



Research Article

Beyond the Law: The Struggle to Apply Ihl in Internal Armed Conflicts

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Abstract

The evolution of armed conflict in the twenty-first century has made it difficult to differentiate between international and internal warfare. This poses significant challenges to the application and enforcement of International Humanitarian Law (IHL). This paper critically examines the struggle to implement IHL in non-international armed conflicts (NIACs), and accentuates on the Boko Haram insurgency in Nigeria. The paper adopts a doctrinal analysis of legal instruments, case law, and institutional reports, to interrogate the extent to which this armed group meets the threshold of a NIAC under Common Article 3 of the Geneva Conventions and Additional Protocol II. Additionally, it has been supported by domestic laws such as the 1999 Constitution (as amended) and Terrorism (Prevention) (Amendment) Act, 2013. It was shown that the actions of this armed group has amounted to several crimes which are recognized internationally such as war crimes, crimes against humanity and several breaches of International Humanitarian Law. The violations of human rights and humanitarian law by their actions, which impinges on the international humanitarian laws which is the Common Article 3 of the Geneva Convention and Additional Protocol II of the Geneva Convention. This has led to the recognition of this conflicts to describe as one of non-international character. The study further explores the legal, political, and institutional barriers that hinder effective compliance and enforcement of IHL norms by both state and non-state actors. The findings reveal that IHL's practical application in Nigeria remains constrained by state sovereignty concerns, lack of accountability mechanisms, and the ideological intransigence of insurgent groups. The study argues that these challenges reflect a broader tension between law and reality in modern internal conflicts. It concludes by recommending legal reforms, enhanced IHL training for security forces, and greater humanitarian engagement with non-state actors to ensure better protection of civilians and adherence to humanitarian norms.

Keywords

International Humanitarian Law, Non-international Armed Conflict, State Responsibility, Non-state Actors, Compliance

1. Introduction

This research work examines the struggle to implement IHL in non-international armed conflicts, and accentuates on the Boko Haram insurgency in Nigeria. The research interrogates

the extent to which the armed group meets the threshold of a non-international armed conflict, with particular attention to Common Article 3 of the Geneva Convention and Additional

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Received: 24 January 2026; Accepted: 10 February 2026; Published: 4 March 2026



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Protocol II. It also explores some provisions of the domestic laws such as the constitution, Terrorism (Prevention)(Amendment) Act, 2013 and the Economic and Financial Crime Commission Act, 2004. It further analyses the activities of this group in Nigeria and the extent to which the Act has succeeded in regulating the armed groups activities generally in Nigeria. Finally, the legal, political and institutional barriers that hinder the implementation of IHL norms will be examined.

Contemporary armed conflicts often defy conventional distinctions between international and internal warfare, as evolving dynamics such as cross-border armed groups, foreign intervention in domestic struggles, and hybrid forms of violence challenge traditional classifications used in datasets and theoretical frameworks[1]. International Humanitarian Law (IHL), also known as the law of armed conflict, was historically developed to regulate hostilities between sovereign states. However, the past few decades have witnessed a shift towards internal armed conflicts. Civil wars, insurgencies, and terrorism have replaced traditional state-to-state warfare as the dominant form of armed violence across the globe. Consequently, the application of IHL to internal conflicts has become one of the most pressing challenges confronting both international legal scholars and humanitarian practitioners.

IHL seeks to mitigate the suffering caused by armed conflict by imposing obligations on parties to protect persons who are not, or are no longer, participating in hostilities, and to limit the means and methods of warfare.[2] Its foundational instruments¹ establish binding legal frameworks for both international and non-international armed conflicts. However, despite the fact that these legal standards are well-developed, the implementation and enforcement of IHL in non-international armed conflicts (NIACs) are elusive [3]. This is as a result of the fact that such conflicts involve non-state armed groups, they lack formal recognition by states and occurs within sovereign territories. These factors complicate both legal classification and practical enforcement.

The violent occurrence of the Boko Haram sect has been targeted mainly at the government, her institutions, infrastructures, officials, industries, places of worship, businesses and the environment due to the weapons employed and the populace are bearing the brunt of Boko Haram's acts of devastation and many other disadvantages. The dangerous nature of insurgency launched by the group has pitched Christians and Muslims against each other owing to the incessant bombings of churches in the North particularly the states of Borno, Yobe, Adamawa [4].

