

**FROM DENIAL TO ACTIVE PARTICIPATION:  
REVIEWING THE NON-MILITARY ROLE OF THE UNITED NATIONS  
IN THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW\***

**Abstract**

*The mechanisms put in place for the implementation of any given set of laws determine to a great extent its effectiveness. This paper examines the non-military aspects of implementation of International Humanitarian Law (IHL) undertaken by the United Nations vide its organs and agencies. Some cases of practical interventions by the United Nations in the process are examined in some detail. This is done to bring to light the onerous task the UN is confronted with in discharging this responsibility. The paper notes that the efforts of the UN in this regard have been quite extensive, and in cases where the UN has had to collaborate with other agencies, it has helped foster a spirit of complementarity and competition. The paper concludes by calling on the UN to strive to be apolitical in its efforts at implementing IHL to enable it be in consonance with the fundamental principle of neutrality under IHL.*

**Keywords:** International humanitarian law (IHL), Armed Conflict, non-military role, Implementation, Geneva Conventions.

**1. Introduction**

International law suffers from a number of limitations on several fronts and this has led to the jurisprudential debate as to whether international law can actually be referred to as law properly so called<sup>1</sup>. For one, the legislative methods used under international law being hortatory, it is largely dependent on the consent of state and stands in glaring contrast to what obtains in domestic legal systems. The judicial system also suffers on account of the fact that its jurisdiction is also largely dependent whether the states involved are willing to subject themselves to their jurisdiction. More importantly, the absence of an international executive body to enforce judgements and generally implement international law severely detracts from the usefulness of the judicial system under international law. International humanitarian law (IHL) shares in all of these weaknesses and it is even in this branch of international law that these deficiencies are more acutely felt; it has been pointed out poignantly thus: ‘If international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously at the vanishing point of international law<sup>2</sup>.’

In terms of implementation of IHL, the key players comprise of states, the International Committee of the Red Cross (ICRC), other non-governmental organisations (NGOs) and very significantly, the United Nations (UN). The roles and functions of states, NGOs, the ICRC and other actors relative to implementation are well spelt out in the Geneva Conventions and their additional Protocols<sup>3</sup> which are the foremost laws regulating armed conflict. However, the Conventions do not refer to the UN<sup>4</sup>, and the United Nations Charter as if in retaliation, makes no mention of IHL, only of ‘human rights in armed conflict’. The only direct mention of the UN in an IHL convention is under Protocol I, wherein it is provided that ‘in situations of serious violations of the Conventions, or of this

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\*By **Ufuoma Veronica AWHEFEADA, PhD**, Faculty of Law, Oleh Campus, Delta State University, Abraka, Nigeria. Email: fuoma2002@yahoo.com, Phone No.: +2348037443552.

<sup>1</sup> See Hart’s Introduction and Commentary in Hart (ed.), Austin, *The Province of Jurisprudence Determined, and The Uses of the Study of Jurisprudence* (Weidenfeld & Nicolson, 1954) 134-142.

<sup>2</sup> Lauterpacht, H., ‘The Problem of the Revision of the Law of War’ in *BYIL*, Vol. 29, 1952-53 at 382; referred to in Sassoli, M., Bouvier, A.A., and Quintin, A., *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*, Vol. 1 (3<sup>rd</sup> edn.), ICRC, Geneva, 2011 at 103.

<sup>3</sup> The four Geneva Conventions are: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), Geneva Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (Geneva Convention II), Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III) and Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), all of 12 August, 1949. The Protocols are Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, (Protocol II), of 8 June, 1977.

<sup>4</sup> The only reference to the UN under the Geneva Conventions is with respect to ratification, accession, denunciation and registration of the Conventions and Protocols. GC I – IV, Articles 49/50/143/159.

Protocol, high contracting parties are obliged to undertake to act, jointly or individually, in co-operation with the UN and in conformity with the United Nations Charter<sup>5</sup>.

