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Master's Thesis

**Detention of Civilians in the Occupied Territories: Limits and Challenges of
International Humanitarian Law**

**Civilių Gyventojų Sulaikymas Okupuotose Teritorijose: Tarptautinės Humanitarinės
Teisės Ribos ir Iššūkiai**

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ABSTRACT AND KEY WORDS

This study explores the practical obstacles and legal challenges in holding individuals and states accountable for violations of international humanitarian law during international armed conflicts, particularly concentrating on prohibition of arbitrary detention and analysis of imperative security reasons enabling detention in the context of armed conflicts. The thesis presents recommendations that effectively improve accountability for violations of international humanitarian law, emphasizing importance of collaboration between authorities to justify important security concerns, advocates for promoting states to broaden the jurisdiction of International Criminal Court and encouraging better cooperation between international, non-governmental and local organizations and institutions.

Key words: international humanitarian law, arbitrary detention, security reasons, accountability, personal responsibility, legal framework, human rights.

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LIST OF ABBREVIATIONS

IHL	International humanitarian law
ECHR	European Convention on Human Rights
ICC	International Criminal Court
ICJ	The International Court of Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICCPR	International Covenant on Civil and Political Rights
UNSC	United Nations Security Council
ARSIWA	Articles on the Liability of States for Internationally Wrongful Acts
CAR	Central African Republic
ADF	Australian Defence Forces
IGADF	Inspector-General of the Australian Defence Force

INTRODUCTION

Relevance of the topic. In 2008, Russia invaded Georgia, heavily bombarding Georgian communities with artillery, ethnic-cleansing Georgian people, unlawfully detaining them under harsh conditions and forcing them to remove the bodies of Georgian soldiers from the streets. Sixteen years after the war ended, Russia continues to widen its border into Georgian territory, keeping the conflict continuing. Many Georgians who survived during the war, as well as live near the border, face daily threats of unlawful detentions and kidnappings. In 2018, Russian-backed authorities tortured and killed Georgian citizen, Archil Tatumashvili, while he was in detention. After 26 days, authorities returned his body to his family, revealing multiple injuries and signs of torture. In 2016, Russian armed forces killed Georgian citizen, Giga Otkhoshvili. The so-called border guards, chased him, with brutally shooting Giga Otkhoshvili multiple times while he was on Georgian-controlled territory. Georgia and the Russian Federation are parties to the Geneva Conventions, the two additional protocols and other key international humanitarian law treaties. These legal instruments are signed by Russia, as well as Georgia, however, enforcement remains frequently weak. The lack of strong, consistent enforcement mechanisms allow some governments, such as Russia, to disregard international humanitarian law, even though it clearly defines penalties for violations. This thesis targets to emphasize important legal and practical difficulties. It specifically concentrates on enforcing international law, particularly about unlawful detention. Potential solutions to guarantee greater accountability for such violations, are explored by dealing with these gaps.

The object. This thesis investigates the legal regulation of detention, examining how courts interpret detention laws in case law, along with the factors that contribute to gaps in states' responsibility mechanisms address detention violations. The study emphasizes the challenges to accountability, especially in cases of arbitrary imprisonment.

Aims and objectives. The difficulties as well as the efficacy of holding people accountable for violations of international humanitarian law during armed conflicts, particularly concerning arbitrary imprisonment, are investigated in this thesis. The thesis evaluates international legal frameworks like the Rome Statute and the Geneva Conventions for the effectiveness in guaranteeing accountability. It examines the mechanisms of accountability, identify the legal and practical obstacles to enforcing violations of international humanitarian law, particularly in non-international armed conflicts and peacekeeping operations and propose suggestions to

improve the legal and practical enforcement of personal responsibility for violations of international humanitarian law.

The tasks include 1) defining the fundamental rules along with guarantees for civilian detention in situations of occupation as well as non-international armed conflicts; 2) analyzing the legal framework that governs civilian detention; 3) examining case law from international tribunals while drawing attention to important definitions alongside rulings from courts; 4) evaluating the role of international institutions such as the International Criminal Court as well as UN peacekeeping in promoting accountability for war crimes; 5) assessing the effectiveness of the legal framework concerning civilian detention, using the Russian invasion of Georgia as a case study; 6) analyzing the limits alongside challenges in enforcing responsibility for the arbitrary detention of civilians in occupied territories; 7) and identifying key gaps in international law, as well as national legal systems, regarding the enforcement of international humanitarian law.

Methods. To achieve the objectives of this thesis, several research methods have been applied:

Document analysis: The thesis reviews legal regulations and legal acts. It identifies weaknesses in the enforcement mechanism and application of international humanitarian law.

Case study analysis: The thesis examines violations of international humanitarian law treaties in detail. Legal gaps in practice are identified by this method.

Comparative legal analysis: is applied to evaluate the methods utilized by various nations to prosecute war crimes, especially those included by the ICC's framework and UN peacekeeping missions. The thesis contrasts state legal systems and procedures to show the advantages and disadvantages of different justice systems.

Theoretical frameworks: The thesis analyzes use of responsibility and sovereignty. The difficulties with carrying out IHL and the accountability of both states and individuals in international operations are better understood in light of these frameworks.

Analysis of legal doctrine: The thorough analysis concentrates on the research regarding violations of international humanitarian law treaties and the principle of accountability. The thesis examines scholarly writings on war crime prosecution, including legal commentary on the Rome Statute, as well as scholarly analysis of the real-world difficulties with complying with IHL.

Originality - This thesis investigates the imprisonment of civilians during armed conflicts, concentrating on the Russian invasion of Georgia. By conducting many in-depth case studies,

it bridges the gap between multiple abstract legal concepts as well as real-life applications. An in-depth perspective is provided by this research. Both international and non-international armed conflicts are examined to highlight current issues and challenges created enforcement strategies. It also clearly draws attention to important legal and practical gaps, providing fresh understandings on the responsibilities of the state, individuals and the application of international humanitarian law. The thesis prominently presents its important contribution to the field through a strong multidisciplinary approach that combines understandings from legal studies, human rights, as well as international relations.

Main sources: Throughout the research, multiple sources were used, including legal acts, scientific literature, articles in journals, information publications, reports and guidelines, case law and etc., to pursue the specified tasks and objectives of the thesis. The Geneva Conventions and their Additional Protocols emphasize oversight over armed conflict and guarantee the safety of victims, such as wounded participants, prisoners of war and civilians throughout hostilities. The framework for discovering the legal responsibilities of states and non-state actors during times of conflict is provided by these sources. Sassòli's (2024) "International Humanitarian Law" provides an academic perspective on practical implementation of humanitarian law. Solis's 2010 book, "The Law of Armed Conflict," along with Melzer's 2016 "International Humanitarian Law: A Comprehensive Introduction," provide important academic resources, connecting theory with case law. Frameworks for accountability regarding meaningful violations of human rights and IHL are provided by important documents, such as the Rome Statute (1998) and UNODC's The Nelson Mandela Rules (2015). International law sources, such as detailed reports, clearly outline the scope of crimes, including war crimes, along with the mechanisms for prosecuting these violations, as depicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) case law. Harrison's Detention, Internment and Deprivation of Liberty in Armed Conflict (2016), along with similar studies, provides important understandings into the often complicated legal aspects of detention practices during conflict situations. The comprehension of important legal issues surrounding detention during armed conflict is improved by reports from the United Nations Office of the High Commissioner for Human Rights (OHCHR) as well as TRIAL International on arbitrary detention. The International Criminal Court (ICC), along with the International Court of Justice (ICJ), issues meaningful, precedent-setting judgments from key international courts that shape how we apply and interpret IHL. The real-world repercussions of violations of international

law and the importantly evolving role of courts in holding people and states accountable, are clearly depicted by important cases. such as Prosecutor v. Delalić et al. and Georgia v. Russia.

1. THE SCOPE OF INTERNATIONAL HUMANITARIAN LAW REGARDING THE DETENTION OF CIVILIANS

A group of regulations, as well as standards, called international humanitarian law, aims to decrease the negative effects of armed conflict for the benefit of humanity. The main objective is to protect those who are not actively engaged in conflicts or who have evacuated from the conflict. International humanitarian law, often called "the law of war" or "the law of armed conflict," serves to regulate state-to-state relations within international law (ICRC, 2022). International law borrows inspiration from multiple sources, including conventions or treaties within jurisdictions, fundamental concepts recognized as legally binding by the international community, along with customary law based on state practices. International humanitarian law applies importantly during armed conflicts, but it does not address whether a state can use force initially (GSDRC, 2013).

International humanitarian law focuses on two main components, with the protection of those who are not or are no longer involved in fighting being the foremost. Citizens, prisoners of war, as well as those who are ill or injured are covered by this. People who actively serve in the armed forces of one side in a conflict, as well as get caught by the other side, are commonly called prisoners of war (Diakonia, 2024). These people face important challenges during their imprisonment. Prisoner-of-war status is granted to members of militias and volunteer forces linked to conventional military forces or resistance activities, as stated in the Third Geneva Convention. Non-international armed conflicts lack this specific status. Parties involved in such wars can confidently choose to apply the same rules as those for international armed conflicts to their similar situations (UNODC 2018).

International humanitarian law grants particular rights and safeguards to prisoners of war. The protection of individual liberties, dignity, along with the freedom to practice their political, religious, as well as other perspective is granted to them (Sassòli, 2024, p. 255). International humanitarian law requires that detention conditions provide appropriate accommodation, food, clothes, hygienic conditions and medical attention. Prisoners of war definitely have the right to talk with their family. Prisoners of war must be freed immediately when hostilities end, provided that only a few are being prosecuted for war crimes or other violations of international humanitarian law. The legislative oversight of war's means and strategies, particularly in terms of military tactics and weapons, is observed in the second

category. Practices that impose unnecessary suffering or fatal injuries on people are prohibited. The use of certain weapons is also restricted (Diakonia, 2024).