The violent activities of the sect have also assumed international dimensions. The nature of their dastardly acts includes bombings, kidnapping of people especially women, children and students' [5] abductions [6], torture, cruel inhuman and degrading treatment, sexual violence, destruction and appropriation of property, shooting victims, nocturnal attacks. This has grossly affected Nigeria leading to the displacement of

persons, unemployment and so many mishaps. It is quite unfortunate that several years after the Boko Haram Insurgency, there is still no solution to combat this menace. The insurgency has also extended into neighbouring states.² Although the scale and intensity of violence arguably meet the threshold of a non-international armed conflict under Common Article 3 of the Geneva Conventions and Additional Protocol II, Nigeria's reluctance to formally acknowledge this classification shows concerns about sovereignty, legitimacy and international scrutiny.

The central problem this paper addresses is the persistent gap between the theoretical protections afforded by IHL and the realities of their enforcement in internal conflicts. Despite the universality of IHL norms, their practical application within Nigeria remains constrained by weak legal institutions, limited accountability mechanisms, and political sensitivities surrounding the recognition of insurgent groups as parties to a conflict. Moreover, this armed group's ideological extremism and deliberate targeting of civilians represent a fundamental rejection of humanitarian principles, further undermining compliance with IHL.

Accordingly, this paper seeks to:

- 1) Examine the conceptual and legal framework governing the application of IHL to non-international armed conflicts;
- 2) Analyze the insurgency within this legal context to determine whether it qualifies as a NIAC;
- 3) Identify the key challenges and barriers to enforcing IHL norms in Nigeria's internal conflict; and
- 4) Propose legal, institutional, and policy reforms to strengthen the protection of civilians and promote adherence to humanitarian standards.

This study adopts a doctrinal legal research methodology, as it examines international treaties, case law, and secondary scholarly sources. It also employs qualitative analysis to evaluate the interplay between legal norms and the political realities of conflict governance in Nigeria.

2. Factors Determining the Application of IHL

One of the major indices for the application of IHL is the intensity of the conflict is to be distinguished from the intensity of the lesser forms of collective violence such as civil unrest, riots, and isolated or sporadic acts of violence [7]. The level of intensity of the violence is determined in the light of indicators such as the duration and gravity of the armed clashes, the type of government forces involved, the number of fighters and troops involved, the type of weapons used, the number of casualties and the extent of the damage caused by the fighting.

The ICRC describes the intensity of the conflict to also include when the hostilities are of a collective character or when

¹The 1949 Geneva Conventions and their 1977 Additional Protocols

²Cameroon, Chad and Niger

the government is obliged to use military force against the insurgents, instead of mere police force [8]. Vite states, with regard to the criterion of intensity, these data can be, for example, the collective nature of the fighting or the fact that the State is obliged to resort to its army as its police forces are no longer able to deal with the situation on their own. The duration of the conflict, the frequency of the acts of violence and military operations, the nature of the weapons used, displacement of civilians, territorial control by opposition forces, the number of victims (dead, wounded, displaced persons, etc.) are also pieces of information that may be considered [9].

However, these are assessment factors that make it possible to state whether the threshold of intensity has been reached in each case; they are not conditions that need to exist concurrently which simply means they need not all occur at once, it is still sufficient where there is space in time so long as they are related to the conflict and to the particular actors. It is generally accepted that low-intensity internal disturbances and tensions are excluded from the ambit of the provision of Common Article 3. Therefore, for International Humanitarian Law to be applicable to Boko Haram Insurgency, the Boko Haram Insurgency must satisfy the high-intensity conflict test otherwise it's only a conflict that falls within the municipal laws of the State of hostility.

Characteristics of Non-International Armed Conflict

These are armed conflicts taking place in the territory of one nation between the armed forces of the State and other armed groups, which reach a level of intensity beyond mere riot or internal disturbance resulting from a sporadic action [10]. The conflict must be between the State party and its citizens happening within the territory of the State without involvement of another State. Furthermore, two requirements are necessary for such situations to be classified as non-international armed conflicts: The hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces.

Non-governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations. Article 3 Common to the 1949 Geneva Conventions during the negotiations preceding the adoption of the 1949 Geneva Conventions, the proposal was made to extend the Conventions applicability.

3. Historical Overview

Boko-Haram insurgency started back in 2008 with the group carrying out minor sporadic acts of violence against law enforcement officers especially the police [11]. The group turned out to be dangerously violent after the killing of their leader in 2009 [12]. The group resorted to attacks on police

stations, bombings of places of worship, later it graduated to attacks on schools, kidnapping, killings and massive raids and burning of villages. The attacks persisted and continues till today.

