of a new insurgency with a broader framework than AQIM. In addition, the group intends to seek revenge against the French and allies for the military intervention in Mali. Ahmed Al-Tilemsi was killed on 11 December 2014 by French forces, leaving MokhtarBelmokhtar as the key leader in Al-Mourabitoun.[63]

The main Area of Operation of Al-Mourabitoun is the traditional strongholds of MUJAO in Gao region between Ansongo and Menaka. The group allegedly consists of about

[60] Ibid.
[61] Ibid.
[62] Ibid.
[63] Ibid.

150 members. The group is said to have a link with Boko Haram (BH) of Nigeria.[64] Reportedly, BH members were once seen near Ansongo and Menaka in 2015. The group has also conducted attacks in areas outside their bases. For instance, the IDF attack of 27 August 2014 on Aguelhok. It is also speculated that Al-Mourabitoun is likely operating in northern parts of Kidal region, especially in the area around In-Afarak. Al-Mourabitoun possesses weapons ranging from AK-47 assault rifles to light and heavy machine guns, as well as mortars and rockets. They also use different kinds of explosives for their IED attacks. The use of old mines, primarily Belgian PRB-M3 mines or old rockets are common tactics of the group.[65]

Al-Mourabitoun's main income derives from trafficking activities. Due to their regional influence and connections to the other groups and into neighbouring countries they are able to control the trafficking activities in their areas and even profit from illegal taxing on transportation. They also generate income from ransom on kidnapping, mainly westerners. Additionally, Al-Mourabitoun has been reported to be receiving financial support from Jihadists all over the world, especially from the Gulf region.[66] They do not respect the tenets of IHL in their operations as they kill unarmed civilians to create fear among the populace.

3.5.3 Merging of Armed Groups

On 18 May 2017, all the non-compliant armed groups merged and formed one body known as *Jama'atNusrat al-Islam wal-Muslimin* (JNIM) (Group for the Support of Islam and Muslims).[67] Since then, their attacks especially indirect fire into UN Camps and villages have been more coordinated and deadlier. On 5 June 2017, the group launched an IDF attack on UN Kidal Camp which resulted in the death of 3 Guinean soldiers and 8 others wounded. They

[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] MINUSMA U3 Force Commander's Morning Brief on 19 May 2017.

have launched several IDF attack into UN Camp in Timbuktu since then killing several peacekeepers, and civilians and wounding many others without respecting the tenets of IHL.[68]

3.6 The Intervention of the African Union

The Malian conflict at a stage began to deteriorate and it became obvious that it was not within the capacity of the Malian Government alone to solve the problem. Chapter 8 of the UN Charter allows regional bodies like the African Union (AU) to intervene in conflicts within their regions. This is usually done in anticipation that a regional organization knows the terrain and people better and would probably solve the problem without the UN coming in. The most immediate cause of the intervention of the AU in Malian Conflict was the aftermath of the March 2012 Coup. The conflict continued to escalate and led to the displacement of about 412,000 Malians, including 208,000 refugees in Algeria, Burkina Faso, Guinea, Mauritania, Niger and Togo.[69] In the words of Oluwadare[70], "by November 2012, tensions erupted between the rebels in the North, with Ansar Dine and MUJAO repelling MNLA out of the main towns that it had occupied. AQIM destroyed many historic and cultural sites in Timbuktu. These attacks closed down the country's gold mining industry.[71]" With the escalating conflict, the AU pushed for better coordination of domestic and international efforts and stressed the need to restore state authority, security sector reform and elections.[72] Nigeria was one of the leading countries pushing for the resolution of Malian conflict considering the influence of the belligerents in Mali over the insurgency caused by Boko Haram Terrorists in Nigeria. Nigeria as always, needed to equally play its big brother role in the sub region. France, the colonial master of Mali had even deployed its own forces alone before the deployment of the AU.

[68]Ibid 6 June 2017.
[69]Oluwadare, A.J. Op cit. p.113.
[70] Ibid.
[71] Ibid.
[72] Ibid.

The Economic Community of West African States (ECOWAS) and AU leaders endorsed for the deployment of a regional force in Mali in November 2012. The bodies requested the UN Security Council to authorize an African led International Support Mission to Mali (AFISMA). It was made up of 3,300-member strong African force with infantry units, air assets and formed police units for an initial period of one year. The UN authorized the force in December 2012 and urged AFISMA to take all necessary steps to rebuild Mali's army, help the government to extend its authority to the north, protect civilians and stabilize the country. AFISMA had severe limitations in terms of logistics. There was also the fear of abuse of human rights by the troops and the UN HQ did not show adequate support for the AU Mission.[73] Several African and non-African countries contributed to the setting up of the mission which was initially known as International Support Mission for Mali (MISMA) with proposed 5,500 troops, to AFISMA with increased requirement for more troops.[74] Before the militants' push into Bamako, French Special forces had already been fighting in Mali alongside the Malian Army. France launched 'Operation Serval' on 11 January 2013, the aim of which was to oust the Islamic militants from the northern region.[75] France retook major northern towns like Gao, Konna, and Timbuktu by the end of January 2013, as the militants withdrew farther north into the desert and the Adrar des Ifoghas Mountains. Some of the jihadists staged suicide bombings and hit-run strikes against French and Malian units.[76]

The exploits of the French troops in Operation Serval did not prevent the deployment of the African regional force. The deployment of AFISMA was equally anchored on the observance of IHL and Human Rights Law. There were two different ways that the UN hinged its involvement in the Malian crisis during the deployment of AFISMA. They were logistics support and afterwards, to establish a UN peacekeeping operation for Mali. The UN authorized

[73]Ibid.p.115.
[74]. United Nations Security Council Resolution 2086 (2012). www.un.org accessed on 1 April 2018.
[75]Oluwadare, A.J. Opt cit. p.115.
[76] Ibid.

AFISMA to use force to support the Malian authorities in recovering areas in Northern Mali under the control of armed groups. The Secretary General made it obvious that any support by the UN to AFISMA was subject and consistent with the Human Rights Due Diligence Policy. In its subsequent resolution, the Security Council endorsed the Secretary-General's position, and emphasized that UN support to AFISMA must be consistent with IHL, human rights law and refugee law.[77] The Security Council while reviewing the situation in Mali with regard to human rights stated that the conflict in Mali had taken an acute toll on civilians. It observed recruitment of child soldiers, sexual violence and the extremely strict interpretation of Sharia law including amputations and stoning are as some of the horrific crimes perpetrated against civilians by armed groups, transnational criminal organisations and other armed opposition groups that have occupied the northern regions of Mali. Specifically, it equally observed that there had been widespread evidence of sexual and other violence against women and girls including gang rapes, public beatings, forced marriage and torture as reported by the Chair of the AU Commission on the situation in Mali dated 14 July 2012.

In addition, the United Nations Secretary-General's report on the situation in Mali on 29 November 2012 also documented various forms of human rights violations perpetrated by armed groups in northern Mali. Furthermore, several United Nations Educational, Scientific and Cultural Organisation (UNESCO) world heritage sites have been destroyed particularly in Timbuktu. Aside from violations committed against civilians, there have been reports of alleged ill treatment and summary executions of some captured combatants, in violation of international humanitarian and human right laws. It is within this context that the 353rd Peace and Security Council (PSC) communiqué of 25 January 2013 decided that civilian human rights observers were to be deployed as part of AFISMA to monitor the human rights situation in the recovered areas and in this way promote and support the respect for fundamental human

[77] O'Brien, P. (2013), Statement at the 30th Annual Seminar for Diplomats on IHL jointly organized by the ICRC and the New York University School of Law. Legal.un.org/ola/media/info_from_lc/POB Statement 30th NYU-ICRC.pdf.

rights and freedoms.[78] It is therefore obvious that the challenge of the observance of IHL has always been in Mali even before the deployment of MINUSMA.

The countries that contributed troops to AFISMA include Benin, Burkina Faso, Burundi, Cape Verde, Chad, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Niger and Nigeria. Others were Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Togo and Uganda.[79] AFISMA found it difficult to surmount the problem of the conflict mainly because it lacked sufficient logistics and did not get the required assistance from the UN and other stake holders. AFISMA only lasted from March 2013 to June 2013 when the United Nations Multidimensional Integrated Stabilisation Mission in Mali (*Mission multidimensionnelleintegreedes Nationsunies pour la stabilization au Mali)* was deployed.[80]

3.7 Other Non-Operational Challenges

A part of the background to the Malian conflict are some other non-operational challenges which have been pointed out previously. They include poverty especially among the population in northern Mali. The desert terrain makes it difficult for the people to cultivate the ground and get crops. Hunger coupled with the feeling of neglect make the youths of northern Mali easy to be recruited by armed groups. The feeling of being abandoned by the central government fuels the agitation of northern Mali population for an independent state of Azawad. There was also the divide-and-rule strategy of the central government in Bamako. Beyond the political and economic marginalisation of northern populations, southern authorities kept trying to divide northern communities in order to prevent one group from gaining too much political influence and to ensure a weakened north. Electoral zoning constituted, for example, an important resource for the authorities in Bamako in terms of political representation of northern communities was one of the strategies which fueled the conflict. By deciding to increase

[78] Letter dated 15 March 2013 from the Secretary-General addressed to the President of the Security Council. S/2013/163.www.securitycouncilreport.org/atf/cf .
[79]www.echoes-ecowas.int/wp-content/upload/2013 accesses on 22 April 2018.
[80]Oluwadare, J. Op cit. p.116.

representation of the less densely populated regions, the Malian government gave the Tuareg communities, mainly living in deserted areas, an electoral advantage over the Arabs, who are generally considered to be even 'less Malian' than the Tuaregs, especially because of the privileged links they were supposed to have with other Arab-speaking countries (Mauritania, Algeria, Libya). It allowed them not only to favour the Tuareg over the Arabs, but also to favour certain groups within the Tuareg community.[81] All these have continued to pose a problem and form parts of the background to the conflict in Mali which prompted the application of IHL.

3.8 United Nations Intervention in Mali

AFISMA did not last long because it could not achieve its mission of flushing out the belligerents and restoring peace in Mali. The United Nations Multidimensional Integrated Stabilisation Mission in Mali (*Mission multidimensionnelleintegreedes Nationsunies pour la stabilization au Mali)* (MINUSMA) was officially launched on 1 July 2013, following the adoption of Security Council Resolution 2100 of 25 April 2013.[82] The formation of the mission created an unusual consensus at UN Headquarters with France leading the resolution. The resolution authorized MINUSMA to have troops strength of 12,000.[83] The Mission was established under Chapter 7 of the UN Charter. The mandate as at the formation of the Mission included stabilizing the key population centres, especially in the north of the country; extending and re-establishing state administration throughout the country and supporting the rebuilding of Malian security sector. Others were; developing disarmament, demobilization and re-integration programmes; supporting the implementation of the transitional road map and facilitating progress towards and inclusive national dialogue and reconciliation process;

[81]Chauzal, G and Van Damme, T. (2015) *The Roots of Mali's Conflict Moving Beyond the 2012 Crisis.*Clingendael, .Netherlands Institute of International Relations http://www.clingendael.nl/ p.20, accessed on 30 June 2018.

[82]Bergamaschi, I. (2013). MINUSMA: Initial Steps, Achievements and Challenges. Norwegian Peacebuilding Resource Centre.p.1.www.peacebuilding.no accessed on 21 April 2018.
[83] Ibid.

supporting the organization and conduct of inclusive, free, fair and transparent presidential and legislative elections; protecting civilians under imminent threat of physical violence; supporting humanitarian assistance; supporting the preservation of Malian culture in collaboration with UN Educational, Scientific and Cultural Organisation; and supporting national and international justice.[84] As at this time, the Government of Mali was a transitional one hence the mandate stated that all the actions were to be conducted in support of the transitional authorities of Mali. The headquarters of MINUSMA is in Bamako while the civilian and regional offices are in Kidal, Gao, Timbuktu and Mopti. The command centres of MINUSMA military are in Bamako as the Force Headquarters, Sector East Headquarters is in Gao, Sector West Headquarters is in Timbuktu while Sector North Headquarters is in Kidal.

The initial challenges during the deployment were those of legitimacy of the Government of the host country as it was an interim government, the weakening of the administration of Northern region due to the attacks of the Islamist belligerents and the extreme weather condition.[85] In Mali, when it is cold around November to February, it is usually very cold as low as 7 degrees celcius and when it is hot around March to June, the heat is usually terrible, sometimes above 40 degrees celcius especially in the northern region as experienced by this researcher. One of the initial tasks of MINUSMA was to rehatt (convert from green to blue berets) 6000 AFISMA troops to blue berets.[86] It is not just to change beret but to adapt to the UN rules and regulations which are not entirely the same with that of AFISMA. They were also expected to meet the UN human rights standard. The other immediate task was to supervise the Presidential election to enthrone a legitimate government, elected by majority of the people. MINUSMA assisted in the conduct of the Presidential election, which ushered in President Ibrahim Boubacar Keita.

[84] MINUSMA Mandate SCR 2100 of 25 April 2013.
[85] Bergamaschi, I. Op cit.p.1.
[86] Ibid.

There was also the challenge of the link between the French troops, then called Operation Serval but now called Operation Bharkan. Operation Serval was to undertake peace enforcement while MINUSMA was to deter threats and take active steps to prevent the return of armed elements to the settlements. It was and has not still been easy to clearly distinguish these roles especially when the belligerents attack the UN troops with deadly weapons and kill so many of them. The UN troops were also weakened by this division as the belligerents attacked them more than they attacked the French troops because they know that the French troops will embark on a more deadly pursuit than what the UN troops would do. The first head of MINUSMA was Mr Bert Koenders from Netherlands while the first Force Commander was Maj Gen Jean-BoscoKazuran from Rwanda and the commander of the French forces was General VianneyPillet.[87] The Mission currently has over 10,000 troops from 50 countries. The troop contributing countries to MINUSMA include; Bangladesh, Belgium, Benin, Bosnia & Herzegovina, Burkina Faso, Canada, Chad, China, Ivory Coast, Czech Republic, Denmark, Dominican Republic, Egypt, Elsavador and Estonia. Others are Finland, France, Gambia, Germany, Ghana, Guinea, Guinea Bissau, Italy, Jordan, Kenya, Liberia, Lithunia, Mauritania, Nepal, Netherlands, Niger, Nigeria, Norway, Sri lanka, Portugal, Rwanda, Senegal, Sierra Leone, Sweden, Switzerland, Togo, United Kingdom, United States of America and Yemen.[88]Inspite of having over 10,000 troops with these number of countries contributing troops, the conflict still rages on and the observance of IHL especially by the non-state armed groups in Mali still leaves much to be desired.

In this Chapter, the research brought to the fore, the background to the Malian conflict and traced the problem up to the deployment of African Union and subsequently to that

[87] Ibid.
[88] https://minusma.unmissions.org/en/military accessed 22 April 2018.

of the UN. It is the deployment of the UN that brought about the focus of the research which is the application of IHL in UN PSO with particular emphasis on MINUSMA.