Additionally, international humanitarian law protects medical personnel, as well as religious staff, serving in the military. Concentrating on their physical and mental well-being is essential. People must constantly show them empathy and avoid unfair treatment. They deserve the rights guaranteed by law (Cambridge University Press, 2022, p. 145-150). International humanitarian law actively restricts killing or harming enemies who have surrendered or are unable to fight any longer, neglecting to collect and take care of injured and ill people by the party responsible for them, refusing to safeguard emergency vehicles, hospitals, medical personnel and supplies. Thorough standards additionally regulate the treatment of civilians and prisoners of war under the control of an enemy power (European Commission, 2024).

In addition to that, a key aspect of international humanitarian law is the establishment of several prominent internationally recognized symbols that designate protected humans, locations and items. The Red Cross, along with the Red Crescent Movement and marks identifying ethnic property and civil defense facilities, are the most well-known of these emblems (IFRC, 2024).

The relevant principle of international humanitarian law is that it distinguishes between combatants and civilians. This principle considers that the civilian population should be treated differently, while combatants must be regarded as legitimate targets of attack (Melzer, 2016, p. 15-20). Attacking those who are not engaged in combat is unlawful, it is illegal to attack people who are not taking part in combat. This concept explains that it is illegal to attack people who are not actively involved in hostilities, such as civilians as well as the injured or prisoners of war (Solis, 2010, p. 78). The principle of minimizing unnecessary suffering guarantees that military actions cause minimal harm by restricting the use of weapons and tactics that lead to disproportionate or unnecessary suffering (Solis, 2010, p. 112). The principle of necessity states that, according to the concept of necessity, the use of force in armed conflict may only be involved if it is genuinely required to accomplish a legitimate military purpose (Melzer, 2016, p. 120-125). The principle of proportionality prohibits actions that cause disproportionate damage to civilians or civilian property compared to the expected military benefit (Melzer, 2016, p. 150-155).

In conclusion, in the scope of international humanitarian law, regarding the detention of civilians, “the law of war” concentrates on those who are either not actively involved in conflicts or have evacuated from the conflict. Considering international humanitarian law determines whether or not to grant rights to individuals in conflict areas, the legal status of prisoners of war becomes especially relevant. International humanitarian law prioritizes living conditions of detainees, their fundamental freedoms and dignity. Furthermore, international humanitarian law safeguards enemies who have withdrawn or are no longer able to fight due to medical conditions.

In light of the above, it is believed that international humanitarian law aims at establishing fair regulations for individuals in the conflict areas. However, concern arises whether these regulations sufficiently protect prisoners of war. Practice shows that parties to a conflict often violate fundamental rules of international humanitarian law, along with evading responsibility for these breaches, despite the principles of IHL.

2. CIVILIAN DETENTION IN ARMED CONFLICTS

2.1. Legal framework for civilian detention in situations of occupation and non-international armed conflicts: basic rules and guarantees

International humanitarian law specifically covers only armed conflicts. Internal disturbances, interruptions and uncommon violent incidents are not being addressed. When an armed conflict begins, all sides are equally bound by international humanitarian law, regardless of who started the war (Fleck & Bothe, 2008, p. 1-20).

Firstly, distinguishing between international armed conflicts and non-international armed conflicts is necessary to discussing the different frameworks for civilian detention in situations of occupation and non-international armed conflicts.

The difference that is observed between international and non-international armed conflicts is seen as important since it is created that the legal responsibilities of the respective parties are defined. It is noted that non-international armed conflicts are controlled by a relatively fewer restrictive set of regulations, while international armed conflicts are subject to a greatly strong legal framework that includes several international treaties as well as agreements (Melzer, 2016, p. 15-30). This is based on the fact that international law respects state sovereignty and the principle of non-interference in a state's domestic affairs, allowing states to regulate legal consequences of internal disturbances themselves. Furthermore, one of the main characteristics is the range of possible legal safeguards. In international armed conflicts, the entire set of Geneva Conventions and Additional Protocols, providing many important safeguards for both combatants and civilians, clearly applies (OHCHR, 2024). The safeguards under non-international armed conflicts, in contrast, prove more limited, mainly concentrating on fundamental humanitarian ideals, such as the defense of people and captives, while paying less attention to how hostilities are conducted (ICRC, 2024).

At least two states actively participate in international armed conflicts (Rulac, 2017). Such conflicts are actively governed by a thorough framework of regulations, which includes Additional Protocol I and the four Geneva Conventions. Boundaries of a single state are where non-international armed conflicts occur. These conflicts take place within the state itself. Conflicts may arise between armed dissident organizations and government forces fighting against them. Additional Protocol II along with Article 3 of the four Geneva Conventions contain most of the limited regulations that apply to non-international armed conflicts. These

regulations are covered by a smaller set of rules (ICRC, 2024, p. 10-13). A key difference is that international armed conflicts actively involve the international community. This invites more international interventions such as sanctions or peacekeeping missions and strongly emphasizes international responsibility. Non-international armed conflicts, on the other hand, often involve internal disturbances that are typically less noticeable internationally, however, they can certainly draw attention from other countries, as well as prompt humanitarian assistance (Bothe et al., 2013, p. 201-263).

To better analyze the differences between international and non-international armed conflicts, practical examples are provided:

Amnesty International states that armed conflicts seriously harm millions of people and lead to major destruction. Multiple wars can occur within individual nations, such as in Syria as well as in Somalia, or between multiple states, such as in Russia's invasion of Ukraine. Many Russian-backed government forces in Syria actively clash with multiple foreign-backed armed groups, while several Al-Shabaab fighters in Somalia resist the government's efforts to seize power. The impact of conflicts are often observed to be similar, regardless of their origin or the parties involved, with a large number of deaths among civilians, wide-ranging relocation and violations of international humanitarian law (Amnesty International, Armed Conflict, 2024). Although there are multiple differences in the scope of the armed conflicts in the situations mentioned previously, many fundamental principles of international humanitarian law actively work to protect non-combatant parties and regulate the actions of armed forces, striving to prevent unnecessary suffering and injury (United Nations, 2011, p. 69-70).

For instance, Russia invades Ukraine, presenting one clear instance of an international armed conflict. Russia, along with Ukraine, are two of the states involved in the conflict. An international conflict, like this one, falls under multiple international legal regulations, such as those specified in the Additional Protocol I and the Geneva Conventions, which restrict combat methods and provide protections for civilians and prisoners of war (Amnesty International, Armed Conflict, 2024). The example of non-international armed conflict is Syria. The Syrian government troops engage in conflict with multiple rebel organizations, with some of them, receiving support from foreign entities. In civil wars, the scope of international humanitarian law typically gets limited to the protections provided by Additional Protocol II and Common Article 3 of the Geneva Conventions (RULAC, 2024). The main goal of this legislative framework is to guarantee that non-combatant parties, including civilians and those who are

detained or injured, are treated humanely. Somalia serves as another example of a non-international armed conflict. In this particular situation, many conflicts exist between the Somali government and the extremist organization Al-Shabaab (European Union Agency for Asylum, 2022). Like the Syrian crisis, the issue remains within Somalia's borders and features an internal battle. Additional Protocol II and Common Article 3 of the Geneva Conventions actively grant important legal rights for civilians and combatants involved in this type of conflict, just like they do for non-international armed conflicts.

After distinguishing between international and non-international armed conflicts, the Geneva Conventions and their regulation of armed conflicts should be analyzed.

The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864) along with the Second Geneva Convention (1906) mostly focus on providing care and protection for combatants, in spite of having only a few provisions related to the detention of civilians in occupied territories (Britannica, 2024). The Third Geneva Convention Relative to the Treatment of Prisoners of War (1929) and the Fourth Geneva Convention (1949) actively provide more wide-ranging safeguarding for civilians, concentrating on importantly the conditions under which they may be held, along with the measures to prevent abuse. Specific guidelines are set forth by the Fourth Geneva Convention for how people in occupied areas should be treated, including their rights while under captivity (Lieber Institute, 2022).

The First Geneva Convention mainly addresses the treatment of the sick and wounded members of armed forces, while it does not explicitly deal with the imprisonment of civilians in occupied territories. The First Geneva Convention covers armed conflicts that lack international status, such as civil wars as well as domestic disturbances. Basic humanitarian requirements are created for the treatment of those who choose not to participate in hostilities. They should be treated with respect and dignity. Nevertheless, Common Article 3 covers people who do not actively participate in hostilities, such as civilians and others. Violence, torture and inhumane treatment of any individual under the control of the conflicting side are forbidden and it is required that equality and humane treatment be afforded to everyone (UN, 1949, Common Article 3). In a similar situation the imprisonment of civilians in territories under occupation is not specifically covered by the Second Geneva Convention. This convention concentrates on the injured, ill and shipwrecked personnel of armed forces at sea. The focus mainly lies on military troops and marine combat, however, it shares Common

Article 3, which mandates the humanitarian treatment of people, with the First. This article covers internal conflicts and other forms of armed conflict that are not of an international nature. Humanitarian safeguards are offered to individuals who are not actively engaged in combat (UN, 1949, Article 3).

When one state is engaged in conflict with another or when a conflict exceeds national borders, such as in conflicts between different countries, the Geneva Convention (III) on the Treatment of Prisoners of War is deemed applicable. Article 4 clearly outlines, in detail, who genuinely qualifies as a prisoner of war for the purposes of the Third Geneva Convention. Once enemy control is created, this convention protects the following groups of people:

1) Combatants as well as members of armed forces: Ordinary members of the armed forces, like those in volunteer corps or militias, may qualify as prisoners of war if they openly carry weapons while fulfilling their duties in line with the rules and regulations of war.

2) Members of unrecognized forces: These are the people serving in armed forces that actively support a government or authority that the detaining power simply does not recognize. The provisions of the Convention still protect these people.

3) Civilians accompanying armed forces: This group includes civilians who actively accompany the armed forces, such as medical personnel, supply contractors and war correspondents, provided they have the necessary authorization along with identification papers from the military unit they are supporting. Merchant Marine crews and Civil Aircraft crews engaged in the fight are also considered prisoners of war unless international regulations give them special consideration.