The core aim for the establishment of the UN as disclosed under the preamble to the United Nations Charter is to save humanity from the scourge of war. Also, by the provision of Article I of the UN Charter, the UN was created for the purpose of maintaining international peace and security. To this end, it is to take effective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace. On the other hand, the central concern of IHL is the regulation of armed conflict, the *jus in bello* as opposed to the *jus ad bellum*. So, while on the one hand the UN seeks to combat the phenomenon of wars or armed conflict<sup>6</sup>, IHL seeks to regulate same. The above scenario would at a first glance give the impression that dominant concern of IHL is at cross purposes with the core aim of the UN. However, this would be a wrong assessment of the true picture of things. In reality, the 'unique structure of the UN system provides it with the opportunity to play a significant role in implementing IHL – as codifier, executor and subject.'<sup>7</sup> The UN Security Council currently appears to be the only multilateral institution capable of effectively enforcing IHL even against the will of the state concerned.

In light of the above, this paper opens with a general introduction, followed by an analysis of the UN's response to threats to international peace and security and nexus to IHL. The third segment analyses the role of the UN in the codification of IHL norms, the fourth part looks at violations of IHL as threat to international peace and security. The fifth segment of the paper the UN efforts at implementation of IHL through the establishment of international criminal tribunals. The final part comprises of an assessment of the overall performance of the UN and how well it has acquitted itself of this responsibility.

## **2. United Nations Organisation's Response to Threats to International Peace and Security**

The principal mandate of the UN is to maintain international peace and security and the Security Council is the organ of the UN that is empowered to determine the existence of any such threat to the peace or breach of the peace.<sup>8</sup> Article 1 of the UN charter enjoins the UN to 'promote and encourage respect for human rights and for fundamental freedoms for all.' Specifically, Article 41 of the UN Charter confers on the Security Council powers to determine measures not involving the use of the armed force, whether economic or diplomatic sanctions to give effect to its decisions. The Geneva Conventions do not make reference to the UN and the UN itself refers to IHL as 'human rights in armed conflicts'<sup>9</sup>. It is worth pointing out from the onset that the legal regimes of IHL and international human rights law (IHRL) are not mutually exclusive; as a matter of fact, they complement and reinforce each other. Both branches of the law have a common denominator – the protection of human life and dignity. While IHRL seeks to safeguard this in war and in peace, IHL is the *lex specialis* that seek to guarantee this end in times of armed conflict. The UN now considers IHL as one of the tasks which the UN Office of Legal Affairs has to shoulder, albeit using methods and mechanisms that are not confined to only those spelt out under IHL treaties. In a General Assembly Resolution, the UN emphasised that:

International peace and security must be seen in an integrated manner and that the efforts of the organisation to build peace, justice, stability and security must encompass not only military matter, but also, through its various organs within their respective areas of competence, relevant political, economic, social, humanitarian, environmental and developmental aspects.

Even though the Geneva Conventions (GCs) do not directly mention the UN in terms of specific responsibility, it is mentioned in Protocol I, where it is provided that State party must undertake 'to act jointly, or individually, in cooperation with the UN and in conformity with the UN Charter'. In line with this duty, is the duty to ensure respect of the GCs by all contracting parties under Common Article I to the GCs; this duty connotes doing all in its powers to ensure respect. This duty to respect and to ensure respect has been severally invoked by both the UN General

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<sup>5</sup> Article 89, Protocol Additional to the Geneva Conventions of 12 August, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.

<sup>6</sup> By a peremptory rule of international law, wars are prohibited and this is captured by Article 2(4) of the UN Charter.

<sup>7</sup> Sassoli, M., Bouvier, A.A., and Quintin, A., *How Does Law Protect in War? Cases, Documents, and Teaching Materials on Contemporary Practice in International Humanitarian Law*, (3<sup>rd</sup> expanded and updated Edn.) (Vol. 1), ICRC, Geneva, 2011 at 376.

<sup>8</sup> Article 1, 39, 41 and 42 of the UN Charter.

<sup>9</sup> UNGA Resolution 2444 (XXIII), of 19 December, 1968, titled 'Respect for Human Rights in Armed Conflicts'.