CHAPTER FOUR

THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN PEACE SUPPORT OPERATIONS AND THE ROLE OF MINUSMA

4.1 Introduction

International Humanitarian Law (IHL) is a universal law that has specifications and standards which are used to judge any armed conflict to determine whether the tenets of the law are being adhered to or not. In the words of Shraga[1] on the applicability of IHL in Peace Support Operations (PSO),

> Any discussion of the question of the applicability of IHL to UN peacekeeping forces must begin with the UN operation in 1950. At the request of the ICRC, that the parties to that conflict apply *de facto* the humanitarian principles of the Geneva Conventions which at the time of the request were not yet in force- the UN Force Commander of the operation replied that while his instructions were to abide by the humanitarian principles of the 1949 Geneva Conventions, particularly Common Article 3, as the UN Commander, he could not undertake to be bound by the detailed provisions of the four Geneva Conventions.

Since that period, the ICRC continued to draw the attention of the UN Secretary General to the need for troop contributing countries (TCC) to have adequate instruction on IHL for troops earmarked for PSO.[2] With the coming into force of the Secretary General's Bulletin on the Observance by UN Forces of IHL on 6th August 1999, it became obvious that UN troops are under obligation to strictly observe the provisions of IHL. It is only with a yard stick of what is the ideal with regard to IHL that one can measure the application of the same law in Mali. This Chapter therefore discusses the broad conditions under which IHL applies to UN operations, the principles of distinction between civilians and combatants and between civilian objects and military objectives. It equally discusses means and methods of warfare, treatment of civilians

[1]Shraga, D. (2008)."The Applicability of International Humanitarian Law to Peace Operations" *International Humanitarian Law Human Rights and Peace Operations.* 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September. p. 82.
[2] Ibid..

and persons*hors de combat* (outside combat), treatment of detainees, protection of the wounded, the sick and medical and relief personnel. On the aspect of the role of MINUSMA *vis-à-vis* the application of IHL in Mali, this Chapter considers the Mandate, Rules of Engagement (ROE) and Standard Operating Procedures (SOP) of MINUSMA on detention, which are linked with the enforcement of IHL. This Chapter also discusses the difference between what is happening in MINUSMA with regard to the application of IHL compared with the provisions of IHL.

4.2 Conditions under which IHL Applies to UN Operations

The ICRC has however consistently underlined that IHL applicability depends upon circumstances as well as on fulfillment of certain conditions.[3] Furthermore, Ferraro[4] states that IHL would govern the activities of a UN peace operation only if the UN forces participate in military action that reach the threshold of an armed conflict, be it international or non-international. Most of the PSOs now are in non-international armed conflict (NIAC) situations involving state and non-state armed groups that are very violent. It is therefore obvious that the threshold being referred to, by Ferraro is almost always attained in many current PSOs. The ICRC has even declared MINUSMA to be a party to the conflict in Mali with its attendant dangers.

In the last 10 years for instance, PSOs embarked upon by the UN have reached the threshold of armed conflict where the lives of civilians and those *hors de combat* have been constantly endangered. Some examples are the United Nations Mission in Central African Republic and Chad (MINURCAT), United Nations OrganisationStabilisation Mission in the Democratic Republic of Congo (MONUSCO). Others are United Nations Organisation Interim Security Force for Abyei (UNISFA), United Nations Mission in the Republic of South Sudan

[3]Ferraro, T. "International Peace Operations and International Humanitarian Law" *Institute of International Humanitarian Law Journal, Rome,* 27 March 2008, p.54.
[4] Ibid.

(UNMISS) and United Nations Supervision Mission in Syria (UNSMIS). There are also the two youngest missions of United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and United Nations Multidimensional Integrated Stabilization Mission in Central African Republic (MINUSCA).[5] These missions range between 2007 and 2017. In view of the above, it is safe to hold the view that due to the level of violence in the armed conflicts within these current missions, especially in Mali, in addition to the directive in the Secretary General's Bulletin on the observance of IHL, the law applies to the UN Mission in Mali, hence the need to look at the specifications.

4.3 The Beginning and End of IHL Applicability

A threshold of armed conflict determined by facts on the ground triggers off IHL applicability. The ICRC holds the view that whether an armed conflict exists, and whether by extension IHL is applicable is assessed based on fulfillment of the criteria for armed conflict found in the relevant provisions of IHL, notably Articles 2 and 3 common to the 1949 Geneva Conventions.[6] Under IHL, international armed conflict (IAC) exists whenever there is recourse to armed force between two or more states. The threshold for determining an IAC is therefore fairly low and the factors of intensity and duration are not usually considered.[7] With regard to non-international armed conflict (NIAC), like the case of Mali, it is usually more complex. However, it is widely accepted that two conditions must be fulfilled before IHL applies. Those conditions are that the fighting must occur between government armed forces and forces of one or more non-state armed groups having a certain level of organization, or between such armed groups and the armed confrontation must have reached a certain threshold of intensity.[8] These conditions are fulfilled in the armed conflict in Mali as the armed groups are fighting the government armed forces and among themselves and most of them are well organized with

[5] www.un.org fact sheet accessed on 16th December 2017.
[6] Report of the 32nd International Conference of the Red Cross and Red Crescent. (2015). *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Geneva, Switzerland.p.7.
[7] Ibid.
[8] Ibid.

spelt out leadership structures and some of them have signed the peace agreement in the country. It is important to observe that in all situations of armed conflict, application of IHL will be better and safer for humanity. In all situations, the condition of civilians and persons *hors de combat (*out of combat) should be seriously considered as without the application of IHL, they are bound to suffer more.

In terms of determining when an IAC comes to an end, it is usually difficult to determine because of the fluid nature of conflicts. An agreement can be signed and breached by the same signatories within a short period of time. IHL however ceases to apply when military operations come to an end in an IAC.[9] The exception is for persons whose final release, repatriation or re-establishment takes place thereafter.[10] It is important to note that cease fire situation on ground is far more reliable than mere agreements not backed by end of hostilities. It is also generally agreed that IHL applicability ceases once the conditions that initially triggered its application no longer exist. This implies that IAC ends when the belligerent states are no longer involved in an armed confrontation.

In terms of NIAC, it is usually more complex to determine the end which should also bring the application of IHL to a close. It is generally believed as stated by the International Criminal Tribunal for Yugoslavia (ICTY) in *Tadic's*case, for the purpose of IHL applicability, a NIAC ceases when a peaceful settlement is reached.[11] While determining the end of NIAC and the coming to an end of the application of IHL, adequate consideration has to be given to the fluctuating nature of NIAC especially at these contemporary times. A lull in the activities of the armed groups should not be interpreted to mean an end to the conflict. Sometimes, the armed groups are retraining and acquiring more arms and ammunition to continue to prosecute the war. Observers may wrongly interpret it to mean the end of hostilities. The essence of being

[9] Ibid.
[10] Article 2(2) of the Third Geneva Convention, Article 694) of the Fourth Geneva Convention, and Article 3 (b) of the Protocol Additional to the Geneva Convention of 12th August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977 and entered into force on 7th December 1978.
[11] Report of the 32ndInternational Conference of the Red Cross and Red Crescent. (2015). Op cit. p.10.

careful in determining the actual situation is to avoid arriving at a hasty conclusion that would put the lives of civilians in danger. In Sierra Leone for instance, the ceasing of hostilities led to the withdrawal of UN fighting troops in the country. A careful observation of the situation coupled with the respect of the belligerents to the ceasefire agreement they signed. Liberia has equally graduated to the threshold where hostilities have ceased. The ICRC maintains that from its practical experience, "the cessation of all hostilities between the parties to the conflict and the absence of a real risk of their resumption have proven to provide the strongest and most reliable indicators that a NIAC has ended."[12] The ICTY also decided that the "peaceful settlement of NIAC is the decisive criterion for determining the end of the conflict and stated that exploring the oscillating intensity of a conflict is not a valid option for determining its cessation."[13] The whole essence of being sure of the cessation of NIAC before ending the application of IHL is to ensure that even in trials, there are differences of offences when the conflict is ongoing and when it has ceased.

4.4 Geographic Reach of IHL Applicability

The area of applicability of IHL in an IAC is obviously the entire territories of the states involved in such a conflict as well as to the high seas and their exclusive economic zones.[14] In terms of NIAC, it would be reasonable to argue that IHL applies in the whole territory of parties involved in a NIAC. "While Article 3 does not deal with the conduct of hostilities, it provides an indication to its territorial scope of applicability by specifying certain acts as prohibited 'at any time and in any place whatsoever.' "[15] There is equally the argument of global battlefield wherein anyone who is involved in NIAC carries the responsibility of being a lawful target of the opposing group wherever he is in the world. Common Article 3 of the Geneva Convention however reduces the geographic applicability of IHL to the place of

[12]Ibid. p.11.
[13]*The Prosecutor v RamushHaradinaj, IdrizBalaj, LahiBrahimaj,* Case No. T-04-84bis-T, Judgment , 29 November 2012. Para 396, available at www.icty.org/x/cases/haradinaj/tjug/en/121129 judgment en.pdf.
[14]Report of the 32nd International Conference of the Red Cross and Red Crescent. (2015). Op cit. p.13.
[15] Ibid.

conflict. In Mali for instance, the state and non-state armed groups fighting one another have the entire territory of Mali as their areas of operation which invariable implies that IHL applies to the entire territory of Mali, from Bamako to Kidal to Timbuktu and Gao and environs, whenever and wherever conflict occurs.

4.5 The Applicability of IHL to Terrorism and Counter terrorism

It is necessary to discuss the applicability of IHL to terrorism and counter terrorism due to the nature of warfare carried out by many non-state armed groups in many parts of the world today, especially in Africa where the UN is keeping peace. ICRC continues to point out that "there is no doubt that it is legitimate to take responsive action to ensure state security. However, in doing so, it is indispensable to maintain the safeguards protecting human life and dignity laid down in IHL and International Human Rights Law (IHRL)"[16] The continued discussion in domestic and international fora on counter terrorism responses has contributed immensely to reducing the demarcation between armed conflict and terrorism. This has had adverse effect on the application of IHL due to the fact that the legal framework governing armed conflict is different from the one governing terrorism.

In some situations of NIAC, states have the tendency to tag non-state armed groups as terrorists in order to ensure that the actions of such groups are taken to be purely criminal even when such actions could be lawful under IHL. It also appears that states in such situations would not want to legitimize the non-state armed groups wherein they will officially become a party to the armed conflict just like the official armed forces of the state and in that case, their actions against the state armed forces would be lawful in IHL. This aspect has brought the discussion on the difference between the legal framework of terrorism and IHL to the front burner. It is however necessary to point out that:

[16]Ibid.p.17.

> The crucial difference is that in legal terms, armed conflict is a situation in which certain acts of violence are considered lawful and others are unlawful, while any act of violence designated as 'terrorist' is always unlawful. The ultimate aim of an armed conflict is to prevail over the enemy's armed forces. For this reason, the parties to the conflict are permitted, or at least are not prohibited from attacking each other's military objectives or individuals not entitled to protection against direct attacks. Violence directed at those targets is not prohibited as a matter of IHL, regardless of whether it is inflicted by a state or a non-state party. Acts of violence directed against civilians and civilian objects, are by contrast, unlawful…."[17]

It is equally important to note that all acts of terrorism both in local and international laws are penalized as criminal and no aspect of it is justified and this makes IHL not to apply in such acts. This kind of situation of some groups being tagged as terrorists exists in some peace support operations. In Mali for instance, the Government prefers that all the non-state armed groups do not operate so that the Government armed forces which is accountable to it would hold sway.

4.6 Principles of Distinction between Civilians and Combatants

IHL in PSO like in all other operations where it applies makes provision for distinction between civilians and combatants. The principle of distinction connotes that during armed conflict, there should be a clear demarcation between armed groups and other combatants who conduct hostilities on one hand and civilians who are not directly participating in hostilities on the other hand and the latter must be spared from the dangers arising from military operations.[18] The principles therefore enjoins parties to a conflict to always be conscious of the fact that during the conduct of hostilities, the population is made up of both combatants and civilians and only the combatants constitute legitimate military target. The Secretary General's Bulletin makes it compulsory that the UN shall make a clear distinction at all times between civilian objects and military objectives. It specifies that military operations shall be directed only against combatants and military objectives. It strictly prohibits attacks on civilians or

[17] Ibid.
[18] Melzer, N. (2009) Interpretative Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law. Geneva, ICRC, p.11.

civilian objects.[19] The Bulletin makes it obvious that civilians shall continue to enjoy the protection afforded by IHL unless and for such time as they take direct part in hostilities. The UN ensures that all necessary precautions are taken to avoid the death of civilians, their injury or damage to civilian property. One of the means of assuring this to avoid as much as possible, locating military objectives close to densely populated areas and to take all practical measures to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. The Bulletin also points out that "military installations and equipment of peacekeeping operations as such shall not be considered military objectives"[20]

In order to avoid attacking civilians and civilian objects, launching operations of a nature, likely to strike military and civilian objectives in an indiscriminate manner or likely to cause incidental loss of civilian life is avoided. In case of collateral damage, the concrete and direct military advantage is compared with the likely damage to be done and in all situations, UN peacekeepers are made to avoid collateral damage or drastically reduce it if it cannot be totally avoided. In addition to avoidance or minimizing collateral damage, reprisal attacks against civilians or civilian objects is prohibited.[21] In modern times, there is an aspect that constitutes a serious repercussion on the principle of distinction wherein civilians take part in certain ways in the armed conflict than bearing arms directly which would make them to be classified as taking direct part in hostilities. This was the decision of the Israeli Supreme Court in the case of ***The Public Against Torture v The State of Isreal.***[22]These conditions include persons collecting intelligence on the armed forces; persons transporting unlawful combatants to or from the place where hostilities are occurring; persons who operate weapons that unlawful combatants use or supervise their operation or provide service to them and persons involved in transporting ammunition to places for use in hostilities. Civilians have been known to be used

[19] Observance by United Nations forces of international humanitarian law. ST/SGB 1999/13.
[20] Ibid.
[21] Ibid.
[22] H.C. 5100/94 (Israel 1999)

to perform the foregoing activities which consequently put them at the risk of belligerent attacks.[23] This is equally referred to as civilianization of conflict.

The principle of distinction has some legal obligations imposed on both civilians and belligerents in order to ensure its strict implementation. The civilians have a duty to refrain from bearing arms; to refrain from taking part in hostilities during armed conflicts; to keep away from objects and locations that constitute legitimate military objectives and to respect the wounded, sick and shipwrecked even if they belong to the adverse party and shall commit no act of violence against them.[24] Observing these rules on the part of the civilians will help immensely to keep them secured in armed conflicts under normal circumstances. In Mali, even when they observe these rules, they still get attacked some times. For the combatants, they have a duty to distinguish between civilians and combatants; to presume persons and objects as civilians when in doubt; refrain from attacking civilians and civilian populations; refrain from attacking combatants that fall under the protection of the principle of distinction; refrain from attacking civilian objects and infrastructure and to bear arms openly. Their other duties include to refrain from employing weapons of indiscriminate impact in warfare; to distinguish themselves from civilians and civilian population through the use of recognizable emblems and combat attires;[25] issue advance warning in operations that are likely to affect the civilian population; to cancel attacks when it becomes apparent that the target is not a military objective and to avoid erecting military objectives close to the vicinity of a civilian population or object. It is therefore clear that distinction between civilians and combatants and between civilian objects and military objects remain a cardinal point of the observance of IHL by peacekeepers. In Mali, like in all other peace operations, the UN maintains such stance as what all peacekeepers should strive to achieve. The case is different for many of the armed groups in

[23] Guillory, M.E. (2001) Civilianising the Force: Is the United States Crossing the Rubicon? 51 Air Force Law Review.p.11.
[24] Article 17 of the Additional Protocol 1 of the Geneva Convention.
[25] Article 57 and 58. Ibid.