4) Residents in non-occupied regions: Civilians in non-occupied regions, who visibly carry their weapons and adhere to the rules of war and who voluntarily join the military to fight the enemy without forming formal units, are considered prisoners of war (UN, 1949, Article 4).

The Geneva Convention's guarantees are to be provided to prisoners from the moment of their arrest until their eventual release. Until a capable tribunal makes a clear decision about whether someone is a prisoner of war, they must actively be treated as such, even if there is a bit of uncertainty regarding their admissible status. The duty to safeguard the rights and provide protection to prisoners of war is concentrated on in the article, guaranteeing that they are not exposed to abuse during this time of uncertainty (UN, 1949, Article 5). For instance, an important case about Guantanamo Bay emphasizes legal dispute concerning Article 5 of the

Geneva Convention (III) on the Treatment of Prisoners of War. After the United States' invasion of Afghanistan, the United States detained several hundred people at the Guantanamo Bay. Authorities held many detainees without trial, further rejecting to clarify their prisoner of war status.

The Supreme Court of United States, in *Hamdi v. Rumsfeld* and *Rasul v. Bush*, considered whether Guantanamo Bay and Afghan detainees deserved Geneva Convention protections, especially provision of article 5, for prisoner of war status. The courts determined that detainees absolutely need legal recourse (*Hamdi v. Rumsfeld*, 2004, *Rasul v. Bush*, 2004).

The Geneva Conventions pay attention to guarantees for prisoners of war, to receive humane treatment. For example, while prisoners of war may actually be arrested by military forces, the lawful and humane treatment of them is an important guarantee provided by the government or military authority that holds them. Moreover, if prisoners of war transfer to another state, the responsible government must guarantee the recipient state respects the Geneva Convention's rules. Amends must be made by the detaining authority or the return of the detainees must be requested if compliance is not met by the transferee (UN, 1949, Article 12). Furthermore, the Convention expressly forbids any action by the detaining authority that could endanger the life or health of prisoners of war. Physical removal as well as medical experiments that are not helpful to the person's health, are recognized as among the main restrictions. Any kind of public inquiry, aggression or intimidation that targets the prisoners. Revenge against prisoners of war is specifically prohibited. These regulations objective to prevent cruel or humiliating treatment of prisoners of war, regardless of their status as captives (UN, 1949, Article 13).

The Geneva Conventions guarantee the rights and well-being of prisoners of war and provide clear obligations for the detaining power. Respect must be given to all prisoners of war, particularly regarding their honor and dignity. Respect can be shown to female inmates by considering their gender. Prisoners actively maintain their civil rights unless there are necessary limitations for their confinement. They also have the important opportunity to obtain legal safeguards along with the chance to interact with their family. The thesis draws attention to the fact that a fundamental aspect of treating prisoners of war is preserving their human dignity (UN, 1949, Article 14). Also the detaining authority has a clear obligation to guarantee the well-being of many prisoners of war. Their safety is also a duty under Article 15. This includes providing free and suitable clothes, food and sufficient shelter. Access to treatment

and medical attention is guaranteed for prisoners as required, taking into account their medical circumstances. This clause is focused on health of prisoners of war, guaranteeing that they are not denied access to basic requirements while they are being held captive, along with being treated fairly (UN, 1949, Article 15). Authorities must guarantee that detainees are placed in suitable facilities on land that meets adequate hygienic, medical and safety standards, in line with important criteria of article 22, for their imprisonment. Prisons cannot be used for them unless specific circumstances make them eligible for it. The detaining authorities must quickly relocate the prisoners to a much safer area if they find themselves in an area with an unhealthy environment. The detaining authority must group captives by nationality, language and customs. However, the prisoners of war themselves should not be segregated from other members of the same armed forces unless they accept it (UN, 1949, Article 22).

Under Article 16, the same treatment must be given to all prisoners of war without discrimination based on race, nationality, religion, or political views. Prisoners of war held by the detaining authority have the right to fair treatment, guaranteeing no group experiences more severe conditions or discriminatory treatment. The non-discrimination clause UN, 1949, Article 16 guarantees that each prisoner's human dignity is preserved. This preservation happens for all prisoners regardless of their origin as well as their views (UN, 1949, Article 16). For instance, the case, *Prosecutor v. Duško Tadić*, demonstrated the relevance of the article 16. According to the above-mentioned case, Duško Tadić, a Bosnian Serb, committed several war crimes. These crimes included the illegal detention along with the mistreatment of many prisoners during the Bosnian War. Discriminatory treatment of prisoners of war, specifically, violation of the Geneva Conventions, including article 16 of the Third Geneva Convention, was one of the charges in the case. It involved discrimination and different treatment based on ethnicity, religion and political views. ICTY emphasized the importance of article 16, which mandates for non-discriminatory treatment of all prisoners of war, based on ethnicity, religion, or political identity (International Criminal Tribunal for the former Yugoslavia, 1995).

Another requirement for detainees is to submit their identifying information. However, not even a small amount of pressure can be used to extract information from prisoners of war, nor may they be compelled to reveal additional information. If a prisoner cannot obtain identification due to sickness or injury, they must receive medical attention as well as have their identification confirmed using any accessible methods (UN, 1949, Article 17).

Article 118 mentions that many prisoners of war should return to their homes and be released quickly once hostilities end. It is required by the Geneva Convention that a repatriation plan must be created by each detaining authority if there happens to be no written contract between the parties. The costs of repatriation, which are also stated to be equally divided between the holding authority and the authority to which those being held belong, are included in the article. Typically, parties with multiple prisoners will cover transportation costs if both sides are nearby; otherwise, the detaining authority is responsible for transportation expenses within its borders (UN, 1949, Article 118).

Now, moving on to the Fourth Geneva Convention, it specifically concentrates on the protection of civilians during both international conflicts as well as non-international conflicts, centering on the "Protection of Civilian Persons in Time of War."

The Fourth Geneva Convention emphasizes humane treatment, that was already established by the Third Geneva Convention. It states that detainees should be protected from public inquiry, threats, assault and insults. Abuses on their dignity such as forced prostitution against woman is restricted. Rape is also included in this protection. Everyone should actively guarantee no discrimination against civilians based on their political, religious, or racial beliefs. Monitoring and safety regulations, may be strongly implemented, but they must be clearly required due to the intense conditions of war (UN, 1949, Article 27).

Article 33 states that citizens are not accountable for crimes they did not commit directly. Collective punishment, intimidation, terrorism (UN, 1949, Article 33) is universally prohibited, along with taking revenge against many citizens or their properties. According to Article 42, people can face detention or internment only when it is absolutely necessary for the Detaining Power's security (UN, 1949, Article 42) as well as safety.

Forcibly relocating or expelling citizens from occupied regions is forbidden under Article 49. Evacuations must be carried out humanely, with consideration for safety, health, sanitation and family unity, even when required for military or security reasons. After hostilities end, officials must promptly restore evacuee civilians to their homes (UN, 1949, Article 49). According to article 76 local authorities must detain people suspected of crimes in occupied territories. When appropriate, authorities must place prisoners in separate sections, guarantee they receive the required medical attention and provide spiritual support, particularly to women and children. Detained civilians receive monthly assistance packages as well as visits

from the International Committee of the Red Cross alongside the Protecting Power (UN, 1949, Article 76).

In conclusion, international humanitarian law applies exclusively to armed conflicts, therefore, the important difference between international armed conflicts and non-international armed conflicts is primary. This qualification creates different legal responsibilities. Its importance is highlighted by this. Incorrect classification, be it international armed conflict or internal disturbances, prevents the application of correct international mechanisms, particularly strong civilian protection mechanisms of the Geneva Conventions. This analysis discusses every article from the four Geneva Conventions outlining civilian detention in occupied territories, along with some cases to better understanding of the importance of Geneva Conventions to courts when legal obligations during occupations are violated. Special attention is paid by the Geneva Conventions to: 1) the moment of arrest, because from that occasion the conventions guarantee these rights; 2) furthermore, humane treatment, prisoner well-being, living conditions, along with the restriction of discriminatory treatment, are guiding principles. In my opinion, although the Geneva Conventions create undeniably strong rules, the Prosecutor v. Duško Tadić case clearly demonstrates the persistent reality of discriminatory actions against prisoners. Also, detainees were held without trial by authorities, a fact stressed in the cases of Hamdi v. Rumsfeld and Rasul v. Bush relating to Guantanamo Bay. Moreover, their status as prisoners of war was rejected to be clarified. These cases emphasize the relevance of Geneva rules but also highlight the practical challenges.

2.2. Imperative security reasons and prohibition of arbitrary detention in the case law of international tribunals.

Detention is the act of restricting someone's freedom by having them kept in a specific location, which necessarily deprives them of their freedom. Many instances of this captivity occur with a state's approval or authority, while in several non-international armed conflicts, many non-state actors may undertake such actions (ICRC, 2016, p. 157). When in custody, people lose multiple freedoms, including the basic right to leave the location at any time. People remain in custody from their catch or imprisonment without a good reason to leave until they are released (KLRC, 2024).

Security-related detention refers to the act of detaining people during armed conflicts or when national security is perceived to be at risk. People consider it an outstanding approach to manage those deemed dangerous. Although more common use of administrative detention has historically been observed in war areas, it is now being increasingly applied outside of armed conflict, especially in counterterrorism initiatives. The law often fails to adequately protect the rights of people who are held to be innocent in these situations (Mehra, Wentworth, as well as van Ginkel, 2021, p. 8-9). The Fourth Geneva Convention allows the imprisonment during international armed conflicts for "imperative reasons of security." This type of imprisonment must end when the security threat importantly decreases or, at the very least, when hostilities conclude. Arbitrary detention violates the fundamental right to liberty. Arbitrary detention occurs when authorities arrest or detain an individual without reasonable suspicion or proof of legal violation, or when they fail to follow due process of law or order (Goodman, 2009, p. 49-50).