Assembly<sup>10</sup> and the UN Security Council.<sup>11</sup> It has been put forward that the application of IHL by UN mechanisms occur in four different situations. It includes when IHL standards are designed to cover a specific practice which human rights standards cover only indirectly; when humanitarian and human rights standards are equally applicable; when IHL is more appropriate than IHRL because of the identity of the offender and when the applicable IHL standard merge with IHRL<sup>12</sup>. Another method of viewing the response of the UN in implementation of IHL is with regards to the aspects of implementation. Gasser has suggested for example, consideration of efforts of the UN towards implementation in areas covering reaffirmation and progressive codification of IHL (standard setting), ensuring prosecution and punishment of persons who have committed serious violations of IHL and increasing respect on the part of parties to specific conflicts for their obligations under IHL<sup>13</sup>. To this latter category, may be added the humanitarian response of the UN through its various organs and agencies, to provide support to victims of armed conflict as well as the efforts of the *ad hoc* and standing international criminal tribunals set up under the auspices of the UN to bring to justice those who have committed serious violations of IHL.

### 3. The UN and Codification of IHL Norms

A proper starting point here is perhaps to mention that at the onset, the UN was not particularly enthusiastic about the codification of the norms of IHL. This however, can be put down to what has been described as ‘naive optimism’<sup>14</sup>. In 1949 when IHL rules were to be modernised and restated, the International Law Commission of the UN took the view that ‘war has been outlawed, the regulation of its conduct has ceased to be relevant’<sup>15</sup>. The decision was thus taken that codification of IHL should not be pursued within the organisation and the UN thus opted out of an important chapter of the development of IHL.<sup>16</sup> The outlook of the UN has however undergone a radical change and the UN now actively participates in the implementation of IHL from the stage of codification, advocacy, observer, to enforcer, usually as a last resort. This ideological conversion is without doubt borne first out of the fact that the outlawing of war<sup>17</sup> did not bring an end to armed conflicts as a form of social intercourse as was probably expected and secondly, the ever-increasing relevance and undisputable omnipresence of IHL in all armed conflict situation. Therefore, by the time the Protocols Additional to the Geneva Conventions were drafted and eventually adopted in 1977, the UN was a major influence of the outcome of both treaties<sup>18</sup>. Two reports drawn up by the UN Secretary-General at the request of the General Assembly<sup>19</sup> had a major influence on the process. The UN has also been in the vanguard of codification of certain treaties that shares close affinity with IHL. These include the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques<sup>20</sup> and the Chemical Weapons Convention.<sup>21</sup> Aside from Conventions, the UN has also, at various times, given expression to the support of IHL principles which different organs and agencies routinely apply in varying capacities. A notable example is the Resolution XXIII of the International Conference on Human Rights, which became a UN General Assembly 2444. This Resolution encapsulated basic IHL principles

<sup>10</sup> UN General Assembly Resolution, A/RES/63/96 (2008).

<sup>11</sup> UN Security Council Resolution S/681 (1990), S/RES/764 (1992) and S/RES/955 (1994).

<sup>12</sup> See O’Donnell, D., *Trends in the Application of IHL by United Nations Human Rights Mechanisms*, IRRC, No. 324, 1998. Available at: <[icrc.org/en/doc/resources/documents/article/other/57jpga.htm](http://icrc.org/en/doc/resources/documents/article/other/57jpga.htm)>; accessed 2 May, 2020.

<sup>13</sup> See Gasser, H., ‘The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations Involvement in the Implementation of International Humanitarian Law’, being a paper presented at the International Symposium on the occasion of the fiftieth anniversary of the United Nations, Geneva, 19-21 October, 1995. Available at:<[icrc.org/en/doc/resources/documents/article/other/57jpga.htm](http://icrc.org/en/doc/resources/documents/article/other/57jpga.htm)>accessed 2 May, 2020.

<sup>14</sup> *Ibid.*

<sup>15</sup> Yearbook of the International Law Commission, 1949, at 281.

<sup>16</sup> Gasser, *op. cit* at n.13.

<sup>17</sup> See Article 2 (3)and(4) of the UN Charter which enjoins states to settle their disputes by peaceful means and refrain from the threat or use of force in international relations; this is however circumscribed by the right to individual or collective self defence under Article 51. The provision of Article 2(4) in essence, sets out to make the resort to force the exclusive preserve of the UN and the provision has been described as a ‘peremptory norm’ of international law in *Nicaragua v. United States* (1986) ICJ Rep. at 14, para.140.