Mali as they attack and kill civilians who are not involved in the armed conflict. For example, on 9 June 2019, about 100 civilians, including 24 children were killed in central Mali by armed groups.[26]

4.7 Means and Methods of Warfare

The means and methods of warfare used in PSOs are not unlimited. The application of IHL makes it impossible for the UN force to use all kinds of weapons. The use of certain types of weapons and means of combat as restricted under relevant instruments of IHL is meant to be strictly observed. The use of the following weapons is prohibited: "asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode expand or flatten easily in the human body; and certain explosive projectiles."[27] The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons is prohibited."[28] Any method of warfare that is capable of causing superfluous injury or unnecessary suffering or which are intended or may be expected to cause, widespread, long-term and severe damage to natural environment is equally prohibited.[29] The UN also in line with the provisions of the IHL prohibits situations where any commander will order that there should be no survivor in any operation.

Some other things that the peacekeepers are prohibited from attacking in line with respect to IHL include monuments of art, places of worship, museums and libraries which constitute cultural and spiritual heritage of peoples. The peacekeepers are also "prohibited from using such cultural property or their immediate surroundings for purposes which may expose them to destruction or damage."[30] They are also not allowed to render objects that are indispensable for the survival of a civilian population useless. These include foodstuff, crops,

[26]Guindo, B.M, speaking with BBC News from Sobame Da near Sanga town in Mopti region on 10 June 2019. https://www.bbc.com/news accessed on 14 June 2019.
[27]Chapter 6, Article 57 and 58 of Additional Protocol op.cit.
[28] Ibid.
[29] Ibid.
[30] Ibid.

livestock and drinking water installations and supplies. The UN force is not also allowed to make dams and electrical generating stations as objects of military operations to avoid the release of dangerous and consequent severe losses among the civilian population. All these rules are made in line with the provisions of IHL to ensure that troops of the UN engage in PSO with full respect for IHL. This, when strictly adhered to gives an armed conflict a human face. It is however expected that all who participate in an armed conflict should adhere to the rules but they remain an ideal situation which will be compared with what is obtainable on ground in Mali, with regard to non-compliant armed groups. For instance, on 2 July 2012, Ansar Dine armed group in Mali destroyed two tombs at the famous 14th Century Djingareyber Mosque in Timbuktu classified by UNESCO as a world heritage site and prohibited by IHL from being destroyed.[31] The International Criminal Court in the case of *The Prosecutor v Ahmad Al Faqi Al Mahdi*[32]found Al Mahdi guilty of this war crime and sentenced him to nine years imprisonment. Al Mahdi pleaded guilty to the war crime of attacking ten historic and religious monuments in Timbuktu Mali between June and July 2012. This is an example of what the armed groups do in Mali, contrary to the letter and spirit of IHL.

4.8 Treatment of Civilians and Persons *Hors de Combat.*

The treatment of civilians and persons not engaged in combat as provided in IHL is incorporated the Secretary General's Bulletin.[33] Civilians and members of the armed forces who have laid down their weapons and those who no longer participate in combat due to sickness, wounds or detention shall be treated humanely. There should be no adverse distinction based on race, sex, religious convictions or any other ground. The civilians and persons not in combat are to be accorded full respect for their persons, honour, religious and

[31]Diarra, A. Reuters https://www.reuters.com accessed on 29 June 2019.
[32]International Criminal Court's judgment, ICC-CPI-20160927-PR1242.http://www.icc-cpi.int accessed on 30 June 2019.
[33]Section 7 Observance by United Nations Forces of International Humanitarian Law.ST/SGB/1999/13.

other convictions.[34] Violence to life or physical integrity, murder and cruel treatment such as torture, mutilation or any form of corporal punishment, collective punishment, taking of hostages, rape and enforced prostitution are strictly prohibited. Other prohibited acts include any form of sexual assault, humiliation, degrading treatment, enslavement and pillage.

Women are given special protection by IHL in peace operations. They are specially protected against any attack especially against rape, forced prostitution and any other forms of indecent assault. Children are also accorded special respect and are protected against any form of indecent assault. In Mali, the armed groups attack innocent civilians. For instance, on 1 January 2019, 37 civilians in the village of Koulogon in the central Mopti region were killed by armed groups.

4.9 Treatment of Detained Persons

The way detained persons are treated in an armed conflict is one of the direct ways to confirm if the parties engaged in such an armed conflict adhere to the provisions of IHL. The UN makes it mandatory that its force shall treat detained members of the armed forces and other persons who no longer take part in military operation with humanity and respect for their dignity. Without prejudice to their legal status, they are to be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949 as may be applicable to them *mutatis mutandis.*[35]The following are the guidelines on how detained persons are to be treated.[36]

a. Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the ICRC in particular in order to inform their families;

[34] Ibid.
[35]Section 8, ibid.
[36] Ibid.

b. They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health and shall not be detained in areas exposed to the dangers of the combat zone;
c. They shall be entitled to receive food and clothing, hygiene and medical attention;
d. They shall under no circumstance be subjected to any form of torture or ill treatment;
e. Women, whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under immediate supervision of women.
f. In cases where children who have not attained the age of 16 years take a direct part in hostilities and are arrested, detained or interned by UN force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;
g. ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

The UN made these provisions to ensure that it leads the way with regard to deep respect for IHL, being the biggest body that fights for world peace. It tries to provide the standard so that others will follow. These rules guide all UN organized peace operations all over the world. Even the peace operations that are organized by regional bodies derive their powers from Chapter 8 of the UN Charter and still adhere to these rules. Making the provisions is one thing and compliance or level of compliance is another. This work shall compare the provisions with what is obtainable in Mali to be able to ascertain the impact of the IHL on the conflict therein.

4.10 Protection of the Wounded, the Sick, Medical and Relief Personnel

The UN forces are enjoined to ensure that the wounded, the sick, medical and relief Personnel shall be respected and protected in all circumstances. They shall be treated humanely and shall receive the required medical attention without adverse distinction. A suspension of

fire shall be arranged or other local arrangements to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.[37] It is also prohibited for UN force to attack medical establishments or mobile medical units. They shall at all times be respected and protected unless they are used outside their humanitarian functions to attack or otherwise commit harmful acts against the UN force. In addition, the UN force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick as well as religious personnel.

The UN force is also prohibited from engaging in reprisal against the wounded, sick or medical personnel or equipment. In Mali, these rules are observed by MINUSMA but the same cannot be said of armed groups, for instance, on 18 May 2017, an indirect mortar attack by armed groups hit the Nigerian Level 2 Hospital in Timbuktu, Mali injuring two soldiers. The Red Cross and Red Crescent emblems are to be respected at all times by UN force and the misuse of such emblems are prohibited. The UN force is also under obligation to respect the right of families to know the fate of their sick and wounded and deceased relatives. This is done by facilitating the work of ICRC tracing agency. The force is equally under obligation to facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction and shall respect personnel, vehicles and premises involved in such operations.[38] Having looked at the ideal application of IHL in PSO, it is important to also look at the role of MINUSMA in this perspective. This involves how MINUSMA applies IHL in the mission.

4.11 MINUSMA's Mandate

The latest mandate of MINUSMA at the time this work is being done is **Security Council Resolution 2364 (2017) of 29 June 2017**. Still established under Chapter VII of the

[37] Section 9, ibid.
[38] Ibid.

UN Charter, it authorizes MINUSMA to use all necessary means to carry out its mandate, within its capabilities and its areas of deployment. The mandate specifically provided for the implementation of the tenets of IHL in the armed conflict in Mali. The mandate began in its preamble by "strongly condemning … human rights abuses and violence against civilians, notably women and children committed in Mali…"[39] It further stressed on the importance of the observance of IHL in this manner:

> *Strongly condemning* all abuses and violations of human rights and violations of international humanitarian law, including those involving extrajudicial and summary executions, arbitrary arrests and detentions and ill-treatment of prisoners, sexual and gender-based violence, as well as killing, maiming, recruitment and use of children, attacks against schools and hospitals, *calling on* all parties to respect the civilian character of schools in accordance with international humanitarian law and to cease detention of all children on national security charges in violation of applicable international law, and *further calling upon* all parties to bring an end to such violations and abuses and to comply with their obligations under applicable international law, *Reiterating*, in this regard, that all perpetrators of such acts must be held accountable and that some of such acts referred to in the paragraph above may amount to crimes under the Rome Statute, *taking note* that, acting upon the referral of the transitional authorities of Mali dated 13 July 2012, the Prosecutor of the International Criminal Court (ICC) opened, on 16 January 2013, an investigation into alleged crimes committed on the territory of Mali since January 2012, and, in this regard, *further taking note* of the fact that on 27 September 2016 the ICC found Mr Al Mahdi guilty of the war crime of intentionally directing attacks against religious and historical monuments in Timbuktu…[40]

This part of the preamble exposes the level of impunity and non-adherence to IHL by armed groups in Mali. Civilians have also been major targets of the armed groups hence the mandate kept stressing the condemnation of such violations. Some aspects of the mandate that deal with the protection of lives and observance of International Human Rights and IHL are discussed hereunder.

[39] S/RES/2364(2017) p.3.
[40] Ibid.

4.11.1 Protection of Civilians and Stabilization, Including Against Asymmetric Threats[41]

The mandate authorizes MINUSMA to protect, without prejudice to the primary responsibility of the Malian authorities, civilians under threat of physical violence and in support of the Malian authorities, to stabilize the key population centres and other areas where civilians are at risk, notably in the North and Centre of Mali, and, in this regard, to enhance early warning. It further authorizes the mission to anticipate, deter and counter threats, including asymmetric threats, and to take robust and active steps to protect civilians, including through active and effective patrolling in areas where civilians are at risk, and to prevent the return of armed elements to those areas, engaging in direct operations pursuant only to serious and credible threats. MINUSMA is also to provide specific protection for women and children affected by armed conflict.[42]

4.11.2 Countering Asymmetric Attacks in Active Defence of MINUSMA's Mandate

Considering the nature of attacks that MINUSMA peacekeepers face in the mission, they are enjoined, in pursuit of the mission's priorities and active defence of its mandate, to anticipate and deter threats and to take robust and active steps to counter asymmetric attacks against civilians or United Nations personnel, to ensure prompt and effective responses to threats of violence against civilians and to prevent a return of armed elements to those areas, engaging in direct operations pursuant only to serious and credible threats.[43] The Mission has been carrying out this task, for instance, the MINUSMA Force carried out several deterrence operations in November 2016 to reduce the attacks of armed groups against civilians.

4.11.3 Protection, Safety and Security of United Nations Personnel

In order to ensure that the peacekeepers whose duty it is to secure civilians in their area of responsibility are also secured, the mandate enjoins MINUSMA to protect the United

[41] Ibid.Paragraph20 (c) p.9.
[42] Ibid.
[43] Ibid.

Nations personnel, notably uniformed personnel, installations and equipment and ensure the safety, security and freedom of movement of United Nations and associated personnel, and, in this context, to periodically review all implemented safety and security measures.[44] In Mali, all peacekeepers are issued anti-ballistic protective vests and helmets to save them during attacks.

4.11.4 Promotion and Protection of Human Rights

It is a cardinal duty of the UN to ensure that human rights are protected wherever it operates. To that extent, the mandate authorizes MINUSMA to assist the Malian authorities in their efforts to promote and protect human rights, in particular in the areas of justice and reconciliation, including to support, as feasible and appropriate, the efforts of the Malian authorities, without prejudice to their responsibilities, to bring to justice those responsible for serious abuses or violations of human rights or violations of international humanitarian law, in particular war crimes and crimes against humanity in Mali, taking into account the referral by the transitional authorities of Mali of the situation in their country since January 2012 to the International Criminal Court.[45] The mandate further enjoins the peacekeepers to monitor, help investigate and report publicly and regularly to the Security Council, on violations of IHL and on violations and abuses of human rights, including all forms of sexual and gender based violence and violations and abuses committed against women and children throughout Mali and to contribute to efforts to prevent such violations and abuses.[46] There is a MINUSMA Human Rights Branch that ensures that human rights are protected in Mali and executes Human Rights Due Diligence Policy.

4.11.5 French Forces Mandate

MINUSMA's mandate recognizes the role of French forces in Mali. The force is currently named Operation Barkhane. The mandate authorizes French forces, within the limits

[44] Ibid.
[45] Ibid.
[46] Ibid.

of their capacities and areas of deployment, to use all necessary means until the end of MINUSMA's mandate as authorized in this resolution, to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary General, and requests France to report to the Council on the implementation of this mandate in Mali and to coordinate its reporting with the reporting by the Secretary General.[47] The mandate further gives the French forces an obligation under international human rights and IHL. In this context, it urges the Malian authorities to further combat impunity and, in this regard, to ensure that all perpetrators of crimes involving violations and abuses of human rights and violations of international humanitarian law, including those involving sexual violence, are held accountable and brought to justice, and also urges the Malian authorities to continue to cooperate with the ICC, in accordance with Mali's obligations under the Rome Statute.[48]

The technical agreement between the United Nations Department of Peacekeeping Operations (UNDPKO) and the Minister of Defence of the French Republic equally laid emphasis on the need for the forces to respect IHL. It provides thus: "The MINUSMA and French forces shall respect the relevant rules and principles of international humanitarian, human rights and refugee law."[49] The tasks given to both MINUSMA and French forces in the mandate, concerning human rights and IHL, especially to assist the Malian Government to bring those who breach IHL to justice simply show the importance the mission attaches to these laws. The peacekeepers and French forces are under obligation to abide by them, to operate within the ambit of the laws and they generally comply with the law.

[47] Ibid. Paragraph 37.p.12.
[48] Ibid.
[49] The Technical Agreement between UNDPKO and the Minister of Defence of the French Republic Concerning Cooperation with and Assistance to MINUSMA by the French Forces within the Framework of Security Council Resolution 2100 (2013) and 2164 (2014) dated 26 March 2016.