The United Nations defines 'arbitrary' as requiring that a specific kind of deprivation of liberty adjusts with applicable law and procedure and also that it is proportional to the objective sought, reasonable and necessary. One key aspect of imprisonment that the United Nations Standard Minimum Rules for the Treatment of Prisoners covers is the treatment of civilians and people who are deprived of their freedom. To guarantee the humane treatment of prisoners, these important regulations play a key role within the larger framework of international human rights legislation. Principles that stress the rights and dignity of every person detained are offered by the regulations. This includes civilians as well as others. Civilians in detention must not undergo torture as well as cruel, inhuman, or humiliating treatment or punishment according to Rule 1, one of the fundamental ideas regarding civilian detention. Rule 17 guarantees that most detainees can question the validity of their custody. They also have the opportunity to obtain legal counsel. According to Rules 22–24, detention facilities must honor each person's dignity by providing enough food, clothing, as well as medical care. Regulations require that facilities keep inmates apart based on their reasons for detention, such as guilty inmates along with those awaiting trial, while vulnerable inmates need extra protection (UNODC, 2015).

When addressing imperative security reasons, we should emphasize that in an international armed conflict, a party may detain civilians for security reasons, yet they must release them immediately as soon as the justifications for their imprisonment are no longer

legitimate. Civilian internees must understand the reasons for their imprisonment and have the ability to appeal their detention before a court or administrative authority. It is required that the internment should be carefully reviewed at least twice a year if it is upheld. The conditions for civilian internees are considered comparable to those for prisoners of war, with several more helpful clauses included, such as allowing for family reunions (Harrison, 2016). Humane treatment, free from prejudice, must be given to people who lose their liberties in non-international military situations. Those who were imprisoned for their role in the war have rights. They can access the protections under international humanitarian law as outlined in common article 3 of the Geneva Conventions and articles 4, 5, and 6 of Additional Protocol II. Those facing criminal charges related to the war, are also protected by these safeguards. States and non-state armed actors are required to comply with the regulations governing non-international armed conflicts, even though these regulations are not as thorough as those governing international conflicts (EEAS, 2024, p. 4). Also, in armed conflicts, authorities impose imprisonment as part of criminal procedures. They also enforce internment which is administrative detention for security reasons.

Arbitrary behavior often indicates the inappropriate, unreasonable, unpredictable and excessive nature of imprisonment, while illegality mainly suggests that laws have not been followed. The victim of arbitrary imprisonment, lacking important assets for their protection, becomes highly vulnerable to human rights breaches such as extrajudicial execution, torture or enforced disappearances (Amnesty International, 2020, p. 22).

To analyze imperative security reasons and the prohibition of arbitrary detention in practice, this research evaluates the concepts using three important international tribunal cases: *Prosecutor v. Delalić et al. (Čelebići case)*, *An and Others v. United Kingdom and Democratic Republic of the Congo v. Uganda*. These cases clearly show how international law actively seeks to achieve a compromise between arbitrary imprisonment and national security interests.

The Democratic Republic of the Congo accused Uganda of important human rights abuses during its military occupation. This accusation was the central issue in the International Court of Justice case - *Democratic Republic of the Congo v. Uganda*. Several violations of human rights were accused against Ugandan soldiers, who arbitrarily imprisoned people while stationed in the Democratic Republic of the Congo. The ICJ stated that Uganda had seriously infringed territorial integrity and sovereignty of the Congo (*Democratic Republic of the Congo v. Uganda 2005*).

The ICJ determined that Uganda held important responsibility for many acts committed by the Ugandan military, which frequently violated international humanitarian law and human rights. The arbitrary detention of people, which is prohibited by international law, was involved among other matters. The Court mentioned that authorities must justify imperative security reasons, which cannot be used as a blanket justification for arbitrary detention. The Court also highlighted that the detentions occurred unjustly and without due process and Uganda did not provide adequate evidence or legal grounds for them. The court states that all security measures must be appropriate to the threat, as well as supported by a clear and serious danger to comply with the concept of non-arbitrary detention. The International Court of Justice mentions it on that "Uganda's detentions lacked due process" (Democratic Republic of the Congo v. Uganda, 2005).

In the case of *An and Others v. United Kingdom*¹. The UK created the Anti-terrorism, Crime and Security Act in 2001, in response to the 9/11 attacks, which allows for the imprisonment of foreign people suspected of terrorism without charge or trial for an indefinite period of time. The prisoners asserted that their rights under Article 5 of the ECHR had been violated as well as stated that their imprisonment was arbitrary (*An and Others v. United Kingdom*, 2009).

It was determined by the ECHR that the UK's detention program importantly breached this provision, according to Article 5(1) of the ECHR, which states, "detention must be lawful and necessary in a democratic society, as well as there must be adequate safeguards against abuse". Furthermore, the Court pointed out that "the indefinite nature of the detention without charge or trial was a disproportionate measure in response to the perceived security threat". In its 2009 ruling, the Court mentioned that "even in times of emergency, the rule of law must prevail, as well as measures taken must be strictly necessary and proportionate". It was made clear by this case that a balance must be struck between individual rights, national security, as well as the ban on arbitrary imprisonment. The Court also addressed many discriminatory aspects of the imprisonment system. The ruling clearly stated that the policy unfairly subjected foreign persons to indefinite imprisonment, while UK citizens suspected of engaging in equivalent behavior would not have faced the same results (*An and Others v. United Kingdom*, 2009).

¹ In the case - *An and Others v. United Kingdom*, the UK was not a party to any armed conflict, however, the case still emphasizes detention practices without charge or trial and the court discusses the balance between national security and individual rights.

In the case of Prosecutor v. Delalić et al. before the International Criminal Tribunal for the former Yugoslavia (ICTY), the court emphasized legality of imprisonment and the treatment of detainees during the Bosnian War. In the Čelebići prison camp, many defendants were arrested and were charged with multiple war crimes, including the unlawful detention and abuse of the rights of civilians. The ICTY examined the legitimacy of the detentions, as required by international humanitarian law (Prosecutor v. Delalić et al., 1998).

The ICTY states that the detentions in the Čelebići camp violated several aspects of international humanitarian law. The ruling states that authorities may impose civilian imprisonment only when urgent security reasons demand it. In this instance, the lack of evidence indicated that the prisoners did not pose a security risk that would legitimize their detention. Additionally, to prevent countless cases of arbitrary imprisonment and guarantee that each custody of civilians is necessary, justified and performed in line with international law, a variety of adequate safety measures and strong legal oversight are necessary. The Tribunal clearly stated, "The prohibition of arbitrary detention is a fundamental principle of international humanitarian law, reflecting the broader principle of humanity (Prosecutor v. Delalić et al., 1998).

To summarize, case law addresses imperative security reasons and arbitrary detention. This research examines three relevant cases characterizing the need to balance arbitrary imprisonment against security concerns. It was demonstrated that authorities must thoroughly justify important security reasons, with every single important detail for the right decision, in light of the previously mentioned cases. Lawful detention, even during conflict, is critically important for a democratic society. Cases highlighted that urgent security needs should justify detention reasons. In the next chapter, legal and practical challenges will be examined while ensuring compliance with international humanitarian law rules regarding civilian detention in the context of an armed conflict.

2.3 Legal and practical challenges of parties to a conflict in ensuring compliance with IHL framework in relation to civilian detention

Irrespective of the nature of the armed conflict, international or non-international, a balance is sought by the legal system surrounding detention between the basic rights of those in custody as well as the security requirements of states. Preventing arbitrary detention, which

violates one of the most fundamental human rights, the right to liberty, makes this balance particularly delicate for many people. States along with non-state actors engaged in armed conflicts must seriously adhere to the due process standards. They must also guarantee that necessity and proportionality standards are followed when detaining people in order to effectively overcome these difficulties. Additionally, to guarantee strong protection of prisoners' rights as well as prevent arbitrary detention, we must implement strong monitoring and control procedures. Active implementation of international legal standards is important to guarantee security and freedom, with respect for everyone's fundamental rights during conflict. The legal and practical difficulties of implementing these frameworks will be extensively examined in this thesis, which is centered on how detention practices are carried out by states and non-state entities, frequently crossing the line between security requirements and the ban on arbitrary detention (TRIAL International, 2024).

The Geneva Conventions and their Additional Protocols support structure of international humanitarian law. Nevertheless, case law shows many important legal issues regardless of these thorough provisions - the conflict between the prohibition on arbitrary imprisonment as well as national security considerations. Imperative security reasons are sometimes used as an excuse by states. The Geneva Conventions along with Additional Protocol II permit detention for security reasons. However, they state that such detention must be necessary as well as proportionate and cannot be arbitrary or unlimited (Fleck 2013 p. 701-716).

The cases that the second chapter discusses - *An and Others v. United Kingdom*, *Prosecutor v. Delalić et al. (Čelebići case)* and *Democratic Republic of the Congo v. Uganda*, clearly show that, even though international legal frameworks exist to prevent arbitrary detention, their application is often quite inconsistent and subject to abuse, particularly when national security issues come into play. Guaranteeing that detention procedures respect detainees' rights to liberty and security is a difficult task for parties, involved in conflicts.

Although strong legislation exists to prohibit arbitrary detention, important issues persist in its actual application. One of the biggest challenges to implementing the ban on arbitrary detention is the absence of effective monitoring as well as control mechanisms. States must guarantee that they respect the legal rights granted to prisoners by the Geneva Conventions, Additional Protocols and other international conventions. The case about Democratic Republic of the Congo showed that detaining powers can often act without facing

any consequences. This happens especially when a war takes place in a non-international armed conflict with no third-party control along with a lack of effective governance. Even when a third party controls the situation, it may be difficult for them to supervise detention facilities if armed groups do not allow access.