<sup>18</sup> See generally, Bothe,M., Partsch, K.J., Solf, W.A., *New Rules for Victims of Armed Conflicts, Commentary on the two Additional Protocols to the Geneva Conventions of 1949*, The Hague/Boston/London 1982 at 3.

<sup>19</sup> Resolution 2444 (XXIII) of 19 November, 1968, entitled ‘Respect for Human Rights in Armed Conflicts’.

<sup>20</sup> ENMOD Treaty, 18 May, 1977.

<sup>21</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and of their Destruction, of 13 January, 1993.

applicable in all forms of armed conflict and at the same time gave decisive impetus to the process which eventually led to the adoption, in 1977 of the two Protocols additional to the Geneva Conventions.

#### **4. Violations of IHL as a Threat to International Peace and Security**

It is the UN Security Council that determines if the scale of violence in an armed conflict has reached where it constitutes a threat to international peace and security. In such situations, the UN has stated emphatically that IHL is applicable. Also, as a response to such threats to the peace, the UN has also emphasised that violations of IHL during armed conflict constitutes a threat to peace; it also sees IHL as human rights applicable in armed conflict. A number of nonmilitary measures have been taken by the Security Council in these situations; it may pass a resolution calling on the aggressor to withdraw its troops or on both parties to ceasefire while it dispatches a mission to the affected locations to undertake an assessment of the actual situation on ground and bring out a report which may indict one or both parties of infractions of IHL. Such a report may subsequently form the basis of further action such as the passing of resolutions condemning the side to the conflict that were guilty of perpetrating the said violations and infractions of IHL. It may go further to carry out military actions to bring an end to situation in a bid to restore international peace and security. The UN acting under Article 41 of its Charter has passed a host of resolutions on several conflict situations over the years reiterating directly or indirectly, the preeminent importance of respect for IHL in times of armed conflict as an international obligation of state. In conflicts such as the Iran/Iraq conflict<sup>22</sup>, the territories occupied by Israel<sup>23</sup>, the invasion of Kuwait<sup>24</sup>, it has relentlessly called on belligerents to respect IHL. The UN has also intervened in situations of non-international armed conflicts, such as those in Somalia, Rwanda, Liberia, and Sudan among others<sup>25</sup>.

During the First Gulf War for example, the UN Security Council commissioned a mission to inspect civilian areas in Iran and Iraq for the purpose of assessing violations of IHL<sup>26</sup>. A Mission was dispatched to both Iran and Iraq to survey and assess the damage to civilian areas in the two countries said to have suffered war damage and the types of munitions that could have caused the damage and to present an objective report of its inspections and observations in both countries. The report indicated that several civilian areas including residential areas, schools, hospitals, oil installations were severely damaged by direct military attacks. As a result of the above-mentioned report of the Secretary General, the UN Security Council vide a Resolution<sup>27</sup> seriously deplored the conflict between the two countries which had resulted in heavy losses of civilian lives and extensive damage caused to cities, property and economic infrastructures. Very significantly, it condemned all violations of IHL, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects and called for the immediate cessation of all military operations against civilian targets, including city and residential areas. Similarly, during the Second Gulf War, (1990-1991) involving the Iraqi invasion of Kuwait, the UN Security Council passed a Resolution<sup>28</sup> wherein it noted with alarm the invasion of Kuwait by Iraq and condemned the invasion and called on Iraq to withdraw immediately and unconditionally to positions as they were on August 1, 1990. However, Iraq failed to abide by the demand of this Resolution whereupon the Security Council passed another Resolution wherein it reaffirmed its earlier Resolution which had not been implemented and imposed economic sanctions on Iraq.<sup>29</sup> Just as IHL becomes applicable in situations involving threat to international peace and security, violations of IHL also constitutes a real threat to peace and security and the UN has not shied away from declaring this to be so and taking the necessary action to redress the violations as well as put a stop to it. In a matter (involving the Palestinian-

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<sup>22</sup> S/RES/598 (1987) on repatriation of prisoners of war in the Iran/Iraq conflict and S/RES/540 (1983) on attacks against the civilian population in the Iran/Iraq conflict.

<sup>23</sup> S/RES/681 on the application of the Fourth Geneva Convention in the occupied territories.