4.12 MINUSMA's Rules of Engagement

The MINUSMA's Rules of Engagement (ROE) provide authority for use of force and explain policy, principles, procedures and responsibilities relating to the use of force.[50] The ROE equally provide severally for the observance of IHL among the troops from different countries of the world who are participating in the Malian peacekeeping process. The execution of the ROE began by stating that "the conduct of military operations is controlled by the provisions of international law."[51] The document specifically states that "MINUSMA military personnel must comply with the international legal principles of proportionality, the minimum use of force and the requirement to avoid, and in any event to minimize collateral damage."[52] These rules are taught to troops and the implementation is regularly monitored. Any breach is usually investigated by the mission and sanctions applied if a unit or particular troops are found culpable. In order to ensure that troops understand these provisions the ROE made it mandatory for the rules to be translated in a clear and concise way into the language(s) of each participating nationality.[53] The ROE provide for specific principles aside from the general rules, to facilitate the execution of the rules. MINUSMA troops in Mali are strictly guided by them and they practically follow these principles but not without challenges in some areas. The principles are as discussed hereunder:

4.12.1 International Law including Law of Armed Conflict

MINUSMA military personnel are required to comply with international law, including the Law of Armed Conflict (LOAC) and to apply the ROE in accordance with those laws, as and when applicable. The ROE also make reference to the Secretary General's Bulletin "Observance by United Nations forces of international humanitarian law."[54] All the

[50]Rules of Engagement for the Military Component of the United Nations Multidimensional Stabilization Mission in Mali, March 2017.p.2.
[51]Ibid.Paragraph 7(a) (1) p.3
[52]Ibid. Paragraph 7 (a) (4).
[53] Ibid.
[54]Ibid. Paragraph 7 (b).

MINUSMA Force troops in Mali have pocket cards containing these rules of engagement which they refer to all the time.

4.12.2 Self Defence

The ROE allow commanders to take all necessary and appropriate action for self defence. All personnel are also given the right to exercise their inherent right for self defence.[55] While the ROE permit pre-emptive self defence against an anticipated attack, such defence must be supported by credible evidence or information that justifies a reasonable belief that hostile units or persons are preparing an attack.[56] The principle of self defence in this context includes defending oneself, a neighbouring unit or civilians. In practice, the troops shoot when their lives or the lives of their colleagues or those they protect are threatened in Mali.

4.12.3 Military Necessity

The principle of military necessity authorizes the use of only that force which is required to accomplish the authorized objective. The principle of military necessity does not authorize acts that are otherwise prohibited under international law, including the law of armed conflict.[57] This principle is made known to the troops before they are deployed for the mission during the in-country training of the troops in their respective countries and repeated during their induction training in the mission. They are also trained on it in the mission area by the Force Legal Adviser.

4.12.4 Alternative to the Use of Force

Force is not to be used all the time by the troops. The ROE provide that whenever the operational situation permits, every reasonable effort must be made to resolve a potentially

[55] Ibid. Paragraph 7 (c)
[56] Ibid.
[57] Ibid. Paragraph 7 (d)

hostile confrontation by means other than the use of force.[58] The alternative to the use of force could be done through negotiations or assistance from the local authorities. This option is usually adopted when the adversary or protesters are not armed and life may not be lost. This is in line with the principle of IHL with regard to distinction.

4.12.5 Duty to Challenge and Warn

The ROE provide that before resorting to the use of violence, every reasonable step must be taken to deter a party or person from committing a hostile act.[59] There is a procedure for such warning which includes using the language the locals will understand and repeating such warning up to three times. This is to ensure that force including deadly force is not wrongly used against unarmed civilians and persons who are not harmful.

4.12.6 Duty to Identify Target – Observed Fire

Positive identification of hostile forces prior to engagement is required. Unobserved indirect fire is prohibited. All fire must be aimed and controlled, and only the minimum number of ammunition necessary is to be fired.[60] The reason for not permitting unobserved indirect fire is to avoid killing of civilians and persons who are *hors de (out of) combat* which will offend the tenets of IHL if breached.

4.12.7 Duty to Use Minimum and Proportional Force

The ROE make it clear that any force used must be limited, in its intensity and duration, to that which is necessary to achieve the authorized objective. The rules also provide that in some circumstances, operational urgency may dictate that immediate use of deadly force may

[58] Ibid. Paragraph 7 (e)
[59] Ibid. Paragraph 7 (f)
[60] Ibid. Paragraph 7 (g)

be necessary for this purpose.[61] The use of force must be commensurate with the level of threat. However, the level of force that is used may have to be higher than the level of the threat in order to avoid or minimize UN or civilian casualties, or in the case of offensive action, to ensure that the authorized objective is achieved. The ROE also make it abundantly clear that commanders, where appropriate, consider the use of alternatives to the use of physical force, such as deception, psychological methods, negotiation and other non-lethal means, including the deployment or manoeuvre of larger forces in order to demonstrate resolve.[62] For instance, when armed groups wanted to attack Timbuktu on 14 April 2016, MINUSMA Force deployed several helicopter gunships hovering around their locations and they withdrew. The people were saved without firing a shot. All these provisions are geared towards ensuring that fewer lives are lost in the Malian conflict and most importantly that civilians and other groups of non-combatants are not killed, in line with the provisions of IHL.

4.12.8 Avoidance of Collateral Damage

When force is used, all feasible precautions are to be taken with a view to avoiding and in any event to minimizing, collateral damage. Force shall not be used where collateral damage is deemed excessive in relation to the concrete and direct military advantage anticipated.[63] Peacekeepers are trained to understand that the military advantage they hope to achieve should not be to the detriment of civilian lives or objectives. There are also consequences when any peacekeeper goes contrary to the rule on avoidance of collateral damage like other rules. It could lead to repatriation or even criminal litigation, depending on the nature of the collateral damage caused. A clear example was the case of Rwandan Police peacekeepers that used

[61] Ibid. Paragraph 7 (h)
[62] Ibid.
[63] Ibid. Paragraph 7 (i)

excessive force that killed three civilians on 2 April 2015 in Mali. The indicted peacekeepers were repatriated to their country because of the incident.[64]

Aside from the specific principles, the ROE equally provide for the promotion and protection of human rights. To this extent, the rules charge the Malian authorities, without prejudice to their responsibilities, to bring to justice those responsible for serious abuses or violations of human rights or violations of international humanitarian law, in particular war crimes and crimes against humanity in Mali, taking into account the referral by civil authorities of Mali of the situation in their country since January 2012 to the International Criminal Court.[65] The observance of IHL among the peacekeepers is so entrenched in the mission that the troops are authorized to arrest any person indicted by the International Criminal Court.

4.13 Specific Rules of Engagement for MINUSMA

The ROE provide for situations wherein the troops are authorized to use force up to and including deadly force and use of force, excluding deadly force. There are 15 situations where force up to and including deadly force can be used. They include, for self defence, protection of civilians, protection of UN facilities and cultural and historical sites in Mali among other situations. The use of force excluding deadly force is authorized for the troops in situations where those posing as threats are not armed and where there is no threat to life or bodily harm.[66] The ROE prohibit the use of weapons that cause mass casualty or mass suffering of the people. All these rules are made to reduce the suffering of mankind in the conflict area, in line with the provisions of IHL. Any breach attracts investigation by the Office of Internal Oversight Services (OIOS) or the Special Investigation Unit (SIU) after a Board of Inquiry may

[64]Report on the Excessive Use of Force by Rwandan Contingent in Mali. www.minusma.orgaccesed on 12 April 2018.
[65]MINUSMA ROE op cit. p. A-2.
[66]Ibid.p.A3-A5.

have concluded that the breach amounted to serious misconduct of which the investigation would not stop at a preliminary stage.

All these checks and balances make it difficult for a peacekeeper to breach the provisions of the ROE or IHL and go free. Peacekeepers are therefore conscious of the implication of not complying with any single rule of IHL as encapsulated in the ROE. It is however a different issue entirely if one is looking at the compliance level of armed groups especially the non-compliant armed groups. MINUSMA ROE apply only to MINUSMA contingent troops and staff officers who belong to the same legal regime as the contingent members in the mission. Military Observers (MILOBs) have the standard operating procedures guiding their use of force which is equally drafted in line with the ROE. Currently in Mali, Military Observers are armed in line with this rule and they are allowed to use the weapon for their self defence.

4.14 Standard Operating Procedure for MINUSMA Detention

Detention is a major aspect of IHL as the observance of the correct procedure or otherwise, in an armed conflict is one of the pointers to whether the tenets of the law are adhered to or not. MINUSMA, like other UN missions being conscious of this fact has a standard operating procedure (SOP) relating to detention which is regularly reviewed.[67] The SOP makes elaborate provisions to ensure that detentions in the Mission are done in line with international best practice and in line with IHL. It has its guiding principles which are explained hereunder: The SOP defines detention thus: "Any person unilaterally restricted by MINUSMA, against their will, in their freedom of movement, shall be deemed 'detained', regardless of the duration of the said detention."[68] This principle could look strange to some observers because even five minutes of restraining an individual from his freedom of

[67] The current MINUSMA Standard Operating Procedure on detention Ref 2015/4 dated 3 May 2015.
[68] Ibid.p.2.

movement by MINUSMA is termed detention. Detention is also described as a form of use of force, which is only permitted in circumstances where the use of force is authorized by MINUSMA's mandate, Rules of engagement or UN Police' Directives on the Use of Force.[69]

The principles for detention and the rules are not applicable to the military peacekeepers alone but equally regulate the UN Police. This is made to ensure that all the branches of the mission that have a duty to detain, do it in line with the rules. The SOP also makes another stringent condition for release of any person detained in the mission. It provides that "any person detained by MINUSMA must be either released by MINUSMA or handed over to national authorities if the person is of interest, according to MINUSMA, to national authorities, where there is a reason to believe they may have committed an offence or crime under Malian legislation."[70] The release of such a detainee or their hand over to the relevant Malian authorities must be undertaken as soon as possible. The question that bothers the minds of peacekeepers is the inability of the Malian justice system to adequately address the issue of criminality among arrested suspects. Some of them get released as soon as they are handed over to Malian authorities and they return to crime. MINUSMA however ensures that it complies with the rules and regulations in order not to be faulted as not complying with IHL. One of the principles equally states that "the basic principles and rules of international humanitarian law and refugee law are applicable in relation to all persons detained by MINUSMA, particularly with respect to the prohibition of discrimination of any and all forms (including based on sex, race, religion, political views, origin etc)"[71] Detention, as provided by the SOP shall not exceed 48 hours, except in cases of hand over, where detention may be extended for an additional 24 hours to facilitate transfer."[72] The hand over is also clearly regulated to ensure that suspects are not handed over to wrong persons. To this extent,

[69] Ibid.
[70] Ibid.
[71] Ibid.p.3.
[72] Ibid.

MINUSMA may only hand over detainees (including foreigners and refugees) to relevant Malian authorities, ie Police Nationale and Gendermerie.[73] There have been occasions in Mali where detainees were handed over using this method, like the handing over of some suspects to the Gendarmerie National on 18 January 2018 at Bamako by MINUSMA.

The Police Nationale in Mali is equivalent to the Nigeria Police in Nigeria while the Gendarmerie is an intermediate force between the military and the police. It is in form of the defunct National Guard in Nigeria. With regard to persons indicted by the International Criminal Court, (ICC) the SOP provides that; "a person apprehended, who is the subject of an arrest warrant issued by the ICC shall not be released, but shall be handed over to the Government of Mali."[74] This provision is to hasten the handover of such persons to the ICC for continuation of the judicial process. The SOP makes a special provision for the detention of minors in the following specific instructions:

> Detention of minors (-18) only as a measure of last resort.Separate minors from adults unless against their interest to do so. Notify parents or other adult relative or guardian. MOC (Military Operation Centre) to inform JOC (Joint Operation Centre). JOC will notify Detention Focal Point, MINUSMA Child Protection Section and ICRC (International Committee of the Red Cross). Only hand over to National Child and Family Protection Directorate (DNPEF) in Bamako, in the presence of Child Protection Section, UNICEF and ICRC, where possible. Prior to handover, ensure SRSG (Special Representative of the Secretary General) has obtained written assurances that authorities shall not recruit a minor as a combatant.[75]

The detention of minors is viewed with all seriousness in MINUSMA. Sometimes, an aircraft is detailed from Bamako to the region just to carry suspects especially when minors are involved, in order to meet up the 48 hours deadline. This researcher experienced where three suspects were arrested in Aguelhok, Kidal Region inclusive of one minor and they were brought to Bamako within 48 hours. They were all eventually released after series of interviews

[73] Ibid.
[74] Ibid.
[75] Ibid. p.6.

and it was discovered that they were not involved in the planting of the improvised explosive device that killed five Chadian peacekeepers in Agulhok on 19 May 2016. Some staff of National Child and Family Protection Directorate were at hand to receive the minor at Bamako Airport on 21 May 2016.

In order to ensure the strict adherence to the SOP, the MINUSMA Senior Legal Adviser is the Focal point for all detentions carried out by MINUSMA. Any information about detention is passed through the normal chain of command in the military, if the detention is carried out by the military, to the military operation centre, and to the joint operation centre and on to the Focal Point as well as to the Force Legal Adviser, Force Provost Martial and Human Rights Division.[76] The passage of this information could happen within an hour, depending on the location where the arrest was made and where the arresting troops were able to reach the mission or Sector headquarters quickly. Sometimes, the terrain and weather militate against speedy passage of such information. In any situation where the provisions of the SOP were not strictly followed, a Board of Inquiry is usually set up to look into the matter and determine culpability or otherwise of different individuals or units that took part in the exercise. The ICRC is also expected to be represented in all situations of handover of suspects to the national authorities. Such representatives are also allowed to have access to the detainees and conduct confidential interview with them without the interference of MINUSMA personnel.

There are three major forms that are filled by arresting authorities in MINUSMA, in line with the provisions of the SOP. They are Statement of Detention tagged Annex A, Statement on Release or Handover referred to as Annex B and Detained Person's Details tagged Annex C. The statement of detention is expected to be signed by both the detainee himself or herself and the detaining authority represented by a UN personnel. The person detaining the suspect must inform him of the reason for his detention and equally include it in

[76]Ibid.p.3.

the form.[77] The form also contains the rights of the detainee which include the right to obtain information as to the reason and factual basis for detention, designate a family member or other representative to be notified of his detention.[78] Others include the right to make complaint regarding conditions of detentions or treatment, to make claims for compensation in relation to bodily injury or damage to property arising from the measures taken during detention.

The detainee is equally entitled to receive an inventory of items taken from the detained person and have those items returned under certain conditions. The detainee may also be examined by a medical professional to determine his immediate mental health, whether he is suffering from any infectious disease, document the injuries sustained during the period of arrest and to ensure continuity of treatment if necessary.[79] The detainee is expected to notify the UN medical team if he does not agree to being medically examined.[80] All these are made to guarantee the fundamental rights of detainees in the Malian conflict, in line with the Geneva Convention.

The statement on release or handover of suspect is also to be completed and signed by both the UN personnel handling the detention and the detainee himself. It contains the period of detention and the rights of the detainee. Some of the right include, the fact that he has a right to make a complaint concerning his treatment or the conditions of his detention. It also contains his right to claim compensation for any bodily injury or property damage from the UN which is attributed to any wrongful action on the part of UN personnel, during his detention. Even the address and phone number of the Focal Point person are contained therein.[81] There are seven forms attached to the Detained person's details. They are; the form that has the detained person's details, detention details, release of detained person which is only applicable in a situation of release, transfer of detained person and medical condition of detained person's

[77]Ibid.p.13.
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81]Ibid.p.15.

details. The detained person's details contain his name, parents' name height, distinguishing marks and his physical condition when he was arrested.[82] This form which is to be signed by both the detainee and the UN personnel handling the detention is kept for record purposes.