Moreover, authorities increasingly use administrative detention², which makes it harder to guarantee that detention procedures truly match international standards. States frequently employ administrative detention as a common strategy during armed conflicts. Many times, they use it in situations where national security faces important threats like terrorist operations, as the second chapter describes. On the other hand, authorities frequently impose administrative detention without a charge or trial and prisoners may, in fact, be held permanently without enough court supervision. The possibility of arbitrary detention raises fundamental concerns, as authorities can imprison people without explaining the reasons for their detention or granting them the chance to contest their imprisonment (Deeks, 2009, p. 403-405).

Administrative detention poses other difficulties when applied outside conflict areas, particularly in counterterrorism activities. Since the conventional categories of armed conflict are frequently not fitting these circumstances, it becomes much more difficult to determine how international humanitarian law should be truly applied in these instances. In these unusual situations, states battle to apply the legal protections from the Geneva Conventions. The *An and Others v. United Kingdom* case draws attention to that counterterrorism operations frequently lead to arbitrary detention and violate due process rights through the use of administrative detention (International Committee of the Red Cross, 2022).

Furthermore, multiple practical difficulties arise when dealing with prisoners of war and detained civilians. Even though international humanitarian law guarantees detainees access to food, medical treatment, as well as family contact, the reality on the battlefield often falls of these standards. The case of *Prosecutor v. Delalić et al.* revealed the serious mistreatment as well as disrespect of prisoners in the Čelebići camp, where they suffered cruel treatment, like torture along with arbitrary imprisonment. Violating the Geneva Conventions along with creating such circumstances increases detainees' vulnerability to future violations of their human rights (*Prosecutor v. Delalić et al.*, 1998).

² Administrative detention is a preventive measure under which an individual is imprisoned without a trial and without committed a particular crime, based on the assumption that the person would engage in illegal behavior in the future.

The laws and regulations governing detention in armed situations, such as the Geneva Conventions along with other international conventions, provide important safeguards for detainees. Nonetheless, many obstacles exist that obstruct the actual execution of these laws. A major issue in modern international law involves the many conflicts between the ban on arbitrary imprisonment as well as many national security considerations. *Prosecutor v. Delalić et al.*, *An and Others v. United Kingdom*, *Democratic Republic of the Congo v. Uganda*, shows the active difficulties in balancing security needs with prisoners' fundamental rights. The increasing use of administrative detention creates further issues.

As a result, regardless of a strong legal framework, many practical monitoring procedures and control mechanisms, remain insufficient. States must uphold all legal rights the Geneva Conventions, Additional Protocols and other international conventions grant prisoners, but in reality, conflict situations often cause states to fail. National security concerns often clash with the absolute prohibition on arbitrary imprisonment, especially for decision-maker authorities. States sometimes use imperative security reasons as an excuse. As the analyzed case law demonstrated, authorities frequently impose administrative detention without charge or trial, in addition to holding prisoners indefinitely without sufficient court supervision. Furthermore, supervision of detention facilities by a third party faces difficulties, especially when access is denied by armed groups.

3. CASE STUDY OF RUSSIA'S INVASION OF GEORGIA (2008): EFFECTIVENESS OF LEGAL FRAMEWORK IN RELATION TO CIVILIAN DETENTION

Russia's invasion of Georgia, commonly referred to as the August War or the 2008 South Ossetia War, was an armed conflict that broke out in August 2008 between Georgia and the Russian Federation. At the beginning of the conflict, South Ossetian forces, with strong backing from Russian armed forces, aggressively violated the 1992 Sochi Agreement by heavily bombarding Georgian communities with artillery. Armed units from the Russian Federation crossed Georgia's national border and invaded the territory. The Georgian armed forces moved into the war area, taking decisive control of the separatist-held city of Tskhinvali as well as clearly targeting to put an end to the attacks on Georgian villages. Russia conducted attacks on Georgia with air, land, as well as maritime forces after wrongfully accusing Georgia of "genocide" as well as "aggression against South Ossetia" in a propaganda campaign. Many refugees as well as officials reported that Russian-supported paramilitary groups had engaged in ethnic cleansing of several villages within Georgian territory. After five days of intensive battle, Georgian forces evacuated from the Tskhinvali area. Russian forces launched an attack on the Kodori Gorge. They struck simultaneously. The Russian air force aggressively struck several locations both inside as well as outside the combat zone, while the Russian forces tightly blockaded an important part of Georgia's region. The war involved many conventional military operations along with multiple cyber military actions targeting one side. Georgia filed an application at the European Court of Human Rights against Russia, alleging violations of human rights during the August War.

Sixteen years after the war ended, Russia continues to widen its border into Georgian territory, keeping the conflict continuing. Many Georgians who survived during the war as well as live near the border face daily threats of extortion, unlawful detentions, along with kidnappings (Council of Europe, 2024).

On May 19, 2016, at the Khurcha-Nabakevi crossing point near the occupation line, Russian armed forces killed 30-year-old Giga Otkhзорia. He got into a heated clash with the armed de facto border guards at the occupation line of Abkhazia. Otkhзорia left the crossing point area to avoid further conflict, heading towards Georgian-controlled territory. The so-called border guards, including Rashid Kanji-Oghli, aggressively chased him, with Kanji-Oghli brutally shooting Otkhзорia multiple times in the lower limbs as well as the abdomen

while he was on Georgian-controlled territory. After the shooting occurred, Rashid Kanji-Oghli personally delivered a fatal shot straight to the head of the fallen Giga Otkhozoria (United Nations General Assembly, 2017).

Russian occupiers abducted and killed Georgian citizen Archil Tatunashvili on February 22, 2018, from the occupation line. The Russian-backed authorities in Tskhinvali killed Archil Tatunashvili while he was in detention. After 26 days, authorities returned his body to his family, revealing multiple injuries and signs of torture (U.S. Mission to the OSCE, 2018).

Georgia and the Russian Federation are parties to the four 1949 Geneva Conventions, the two additional protocols of 1977, as well as the 1954 Convention for the Protection of Ethnic Property in the Event of Armed Conflict, which are key IHL treaties. The Russian Federation adheres to the Hague Convention (IV) of 1907, which addresses the Laws and Customs of War on Land. Many factors indicate that Russia's invasion of Georgia represents an international armed conflict involving both countries. Therefore, this type of armed conflict must adhere to international humanitarian law (Geneva Conventions; Hague Convention for the Protection of Ethnic Property, 1954).

In South Ossetia, the Russian-backed South Ossetian military along with militias systematically destroyed many Tbilisi-backed settlements. Authorities detained at least 159 ethnic Georgians. They mistreated them through executions, rapes, kidnappings along with beatings. These acts violated humanitarian law. They mistreated protected people. Murder, rape, torture and property damage are serious crimes that require criminal prosecution. If they were a component of a coordinated assault on civilians, these actions may frequently be punished as crimes against humanity. If people carry out actions with the intention of discriminating against ethnic Georgians, an important number of these actions would be considered persecution. They would then face prosecution under the International Criminal Court legislation (European Court of Human Rights, 2021).

Many detainees strongly reported facing mistreatment both while in custody, during the transit to custody and while in prison. For more than two weeks, authorities forcefully kept the majority of the detainees in what amounted to degrading treatment in the basement of the South Ossetian Ministry of Interior headquarters in Tskhinvali. Some of these prisoners were actively forced into labor in Tskhinvali, tasked with removing bodies of Georgian soldiers from the streets. During the transfer to the Ministry of Interior, Ossetian authorities executed at least

one person while he was in their custody. Digging graves, burying dead, along with cleaning the streets of construction waste left over from the fighting - it was reported by Human Rights Watch that some days were offered by the two prisoners they communicated with, for labor, allowing them to spend a few hours outside the crowded cells. For their labor, no employees were compensated. Under the Fourth Geneva Convention, authorities may forcefully engage anyone aged 18 or older to work as necessary for maintaining public utilities, satisfying army needs and delivering humanitarian aid, including important tasks such as providing food, shelter, clothing and medical care for civilians. Every individual must never be compelled to work due to any form of discrimination. All workers deserve fair compensation for their labor. These actions clearly represent war crimes and grave breaches of the Geneva Conventions. The Russian government holds accountability for these actions. It did so because it maintained effective authority over the area where these detentions occurred. Most people investigated by Human Rights Watch who were detained by Russian forces reported being civilians who had neither picked up weapons against Russian forces nor participated in the war (Amnesty International, 2008, p. 47).

Russian troops have no proof that the individuals they held had legitimate security reasons for their arrest. A child was in custody, along with several others who were quite old. Most people were detained under conditions that clearly show they were not participating in hostilities, taking up arms, as well as not posing a threat to national security (Human Rights Watch, 2008).

Protected people are regarded as civilians under the Fourth Geneva Convention, which outlines the safeguards provided to civilians during times of conflict. According to the Convention, those not actively participating in the hostilities shall be treated humanely, with no discriminatory treatment based on multiple factors such as race, color, religion or faith, sex, birth or wealth, or any other similar criteria. War crimes are serious violations of the Fourth Geneva Convention. They involve intentionally causing important suffering or bodily or health dysfunction along with purposeful murder torture and inhuman treatment. The Fourth Geneva Convention permits the imprisonment or assigned residency of many protected people along with many civilians for important security reasons. This applies during many times of conflict and occupation. A protected individual is unlawfully detained. This action is considered a war crime (International Committee of the Red Cross 1949).

The European Court of Human Rights has issued several rulings regarding the alarming detention and abuse of civilians in the occupied regions tied to Russia's invasion of Georgia. Russian officials infringed both Article 3 on the Prohibition of Torture and Article 5. Additionally, the ECHR found that multiple Russian authorities violated Article 38 of the Convention by not furnishing the Court with necessary military battle reports and important evidence.

Throughout these decisions, the legal framework related to civilian detention has not been effectively enforced at all. The United Nations, the European Union, the Council of Europe condemned human rights violations and arbitrary detention. They also called for protecting detainees as well as respecting international law. Many human rights violations were highlighted by international organizations, while monitoring and responses to the situation were undertaken by the United Nations and the European Union. These efforts failed to importantly change detention practices during the conflict, leaving violations of international law as an important issue.