3.1. Legal Classification of the Armed Insurgency in the North Eastern Nigeria as a Non-international Armed Conflict

The primary legal foundations for identifying NIACs are Common Article 3 of the 1949 Geneva Conventions and Article 1 of Additional Protocol II (1977). Common Article 3 applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties" and outlines minimum humanitarian standards, including humane treatment and the prohibition of torture, murder, and degrading treatment. Additional Protocol II expands on Common Article 3, requiring that non-state armed groups exhibit a certain level of organization and control over territory, enabling them to conduct sustained military operations.

In interpreting these provisions, international jurisprudence, most notably the decision in *Prosecutor v. Duško Tadić* [13] before the International Criminal Tribunal for the former Yugoslavia (ICTY), established two cumulative criteria for determining the existence of a NIAC: (i) the intensity of hostilities, and (ii) the organization of the parties to the conflict. Both must be satisfied for a situation to qualify as a NIAC under IHL.

The intensity criterion requires that the level of violence surpass internal disturbances, riots, or isolated acts of violence. Relevant indicators include the frequency and seriousness of attacks, duration of hostilities, nature of weapons used, number of casualties, displacement of civilians, and involvement of the state's armed forces.

Applying this test, the Boko Haram insurgency clearly exceeds the threshold of internal disturbance. Since 2009, Boko Haram has engaged in sustained and coordinated attacks across Nigeria's northeastern states, as they target civilians, government installations, schools, and international agencies. Reports indicate over 35,000 deaths and the displacement of approximately 2.5 million people within Nigeria and neighbouring states [14]. The insurgency has seen the use of automatic weapons, improvised explosive devices (IEDs), suicide bombings, and attacks on military bases.

The Nigerian Armed Forces' large-scale counterinsurgency operations, featuring aerial bombardments, artillery deployment, and the creation of the Multinational Joint Task Force (MNJTF) with Chad, Niger, and Cameroon, further attest to the conflict's sustained intensity. The duration, scale, and severity of hostilities, as well as the extensive humanitarian impact, confirm that the Boko Haram insurgency satisfies the intensity requirement under IHL [15].

3.2. Organization of the Parties

The organization criterion assesses whether the non-state armed group displays a level of command structure and operational capacity sufficient to plan and carry out sustained military operations [16]. Boko Haram meets this threshold. Founded by Mohammed Yusuf in 2002 and later led by Abubakar Shekau until 2021, the group developed a hierarchical structure with defined command, recruitment, logistics, and propaganda units. Its capacity to coordinate complex, multi-location attacks and to impose authority over occupied territories demonstrates a coherent command system. Even after internal divisions,³ both factions retained operational discipline and control mechanisms [17].

Boko Haram's temporary seizure of territories in northeastern Nigeria between 2013 and 2015, where it declared an Islamic "caliphate," further indicates an organized administrative structure capable of sustaining military and governance activities, as envisaged by Article 1(1) of Additional Protocol II.

Recognition of the Conflict as a NIAC

The classification of the Boko Haram insurgency as a NIAC has been affirmed by several international bodies. The Office of the Prosecutor of the International Criminal Court (ICC), in its Preliminary Examination Report on Nigeria (2020), concluded that the hostilities between Nigerian security forces and Boko Haram/ISWAP meet the legal threshold of a NIAC under Article 8(2)(f) of the Rome Statute.⁴ Similarly, the International Committee of the Red Cross (ICRC) has consistently applied the NIAC framework to its humanitarian operations in northeastern Nigeria.⁵

However, the Nigerian government has refrained from officially recognising the insurgency as a NIAC, instead framing it as a "terrorist threat." This political stance is motivated by concerns that legal recognition could legitimize Boko Haram as a belligerent party or attract unwanted international scrutiny.⁶ Nevertheless, legal classification under IHL is an objective determination based on facts rather than political declarations. The evidence of protracted, organized, and intense hostilities therefore satisfies the NIAC criteria, irrespective of state acknowledgment.

3.3. Legal Implications of NIAC Classification

The classification of the Boko Haram insurgency as a NIAC carries significant implications. It triggers the applicability of Common Article 3 and Additional Protocol II, thereby binding both the Nigerian government and Boko Haram to humanitarian obligations, including the protection of civilians, humane treatment of detainees, and prohibition of indiscriminate attacks. It also enables the investigation and prosecution of war

crimes committed by either side under domestic law or before international tribunals such as the ICC.⁷

Nevertheless, the enforcement of these obligations remains limited. Reports by Human Rights Watch and Amnesty International have documented widespread violations by both Boko Haram and Nigerian security forces, including extrajudicial killings, arbitrary detention, and attacks on civilians [18]. The persistence of these abuses shows that there is a challenge that this paper seeks to highlight: the disjunction between the normative universality of IHL and its fragile implementation in the realities of internal armed conflicts.