The detainee has a right to refuse to sign but the UN personnel handling the detention has to note such refusal on the form. The detention details contain the location of arrest, the apprehending unit, reasons for detention and factual basis for the detention. A medical report is also to be attached.[83] An inventory of items seized from the detained person is to be completed and both the detained person and the MINUSMA officer will endorse the form. The form for release of detained persons contains the time, location and reasons for release. It also contains the names of property of detained person retained, if any and the reason for such retention. The picture of the detained person to be released is attached to the form and both of them sign with any other witness around during the release.[84] There is also a form provided incase of transfer from one MINUSMA entity to another before release or handover to local authorities. This form is created to ensure that there is no break in the chain from arrest of the suspect to handover to local authorities or final release. It will also be easy to detect at what point a detainee died, incase of such unfortunate incident. It contains the details of the detainee, property transferred with the detained person and the particulars of the transferring and receiving units.[85] The last form is the one used to hand over the detainee to the civil authorities. The picture of the detainee has to be attached to it. The form contains the date of handover, the location, time, and the details of the MINUSMA staff handing over and those of the local authority taking over. A medical report is also attached to indicate the medical condition of the detainee at the time of hand over.[86] This is important to indicate that the detainee was handed

[82]Ibid.p.16.
[83] Ibid.p.18.
[84]Ibid.p.20.
[85]Ibid.p.21.
[86]Ibid.p.22.

over alive and healthy and the UN would not be held responsible for anything that happens to the detainee after the handover. All parties present would sign the form.

After the handover, the representative of the local authority that took over the detainee issues a confirmation receipt to confirm that he actually received the detainee. He indicates the place, date and time of handing and taking over and he signs the receipt. These provisions are diligently followed and, in any case, where there is a breach, an investigation is carried out and the defaulting party on the part of the UN is sanctioned, in line with the rules and regulations guiding UN personnel. If a contingent member manhandles a detainee for instance and it is discovered through the forms used in handover, such a peacekeeper could face repatriation and prosecution in his home country if indicted by the investigation.

4.15 Lessons Learnt from Similar United Nations Operations in ECOWAS Region where IHL was Applicable

The United Nations conducted similar operations in some other countries in the West African Sub-region wherein IHL was equally applicable. Some of those countries include Liberia, Sierra Leone and Cote D'Ivoire. A clear difference among the UN missions in other West African countries and Mali is that while the peacekeepers are major targets in Mali, the belligerents target opposing belligerents and government forces more in other missions. The same rule of the observance of UN peacekeepers of the IHL which applies in Mali has also been applicable in the other UN missions in West Africa which are actually older than the Malian Mission. [87] In November 2001, there were series of allegations against the UN peacekeepers in three West African countries of Guinea, Liberia and Sierra Leone.[88] The Office of Internal Oversight Services (OIOS) of the UN was tasked to conduct investigation into the

[87]Observance by United Nations Forces of International Humanitarian Law.ST/SGB/1999/13.
[88] Report of the Office of Internal Oversight Services on the Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa. A/57/465.Fifty Seventh session of the General Assembly, 11 October 2002.

allegation. Based on the investigation, the UN adopted some measures in form of lessons learnt to reduce such occurrence in the future, which has a direct link to IHL as IHL equally frowns at the sexual exploitation of vulnerable locals by peacekeepers. Some of the major lessons learnt were that the UN came out with a plan of action to fight against the menace. They included the strategy of prevention, response, management and implementation issues. On prevention, the UN came up with a more proactive idea of creating an environment free of sexual exploitation and abuse in humanitarian crisis. This was done by introducing measures to prevent the menace in the functions of the humanitarian workers. For instance, making them to include it as a part of their duty to prevent themselves and their colleagues from having inordinate relationship with those they provide aids for. They are also trained to respond to allegations of such misconduct and equally participate in management of situations where such abnormal situation occurs like ensuring that there is medical and psychological care for the locals who get abused by peacekeepers.

The lessons learnt in these three West African countries with regard to prevention of sexual exploitation and abuse were applied and are still being applied in the United Nations Mission in Mali. The prevention, response and management strategies. The new trend in Mali which was not generally a major lesson in the other peacekeeping missions in West Africa is the rising trend of the attack on peacekeepers even when that could be classified as a war crime.

In this Chapter, the ideal way IHL is supposed to be applied in PSO has been examined, taking a look at the Secretary General's Bulletin on Observance by United Nations forces of international humanitarian law (ST/SGB 1999/13). The United Nations Mission in Mali (MINUSMA) on its part practically implements the application of IHL, making use of its mandate, rules of engagement (ROE) and the standard operating procedure (SOP) on arrest and detention among other rules. The examination of these provisions shows that MINUSMA is

doing a lot to ensure that its personnel strictly comply with IHL. A closer look at the provisions of MINUSMA Mandate, ROE and SOP on detention indicates that the legal framework of the mission is in tandem with the tenets of IHL. The practical execution of the provisions of these rules and procedures also indicates that the mission observes IHL unlike the armed groups in Mali. That does not mean that it is a perfect situation. Some of the armed groups go completely contrary to the provisions of IHL and that is the crux of the matter. The ideal provisions of IHL with regard to the mission and the practical situation on ground were highlighted. The lessons learnt from other UN missions in West Africa with regard to the implementation of IHL were also discussed. There are challenges even in MINUSMA with regard to complete execution of these rules and procedures. There is also the challenge of non-state armed groups in the conflict not doing as much as MINUSMA to observe the tenets of IHL.

These challenges and prospects will be discussed in the subsequent chapter.

CHAPTER FIVE

CHALLENGES AND PROSPECTS OF THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW BY THE UNITED NATIONS MISSION IN MALI

5.1 Introduction

The application of International Humanitarian Law (IHL) in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) is based on the Secretary General's Bulletin on the Observance by United Nations Forces of International humanitarian law (IHL).[1] The Bulletin provides for what the peacekeepers should do in different circumstances in order for them to strictly adhere to its provisions. Having dealt with those provisions in the previous chapter, this chapter sets out to discuss the challenges and prospects of the application of this law in Malian conflict by United Nations (UN) peacekeepers in the country. There are over 10,000 troops from 50 countries in MINUSMA, aside from UN Police, Immigration, and civilians from different countries that are serving in the peacekeeping mission. The MINUSMA Force, made up of the Army, Navy, Air force and Gendarmerie depending on the troop contributing country (TCC), is expected to strictly apply IHL in their operations in the country. Though the application of IHL is meant to be activated when the peacekeepers play the role of combatants in their duties, there is hardly any week that one contingent or the other in MINUSMA is not engaged in combat with the belligerent armed groups, in self defence or in the defence of the mandate of the Mission in one area of the mission or the other.

[1]ST/SGB/1999/13.

The challenges include lack of reciprocal application of IHL in the mission area by some non-state armed groups, no resources provided for detention of arrested persons, and weak judicial system on the part of the host state. Others are that of different legal jurisdictions of MINUSMA troops and the delay in the investigation of breach of IHL by MINUSMA troops among others. With regard to prospects, it is obvious that the application of IHL in MINUSMA has not reached the level that keen observers would wish that it gets to, especially with the lopsided application of the law in the Mission for now, but there is the expectation that when certain measures are put in place and adhered to by the Mission and all other stakeholders in the peace process in Mali, there are prospects of the application of IHL in the Mission becoming better. Some of those positive steps include; improvement of training on IHL both before deployment and in the Mission, promulgation of measures for protection from breach of IHL by parties to the conflict and full implementation of peace enforcement by the UN in Mali. When these positive steps are taken, there will be obvious prospects of the implementation of IHL in the Mission. They will have the capacity to reduce the death of civilians and UN personnel in Mali, and assist in the restoration of peace in Mali. It will equally assist other armed groups in the sub-region to do a rethink about their method of executing warfare in their countries. It will also improve peace generally in the sub-region.

This chapter therefore sets out to highlight the challenges militating against the successful application of IHL in the Malian conflict and equally to point out the prospects of IHL when certain corrective measures are adopted.

5.2 Challenges of the Application of International Humanitarian Law in MINUSMA

5.2.1 Lack of Reciprocal Application of International Humanitarian Law in the Mission Area by Some Non-State Armed Groups

The UN troops are regularly monitored to ensure that they strictly comply with the tenets of IHL but some non-state armed groups like the AnsarEddine and Al-Mourabitoun do

not bother about IHL.[2] The UN troops are usually discouraged when they do everything possible to ensure that civilians are protected and that no non-military targets are attacked while some of these armed groups attack and kill civilians without hesitation.[3] They also use indirect unobserved fire as their regular means of attack contrary to the practice of the MINUSMA Force. The troops frequently asked the Force Legal Adviser why they should continue to comply with the tenets of IHL while some armed groups do not and even end up attacking civilians, UN personnel and facilities, an action which is a war crime and nothing seemed to be happening to them. It was not easy to convince the UN troops that the standards are not the same and that UN troops can never degenerate to the level of the non-compliant armed groups that attack civilians and persons *hors de combat* (out of combat)indiscriminately.[4]

Some of the examples of situations where some non-compliant armed groups did not bother about adherence to IHL in their attacks include the Indirect Fire (IDF) attack on MINUSMA Headquarters in Timbuktu on 3 May 2017. The attack wherein mortars and 122mm Artillery shells were fired into MINUSMA Camp was carried out by the merged non-compliant armed groups named *Jama'atNusrat al-Islam wal-Muslimin* (JNIM) (Group for the Support of Islam and Muslims).[5] The attack made a direct hit on Liberian peacekeepers Camp in Timbuktu, Mali killing one peacekeeper and seriously wounding 8 others in their accommodation.[6] Another rocket IDF attack about a week after landed around the Timbuktu Airport and at the Nigerian Level II Hospital, leading to the destruction of one ambulance and some hospital facilities with two Nigerian peacekeepers injured.[7]

[2]MINUSMA U3 Force Commanders Conference Brief on 12 January 2016.p2.
[3]Ibid.p.6.
[4]The MINUSMA's Force Legal Adviser's Lecture to Senegalese Contingent at Timbuktu Mali on 12 January 2016.
[5] MINUSMA U3 Force Commander's Morning Brief on 19 May 2017.
[6] Ibid.
[7]Ibid. This researcher was there on the day of the incident and saw the injured Nigerian soldiers and the impact of the rocket on the hospital.

Equally on 26 May 2017 in Talataye, Gao Region, non-compliant armed group elements killed seven civilians.[8] Furthermore on 14 August 2017, the IJNM still carried out a daring small arms attack with grenades and Rocket Propelled Grenade (RPG) 7 against Sector West HQ of MINUSMA in Timbuktu and almost over ran the HQ. The attack turned to a close quarter battle after the armed elements dislodged the Burkina Faso peacekeepers providing security at the HQ entrance. They killed five UN civilian contractors and one local staff.[9] In addition, Jihadists were reported to have killed 17 civilians in an attack of 'unparalleled horror' in northern Mali, near the border with Niger. Elderly people were burned alive in their homes and attackers looted property. It was reported by *Agence France Press(AFP)* (French Press Agency)that the attack came days after suspected jihadists killed more than 40 people on 26 and 27 April, 2018 in the north western region of Menaka in Mali according to UN. The execution of 17 people was in Tindinbawen and Taylalene.[10] On 23 March 2019, about 134 civilians were massacred in central Mali as reported by the UN.[11] A Nigerian medical peacekeeper, (WO MS Lasisi of the Nigerian Airforce, Nigerian Level 2 Hospital) was killed in Timbuktu, Mali and another injured on 18 May 2019, by armed elements.[12] In all these killings of unarmed civilians and peacekeepers including medical personnel, the non-compliant armed groups' elements did not bother about the provisions of IHL. In the attack of 14 August 2017, what saved many peacekeepers was that the attack took place around the time the peacekeepers were on break for lunch and were not in the premises. It would have been a major disaster for MINUSMA. These are just few practical examples of how civilians and UN troops get killed easily because MINUSMA troops remain defensive in their operations and this principle gives

[8] A statement by Garda World Security Outfit on Malian Conflict https://www.garda.com accessed on 14 July 2018
[9] MINUSMA U3 Force Commander's Morning Brief on 15 August 2017.
[10] Stocker, J. in her article in The Defence Post published on 2 May 2018. https://www.defencepost.com accessed on 3 May 2018.
[11]Sankare, H.C. while speaking with BBC News in central Mali on 23 March 2019. https://www.bbc.com/a/un-death-toll-from-central-mali-massacre accessed on 20 May 2019.
[12] Nigerian Contingent member informed this researcher of the incident on 19 May 2019.

room for the non-compliant armed groups to bring the war to them even at most unexpected time. The MINUSMA troops find it difficult to comprehend the rationale behind checking them regularly to remain defensive in their operations while the non-compliant armed groups do what they like by killing innocent civilians.

The Rome Statute of the International Criminal Court specifies that attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission is a war crime.[13] The Statute defines the elements as follow: that the object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations. It also states that the perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack. It equally highlights that such objects of attack were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.[14] There is a clause however which states that for the action to qualify as a war crime, "the conduct took place in the context of and was associated with an international armed conflict".[15] The same provision was made, with regard to killing or wounding a person *hors de combat*[16]and attack on civilians.[17] The UN forces must not contravene any of these rules, whether in an international or non-international armed conflict.

The Secretary General's Bulletin on the Observance of United Nations Forces of International Humanitarian Law simply prohibits troops from breaching any of the rules in the bulletin which include attacking persons *hors de combat* and attacking civilians among others.[18] The non- compliant armed groups in Mali can only be prosecuted by the International

[13] Article 8(2) (b) (iii) Rome Statute of the International Criminal Court which entered into Force on 1 July 2002.
[14] Ibid.p.20.
[15] Article 8 (2) (b) (iii) (6). Ibid.
[16] Article 8 (2) (b) (vi). Ibid.
[17]Article 8 (2) (e). Ibid.
[18]ST/SGB/1999/13 which entered into force on 12 August 1999.

Criminal Court by virtue of Common Article III to the Geneva Convention that makes the application to include wrongful actions taken in a non- international armed conflict. This provision qualifies the perpetrators to be tried by the International Criminal Court even when it is not in an international armed conflict. The leadership of these non-compliant armed groups knows that UN troops would hardly attack them while they are hiding in the midst of civilians as a way of avoiding collateral damage. The armed elements therefore exploit this gap, use it to draw close to UN camps and inflict maximum casualty on UN staff, both military and civilian and also on the civilian population as described above. The perpetrators are hardly arrested which encourages them to continue with their nefarious activities. A summary of the casualty rate on the UN Forces and civilians working with the UN from the inception of the mission in 2013, up to June 2019 shows that: "A total of about 200 MINUSMA personnel made up of soldiers and civilians have been killed by non-compliant armed groups attacks from July 2013 when the UN commenced the operation".[19] Only 5 of the assailants died because they were suicide bombers. None of them was killed by the bullet of UN troops."[20] This is mainly due to the defensive nature of the mandate wherein UN troops are meant only to attack when attacked.