In conclusion, the case reveals, that international law provides a strong framework filled with clear clarifications and regulations for the detention of people for security purposes, but the distinction draws attention to an important problem. While international law sets many regulations and clearly defines responsibilities for violations, it often suffers from effective enforcement issues. The international community failed to punish Russia for its aggressive actions in the 2008 war - no meaningful legal or punitive measures were imposed, which demonstrates that there is an important gap between the theoretical foundations of laws as well as their actual application.

4. LIMITS AND CHALLENGES IN ENFORCING RESPONSIBILITY FOR ARBITRARY DETENTION OF CIVILIANS IN OCCUPIED TERRITORIES

4.1. State responsibility for breaches of international humanitarian law in occupied territories

The International Committee of the Red Cross actively works to promote the protection of innocent people during armed conflict, especially when their lands are under occupation, as well as to guarantee their safety. The ICRC's guidelines concentrate on civilian rights in conflict areas, in addition to drawing attention to the responsibilities of the occupying force. The detention of civilians during occupation is addressed by the ICRC. This detention is often linked to violations of human rights (ICRC, 2009, p. 1).

A State must be accountable for multiple violations of international humanitarian law, such as:

1. Violations occurred by its military forces and other authorities;
2. People or organizations if authority violates some aspects of governmental power and these violations occur regularly;
3. People or organizations are violating orders. They are operating under its supervision or direction;
4. The ICRC actively accepts violations by private people or organizations as part of its own behavior (ICRC, 2002, p. 4).

The 1907 Hague Convention (IV) in Article 3 and Additional Protocol I in Article 91, both clearly points up that state is responsible for all acts committed by individuals, forming part of its armed forces. This regulation puts into action the general rule of state responsibilities for internationally wrongful acts, which clearly holds a state accountable for all the actions of its authorities. The state regards the military as a state authority, similar to other branches of government, which include the legislative, executive and judicial branches. The Geneva Conventions clearly concentrate on the state responsibility and the need to prosecute people for the violations go hand in hand, representing how this fundamental rule of attributing blame is applied in international humanitarian law (ICRC, Article 3 and Article 91).

The Second Protocol to the Hague Convention concentrates on the idea that many states bear accountability along with people for crimes. It applies this principle to a state's armed forces, concentrating on that any party to the war bears responsibility for "all acts" carried out by members of its armed forces (ICRC, 2024, Article 3 and Article 91). States must actively

investigate claims of war crimes made by their citizens or military personnel and bring charges against the suspects if necessary. An important aspect of state responsibility is the obligation to actively prevent violations of international humanitarian law. States must also guarantee that they punish those who violate it (UNESCO 1999 Article 1).

The International Law Commission offers a thorough framework for recognizing responsibility of a state for breaches of international law. This framework is included in the Articles on the ARSIWA. A State holds international responsibility for violating duties it is liable for, as stated by ARSIWA. Fairly important actions are taken by the military and other government agencies. Under the Fourth Geneva Convention, the Occupying Power has many specific obligations, such as maintaining the status quo as well as guaranteeing civilian protection along with care (Diakonia, 2024).

International commissions of inquiry and fact-finding missions serve as important tools for the United Nations to respond to violations of international human rights law and international humanitarian law, dealing with international crimes. To tackle offenses across an expanding range of contexts, entities like the UN Security Council, General Assembly, Human Rights Council, Secretary-General and High Commissioner for Human Rights are increasingly creating these commissions. Fact-finding missions and commissions of inquiry effectively eliminate impunity by encouraging accountability for such violations. They compile, validate data, document historical occurrences, in addition to acting as a foundation for additional research. They also propose actions to guarantee offenders are held accountable, provide justice as well as compensation for victims, along with dealing with infractions. Full support is their right, which includes the cooperation of states and adequate funding (Lords Library, 2022; UN OHCHR, 2024).

When discussing state responsibility for breaches of international humanitarian law in occupied territories, it is important to emphasize the case *Al-Shimari v. CACI Premier Technology, Inc.* The case centers on many allegations of torture and abuse committed by multiple private military contractors for the U.S. government during the Iraq War. Former inmates of the Abu Ghraib jail took legal action against CACI. They alleged that their constitutional rights had been abused. State responsibility in outsourcing military and detention operations is examined in the case, along with the question of whether accountability for the conduct of its contractors can be held by the U.S. government. The main point of contention is whether the U.S. government can be held accountable for the acts of private actors when they

carry out important state tasks, such as detention as well as questioning. The U.S. government supplied interrogators at the facility through its contractor, who actively tortured as well as mistreated prisoners while disguising their actions as military activities. The appellants argued that, because the contractors clearly operated under the direction of the US military, the government must be held accountable for the actions of its representatives, even if they weren't direct workers (*Al Shimari v. CACI Premier Technology, Inc.*, 2016).

The court's ruling drew attention to the conflict between the accountability of the government and private contractors. It clarified that many instances could depict how the United States might face indirect liability for the actions of its contractors while they are carrying out official duties. The legal consequences of the case play an important role in determining the boundaries of state accountability in disputes where private enterprises assist in carrying out governmental directives. The case mentions the Geneva Conventions, which describe the safeguards provided to detainees in conflict areas, as well as other rules of international humanitarian law that address state accountability. The question of whether responsibility for violations of international law needs to be accepted by the U.S. due to the acts of private contractors operating under government control is posed from the standpoint of state responsibility. The IHL principle of command responsibility holds states accountable for illegal acts committed by non-state actors under their command, as it requires that states guarantee their forces, along with contracted forces, follow the rules of war. Concerns about accountability for transgressions of international law in cases involving private contractors are raised by the case, which draws attention to the detailed relationship between state responsibility as well as the outsourcing of military along with prison activities (*Al Shimari v. CACI Premier Technology, Inc.*, 2016).

Al-Shimari v. CACI brings up important questions about the extent of state responsibility under international law, especially when the state assigns important duties to private organizations, including detention as well as questioning. The necessity of explicit accountability structures is drew attention to by the case. This is particularly true regarding human rights and international law abuses when military operations are sanctioned by the state and participated in by private actors.

In conclusion, the principle of command responsibility holds states accountable for illegal acts by their subordinate non-state actors because states must guarantee that their forces and contracted forces, obey the laws of war, as shown by the mentioned case. The research

demonstrated that rapidly shifting territorial control in the armed conflicts, challenges state responsibility. Control over territories and populations challenges effective enforcement of international humanitarian law in these situations. Individual criminal responsibility³ may provide a more effective framework for enforcing IHL rules, particularly about detention, plus guaranteeing accountability for violations, in these circumstances. The international community can address many violations by holding some people personally accountable, even where state structures are weak or absent. Mechanisms like the International Criminal Court focus on individual responsibility, thus prosecuting those directly involved in IHL breaches, even with limited or inconsistent state enforcement. Individual criminal responsibility, while state responsibility remains a basis of IHL, may be viewed as a more reliable mechanism for guaranteeing justice and accountability in conflict situations.

4.2 Arbitrary detention of civilians as a war crime in the Rome statute of International Criminal Court

Every member of the armed forces must be responsible for their acts, as they can be charged with a crime if they break the laws of war. People who genuinely try to help, enable, aid, promote, plot, or start a war crime can also readily face accountability for their actions under multiple forms of individual criminal liability, just like those who actually conduct war crimes. In the context of armed conflict, important responsibility is placed on military leaders for the orders that are given to their troops to violate international humanitarian law. They are held accountable for failing to stop as well as prevent such violations (Diakonia, 2024).

The Rome Statute specifically mentions the unlawful detention of civilians, drawing attention to the conditions under which such confinement may be considered a war crime. The rules of international humanitarian law is importantly supported by these provisions, which provide many safeguards against the abuse of power by both state and non-state actors engaged in conflicts.

The ICC's laws actively hold accountable those involved in arbitrary imprisonment, effectively preventing them from avoiding punishment by claiming that it is necessary for security or war. International law clearly forbids arbitrary imprisonment as a war crime,

³ The principle of individual criminal responsibility will be analyzed in further sub-chapters of this thesis.

especially in the context of both international and non-international armed conflicts. The standards for legal detention as well as the protocols for prosecuting offenders are importantly outlined by these clauses (Doermann, 2010, p. 35-36).

Acts, such as torture, rape and forced prostitution, are examples of severe violence and mistreatment. Additionally, many crimes against identifiable groups based on political, racial, or religious grounds are both prohibited and recognized as illegal under international law (Bassiouni, 2011, p. 10-20).

"Enforced disappearance of persons" involves many people being arrested, detained or kidnapped by a state or political organization, or with their consent, support or authorization, while those authorities consistently refuse to acknowledge the loss of freedom or provide any information about the location of these people, targeting to exclude them from legal protection for a long period (UN, 2010).

Furthermore, International Criminal Court specifies that these crimes include a range of serious violations, involving acts against people or property that the Geneva Conventions protect. Some of the major offenses that people classify as war crimes include willful killing, torture and cruel treatment. Violations include the forbidden destruction or appropriation of property, the unlawful imprisonment of captives and the causing of severe pain or harm. The laws actively prevent unlawful deportations or transfers, prohibit seizing hostages, guarantee fair trials and stop the harassment of prisoners of war to serve in hostile forces. International law classifies these infractions as serious crimes that necessitate prosecution (Doermann, 2010, p. 356-357).

Moreover, acts like murder, mutilation and torture, are noted in article 8(2)(C) when an armed conflict of a non-international character takes place, especially when human dignity is compromised, treatment is degrading, people are kidnapped and executions are carried out without proper judicial judgment. Article 55 clearly states that during an investigation carried out under this Statute, nobody may be arbitrarily arrested, detained or have their freedom taken away from them unless there are specific grounds as well as processes outlined in this Statute (ICC, 1998, p. 5).