<sup>24</sup> S/RES/687 (1991) on repatriation of Kuwaiti detainees held in Iraq; S/RES/674 (1990) and 670 (1990) on the applicability of the Fourth Geneva Convention in Kuwait.

<sup>25</sup> See S/RES/1872 (2009) on Somalia; S/RES/1870 (2009) on Sudan, S/RES/925 (1994) on Rwanda.

<sup>26</sup> See Report of the United Nations Secretary General on Mission to Inspect Civilian Areas in Iran and Iraq which have been Subject to Military Attack, UN DOC. S/1583, June 20, 1983.

<sup>27</sup> Security Council Resolution 540 (1983), UN Doc S/540 (October 31, 1983), available at: <<http://www.un.org/documents/scres.htm>> accessed 2 May 2020.

<sup>28</sup> United Nations Security Council Resolution 660, adopted on 2 August, 1990.

<sup>29</sup> Security Council Resolution 661, (1990), UN Doc. S/RES/661 (August 6, 1990). Available at: <<http://www.un.org/documents/scres.htm>> accessed 3 May 2020.

Israeli conflict),<sup>30</sup> the UN General Assembly sought the advisory opinion of the International Court of Justice<sup>31</sup> on what are the legal consequences of the commencement and continuation of construction by Israel, the occupying power, of a 'wall'<sup>32</sup> in the occupied Palestinian territory. The court found that the actions of Israel in the occupied Palestinian territory contravene several provisions of the Geneva Conventions.

Another significant conflict in which the UN acted decisively involved the Darfur crisis. A UN Commission of Enquiry<sup>33</sup> on Darfur was set up pursuant to a Security Council Resolution.<sup>34</sup> The report of the Commission traced the historical and social background to the crisis. Two groups of rebel forces, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), organised themselves into opposition sometime around 2001 and 2002 in opposition to the Khartoum Government citing socio-economic and political marginalisation of Darfur and its people. These two groups started launching military attacks against the government sometime late in 2002 and early 2003. Faced with military threat from two rebel movements and combined with a serious deficit in terms of military capabilities on the ground in Darfur, the Government called upon local tribes to assist in the fighting against the rebels. In this way, the government exploited the existing tensions between different tribes. The Arab nomadic tribes responded to the call of the government (with the hope of being allotted land since they were nomadic). These Arabs (alongside foreigners from Chad, Libya and other states), responded to this call and were recruited to become what the civilian population and others referred to as the '*Janjaweed*'. The Commission made a number of significant findings on the conflict in Darfur. It determined firstly, that the crisis in Darfur does not merely amount to internal disturbances and tensions, riots, or isolated and sporadic acts of violence, but to a full blown internal armed conflict. It found that all sides to the conflict were in gross breach of IHL.

Aside from the UN Security Council, the UN Human Rights Council has also on occasion, called out the activities of countries that violate IHL. During the conflict in Lebanon that broke out between the Hezbollah<sup>35</sup> and the Israel Defence Forces (IDF) sometime in 2006, the UN Human Rights Council set up a Commission of Inquiry on the situation in Lebanon.<sup>36</sup> This particular conflict that necessitated the intervention of the Human Rights Council was unique in the sense that the hostilities were in actual fact and in the main only between the IDF and the Hezbollah. The Lebanese Armed Forces did not take part in them. However, the Council was of the opinion that the conflict is still an international armed conflict in character and considers both Lebanon and Israel as parties to the conflict. They remain bound by the Geneva Conventions of 1949 (as well as several other IHL treaties that have been ratified by both parties) and customary IHL existing at the time of the conflict. Hezbollah is equally bound by the same laws.

## 5. Implementation of IHL through the Establishment of International Criminal Tribunals

In addition to the dispatching of missions to investigate threats to peace and security amounting to violations of IHL and the setting up of Commissions of Enquiry, the UN Security Council has also taken proactive steps by setting up *ad hoc* international criminal tribunals. The UN for instance, passed several Resolutions with respect to the conflict in the former Yugoslavia and in particular, Resolution 808 which states that an international criminal tribunal shall be established for the prosecution of persons responsible for serious violations of IHL

<sup>30</sup> ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Advisory Opinion), 9 July 2004. <<http://www.icj-cij.org>> accessed 3 May 2020.