The Common Article 3 of the Geneva Convention clearly states that all parties to a conflict in a non-international armed conflict are to respect the rules therein. It provides that in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the provisions that "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed '*horsde combat'* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any

[19]BBC News report on Malian crisis https://bbc.co.uk/news/amp-africa accessed on 19 May 2019.
[20]Ugwu, E.O. End of Mission Report of the MINUSMA's Force Legal Adviser from 27 November 2015 to 23 June 2017, dated 26 June 2017.

adverse distinction founded onrace, colour, religion or faith, sex, birth or wealth, or any other similar criteria."[21]

It further provides that to this end, the following acts are and shall remainprohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.[22] The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.[23]

The non-compliant armed groups in the Malian conflict are parties to the conflict and contrary to the provisions of the Common Article 3 of the Geneva Convention that guides a non-international armed conflict like the one in question, they do not make efforts to end the conflict and do not apply even the minimum standard as discussed above. It is a huge challenge as only the UN troops and compliant armed groups make effort to abide by the rules.

5.2.2 Lack of Detention Facilities and Resources to Cater for Detention of Arrested Persons

The UN does not have detention facilities in its missions, MINUSMA inclusive. There are legal provisions on how to treat detainees after arrest and how to transfer them to local authorities or release them after a maximum of 72 hours but there is no detention facility

[21] Article 3, Geneva Convention 1949.
[22] Ibid.
[23] Ibid.

provided. There is also no money provided for the feeding of any detained suspect in a UN mission. The time provided for hand over or release of arrested suspects is also short considering the terrain of Mali. Without a detention facility, the security of the detainee becomes a problem even for the troops that arrested such a suspect. Sometimes, the arrested suspects may have genuinely been involved in planting an improvised explosive device that killed civilians or UN troops but the rule on hand over or release must be strictly followed.[24] Consequently, troops are always in a hurry to transfer suspects for lack of detention facilities without conducting proper preliminary investigations into the allegations. This therefore, possesses a serious challenge for the implementation of Standard Operating Procedure (SOP) on detention of suspects.

MINUSMA's SOP on detention makes elaborate provisions for the care and comfort of detained suspects. Detainees are to be provided access to drinking water at all times and healthy meals three times a day which must be consistent with the detainee's religious practice.[25] Additionally, they are to be provided with good and clean clothing. The requirements are expensive and need special financial provision for the implementation. Incidentally, the SOP makes no provision of how these requirements are to be financed. Commanders with no specific money meant to finance the care and comfort of detained suspects naturally shy away from committing themselves into such venture thereby frustrating the implementation of the SOP.

5.2.3 Weak Judicial System on the Part of Malian State

The judicial system of Mali is weak due to coups, counter coups and endemic armed conflict which have persisted for quite some time in the country. There have been situations where suspects of killing of civilians were arrested by UN troops and handed over to the local authorities in line with the provisions of the SOP on detention but they got released almost

[24] MINUSMA's Standard Operating Procedure on Detention MINUSMA Ref 2015/4 dated 3 May 2015.
[25] Ibid.p. 14.

immediately after hand over. In the course of executing various military operations in Mali, a number of arrests were made by troops and the suspects were subsequently handed over accordingly. Some of the suspects were handed over with creditable and reliable physical exhibits[26]. Unfortunately, there is no single report of prosecution of any of the suspects in Mali, to the knowledge of this researcher. The discouraging effect on troops to embark on similar arrest is enormous. Troops naturally consider the exercise as a time-wasting venture not worth spending human and material resources to arrest, search, detain and hand over the suspects to the local authorities.

Incidentally, the suspects are eventually released back into the streets and villages. In such a case, the released suspects continue with their nefarious acts of manufacturing and planting improvised explosive devices (IED) against troops and civilians unhindered and with more confidence of not expecting any punitive action from the Government. Above all, the lives of the personnel who effected the arrest are not safe as long as the released suspects who recognize them move around freely. This singular scenario constitutes a serious hindrance to the implementation of the SOP in MINUSMA which hinders IHL implementation. The UN and Malian Government can also do more to strengthen the judicial system of Mali to make it able to perform its duties creditably well, in order to boost the observance of the tenets of IHL by all parties to the Malian conflict for the fact that UN will leave the country one day for them to take charge of their destiny.

5.2.4 Different Legal Jurisdictions of MINUSMA Troops

MINUSMA troops are over 10,000 from 50 countries.[27] They are from different legal jurisdictions and this has an effect on their interpretation of UN rules and regulations, including IHL. The compliance level with the tenets of IHL by the contingents are not the same. While some of the countries are very well trained on IHL even before coming to the mission and

[26]. *Flash Report from Sector North dated 120800ZJAN18 where the Suspects were arrested and handed over with exhibits relating to manufacturing, planting and remotely detonating of IED.*

[27] MINUSMA's Force Chief of Staff's Brief during the Force Commander's Conference on 4 June 2018.

apply same, some other contingents find it difficult to subject themselves to IHL and other human rights provisions.[28] This gives the Force Legal Adviser of the Mission a lot of problems to get such troops to apply IHL in their operations. Some of these troops believe that they are in Mali for combat and nothing else. The likely implication of these different interpretations of the provisions of IHL by troops on peacebuilding is that it will be difficult to consolidate on the peace that may have been achieved after some time as they will be acting divergently under the same circumstance.

5.2.5 Delay in the Investigation of Breach of IHL by MINUSMA Troops

Investigation in UN system is usually slow. Breach of the tenets of IHL by a peacekeeper is a misconduct that is usually investigated at different levels. Depending on the nature of misconduct and the contract of employment of the peacekeeper that breached the rules, such a breach is investigated. If the breach was by a member of a national contingent, the troop contributing country investigates and sanctions such a peacekeeper. The UN also investigates and sanctions in some instances. The challenge is that most times, the investigation takes so long that the expected impact the sanction is expected to make is not achieved. In some instances, such a peacekeeper may have even left the mission before the conclusion of the investigation. There is a need to reduce the time of investigation of breach of IHL and other UN rules by peacekeepers which is six months for now and three months in some instances[29] in order to have an impact and to deter would-be offenders.

5.2.6 Poor Attitude of Some Officers towards Training on International Humanitarian Law

In the Military, training is considered as the best welfare commanders could give to their troops or subordinates. Training does not only adequately equip the trainee in the field of study and broadens his knowledge but also builds confidence of the trainee which enhances his

[28] On 26 May 2016, Chadian troops killed a civilian and arrested three others in what appeared to be a retaliatory act against the killing of five of their colleagues at Aguelhok, in northern Mali.
[29] Advisory on Conduct and Discipline in Field Missions (2013), DFS/Conduct and Discipline Unit Version 2, p. 42.

performance. Incidentally, in MINUSMA, there is poor attitude on the part of some officers towards attending training particularly at the Sector and field levels. Some commanders do not like to participate in trainings on Standard Operating Procedures on detention but prefer to send their subordinates who do not take major decisions during detention situations thereby causing some problems on the observance of the rules. The adverse effect always manifests when suspects are arrested and taken to the officers for necessary actions. Such officers obviously cause delays and some of them do not know what to do at every point in the chronology of the required procedure.

In some situations, some of the officers in the course of acting ignorantly become susceptible to mistakes that result in contravention of the principles of detention. Below are some examples of such erroneous actions taken out of not knowing the right thing to do. On 12 January, 2018, a 15-year-old boy (minor) was arrested by Chadian Company between Tessalit and Aguelhock, in Mali. The minor (below 18 years is classified as a minor in UN) was transferred to the Guinea Battalion in Aguelhok which eventually handed him over to United Nations Police (UNPOL) in Kidal to be taken in UN helicopter to Gao. At Gao, the Kidal UNPOL handed over the minor to Gao UNPOL. On 14 January 2018, the Gao UNPOL handed the minor over to the Gendarmerie in Gao. On 18 January 2018, the minor was transferred from the Gendarmerie to the Regional Directorate for the Advancement of Children and Family (Government Child Protection Institution) in Gao.[30] The rule was breached because instead of handing over the child to the agency in charge of children within 48 hours, it took them six days to hand him over. A similar display of non-observance of the rules was on 28 March 2018 when two boys of 15 and 17 years of age were arrested by Senegalese Quick Response Force (QRF) at Dioungani Village, KoroCercle within Mopti Region. On 29 March 2018, the arresting Unit handed over the minors to the Gendarmerie at Sevare. Unfortunately, the minors

[30] Report of the MINUSMA Force Legal Adviser dated 2 May 2018.

were detained until 9 April 2018 before the Gendarmerie eventually transferred them to the DNPEF (National Directorate for the Advancement of Children and Family) in Bamako.[31] Instead of handing over the minors within 48 hours as provided by the SOP on detention, it took them about 11 days to accomplish which is a clear breach of the rules.

The procedures adopted in these cases were not only strange but also contravened the SOP on how minors are to be handled in such circumstance, thereby running foul of how to treat minors as stipulated by IHL. The cases cited above clearly defeated and contravened the spirits and intendments of the SOP that requires that minors should not be detained except as a last resort but to be transferred to National Child and Family Protection Directorate (DNPEF) in Bamako in the presence of Child Protection Section and staff of the United Nations Children's Fund (UNICEF).[32] By all intents and purposes, the SOP does not contemplate or authorize troops to hand over arrested minors to any non-military outfit but to escort and hand over the minor to the National Child and Family Protection Directorate in Bamako or the Regional Office in Gao in the presence of Child Protection Section and UNICEF. The strange procedures were adopted by the officers notwithstanding the fact that training on how minors are to be handled were constantly given by the Force Legal Adviser to troops. This is particularly instructive as handing over Units in the cases cited above did not guarantee the treatment the receiving outfits would have given to the minors. The requirement for arrested minors to be handed over to the National Child and Family Protection Directorate in Bamako in the presence of Child Protection Section and UNICEF is to guarantee the security of the minors amongst other compelling reasons. Some of the officers who do not like to attend such trainings do that due to pride and feel that they know the procedure only to exhibit ignorance when the real situation arises.

[31] Ibid.
[32] MINUSMA's Standard Operating Procedure on Detention MINUSMA Ref 2015/4 dated 3 May 2015.

5.2.7 Classification of MINUSMA as a Party to the Malian Conflict

The International Committee of the Red Cross (ICRC) informed the Department of Peacekeeping Operations and MINUSMA in December 2014, that as the custodian of international humanitarian law, it had listed MINUSMA as a party to the Malian conflict. The ICRC explained that it had based this classification on the links between MINUSMA and Malian and French forces, notably press reports erroneously presenting *Operation Hydra* of October 2013 as a joint Serval-*FAMa (Forces ArmeeMalienne) (*Malian Armed Forces*)*-MINUSMA operation.[33] Since then, MINUSMA's Legal Advisor clarified with the Legal Officer from ICRC Headquarters that the mission was conducting coordinated rather than joint operations with the FAMa and Bharkane but the ICRC held the view that it was too early to speak of 'lasting disengagement' and declassify MINUSMA. The case of MINUSMA may have been weakened by Security Council Resolution 2295 (2016) tasking MINUSMA to support the redeployment of the Malian Defence and Security Forces and it will become increasingly difficult to argue that the mission is not a party to the conflict if it enhances its support to FAMa deployed along Mali's border as part of G5 Sahel multinational joint task force.[34]

The disagreement over the classification of MINUSMA as party to the conflict has not hampered the collaboration between the Mission and the ICRC on the ground. The two entities have cooperated closely on detention monitoring, including cooperating on the detention of children (family tracing) and the exchange of prisoners. The ICRC operates a large hospital in Gao to which MINUSMA has regularly transferred combatants in need of medical care, notably in the aftermath of the fighting in Kidal and the attack in Mixed Operations Camp (MOC) in Gao on 18 January.[35]

[33]Gahigi,S. Mali ICRC Team Leader during his presentation at the Annual ICRC-DPKO Workshop held at MINUSMA HQ, Bamako, Mali on 27 February 2017.
[34] Ibid.
[35] Ibid.

The challenge of classifying MINUSMA as a party to the conflict with respect to the implementation of IHL is multifaceted. MINUSMA force does not embark on a deliberate offensive operation. Though the mandate of the Mission is more robust now, the Force still plays mainly a defensive role. Classifying MINUSMA as a party to the conflict when it does not have the freedom to find, fix and strike the belligerents places the Mission in a very disadvantageous situation. It makes MINUSMA Force a lawful target to the non-compliant armed groups while it does not have the same freedom of action to attack them like the Malian armed forces or even the French Forces in Mali. While MINUSMA Force strictly observes IHL as enunciated by Common Article 3 of the Geneva Convention and the Secretary General's Bulletin on the Forces' observance of IHL, the opposing armed groups do not. It places the Force in a very big disadvantage. It also exposes the civilian staff of MINUSMA to danger because the civilian staff work in camps where soldiers live and work. If MINUSMA troops are lawful targets, the civilians automatically become targets as well, though not lawful targets but bullets and bombs do not distinguish between soldiers and civilians when they land in a place. This singular act endangers the entire peacekeeping and equally negates the entire peace process. Those civilian peacekeepers are protected by IHL but classifying the military peacekeepers as a party to the conflict puts up all the UN camps and offices in serious danger of attack contrary to the provision of IHL as there is hardly any UN office or camp in MINUSMA that peacekeeping troops are not deployed. This classification did not take cognizance of the continuing nature of the danger posed both for the peacekeeping mission and for the implementation of IHL and it does not take effect only when the intensity of the fighting by MINUSMA troops has reached a certain thresh hold that should be the ideal situation to so classify the mission.

In support of this argument, in the words of Khalil,[36] "in the event MINUSMA is deemed to be a party to the conflict, MINUSMA military personnel would lose their protected status and thereby become lawful targets." She lists the additional consequences to include the fact that attacks on MINUSMA military personnel would no longer constitute crimes under IHL or the Rome Statute of the International Criminal Court. She equally adds that any member of the MINUSMA civilian components who takes a direct part in the hostilities by providing operational information and or supplies to a particular military operation would lose their protected status for as long as they are taking direct part in the hostilities. Additionally, the killing of any civilian, incidental to an attack on MINUSMA military personnel would not necessarily be unlawful under IHL, unless those civilians were killed intentionally or in a manner that is disproportionate in relation to the anticipated military advantage, and would also cease to be a crime under the above mentioned instruments.[37] Khalil concluded that MINUSMA's military presence, while intended to deter, prevent and protect civilians against imminent threats of physical violence would instead not only pose an inherent threat to civilians but would also potentially impede MINUSMA's ability to efficiently and effectively carry out other aspects of its mandate, including facilitating humanitarian assistance.[38] It is therefore an obvious challenge that requires paying close attention to and resolving it for the benefit of the successful application of IHL and for a successful peacekeeping and restoration of peace in Mali.