When discussing individual responsibility for breaches of international humanitarian law in occupied territories, it is important to emphasize the Australia/Afghanistan Inquiry into

the Conduct of Australian Defence Forces and Central African Republic: Sexual Violence by Peacekeeping Forces⁴ (Inspector-General of the Australian Defence Force 2020).

An important step in dealing with claims of war crimes that were allegedly perpetrated by Australian soldiers during their time stationed in Afghanistan was the Brereton Report, also known as the Australia/Afghanistan Inquiry into the conduct of the Australian Defence Forces (ADF). In the Brereton Report, reliable evidence was found of unlawful deaths as well as inhumane treatment of civilians and detainees by members of the Australian Defence Forces, which was ordered by the Inspector-General of the Australian Defence Force. Specifically, the investigation uncovered 23 cases involving 19 alleged perpetrators of these war crimes. The report concentrates on personal accountability. It suggests sending these people to the Australian Federal Police for a criminal investigation (Inspector-General of the Australian Defence Force 2020).

The creation of the Office of the Special Investigator clearly shows a strong dedication to personal responsibility in response to the report's conclusions. The Office of the Special Investigator has the responsibilities of investigating the claims made in the Brereton Report as well as compiling evidentiary briefs for prosecution. The idea that people, not units or the military institution as a whole, are held accountable for their conduct is being reaffirmed by this office's mandate, which is directed towards guaranteeing that those who have committed war crimes are brought to justice. These acts, which include terminations as well as other disciplinary actions, further show the emphasis on personal responsibility (Crawford & Fellmeth, 2020, p. 4-8).

The Brereton Report and the measures taken by Australian authorities show a strong commitment to personal accountability for violations of international humanitarian law. The investigation actively draws attention to the importance of guaranteeing that people are held accountable for their behavior in conflict situations by specifically naming offenders along with suggesting both criminal as well as administrative measures. This strategy aims to maintain the moral principles and legitimacy of the military forces involved while also delivering justice to the victims.

Sexual violence allegations by peacekeeping soldiers have greatly affected many in the Central African Republic, drawing attention to the relevant roles of personal accountability as

⁴ The case emphasizes peacekeeping soldiers' individual criminal responsibility, not detention practices. However, next case will discuss detention practices, along with individual criminal responsibility.

well as duty in many multinational missions. These occurrences importantly worsen the suffering of many local residents. They also cast large doubt on peacekeeping missions. A multidimensional strategy actively concentrates on investigating, prosecuting and preventing such crimes to effectively address this (Human Rights Watch, 2016).

United Nations peacekeepers have frequently faced accusations. The seriousness of these charges has triggered intense international attention as well as a strong call for justice. Personal accountability is important for fighting these offenses. The UN and member states have acted to hold people who commit acts of sexual assault accountable. Carrying out in-depth investigations, collaborating with regional law enforcement and supporting the prosecution of those who are accused are the tasks involved. The UN actively engages in improving the accountability framework for peacekeepers by creating conduct, and discipline units within missions, along with mandating pre-deployment training against sexual exploitation and abuse. UN officials responded to many CAR claims. Personnel involved in sexual abuse cases were repatriated and authorities stopped their units. Meaningful dedication is shown by upholding the integrity of many peacekeeping missions. Holding many human rights violators accountable also shows this commitment. In spite of progress, many issues remain, particularly in guaranteeing that justice is administered in the nations providing troops, where diverse political factors may influence outcomes, as well as potential inadequacies in the existing legal systems. The United Nations actively protects and compensates victims of sexual assault. Offering survivors large medical attention, wide-ranging psychological support, as well as thorough legal aid addresses their short-term and long-term needs. Giving people affected by these horrible acts their dignity back and guaranteeing justice relies heavily on such necessary actions.

The challenge of sexual violence committed by CAR peacekeeping soldiers draws attention to the urgent need for solid systems to prevent, investigate and punish such offenses. Guaranteeing that people take responsibility is important for upholding the values of international humanitarian law and for preserving the legitimacy of multinational peacekeeping operations. The international community can hold offenders accountable as well as assist victims to create more moral and efficient peacekeeping missions (Human Rights Watch, 2016).

Lastly, the sexual violence cases in the Central African Republic clearly showed how important individual accountability is for multinational peacekeeping efforts. Guaranteeing the effectiveness of peacekeeping operations is dependent on dealing with these crimes.

The next case, which focuses on detention practices and individual responsibility, is the Prosecutor v. Bosco Ntaganda, official of the Union of Congolese Patriots group during the Ituri conflict in the Democratic Republic of the Congo (DRC). In 2019, the ICC actually convicted Mr. Bosco of crimes against humanity and war crimes. These included the cruel and unlawful detention of civilians and the inhumane treatment of those civilians during the Ituri. International law was violated by Ntaganda, who detained civilians in military camps, subjecting them to torture, forced labor and inadequate conditions. The Geneva Conventions protect civilians from unlawful detention and mistreatment, therefore, many of these acts constituted war crimes. International humanitarian law explicitly prohibits acts of torture, other cruel, inhuman, or degrading treatment. Authorities forced detained civilians to work constructing military fortifications under harsh and dangerous conditions (The Prosecutor v. Bosco Ntaganda, 2019).

The ICC addressed illegal detention practices during armed conflict as war crimes, with Bosco Ntaganda's case acting as an important illustration of this. An increased responsibility for holding people fully accountable for unlawful detention, cruel torture and other inhumane practices inflicted upon innocent civilians and prisoners of war, was created by the ICC, as Ntaganda's conviction, quite importantly, resulted from charges directly related to these very serious violations (The Prosecutor v. Bosco Ntaganda, 2019). (The Prosecutor v. Bosco Ntaganda, 2019).

In conclusion, the ICC strongly concentrates on individual responsibility, and quite effectively, it delivers meaningful results. The ICC's classification of civilian detention in occupied territories as a war crime emphasizes the importance of prohibiting unlawful detention, torture and other cruel, inhuman or degrading treatment during custody. The case study demonstrated that state responsibility for detention practices is considered less effective than individual responsibility, because questions remain regarding state's acceptance of responsibility for international law violations committed by private contractors under government control, in spite of existing case law.

4.3 Legal and practical gaps in enforcement of responsibility for IHL violations in relation to civilian detention

The important legal obstacle to prosecuting perpetrators for serious IHL violations, especially those involving the unlawful imprisonment of civilians, is the issue of jurisdiction. The International Criminal Court can only examine war crimes, including arbitrary imprisonment, in states that have importantly accepted the Rome Statute or have been referred by the UN Security Council within the existing system of international law.

There are several factors that contribute to gaps in enforcement. These factors can be differentiated as: the evasion of the Rome Statute; lack of clarity in legal regulation; failure to take responsibility for subordinate actions; the effect of weak national legal systems on accountability; deficiency of national courts in ensuring accountability; restricted access and lack of evidence; the impact of silence from other states; the prediction of impunity; lack of effective support systems for victims; the rejection of cooperation in investigations.

1) The evasion of the Rome Statute - Many countries involved in armed conflicts have consistently ignored international legal processes or have often not signed the Rome Statute. Governments involved in active conflicts, such as those in Syria, Yemen, or Sudan, either reject the legitimacy of international organizations or resist allowing outside investigation or punishment. Those responsible for arbitrary detention often escape punishment because the ICC seriously lacks jurisdiction over nations that are not parties to the Rome Statute, or who stubbornly refuse to comply (Wagner, 2003, p. 413-415). Many states' sovereignty can block legal action. This is true even when a state is a party to the Rome Statute. Nations may actively refuse cooperation with international organizations, especially when their alliances and national interests are involved (Sarwar, 2021, p. 162-165).

2) Lack of clarity in legal regulation - The meaning of "Arbitrary Detention" remains unclear. An important legal void emerges from the confusion surrounding the meaning of "arbitrary detention." Even though it is widely used in IHL, this phrase lacks a specific definition that all legal systems agree upon. Although the Geneva Conventions and its Additional Protocols clearly forbid arbitrary detention, many people actively debate what specifically qualifies as "arbitrary" detention in multiple conflict situations. State actors frequently justify detentions undertaken under the pretense of military necessity or for "security reasons." This justification complicates the determination of their legality or

illegality. IHL states that arbitrary detention includes several conditions of custody. It also covers the absence of court supervision as well as the denial of fair trial procedures in addition to the act of arresting or detaining people. Ambiguity can arise importantly due to the challenge of clearly distinguishing between arbitrary as well as lawful detention, especially in non-international armed conflicts where state actors might argue that detentions are needed to maintain security or to prevent insurgencies, in spite of their harmful effect on civilians.

3) Failure to take responsibility for subordinate actions - Command accountability for arbitrary detention is another challenge that is faced by military commanders. Commanders who knew or should have known about a crime committed by their subordinates, yet did nothing to stop or punish it, could indeed face serious criminal charges under the Rome Statute. Commanders frequently assert, however, that they lacked knowledge of the particular detentions occurring as well as the means or power to stop their subordinates' illegal behavior. As a result, accountability may be weakened as top military officers accountable for crimes are not prosecuted (Rodman, 2019 p. 73-77).

4) The effect of weak national legal systems on accountability - Many national legal systems suffer weakness, particularly in governments involved in protracted conflicts, creating important practical gaps in imposing culpability for arbitrary detention. In many states with protracted internal conflict, national judicial systems are destroyed by corruption, lack of funding, or political meddling. This greatly limits the capacity to actively enforce IHL offenses domestically (Rodman, 2024).

5) The failure of national courts in ensuring accountability - Limited options for pursuing justice confront victims of arbitrary detention. These situations leave them with few choices. A culture of impunity often results when national courts fail to investigate and prosecute crimes committed by state or non-state actors. Even when local tribunals are in place, they might not be able to effectively deal with the complication of war crimes or to function without political interference, especially when senior authorities or military leaders are involved (Barnett, 1996, p. 157-159).