<sup>31</sup> This is in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the court.

<sup>32</sup> (The 'wall' in question is a complex construction and the term cannot be understood in a limited physical term. The works planned or completed for the said wall have resulted or will result in a complex consisting of a fence with electronic sensors, a ditch of up to four metres depth, a two-lane asphalt patrol road, a trace road and a stack of six coils of barbed wire marking the perimeter of the complex. This said complex has a width of about 50 to 70 metres and increasing to as much as 100 metres in some places).

<sup>33</sup> Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January, 2005; available at: <[www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)>. Accessed 5 May 2020.

<sup>34</sup> UN Security Council Resolution 1564 of 18 September 2004; this was the first time a Security Council Resolution had invoked the Convention on the Prevention and Punishment of the Crime of Genocide by establishing the international inquiry.

<sup>35</sup> Hezbollah is a Shite organization that began to take shape during the Lebanese civil war. It originated as a merger of several groups and associations that opposed and fought against the 1982 Israeli Occupation of Lebanon and is now actively recognized in the Lebanese political system and society.

<sup>36</sup> Human Rights Council Report of Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, A/HRC/3/2, 23 November 2006.

committed in the territory of the former Yugoslavia, which later became known as the ICTY. The resolution further requested the Secretary-General to submit a report on specific proposals and options relating to the implementation of the decision to establish a tribunal including whether it has a basis in law. The tribunal was however fully established by Resolution 827 of 1993. This followed reports of the UN Secretary-General for both the former Yugoslavia as well as Rwanda. This is considered necessary to bring an end to such crimes and to bring to justice the persons who are responsible for them. The situation in former Yugoslavia was considered by the UN Security Council as a continuing threat to international peace and security. This was as a result of the widespread and flagrant violations of IHL that occurred within the territory of the former Yugoslavia, especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organised and systematic detention and rape of women, the continuance of the practice of ‘ethnic cleansing’ including the acquisition and holding of territory. The setting up of an *ad hoc* international tribunal was therefore considered imperative for the prosecution of persons responsible for serious violations of IHL for the purpose of bringing an end to such crimes and to bring to justice persons who are responsible for them.<sup>37</sup> The ICTY was thereby established for the prosecution of persons responsible for serious violations of IHL committed in the territory of the former Yugoslavia since 1991, May 25, 1993 with an accompanying statute. The establishment of the International Criminal Tribunal for Rwanda followed the same pattern. A resolution was passed calling on the Secretary-General to submit a report, as well as the report of the Special Rapporteur for Rwanda of the UN Commission of Human Rights. Following the submission of the said reports, the ICTR was established with a statute of court as well.<sup>38</sup> It bears pointing out that these *ad hoc* Tribunals contributed in no small measure in expounding the frontiers of IHL, giving clarity to the principles and further streamlining, entrenching as well as expounding the frontiers of the jurisprudence of IHL. The efforts of the UN in setting up these tribunals without doubt, has also helped to further the implementation of IHL as the convictions secured by these tribunals sends a very potent signal about the seriousness of the international community to bring to account all those who had committed violations of the prescriptions of IHL, whether in the statute books, including but not limited to grave breaches of the four Geneva Conventions as well as violations of the laws and customs of war including the crime of genocide and crimes against humanity all of which were within the jurisdiction of the tribunals.<sup>39</sup>

The ICTY and the ICTR (which were *ad hoc* tribunals), were precursors to the International Criminal Court (ICC)<sup>40</sup> which is a permanent arrangement for bringing to justice persons who are guilty of violations of IHL; the UN is also instrumental to the establishment of this court. Sometime after the coming into force of the Statute of the Court, the UN considered the situation in Darfur Sudan to be a threat to international peace and acting under Chapter VII of the Charter of the UN, decided to refer the matter in Darfur to the Prosecutor of the ICC.<sup>41</sup> The Prosecutor applied for a warrant of arrest against the Sudanese President, Omar Al Bashir under Article 58 of the ICC Statute<sup>42</sup> which was granted by the ICC Pre-Trial Chambers. This according to the Court was for his alleged responsibility for crimes against humanity and war crimes under the ICC Statute<sup>43</sup>. The Arab Transitional Parliament strongly disagreed with the decision of the Pre-Trial Chambers on the basis that Sudan was not a party to the ICC Statute and also that the crisis in Sudan is an internal affair and so is not covered by the mandate of the UN Security Council under chapter VII of the UN Charter; they also contended that the President of Sudan enjoys immunity from criminal jurisdiction.<sup>44</sup>

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<sup>37</sup> Security Council Resolution 827 (1993), UN Doc. S/RES/827 (May 25,1993).