5.2.8 Wrongly Tagging Acts of Warfare by Non-State Armed Groups as Terrorist

A recent challenge for IHL has been the tendency of states to label as 'terrorist' all acts of warfare committed by non-state armed groups against them. This is more pronounced in

[36]Khalil, M. (2014) *Humanitarian Law and Policy in 2014: Peacekeeping Missions as Parties to Conflicts*.https://phap.org/thematic-notes/2014/humanitarian-law-policy-2014-peacekeeping-missions-parties-conflicts.
[37]Ibid.p.18.
[38] Ibid.

non-international armed conflicts.[39] It is obvious that armed conflict and acts of terrorism are different forms of violence governed by different bodies of law, they are sometimes perceived as synonymous due to constant conflation in public domain.[40] The use of the term 'terrorist act' in the context of armed conflict causes confusion between the two separate bodies of law and could sometimes lead to a situation where non-state armed groups disregard IHL norms because of a perception that they have no incentive to abide by the laws and customs of war. The designation of some non-state armed groups as terrorist groups equally has significant implications for humanitarian engagement and may impede humanitarian action.[41] In Mali, there is hardly any attack on civilians and on UN personnel by non-state armed groups that is not attributed to terrorist acts. It is very possible that many attacks on civilians and MINUSMA Camps and UN personnel are motivated by this fact. The attackers may feel that being tagged as terrorists; they cannot be treated as true combatants in an armed conflict but as common criminals who are to be prosecuted for the act of terrorism. IHL is continually challenged by the evolution of contemporary armed conflict. Achieving greater protection for civilians in armed conflict is dependent on the respect, implementation and enforcement of IHL.[42]

5.2.9 Inability of the State to Meet Basic Needs of Civilians

In contemporary armed conflict like that of Mali, the protective scope of IHL remains of utmost concern. In many situations like that of Mali, states are unable or unwilling to meet the basic needs of civilians and in such situations, IHL provides that relief actions may be taken by other actors, including humanitarian organizations, subject to the agreement of the State.[43] There however remain many obstacles to humanitarian access, including military, political and security related concerns which hinder the provision of assistance to civilians in need. In Mali

[39] ICRC, Overview of Contemporary Challenges for International Humanitarian Law. https://www.icrc.org accessed on 2 August 2018.p.4.
[40] Ibid.p.9.
[41] Ibid.p.13.
[42] Ibid.
[43] Ibid.

for example, there is hardly the presence of Malian security presence in Kidal and some other parts of northern Mali. This fact exposes the civilians to become very soft and easy target to the armed groups. Some of the civilian aid workers equally get attacked and killed while delivering humanitarian aids to civilian citizens of the country. This deficiency is a challenge to the implementation of IHL because it makes civilians and persons *hors de combat* to be exposed to the danger of death and abuse of their rights, contrary to the provisions of IHL.

5.2.10 Requirement to Destroy Dangerous Items Recovered from Arrested Suspects

The standard operating procedure (SOP) on arrest and detention in MINUSMA provides for the destruction of dangerous items recovered from arrested suspects on the authorization of the commanding officer of the arresting unit after filming and photographing such an item.[44] In many developed legal systems, items recovered from suspects are used as exhibits in court of law to prosecute and sustain conviction of suspects. In Nigerian legal system for instance, the picture or video of such recovered item can only be tendered in a law court if the requirements of the tendering of electronic evidence as provided for by Evidence Act 2011 are fulfilled.[45] These include a certificate to be made by the regular user of the apparatus used to produce the picture or video. Incidentally, the SOP provides for the destruction of such viable and important exhibits. It therefore, appears that the SOP on arrest, search and detention does not contemplate the prosecution of arrested suspects in a legal system where such photographs and videos without more cannot sustain a trial. That poses as a challenge to the accomplishment of the application of IHL if the judicial system where such an arrested person is to be tried cannot sustain such a trial without the physical evidence if it is a moveable item.

[44] MINUSMA's Standard Operating Procedure on Detention MINUSMA Ref 2015/4 dated 3 May 2015.
[45] Section 84 Evidence Act 2011.

5.2.11 Lack of Cooperation from Malian Locals with MINUSMA

One of the difficulties experienced in the operational implementation of the SOP on arrest, search and detention is the lack of cooperation of the Malian locals with regard to information gathering concerning those who attack civilians and UN personnel. Information from locals forms a very vital source of military intelligence in any operation. Such information could lead to arrest of wanted criminals, and members of armed groups who breach the provisions of IHL. Unfortunately, the local population in Mali is not willing to give any information to the military that could assist the troops to effect arrest of the most wanted people. The perpetrators and their agents involved in the planting of improvised explosive devices (IEDs) which have taken numerous lives of civilians and UN personnel live within the local population. Some of the locals are not willing to give up their children who are perpetrators of these acts to the military while those who would have loved to give such information are afraid of their safety as they could become targets of attack for giving out such information. This situation is a challenge to the implementation of the provisions of IHL as culprits go free due to lack of information about them.

5.2.12 Non-State Armed Groups Operating Within Populated Areas

Hostilities conducted in Mali by non-state armed groups within populated areas equally pose as a challenge to the application of IHL in the Malian conflict. Such conduct of hostilities in populated areas exposes civilians and civilian objects to effect of the armed conflict that result in death and injuries and destruction of property against the tenets of IHL. The intermingling of armed groups with civilians, in violation of IHL has been used by some armed groups or even the state armed forces as justification to bypass the taking of all possible precautions to minimize risks to civilians, as requires by IHL.[46] This is more pronounced in the

[46]ICRC.https://www.icrc.org accessed on 4 August 2018.

use of explosives in the armed conflict. The locals are usually afraid of being attacked if they resist to allow their villages to be used as firing base and they do not have the required force to confront them with arms. MINUSMA troops see this as a very serious challenge because it is difficult to know and see the direction of fire which is killing innocent civilians and UN personnel and restrain themselves from returning fire to such an area. The Force Legal Adviser makes it as a part of the training and retraining of the troops on the need to restrain themselves from reacting to those unprovoked attacks.

5.2.13 Implications of the Challenges of the Implementation of IHL in MINUSMA

There are implications of the challenges of the implication of IHL in MINUSMA to peace and security in the sub-region, peacekeeping and maintaining compliance with IHL Treaty Obligations. For instance, the implication of the non-compliance to IHL obligations by the non-compliant armed groups in Mali to peace and security in the West African sub-region is enormous. The other armed groups in other countries in the sub-region get emboldened to continue to commit atrocities when they see that nothing happens to those in Mali. The peacekeepers do not perform to their fullest when their obedience to IHL exposes them to the risk of attack by non-armed groups who know that they will not go for an offensive operation due to IHL restrictions especially when they are hidden in villages among the people. The implication of lack of detention facilities in MINUSMA on maintaining compliance with IHL treaty obligations for instance, is that it will be difficult to ensure humane treatment of detained persons when there is even no detention facility not to mention whether it is built to ensure the comfort of those detained or not. Furthermore, the implication of weak judicial system of the host state on peacekeeping is that there will be retrogression in the achievement of peace. Those arrested and could not be properly prosecuted will simply continue with committing atrocities which include killing of innocent civilians among other implications.

5.3 Prospects of the Application of International Humanitarian Law in MINUSMA

There is the possibility that something good may happen in the future in Mali with regard to the application of IHL. The application of IHL in Mali, though lopsided and gloomy for now, has the potential of both the country and the mission overcoming the challenges when positive steps are taken to overcome them as a way forward. Some of those positive steps are improvement of training on IHL both before deployment and in the mission, promulgation of measures for protection from breach of IHL by parties to the conflict and full implementation of peace enforcement by the UN in Mali. In the alternative, if the UN does not want to engage its troops in full peace enforcement operation, it can empower the regional body like the Economic Community of West African States (ECOWAS) or the African Union to go all out and enforce peace in Mali. ECOWAS Monitoring Group (ECOMOG) did it in Liberia before UN took over. When these positive steps are taken, there will be obvious prospects of the implementation of IHL in the Mission. They will have the capacity to reduce the death of civilians and UN personnel in Mali, and assist in the restoration of peace in the country. It will equally assist other armed groups in the sub-region to do a rethink about their method of executing warfare in their countries.

5.3.1 Improvement of Training on International Humanitarian Law

Training on IHL is going on in MINUSMA but there is a need to improve on it. The UN Headquarters conducts readiness inspection to confirm that a unit is properly equipped and ready to deploy to a mission. There is also a pre-deployment training conducted for such units.[47] The lapses observed in MINUSMA call for improvement of IHL training during the pre-deployment and after deployment phases of a unit. There should be an improvement on the

[47]UN DPKO Schedule of Trainings. https//research.un.org/revisedcptm2017 accessed on 15 December 2018.

practical tests administered to the potential peacekeepers to ensure that they properly understand what is expected of them before deployment. Those who do not measure up to standard should be dropped to avoid polluting the good ones. Even when the troops deploy, they should be trained in the mission and there should be continuous monthly training on the subject after the initial training on deployment. The continuous training should be the responsibility of the contingent commanders like it is done with rules of engagement. This will help to ensure that the tenets of IHL are strictly adhered to by peacekeepers. This should also apply to the security forces of the host nation. Currently, the MINUSMA Force Commander directs all contingent commanders to be present at every training of their troops to ensure that the commanders who give orders directly to troops participate in trainings in order not to give a gap between training and execution of tasks in the Mission. This has the prospect of improving the application of IHL in the Mission.

5.3.2 Promulgation of Measures for Protection from Breach of IHL by Parties to the Conflict

The UN Headquarters in 2015, promulgated elaborate measures for protection from sexual exploitation and sexual abuse.[48] These measures include on-site court martial proceedings against peacekeepers who get involved in sexual exploitation and abuse, by the personnel's contingent when indicted by investigation conducted by a National Investigation Officer attached to the unit. There is also command and individual responsibility among others.[49] An entire contingent can also be repatriated if the misconduct of sexual exploitation and abuse is widespread and nothing tangible is done about it. It is working well in UN missions. There is a need for the UN General Assembly to promulgate these types of measures to check peacekeepers who breach IHL in UN missions. It will go a long way in curbing the possibility of widespread breach of IHL by troops in missions, MINUSMA inclusive. Missions

[48] A/69/779.Promulgated at the Sixty-ninth Session of the General Assembly of the United Nations on 15 February 2015.
[49] Ibid. p.23.

should also use the Human Rights Due Diligence Policy of the UN which allows the UN to only assist local forces that observe fundamental rights of persons. This will also help to check abuses by local security forces. These measures may not however work for non-compliant armed groups hence the need to fully implement peace enforcement mandate of the UN in MINUSMA.

5.3.3 Full Implementation of Peace Enforcement by the UN in Mali

Many of the measures suggested to improve the implementation of IHL in Mali may not work for the non-compliant armed groups. They cannot subject themselves to UN training nor to UN rules and regulations. The only language they may genuinely understand may be the language of force. It is therefore suggested that a full implementation of peace enforcement charter of the UN like that of the Force Intervention Brigade in the Democratic Republic of Congo will help the belligerents to see reasons to play by the rules. The unnecessary killings of civilians will also be drastically reduced. The ICRC could also make an addendum to IHL that in a UN mission where there are armed groups that do not respect the tenets of IHL, the UN troops should be permitted to find, fix and strike members of such an armed group and not wait to be attacked before they defend themselves. This would also form a part of implementation of full peace enforcement in the mission. This measure has the prospect of making IHL to be better respected and implemented in the Mission. The armed groups in West African sub-region and the continent of Africa are linked especially because of the porous borders and weakness of many of the security apparatus in Africa. Most of the armed groups in West African sub-region thrive because of their brutality and impunity. There are usually domino effects on events in the sub-region with regard to armed conflicts. If peace is achieved in Mali, through the application of the provisions of IHL, it is most probable that other armed groups in

the sub-region will listen to the voice of reason and avoid the senseless killing of innocent civilians.

In this chapter, the researcher enunciated numerous challenges of the application of IHL in MINUSMA. These challenges include the lopsided application of the law wherein the state-owned armed groups, compliant armed groups and UN Force troops obey the provisions of IHL but the non-compliant armed groups kill innocent civilians and UN personnel at will and do not care about those provisions. The incapacity of Malian Government to carry out its role in the armed conflict, like the prosecution of those arrested to have breached one law of war or the other among others were discussed as well. Application of IHL in MINUSMA has prospects if training both before and after deployment is substantially improved and if the UN General Assembly promulgates special measures for protection from breach of IHL like the one for protection from sexual exploitation and abuse. There is also prospect of the implementation of IHL if the UN authorizes the full implementation of peace enforcement in Mali. These measures will help to reduce civilian deaths, enhance the restoration of peace in Mali and equally help the West African sub-region in the restoration of peace as the domino effect of the Malian conflict will equally reduce.

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 Introduction

This part of the research deals with summary, findings and recommendations. The summary captures the major highlights of the work which naturally culminates into findings. The findings bring out the major problems discovered by the research which lead to recommendations that highlight ways of solving the problems identified with the application of the International Humanitarian Law (IHL) in peace support operations, with special emphasis on the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

6.2 Summary

This work accentuates that the major purpose of IHL is to reduce the negative impact of war on humanity. It prohibits the use of certain weapons and means of warfare to reduce the pains of war especially on civilians and others who do not take active part in such wars and armed conflicts. The Battle of Solferino, referred to in Italy as the Battle of Solferinoand San Martino on 24 June 1859 brought to the fore, the urgent need to take care of the wounded in battle and to reduce the impact of armed conflict on humanity.[1] That suffering of the wounded and other negative impacts of that battle which formed the major bases for the formation of the International Committee of the Red Cross (ICRC) also shaped the nature of what IHL would eventually become. The work also pointed out that the United Nations (UN) began its first peace support operation in the Middle East in 1948 and since then, it has embarked on 68 peacekeeping missions in the world. The nature of peacekeeping in the early days of peace

[1] Brooks, R. (2009), *Solferino 1859. The Battle for Italy's Freedom.* Osprey Publishing, p.57

support operations was quite traditional as the conflict was usually inter-state. However, after the cold war, the conflicts have been intrastate and more of asymmetric warfare. Peace Support Operations (PSO) are deployed based on the presence of armed conflicts and IHL is therefore necessary to apply in such a conflict to reduce the impact of such a conflict on civilians and other categories of persons who do not take direct part in the conflict.

IHL applies to the UN and by extension, to MINUSMA on the authority of 'Secretary General's Bulletin on the Observance by United Nations forces of international humanitarian law.'[2] The application of IHL in the UN mission is meant to limit the effect of the armed conflict on human beings, especially to civilians and those *hors de combat* (out of combat) in the area. The application and observance of IHL by only UN peacekeepers and compliant armed groups in Mali without the non-compliant armed groups' adherence to IHL constituted a major issue of discussion in this research. The compliant armed groups include MouvementNationale pour Liberation d'Azawad (National Movement for the Liberation of Azawad (MNLA), MouvementArabe de l'AZAWAD (Arab Movement for the Azawad) (MAA) and Haut Conseil pour l'Unité de l'AZAWAD (High Council for the Movement of Azawad) (HCUA). The non-compliant armed groups include AnsarEddine, Al-Mourabitoun, Jama'atNusrat al-Islam wal-Muslimin (JNIM) (Group for the Support of Islam and Muslims and Al-Qaida in the Islamic Maghreb (AQIM), among others.