6) Restricted access and lack of evidence - The difficulty of keeping track of as well as recording arbitrary detention in war areas is represented by another important practical gap. During armed conflict, particularly in non-international armed conflicts with multiple players involved, local and international humanitarian groups face severe limitations in their capacity

to oversee detention facilities. Many governments or rebel organizations hide detention facilities and restrict access to captives (Rodenhäuser, 2024).

International organizations often depend on many satellite images, some on-the-ground reports and multiple third-party accounts, but these sources are not always sufficient to fully catch the situation. Moreover, foreign organizations like the UN face great challenges in conducting thorough investigations or guaranteeing that detainees are not truly victims of arbitrary imprisonment or torture due to political considerations as well as security concerns. Finding the offenders and obtaining the proof needed for prosecution is actually quite difficult without proper documentation (OHCHR, 2024, p. 360-362).

7) The impact of silence from other states - Impunity may be maintained by international silence, as shown by the ineffective intervention in cases such as those in Syria, where reports of common arbitrary imprisonment as well as other IHL violations have surfaced. Powerful nations concentrate on their political or economic ties over civilian safety. They might veto or obstruct efforts to hold offenders accountable in international courts. Uneven responsibility exists in the system, allowing many people to avoid criticism, because of their military or political influence (Amnesty International, 2024).

8) The prediction of impunity - the problem of impunity remains quite severe in the punishment of IHL violations. This includes many cases of arbitrary detention. Many people, whether state actors or members of armed organizations, often believe they will escape the result of their crimes. In wars where arbitrary detention acts as a weapon of war by both state actors as well as non-state actors, this is especially true. The lack of strong enforcement measures, both domestically as well as internationally, encourages impunity. If offenders are not prosecuted immediately after a disagreement, these offenses often get forgotten or reduced. Perpetrators often move to new military or political roles, thereby avoiding prosecution. With little chance of justice for the victims, it is guaranteed by this pervasive culture of impunity that the cycle of arbitrary imprisonment, along with other war crimes, will go unregulated (Murray, 2018).

9) Lack of effective support systems for victims - An active problem in enforcing accountability for arbitrary detention is that effective support systems for victims are lacking. IHL states that war crimes victims, including those facing arbitrary jail time, deserve important compensation, restoration, as well as rehabilitation support. Reparations are either nonexistent

or inadequately developed in many conflict zones, particularly those marked by persistent violence or political instability (United Nations, 2021).

Victims of arbitrary detention experience severe psychological and bodily harm and if they do not receive suitable legal channels for recourse, they may unfortunately lose trust in the international justice system (Bell, 2017).

10) The rejection of cooperation in investigations - International laws and conventions like the Rome Statute and the Geneva Conventions provide a framework for pursuing infractions, but many countries must collaborate for real effectiveness. Political interests create serious obstacles. Practical difficulties along with some states' rejecting to cooperate with international investigating agencies often block this cooperation. Political leaders often lack the strong will to actively use coordinated international measures to enforce IHL violations in crisis situations. Many countries battle to effectively punish crimes such as arbitrary detention when international cooperation is weak (Martin, 2018).

In conclusion, many countries involved in armed conflicts have consistently ignored international legal processes or have often not signed the Rome Statute. Governments involved in active conflicts, such as those in Syria, Yemen, or Sudan, either reject the legitimacy of international organizations or resist allowing outside investigation or punishment. Those responsible for arbitrary detention often escape punishment because the ICC seriously lacks jurisdiction over nations that are not parties to the Rome Statute or who refuse to comply. Many states' sovereignty can block legal action. This is true even when a state is a party to the Rome Statute. Nations may actively refuse cooperation with international organizations, especially when their alliances as well as national interests are involved.

CONCLUSIONS AND PROPOSALS

1) International laws and conventions like the Rome Statute and the Geneva Conventions create a framework for pursuing infractions. Many countries' collaboration guarantees effectiveness. Serious obstacles arise from political interests. Many practical difficulties and the refusal of several states to cooperate with international investigating agencies frequently prevent this cooperation.

2) The thesis found that distinction between international armed conflicts and internal disturbances, not reaching the standard level of hostilities for non-international armed conflicts, is important, since international humanitarian law applies exclusively to armed conflicts. Different legal responsibilities are created by this qualification, drawing attention to its importance. Incorrect classification, be it international armed conflict or internal disturbances, prevents the application of correct international mechanisms, particularly strong civilian protection mechanisms of the Geneva Conventions.

3) This research examined several relevant cases characterizing the need to balance arbitrary imprisonment against security concerns. It was demonstrated that authorities must thoroughly justify important security reasons, with every single important detail for the right decision, in light of the above-mentioned cases. Lawful detention, even during a conflict, is critically important for a democratic society. Cases highlighted that urgent security needs should justify detention reasons.

4) Regardless of a strong legal framework, many practical monitoring procedures and control mechanisms, remain insufficient. States must uphold all legal rights the Geneva Conventions, Additional Protocols and other international conventions grant prisoners, but in reality, conflict situations often cause states to fail. National security concerns often clash with the absolute prohibition on arbitrary imprisonment, especially for decision-maker authorities. States sometimes use imperative security reasons as an excuse. As the analyzed case law demonstrated, authorities frequently impose administrative detention without charge or trial, in addition to holding prisoners indefinitely without sufficient court supervision. Furthermore, access denial is a serious problem. Supervision of detention facilities by a third party faces difficulties, especially when access is denied by armed groups.

5) Russia's invasion of Georgia revealed that international law provides a strong framework filled with clear clarifications and regulations for the detention of people for

security purposes, but the distinction draws attention to an important problem. While international law sets many regulations and clearly defines penalties for violations, it often suffers from common enforcement issues. This particular situation clearly draws attention to a serious problem within the international legal system. The international community failed to punish Russia for its aggressive actions in the 2008 war - no meaningful legal or punitive measures were imposed, which demonstrates that there is an important gap between the theoretical foundations of laws as well as their actual application.

6) The thesis found that the International Criminal Court concentrates on individual responsibility and it delivers meaningful results. The ICC's classification of civilian detention in occupied territories as a war crime emphasizes the importance of prohibiting unlawful detention, torture and other cruel, inhuman or degrading treatment during custody. The case study demonstrated that state responsibility for detention practices is considered less effective than individual responsibility, because questions remain regarding state's acceptance of responsibility for international law violations committed by private contractors under government control, in spite of existing case law.

7) Several factors contributing to enforcement gaps were investigated by the thesis:

7.1 The avoidance of the Rome Statute:

The thesis showed, that governments often avoid to sign the Rome Statute and reject international organizations to conduct investigations.

7.2 Lack of clearness in legal regulation:

The term 'Arbitrary Detention' is very often interpreted differently, which creates legal gaps. It causes lack of an universal definition.

7.3 Failure to take responsibility for subordinate actions:

Serious criminal charges under the Rome Statute could indeed be faced by commanders who knew, or should have known, of a subordinate's crime but did nothing to stop or punish it. Ignorance of the detentions was frequently claimed by them and the authority to prevent illegal actions of their subordinates' was lacking.

7.4 The effect of weak national legal systems on accountability:

The thesis examined situations in Afghanistan and the Democratic Republic of the Congo and analyzed that long internal conflicts and a serious lack of funding or political interference creating important practical gaps in imposing responsibility for arbitrary detention. Domestically, this restricts the ability to actively enforce IHL rules.

7.5 insufficiency of national courts in ensuring accountability:

Some national courts fail to investigate and prosecute individuals in nations with weak legal systems.

Furthermore, issues are restricted access and lack of evidence, effective support systems for victims and the rejection of cooperation in investigations.

8) The thesis suggests

8.1 Expanding the International Criminal Court's jurisdiction due to the many challenges presented. It is achievable by actively promoting a broader global agreement to use UN Security Council resolutions in order to expand the ICC's jurisdiction. Moreover, the international community should impose greater diplomatic pressure on non-compliant governments to recognize ICC jurisdiction and engage in international judicial proceedings.

8.2 Clear legal terminology is very important. Active adjustment to the Geneva Conventions along with their Additional Protocols reduces legal uncertainties, guaranteeing consistent enforcement.

8.3 An important step is to improve accountability for command. Leaders can actively hold their subordinates responsible for many acts. They can do this by enforcing strict documentation as well as reporting standards inside military systems. To improve accountability across multiple levels of command, many procedures should be created to simplify the prosecution of senior officers who engage in arbitrary detention.

8.4 Increased collaboration among international, non-governmental and local organizations and institutions improves access to detention facilities. This collaboration leads to more accurate reporting of instances of arbitrary detention.

8.5 Political will and international collaboration must be encouraged to guarantee consistent enforcement of IHL. "Strong states" should concentrate on humanitarian considerations over geopolitical objectives to assist international efforts to reduce arbitrary imprisonment.

8.6 To make sure that victims of arbitrary imprisonment get justice and compensation, we need to create strong victim support networks. These networks are important for guaranteeing that victims feel supported and empowered. Financial recompense, legal assistance, as well as psychological treatment must be created.

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SUMMARY

Detention of Civilians in the Occupied Territories: Limits and Challenges of International Humanitarian Law: a Legal Analysis

Mariam Grigolishvili

This thesis emphasizes the factors that contribute to gaps in enforcement, placing important emphasis on the legal frameworks that govern such activities as well as the multiple abuses that occur.

The work demonstrates that several factors: the evasion of the Rome Statute, lack of clarity in legal regulation, failure to take responsibility for subordinate actions, the effect of weak national legal systems on accountability, deficiency of national courts in ensuring accountability, restricted access and lack of evidence, the impact of silence from other states, the prediction of impunity, lack of effective support systems for victims, the rejection of cooperation in investigations seriously violate human rights and international humanitarian law.

The thesis urges that authorities must thoroughly justify important security reasons, with every single important detail for the right decision, because lawful detention during conflict is critically important for a democratic society. The thesis strongly advises promoting a broader global agreement to use UN Security Council resolutions in order to expand the ICC's jurisdiction, making legal terminology clear and increasing collaboration among international, non-governmental and local organizations and institutions.