<sup>38</sup> Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda and Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighboring States between January 1, 1994 and December 31, 1994.

<sup>39</sup> See Articles 1 – 5 of the Statute of the ICTY. For the ICTR, its jurisdiction covered violations of Article 3 common to the four Geneva Conventions and Additional Protocol II, in addition to genocide and crimes against humanity.

<sup>40</sup> 1998 Statute of the International Criminal Court (Rome Statute); the Statute entered into force on 1 July, 2002.

<sup>41</sup> This was done vide the UN Security Council Resolution 1593 (2005), 31 March 2005, Doc. S/RES/1593.

<sup>42</sup> See International Criminal Court, ‘Prosecutor’s statement on the Prosecutors Application for a Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR,’ 14 July 2008, available at [www.icc-cpi.int](http://www.icc-cpi.int).

<sup>43</sup> Pre-Trial Chamber I, Situation in Darfur, Sudan, in the case of *The Prosecutor v. Omar Al Bashir*, 4<sup>th</sup> March 2009 available at: <[www.icc-cpi.int](http://www.icc-cpi.int)> accessed 6 May 2020.

<sup>44</sup> See Arab Transitional Parliament’s Committee for Legislative, Legal and Human Rights Affairs, ‘Statement on the ICC Prosecutor’s Request to Issue Arrest Warrant against President Omar Hassan Ahmad Al-Bashir, President of the Republic of the Sudan,’ 5 August, 2008, available at: <[www.arableagueonline.org](http://www.arableagueonline.org)> accessed 6 May 2020.

## 6. The UN and Humanitarian Assistance during Armed Conflicts

Another way in which the UN supports the implementation of IHL during armed conflicts is by responding to humanitarian needs thrown up by armed conflict situations. The UN Security Council has for instance called for unrestricted access and safe passage to be given to aid deliveries<sup>45</sup>. Under IHL, relief actions involving the supply of food and medical supplies are allowed provided they are humanitarian and impartial in character<sup>46</sup>. A number of the UN organs and agencies have been involved in providing humanitarian assistance to victims of armed conflict as well as IHL violations. These include the office of the United Nations High Commissioner for Refugees (UNHCR), Office of the High Commissioner for Human Rights (OHCHR), agencies such as the World Food Programme (WFP), the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF)<sup>47</sup>.

During the Iraqi invasion of Kuwait for example, the UN imposed economic sanctions on Iraq and established a committee of the Security Council consisting of all members of the Council, to examine reports by the Secretary-General, on the situation and seek information from states on the action they are taking to implement the Resolution.<sup>48</sup> Subsequently, the Security Council<sup>49</sup> requested that in seeking and supplying such information, particular attention will be paid to such categories of persons who might suffer specially, such as children less than fifteen years of age, expectant mothers, maternity cases, the sick and the elderly. That if the committee decides that a situation has arisen in which there is an urgent humanitarian need to supply foodstuffs to Iraq or Kuwait in order to relieve human suffering, it will report promptly to the Council its decision as to how such need should be met. It further directed that the committee in formulating its decisions, should bear in mind that foodstuffs should be provided 'through the United Nations in co-operation with the ICRC or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they reach the intended beneficiaries.'

## 7. Conclusion

The UN as earlier noted has shifted from being an ill informed and passive observer of IHL to being an active promoter. From the era of UNs' passivity, when it turned down the opportunity of being a part of the process of codification of the Geneva Conventions, the UN now realises that compliance with IHL is the first step to restoring international peace and security and that a violation of IHL poses a very potent threat to same. The UN realising this, has created mechanisms that serve to strengthen the implementation and enforcement of IHL. Measures such as the passing of resolutions condemning violations of IHL, calling for respect for IHL and recognition of IHL treaties among others are all innovative strides that have in no small measure impacted positively on the implementation of IHL. Also, fact finding commission set up and imposed on states by the UN are much better than those stipulated under IHL treaties which essentially depend on the consent of states to function.<sup>50</sup> The UN Security Council has the ability to match its words with enforcement action as it can deploy the UN military forces to ensure compliance with IHL, either to enforce a ceasefire, in an armed conflict where IHL is flagrantly disregarded, probably by deliberate attacks on civilian population or to allow for humanitarian access to civilian population.