The work traced the origin of the conflict to pre-independence era of Mali before 1960 to the feeling of marginalization and lack of government presence in Northern Mali, generally represented by the Azawads, coups and counter coups executed by the Malian military. The fall of Ghadafi was another means identified in the work as an additional source of weapons and foot soldiers that fuelled the armed conflict in Mali. The UN Security Council authorized an African led International Support Mission to Mali (AFISMA) to deploy in Mali in 2012 to quell

[2]ST/SGB/1999/13.

the Malian conflict.[3] It was made up of 3,300-member strong African force with infantry units, air assets and formed police units for an initial period of one year to take all necessary steps to rebuild Mali's army, help the government to extend its authority to the north, protect civilians and stabilize the country. AFISMA could not bring the expected peace which made the UN to deploy MINUSMA in 2013.

The work discussed the several means through which IHL is practically applied in MINUSMA. The application of IHL also highlights the principles of distinction between civilians and combatants and between civilian objects and military objectives. It equally includes means and methods of warfare, treatment of civilians and persons*hors de combat* (outside combat), treatment of detainees, protection of the wounded, the sick and medical and relief personnel. On the aspect of the role of MINUSMA *vis-à-vis* the application of IHL in Mali, the work considered the Mandate, Rules of Engagement (ROE) and Standard Operating Procedures (SOP) of MINUSMA that are linked with the enforcement of IHL. The difference between the practical situation in MINUSMA with regard to the application of IHL was compared with the standard provisions of IHL. The practical execution of the provisions of these rules and procedures also indicates that the mission observes IHL. That does not mean that it is a perfect situation. There are challenges even in MINUSMA with regard to complete execution of these rules and procedures, for instance with the way some contingents do not take trainings on IHL seriously and fall short of what is expected of them in detention situations among others. There is also the challenge of non-state armed groups in the conflict not doing as much as MINUSMA to observe the tenets of IHL. Some of the armed groups go completely contrary to the provisions of IHL in their operations. The work drew some lessons from Liberia, Sierra Leone and Cote D'Ivoire with regard to the application of IHL, mainly based on the prevention of sexual exploitation of vulnerable locals by peacekeepers. The challenges and

[3] Ibid.

prospects of the application of IHL in MINUSMA form major parts of the findings of this work which are discussed subsequently and from where recommendations are drawn.

6.3 Findings

After an analysis of the numerous issues that have characterized the application of IHL in MINUSMA, the research has come out with the following findings:

6.3.1 No Reciprocal Application of IHL by Some Non-State Armed Groups

The UN troops are usually discouraged when they do everything possible to ensure that civilians are protected and that no non-military targets are attacked while some of these armed groups attack and kill civilians without hesitation. They also use indirect unobserved fire as their regular means of attack. The troops frequently asked the Force Legal Adviser why they should continue to comply with the tenets of IHL while some armed groups do not and even end up attacking civilians, UN personnel and facilities, an action which constitute war crime and nothing seemed to be happening to them. It was not easy to convince them that the standards are not the same and that UN troops can never degenerate to the level of the non-compliant armed groups that attack civilians and persons *hors de combat* indiscriminately.

6.3.2 Weak Judicial System on the Part of the Host State

The judicial system of Mali is weak due to coups, counter coups and endemic armed conflict which have persisted for quite some time in the country. There have been situations where suspects of killing civilians were arrested by UN troops and handed over to the local authorities in line with the provisions of the SOP on detention but they get released almost immediately after hand over. They eventually return to such armed attacks against civilians in

contravention of the tenets of IHL. It discourages the UN troops who are equally exposed to the danger of being attacked by the same released suspects.

6.3.3 Different Appreciation of IHL by MINUSMA Troops

MINUSMA troops are over 10,000 from 50 countries. They are from different legal jurisdictions and this has an effect on their interpretation of UN rules and regulations, including IHL. The compliance level with the tenets of IHL by the contingents are not the same. While some of the countries are very well trained on IHL even before coming to the Mission and apply same, some other contingents find it difficult to subject themselves to IHL and other human rights provisions. This gives the Force Legal Adviser of the Mission a lot of problems to get such troops to apply IHL in their operations. Some of these troops believe that they are in Mali for combat and nothing else.

6.3.4 Unclear Definition of when IHL should apply to Peacekeepers

The confusion in the application of IHL is that while the UN HQ for instance believes that MINUSMA peacekeepers are protected and not a party to the conflict, the International Committee of the Red Cross (ICRC) which is the guardian of IHL has classified MINUSMA as a party to the conflict in Mali, thereby making the peacekeepers lawful targets to the armed groups in Mali. When IHL rules apply, they make it lawful for groups involved in the armed conflict to attack military personnel and targets of another armed group in the conflict, meanwhile the MINUSMA troops do not have freedom of action to attack the belligerents. This lack of freedom of action limits the efficacy of their self-defence as they mainly wait and only respond when attacked.

6.3.5 Poor Attitude of Some MINUSMA Military Officers towards Training on International Humanitarian Law

In MINUSMA, there is poor attitude on the part of some officers towards attending training particularly at the Sector and field levels. Some commanders do not like to participate in trainings on Standard Operating Procedures on detention but prefer to send their subordinates who do not take major decisions during detention situations thereby causing some problems on the observance of the rules. The adverse effect always manifests when suspects are arrested and taken to the officers for necessary actions. Such officers obviously cause delays and some of them do not know what to do at every point in the chronology of the required procedure. In some situations, some of the officers act ignorantly in contravention of the principles of detention which run contrary to the tenets of IHL.

6.3.6 Non-State Armed Groups Operating Within Populated Areas

Hostilities conducted in Mali by non-state armed groups within populated areas equally pose as a challenge to the application of IHL in the Malian conflict. Such conduct of hostilities in populated areas exposes civilians and civilian objects to the effect of the armed conflict that result in death and injuries and destruction of property against the tenets of IHL. The intermingling of armed groups with civilians, in violation of IHL has been used by some armed groups or even the state armed forces as justification to bypass the taking of all possible precautions to minimize risks to civilians, as required by IHL. This is more pronounced in the use of explosives in the armed conflict. The locals hardly have any solution to it because they may be wiped out if they resist to allow their villages to be used as firing base and they do not have the required force to confront them with arms. MINUSMA troops see this as a very serious challenge because it is difficult to know and see the direction of fire which is killing innocent civilians and UN personnel and restrain themselves from returning fire to such an area.

6.4 Recommendations

In view of the above findings, this research makes the following recommendations:

6.4.1 Full Implementation of Peace Enforcement by MINUSMA

Considering the leverage the non-state armed groups are having to commit all sorts of atrocities against civilians and peacekeepers, especially because they know that the peacekeepers are constrained by only attacking in self-defence, it is recommended that UN HQ authorizes the mission to go for all out peace enforcement. This will save lives of civilians and improve the application of IHL in the Mission. In the alternative, if the UN does not want to engage its troops in full peace enforcement operation, it can empower the regional body like the Economic Community of West African States (ECOWAS) or the African Union to go all out and enforce peace in Mali. ECOWAS Monitoring Group (ECOMOG) did it in Liberia before UN took over.

6.4.2 Need to Build the Capacity of the Malian Judicial System

The Malian Government should do more to strengthen the judicial system of Mali to make it able to perform its duties creditably well. The UN needs to assist the Malian Government also through training and provision of aid in terms of funds and mentors in judicial system. It should be made obvious to the Malian Government and people that the destiny of their country lies in their hands. Strengthening the judicial system will enhance quick and effective investigation of suspects handed over to local authorities. This will enhance the application of IHL because the members of non-compliant armed groups that breach IHL and got transferred to the local authorities get released almost immediately and discourages the peacekeepers who arrest those that breach the peace and invariably weakens the application of IHL in the country.

6.4.3 Need for Harmonization of the Provisions of IHL with Troop Contributing Countries

There is the need for Troop contributing countries to ensure that their troops adhere strictly to the provisions of IHL in the Mission area and not interpret the law differently to suit their local interest. Any country whose troops breach the provisions of IHL in the mission should be sanctioned by UN HQ and the sanction should include withdrawal of such a contingent and banning the country from participating in UN missions for some time.

6.4.4 Need to Clarify the Protection Available for Peacekeepers where IHL Applies

IHL needs to have an addendum to clarify this point that where the peacekeepers do not have the freedom of action to find, fix and strike the opposing armed groups, IHL should apply but the peacekeepers should not be lawful targets to the belligerents. Attacking peacekeepers and their base or equipment should out rightly be made a war crime and not the current provision where it is provided by the Rome Statute that attack on peacekeepers *may* constitute war crime.

6.4.5 Enhancement of Pre-deployment and In-Mission Training of Peacekeepers on IHL

The poor attitude of some MINUSMA military officers towards IHL training in the mission area can be solved by intensive and effective pre-deployment and in-mission training of peacekeeping troops. The UN HQ should intensify assessment of the compliance of troop contributing countries (TCCs) to good attitude towards training before allowing such a country to deploy. TCCs should consider the report from the Force Commander of a UN Mission for the promotion of officers after deployment. This will make them take the observations of the Force Headquarters in the mission seriously unlike what is currently obtainable where many

countries do not reckon with reports from UN Missions for the promotion of officers in some jurisdictions.

6.4.6 Need for Strict Application of the Principle of Distinction in IHL

IHL allows combatants to attack civilians if their location is used as a fire base to attack peacekeepers. The locals should therefore be made to understand that there is a prize to pay for allowing belligerents to attack peacekeepers from their settlements. They should take the bold step of reporting the activities of the belligerents to the UN troops, albeit covertly. The belligerents may also revenge but in the final analyses, it is better for the locals to be on the side of law and justice.

BIBLIOGRAPHY

BOOKS

Antoine A. B., eds, (1999) How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law ICRC 1159, 1185-86, 109.

Bellamy, A.J., Williams, P., and Griffin, S. (2010) Understanding Peacekeeping. CambridgePress.

Ladan, M.T. (2007) *Materials and Cases on Public International Law,*Ahmadu Bello University Press, Zaria.

Majeta, P. (2015). *Between Doctrine and Practice: The UN Peacekeeping Dilemma*. Global Governance: A Review of Multilateralism and International Organizations: July-September 2015, Vol. 21

Morgan, K. (2013). *Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare.*Independent Study Project (ISP) Collection. Paper 1618

Porreto, G and Vite, S. (2006). *The Application of International Humanitarian Law and Human Rights Law to International Organisations*, University Centre for International Humanitarian Law Journal, Geneva.

Report of the 32nd International Conference of the Red Cross and Red Crescent on *International Humanitarian Law and Challenges of Contemporary Armed Conflicts, Geneva, October 2015.*

Sassoli, M. et al. (2012).*How Does Law Protect in War?*Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law

Zwanenburg, M. (2015).*United Nations and International Humanitarian Law*. Oxford Public International Law, Max Planck Encyclopedia of Public International Law.

JOURNAL ARTICLES

Arto, R. "Internatioal Humanitarian Law Challenged by Today's Military Operations*" Journal of International Institute of Humanitarian Law, Rome,* 27 March 2008.

Ball, N et al. (2015). *Fighting for Peace: The Tricky Business of Using Greater Force in UN Peace Operations.*Clingendael.Journal of Netherlands Institute of International Relations.

Bisogniero, C. (2008) in his contribution at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Bothe, M. (2008).*The Responsibility to Protect and International Humanitarian Law.* 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Bugnion, F. (2004).*The International Committee of the Red Cross and the Development of International Humanitarian Law.* Chicago Journal of International Law, Chicago, Vol 5, Number 1, Article 14, 2004

Decaux, E. (2008). *International Peace Operations and International Humanitarian Law.*International Institute of Humanitarian Law Journal, Rome, 27 March.

Cario, J. (2008). *Detention in Peace Operations. A Practical Approach.*31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Engdahl, O. (2008). *The Legal Status of United Nations and Associated Personnel in Peace Operations and the Legal Regime Protecting them.* 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Ferraro, T. (2008)"International Peace Operations and International Humanitarian Law" *Institute of International Humanitarian Law Journal, Rome,* 27 March.

Ferraro, T. (2014).*The Applicability of International Humanitarian Law to Multinational Forces.*International Review of the Red Cross.p.11. http://journals.cambridge.org.

Ferraro, T. "International Peace Operations and International Humanitarian Law" *Institute of International Humanitarian Law Journal, Rome,* 27 March 2008,

Grenfell, K. (2013). *Perspectives on the Applicability and Application of International Humanitarian Law: The UN Context.*International Review of the Red Cross. 95 (891/892)

Greppi, E. (2008). *Some Reflections on he Challenges Which International Humanitarian Law has to Face in Contemporary Armed Conflicts.* Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March.

Guttry, A. (2014). *Recent Challenges to Peacekeeping Operations in Africa.*The International Training Programme for Conflict Management (ITPCM) International Commentary, Vol X, no 36, July.

ICRC Overview of Contemporary Challenges for IHL. 2013. http://www.icrc.org

Kellenberger, J. (2008). Keynote Address at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Kunz, R. (2008) in his contribution at the 31st Round Table on Current Problems of International Humanitarian Law, published in the Journal of International Humanitarian Law, Sanremo, 4-6 September.

Lazzaroto, S. (2008).*Current Challenges of International Humanitarian Law.*Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March
Report of the 32nd International Conference of the Red Cross and Red Crescent on *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts.*Geneva, October 2015.

Lopez, L. (1994). *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts.* New York University Law Review.

Majeta, P. (2015). *Between Doctrine and Practice: The UN Peacekeeping Dilemma*. Global Governance: A Review of Multilateralism and International Organizations: July-September 2015, Vol. 21

Nicholes, M. (2014) UN Seeks Surveillance Drones for Mali, Reuters, Shelves Plans for Ivory Coast. http://www.reuters.com/articles/2014/05/12.

Oluwadare, AJ. (2015) "The African Union and the Conflict in Mali: Regional Influence and Limitations of Regional Actor*." Journal of International and Global Studies, Volume 6,* Number 1,

Pomper, S. (2008).*Remarks on the Future Development of International Humanitarian Law.*Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March

Raty, A. (2008).*International Humanitarian Law Challenged by Today's Military Operations.* Journal of International Institute of Humanitarian Law, Rome-PolazzoSalviati, CASD, 27 March

Scot, S. and Case S. (2014). *The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo.* International Peace Institute Journal. p.6. www.ipinst.org accessed on 11 April 2017.

INTERNET SOURCES

Higgins, N. (2013). *The Protection of United Nations & Associated Personnel.*Journal of Humanitarian Assistance, 2003.http://www.jha.ac/articles/a116.thm.

http://digitalcollections.sit.edu/isp_collection/1618

https://www.icrc.org.../6739-how-does-law-protect-war-cases-document

http://www.jha.ac/articles/a116.thm.

http://phap.org/thematic-notes/2014/humanitarian-law-policy-2014/humanitarian

http://phap.org/thematic-notes/2014/humanitarian-law-policy-2014/humanitarian

Khalil, M. (2014).*Humanitarian Law & Policy in 2014: Peacekeeping Missions as Parties to Conflicts.* http://phap.org/thematic-notes/2014/humanitarian-law-policy-2014/humanitarian missions-parties-conflicts.

www.minusma.unmission.org

www.un.org/en/peacekeeping/resources/statistics/fatalities.shtml

www.un.org

www.ipinst.org