



Armed Conflict

and the Law

MACHIRA APOLLOS

TABLE OF CONTENTS

Acknowledgement	iii
Acronyms	ix
Introduction	1
CHAPTER ONE : THE NATURE OF CONFLICT	3
1.0 Introduction	3
1.1 Typology of conflicts	5
1.1.1 Continuous conflicts	5
1.1.2 Periodic or episodic conflicts	6
1.1.3 Terminal conflicts	6
1.2 The rules of social co-existence	8
CHAPTER TWO: POLITICS, ETHNICITY AND VIOLENCE IN AFRICA - A CASE STUDY OF KENYA	11
2.0 Introduction	11
2.1 The Dynamics of Conflicts in Africa	11
2.2 Root causes of Conflicts in Africa	12
2.3 The Case of Kenya	13
CHAPTER THREE: CONFLICT CAUSATION THEORIES	20
3.0 Introduction	20
3.1 Essence	22
3.2 Stratification	22
3.3 Basic conflicts	22
3.4 Modes of conflict	23
3.5 Conflict Theory Presented by Ralf Dahrendorf	24
3.6 Karl Marx's Conflict Theory	25
CHAPTER FOUR : THE ROLE OF ARMS AND LIGHT WEAPONS IN ESCALATION OF CONFLICT IN WEST AFRICA - A CASE STUDY	26
4.0 Introduction	26
4.1 Arms inflows: embargoes flouted	26
4.2 Circulation of weapons and instability	27
4.3 Mercenaries and militias	27
4.4 Inter-state alliances	28
CHAPTER FIVE : INTERNATIONAL HUMANITARIAN LAW	30
5.0 Introduction	30
5.1 The Law of Geneva (Geneva Law)	31
5.1.2 The First and Second Conventions	32
5.1.3 The Third Convention	33
5.1.4 The Fourth Convention	34

5.1.5 Mixed type of Law	35
5.1.6 Protocols Additional to The Geneva Conventions of 1949	35
5.1.7 Additional Protocol I	36
5.1.8 Additional Protocol II	36
5.1.9 Additional Protocol III	37
5.2 The Law of The Hague	37
5.2.1 Other Hague Conventions and Declarations	39
5.3 Basic Rules of International Humanitarian Law In Armed Conflicts	41
5.3.1 The Place of IHL within Public International Law	42
5.3.2 Sources of International Law	43
5.3.3 International Armed Conflict	44
5.3.4 Non-international Armed Conflict	44
5.3.5 Internal disturbances	44
5.3.6 Belligerents/Combatants	46
5.3.7 Civilian Person	46
5.3.8 Civilian Object	47
CHAPTER SIX: THE HISTORY OF INTERNATIONAL HUMANITARIAN LAW	48
6.0 History and Evolution of IHL	48
6.1 History and evolution of IHL	48
CHAPTER SEVEN: IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW	51
7.0 Introduction	51
7.1 Role of Red Cross Societies	51
7.2 Role of the United Nations	52
7.3 Role of Non-Governmental Organizations.	53
7.4 Role of Universities	54
7.5 Measures of Implementation	55
CHAPTER EIGHT : INTERNATIONAL HUMAN RIGHTS LAW	60
8.0 Introduction	60
8.1.0 Development of Human Rights	60
8.1.1 The obligations of Human Rights	61
8.1.2 Enforcement of human rights standards	62
8.2 Types of enforcement mechanisms	62
8.3 Differences between international Human Rights Law and the International Humanitarian Law	63
8.4 Areas of Convergence or similarities between IHL and HRL	64
8.5 Human Rights Abuses in Armed Conflicts	66
8.6 International Refugee Law	67