The mechanism of the Courts, both *ad hoc* and standing that have been set up by the UN is also another welcome development to the advancement and implementation of IHL. The ICTR, ICTR and particularly the ICC, have given impetus to prosecution of violations of IHL at international level. The roles of these are complementary to that of national courts. The ICC suffers the limitation of its jurisdiction being subject the ratification of its Statute

<sup>45</sup> S/RES/1870 (2009) on Sudan.

<sup>46</sup> See Article 70 of Protocol I; Article 59 GC IV.

<sup>47</sup> In August 1979 for example, UNICEF and the ICRC undertook a joint emergency operation to deliver food, water and medical assistance to the hundreds of thousands of people in need. By the time the conflict ended in December 1980, the operation had distributed two hundred and fifty metric tonnes of food. See ICRC, *Cambodia: History of of ICRC Activities*, 10 December, 2009, available at: [www.icrc.org/en/doc/resources/documents/misc/camodia-history-091209.htm](http://www.icrc.org/en/doc/resources/documents/misc/camodia-history-091209.htm) accessed 323 May, 2020.

<sup>48</sup> UN Security Council Resolution 661, adopted 6 August, 1990.

<sup>49</sup> UN Security Council Resolution 666 (1990), UN Doc. S/RES/666 (September 13, 1990).

<sup>50</sup> See for example, the fact finding commission provided for under Article 90 of Protocol I; this commission is yet to be activated though established in 1991. See generally, Azzarello, C., and Niederhauser, M., 'The Independent Humanitarian Fact-Finding Commission: Has the 'Sleeping Beauty' Awoken?' in *Humanitarian Law & Policy*, January 9, 2018.

and many influential states are yet to ratify same<sup>51</sup>. The UN should encourage all its permanent members of the Security Council to ratify the Statute of the ICC. The UN for example, has referred a matter to the ICC even though the state in question was not a party to the Rome Statute of the ICC. This action has been criticised as being political and skewed against Africans, hence it was criticised by both African leaders and the League of Arab nations. One can only add that the UN should strive to be impartial in all its dealings. In spite of the wrongful invasion of Iran by the United State of America to search for biological weapons that were never found, based on intelligence that ultimately proved to be incorrect; there has not been a similar call by the UN for the arrest of the president of the United States of America. This is in spite of reports that there were glaring incidents of violations of IHL by the United States<sup>52</sup>. This has led to the conclusion being put forward also as a pointer to the fact that the UN is not even-handed, that the UN does not act impartially in conflicts involving permanent members of the UN Security Council or their allies, hence it has been asserted that ‘...these differences in treatment - or double standards – affects the credibility of council’<sup>53</sup> and falls short of the crucial tenet of IHL, impartiality. The UN should work towards a system that puts aside political considerations and be guided by the fundamental principles of neutrality and impartiality in its enforcement efforts. The work of the UN has also demonstrated that IHL and IHRL are not mutually exclusive fields of law, rather, the principles of IHRL is better expounded by IHL to meet the peculiar demands of armed conflict situation. The work of the UN in implementing IHL is indeed extensive and multi-faceted. This is indeed commendable; the UN should only strive to ensure it eschews impartiality in all its activities so as to gain a moral high ground to stand as an enforcer of IHL.

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<sup>51</sup> The United State of America for example, which is a permanent member of the UN Security Council, is yet to ratify the Rome Statute.

<sup>52</sup> Human Rights Watch, ‘Off Target: The Conduct of the War and Civilian Casualties in Iraq’, 2003, available at <http://www.hrw.org>.

<sup>53</sup> Pfanner, T., *Various Mechanisms and approaches for implementing International Humanitarian Law and Protecting and Assisting War Victims*, IRRC, Vol. 91(874), 2009 at p.315.