4. Challenges in Applying IHL to the Conflict

The following subsections discuss the key challenges in this regard.

4.1. Ambiguity in Legal Classification and State Reluctance

One of the foremost challenges in applying international humanitarian law (IHL) to the Boko Haram conflict lies in the reluctance of the Nigerian government to formally recognize the situation as a non-international armed conflict, thereby complicating the invocation and enforcement of relevant IHL standards [19]. States often resist such classification out of concern that it may legitimize insurgent groups or confer upon them a quasi-political status under international law. Nigeria has frequently characterized its operations against Boko Haram as "counter-terrorism" rather than armed conflict, thus framing it within the context of criminal justice and domestic law enforcement rather than humanitarian law. This reluctance to invoke IHL impedes the full activation of protections under Common Article 3 and Additional Protocol II, which provide for the humane treatment of persons taking no active part in hostilities. When this anti-terrorism framework is maintained, the state tends to prioritize national security concerns over humanitarian obligations, leading to limited accountability for violations by security forces and a lack of clear legal guidance for military conduct. Consequently, this political hesitation undermines the consistent and impartial application of IHL norms in the Nigerian theatre.

4.2. The Asymmetric Nature of the Conflict

Boko Haram's insurgency epitomizes asymmetric warfare, in which a non-state armed group employs guerrilla tactics, terrorism, and suicide bombings against a conventional military force. This asymmetry complicates the application of IHL,

³ the 2016 split that produced the Islamic State of West Africa Province (ISWAP)

⁴International Criminal Court, "Report on Preliminary Examination Activities (Office of the Prosecutor, 2020)

⁵ICRC, stated in [8]

⁶Federal Government of Nigeria, "Terrorism (Prevention) Act 2011 (as amended 2013)

⁷Rome Statute, "Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2020) 2187 UNTS, Article 8(2)(f)

which was primarily designed with state-centric, symmetrical conflicts in mind. The shift from traditional interstate wars to asymmetric conflicts where non-state groups and state forces clash in populated areas complicates distinctions between combatants and civilians, and deepens humanitarian challenges [20].

Boko Haram routinely targets civilians, places of worship, schools, and humanitarian workers, in blatant violation of the IHL principles of distinction and proportionality. The group's deliberate use of civilians as human shields and its operations within populated areas blur the lines between combatants and non-combatants, making it extremely difficult for the Nigerian armed forces to comply with the obligation to distinguish between legitimate military targets and protected persons. Moreover, the fragmented structure complicates the identification of responsible actors. The lack of centralized command undermines the feasibility of enforcing IHL obligations, as no unified leadership exists to ensure compliance. [21]. The group's ideological motivation to establish a caliphate based on extremist interpretations of Islamic law further alienates it from international legal norms, rendering traditional mechanisms of persuasion or engagement largely ineffective.

4.3. Weak Institutional and Enforcement Mechanisms

A major barrier to the implementation of International Humanitarian Law in Nigeria is the weakness of domestic institutions and legal frameworks responsible for enforcement. Although Nigeria is a party to the Geneva Conventions and their Additional Protocols, its dualist constitution requires these treaties to be incorporated into national law before they can be applied domestically. While the core conventions have been enacted, the Additional Protocols remain un-domesticated, and the judiciary has limited capacity to enforce IHL rules without clear legislative backing, undermining compliance and accountability [22]. The absence of a comprehensive national legal framework incorporating IHL principles means that military and security agencies often operate without clear rules of engagement consistent with humanitarian obligations. Additionally, the National Human Rights Commission (NHRC) and the judiciary have limited capacity to investigate or prosecute violations committed during the conflict [23]. Reports by international organizations such as Amnesty International and Human Rights Watch have documented widespread human rights abuses, including arbitrary detention, extrajudicial killings, and sexual violence by both Boko Haram [24]. Human Rights Watch (HRW) has clearly documented that both Boko Haram and Nigerian security forces have committed serious human rights violations — including arbitrary arrests/detention, extrajudicial killings, torture and other abuses — during the conflict in northeast Nigeria [25]. Yet, prosecutions remain rare, fostering a culture of impunity that

erodes public trust and weakens compliance with humanitarian norms.