CHAPTER NINE: MAJOR CONCERNS OF IHL IN ARMED CONFLICTS	72
9.0 Introduction	72
9.1. Non-international armed conflict	73
9.2 Rules concerning combatants in situations of armed conflicts	74
9.3 Combatants' rules	75
9.4 Rules during Conduct of Hostilities	76
9.5 The Protection Mandate of I.H.L.	76
9.5.1 Prisoners-of-War	78
9.5.2 Women prisoners	79
9.5.3 Child prisoners	79
9.5.4 The child and his/her family	80
9.6 The Emblems	81
9.7 Penal Repressions of IHL	83
9.8 Implementation Of The Penal Clauses of IHL	85
9.9 Penal Repressions at National and International Levels	86
CHAPTER TEN: INTERNATIONAL JURISDICTION	88
10.0 Introduction	88
10.1 The International Criminal Tribunal for Rwanda	89
10.2 The International Criminal Tribunal for the former Yugoslavia	93
10.3 The International Criminal Court (ICC)	96
10.4 The Challenges of International Jurisdiction	98
CHAPTER ELEVEN: THE ROLE OF UNITED NATIONS PEACE-KEEPING IN ARMED CONFLICT SITUATIONS	104
11.0 Introduction	104
11.1 Types of Peace Keeping Operations	105
11.2 Principles of Peace-keeping	106
11.3 Position of the UN on IHL	110
11.4 International Peacekeeping of the Last Two Decades	111
11.5 The Dynamics of Peace-keeping, Peace-making and Peace-building	119
11.5.1 A Framework for Peace	119
11.6 Non-United Nations Peacekeeping	123
11.7 Peace-making	126
11.8 Peace-building	129
11.9 Peace-building Agents	133
CASE STUDY: THE SOMALIA CASE	134
1. Background and Causes of Conflict in Somalia – The Intervention of UN	134
2. United Nations' Intervention in Somalia	135
CHAPTER TWELVE: IMPLICATIONS OF ARMED CONFLICTS	137
12.0 Introduction	137

12.1 Socio-economic Implications of Armed Conflicts	138
12.2 Psychological Implications of Armed Conflicts	142
12.3 Human Security Implications in War-torn Countries	148
12.4 Terrorism	151
CHAPTER THIRTEEN: THE GENERAL AFRICAN TRADITIONS OF WAR	154
13.0 Introduction	154
13.1 Conflict prevention and resolution in pre-colonial Africa	155
13.2 The Principles of Humanitarian Law as compared with African traditions	162
CHAPTER FOURTEEN: AFRICAN PRINCIPLES OF CONFLICT RESOLUTION AND RECONCILIATION	165
14.0 Introduction	165
14.1 Indigenous Peace Cultivation Approaches and Practices	169
CASE STUDY ONE - The Marakwet and Pokot Communities of North Rift Kenya	169
1.0 Introduction	169
1.1 Organizational and Authority Structures	169
1.2 Marriage Patterns and Peace Making	170
1.3 Intra-Community Conflicts and Peace Cultivation	171
1.4 Inter – Community Conflicts and Peace Making Processes	173
1.4.2 The Role of the Youth in Peacemaking	174
1.4.3 Role of Women in Peacemaking	175
1.4.4 The Role of Elders in Peace-making	176
CASE STUDY TWO - Institutions of Social Order and Harmony in the Agikuyu Traditional Setting	177
2.0 Introduction	177
2.1 The Moral Economy and Civic Virtues among the Agikuyu	177
2.2 Organization for Order and Harmony	178
2.3 Councils of Elders and their Role in Peace and Conflict Management	179
CASE STUDY THREE - Re-Thinking African Indigenous Approaches to Conflict Resolution in Turkana	182
3.0 Introduction	182
3.1 Turkana Conflict Resolution Mechanisms	183
3.2 Inter-Ethnic Conflict Prevention Techniques	183
3.3 Traditional Practices in Mediation	184
3.4 Lessons of Conflict Resolution from the Turkana	184
3.5 Common characteristics of ingenious approaches to conflict resolution	184
CHAPTER FIFTEEN: THE WAY FORWARD: PEACEBUILDING AND CONFLICT TRANSFORMATION	186
APPENDIX 1 The Rome Statute Of The International Criminal Court	193
Appendix 2 Summary of the Special Tribunal for Kenya Draft Bill, 2009	208
Bibliography	218