This institutional fragility is compounded by limited military training on IHL, inadequate documentation of violations, and poor coordination between civilian authorities and the armed forces. Without a robust domestic enforcement mechanism, IHL remains largely theoretical in Nigeria's counterinsurgency operations.

4.4. Accountability and Impunity

Finally, a profound challenge in applying IHL to the Boko Haram conflict is the pervasive lack of accountability for violations by all parties. While Boko Haram's atrocities constitute war crimes and crimes against humanity, there has been limited prosecution of its members under international or domestic law [26]. The absence of credible investigations undermines Nigeria's obligations under the Fourth Geneva Convention,⁸ which requires states to search for and prosecute persons alleged to have committed grave breaches. International mechanisms, including the International Criminal Court (ICC), have opened preliminary examinations into Nigeria's conduct, but cooperation and progress remain slow [27]. This climate of impunity not only weakens the deterrent effect of IHL but also erodes its moral authority in the eyes of affected populations.

5. Conclusion

This paper has examined the conceptual and practical challenges surrounding the application of International Humanitarian Law (IHL) in internal armed conflicts (NIACs), with specific reference to the Boko Haram insurgency in Nigeria. It established that although IHL provides a comprehensive legal framework, rooted in the Geneva Conventions of 1949 and Additional Protocol II of 1977, its implementation in non-international contexts remains deeply problematic. The Boko Haram conflict meets the threshold of a NIAC, given the sustained intensity of hostilities and the level of organization exhibited by the insurgent group. Yet, Nigeria's political reluctance to recognize the situation as such, coupled with weak institutional mechanisms and the asymmetric nature of the warfare, has hindered full adherence to humanitarian norms. Both state military forces and the opposing armed group have committed serious violations of international humanitarian law, particularly the principles of distinction, proportionality, and humanity, leading to widespread civilian suffering and displacement. The study further revealed that impediments (such as poor domestication of IHL, limited military training, and lack of accountability) have perpetuated a culture of impunity. Humanitarian access remains constrained, and the protection of civilians continues to depend more on ad-hoc interventions than on a coherent legal or policy framework. These

⁸ Article 146 of the Geneva Convention (IV) On Civilians, 1949

realities expose a persistent gap between the theoretical universality of IHL and its operational enforcement in internal conflicts. Thus, this situation exemplifies the broader global challenge of translating the ideals of humanitarian law into practice amid complex socio-political and ideological environments. In other to curb these, there is a need for legal reform, moral commitment, institutional will, and sustained international engagement.

Recommendations

To move beyond the current impasse and ensure that IHL functions effectively in NIACs such as the Boko Haram insurgency, the following recommendations are proposed:

- 1) Nigeria should enact a comprehensive International Humanitarian Law (Implementation) Act to incorporate the Geneva Conventions and Additional Protocols into national law.
- 2) Domestic statutes should clearly define war crimes, command responsibility, and procedures for prosecution of violations committed in internal conflicts.
- 3) There is a need for the Nigerian government to establish dedicated IHL units within the Ministry of Justice, the Armed Forces, and Police Service to provide legal guidance on military operations and treatment of detainees. Also, empower the National Human Rights Commission (NHRC) and the judiciary with greater independence and resources to investigate and sanction violations.
- 4) The Federal Government should integrate IHL education into all levels of military and police training curricula, with emphasis on practical application in asymmetric warfare. Conduct regular joint workshops among the military, humanitarian agencies, and civil society organizations to foster a shared understanding of humanitarian obligations.
- 5) The government should create specialized war crimes chambers or hybrid courts to prosecute serious violations of IHL.
- 6) The government should develop integrated civilian protection strategies, including early-warning mechanisms, gender-sensitive responses, and improved security for internally displaced persons (IDPs).
- 7) The government should continue to strengthen collaboration within the Multinational Joint Task Force (MNJTF) to harmonize rules of engagement in line with IHL. The government should also solicit technical and logistical support from international partners such as the African Union (AU), United Nations (UN), and European Union (EU) for monitoring, training, and humanitarian coordination.
- 8) Lastly, the Nigerian government needs to establish victim-centred reparations and initiatives to restore trust and strengthen long-term peace.

Abbreviations

IHL International Humanitarian Law

NIACs	Non-International Armed Conflict
ICTY	International Criminal Tribunal for the Former Yugoslavia
AU	African Union
ICC	International Criminal Court
NHRC	National Human Rights Commission
UN	United Nations
MNJTF	Multinational Joint Task Force
IDPs	Internally Displaced Persons
EU	European Union

Author Contributions

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Conflicts of Interest

The authors declare no conflicts of interest.

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