

ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THE OCCUPIED PALESTINIAN TERRITORIES*

Abstract

The origin of the Israeli-Palestine conflict can be traced back to Jewish immigration and sectarian conflict in Mandatory Palestine between Jews and Arabs. It has been referred to as the world's most intractable conflict with the ongoing Israeli occupation of the West Bank and the Gaza Strip reaching six decades. The core of the conflict is the abuse and neglect of international humanitarian laws by all parties. At the general level, what are the legal consequences when rules of international law are broken? In the context of the Occupied Palestinian Territory, all sides are frequently accused of violating international humanitarian law as well as international human rights law. Israeli Forces have been accused of causing extensive and unnecessary destruction of civilian property in the Palestinians territories contrary to the Fourth Geneva Convention, or of building a wall in violation of international law, transferring the Israeli population into the Occupied West Bank (settlements), impeding humanitarian access as well as committing a range of violations of international humanitarian law during military operations in Gaza and the West Bank. Meanwhile Palestinian militants in Gaza have been accused of making no attempt to comply with the principle of distinction by launching indiscriminate rocket attacks at civilian areas. This paper observed that these violations amounts to war crimes committed by both sides but regretted that there is no political will on the part of the International community to hold them accountable for war crimes. The paper recommends a collective action of the international community to punish all those involved in the violations of international humanitarian law between Israel and Palestine.

Keywords: Violations, International humanitarian Law, Accountability, Palestinian territories

1. Introduction

The origin of the conflict can be traced back to Jewish immigration and sectarian conflict in Mandatory Palestine between Jews and Arabs. It has been referred to as the world's most intractable conflict, with the ongoing Israeli occupation of the West Bank and the Gaza Strip reaching six decades.¹ Despite a long-term peace process and the general reconciliation of Israel with Egypt and Jordan, Israelis and Palestinians have failed to reach a final peace agreement. The key issues are: mutual recognition, borders, security, water rights, control of Jerusalem, Israeli settlements, Palestinian freedom of movement, and Palestinian right of return. The violence of the conflict, in a region rich in sites of historic, cultural and religious interest worldwide, has been the object of numerous international conferences dealing with historic rights, security issues and human rights, and has been a factor hampering tourism in and general access to areas that are hotly contested. Many attempts have been made to broker a two-state solution, involving the creation of an independent Palestinian state alongside the State of Israel after Israel's establishment in 1948. However, the Israeli occupation comes with a price and consequences. The Israel settlements are expanding around the Palestine territories such that it is becoming impossible to have a definite border for the Palestine in a two state solution. There has been allegation of violations of international law by both Israel and Palestine. For example, in Jerusalem, it is more than fifty years after Israel occupied the West Bank and Gaza Strip. Israel controls these areas through repression, institutionalized discrimination, and systematic abuses of the Palestinian population's rights.² At least five categories of major violations of international human rights law and humanitarian law characterize the occupation namely: unlawful killings; forced displacement; abusive detention; the closure of the Gaza Strip and other unjustified restrictions on movement; and the development of settlements, along with the accompanying discriminatory policies that disadvantage Palestinians.³ Many of Israel's abusive practices were carried out in the name of security. Palestinian armed groups have carried out scores of lethal attacks on civilians and launched thousands of rocket attacks on Israeli civilian areas, also in violation of international humanitarian law. According to Sarah:

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¹Israeli-Palestinian Conflict. Available on https://en.wikipedia.org/wiki/Israeli%E2%80%93Palestinian_conflict#History. Accessed on 5 October, 2019

². See as one example of the current landscape Human Rights Watch World Report 2013, <http://www.hrw.org/world-report/2013/country-chapters/israel-palestine>. Accessed on 5 October, 2019.

³ For specific examples, see the International Court of Justice advisory opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, available online at <http://www.icjci.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>; For an analysis of the conduct of hostilities during Operation Cast Lead see Fact Finding Mission on the Gaza Conflict (Goldstone Commission). Accessed on 4 October, 2019

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Whether it's a child imprisoned by a military court or shot unjustifiably, or a house demolished for lack of an elusive permit, or checkpoints where only settlers are allowed to pass, few Palestinians have escaped serious rights abuses during this 50-year occupation. Israel today maintains an entrenched system of institutionalized discrimination against Palestinians in the occupied territory – repression that extends far beyond any security rationale.⁴

The paper shall review the provisions of international humanitarian laws, the Geneva Conventions and the Additional Protocols to demonstrate the violations of international humanitarian law by both the State of Israel and the Islamic militants in Gaza Strip controlled by Hamas.⁵ The Geneva Conventions and their Additional Protocols are international treaties that contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war). A summary of the different conventions is presented to bring out the basic contents of each document.

Geneva Convention on the Protection of the Wounded, Sick and Shipwrecked

As a result of the inadequacies of the rules of humanitarian law existing before the Second World War, the United Nations adopted the four Geneva Conventions in 1949. This Convention⁶ represents the fourth updated version of the Geneva Convention on the wounded and sick following those adopted in 1864, 1906 and 1929. It contains 64 articles. These provide protection for the wounded and sick, but also for medical and religious personnel, medical units and medical transports. Ratifying nations must “enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches of the Conventions.”⁷ The First Geneva Convention basically protects soldiers who are *hors de combat* (out of the battle). This Convention,⁸ like the others, recognizes the right of the International Committee of the Red Cross to assist the wounded and sick. The Convention⁹ provides that the wounded and sick shall be respected and protected without discrimination on the basis of sex, race, nationality, religion, political beliefs or other criteria. Furthermore, the wounded and sick shall not be murdered, exterminated or subjected to torture or biological experiments.¹⁰ By Article 15 of the Convention the wounded and sick shall receive adequate care and sick shall be protected against pillage and ill treatment. Another important provision of the Convention is to the effect that all parties in a conflict must search for and collect the wounded and sick, especially after battle, and provide the information concerning them to the Central Tracing and Protection Agency of the International Committee of the Red Cross.¹¹

Geneva Convention on the Protection of the wounded, sick and shipwrecked Members of the Armed Forces at Sea

This Convention¹² replaced Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention. It closely follows the provisions of the first Geneva Convention in structure and content. It has one annex containing a model identity card for medical and religious personnel.¹³ This Convention¹⁴ adapts the protections of the First Geneva Convention to reflect conditions at sea. It simply extended the same protection afforded to people fighting on ground and their medical assistant to soldiers at sea and shipwrecked at sea and their civilian crew. It protects wounded and sick combatants while on board ship or at sea. Its 63 articles apply to the

⁴Sarah Leah Whitson, Middle East director at Human Rights Watch. Available on <https://www.independent.co.uk/news>. Accessed 14 October, 2019.

⁵ Hamas is the political Party that control the Gaza Strip in the Palestine. It was formed in 1987, and has its origins in Egypt's Muslim Brotherhood movement, which had been active in the Gaza Strip since the 1950's and gained influence through a network of mosques and various charitable and social organizations. The highest donor to the Hamas is the Islamic Republic of Iran who gives both military aid to Hamas. The US black listed the Hamas as a terrorist organization and refused to recognize the Government of the Palestine when Hamas won election in 2005.

⁶ The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

⁷ See the Preamble to the Geneva Convention, 1949

⁸ See Article 9 of the First Geneva Convention, 1949

⁹ See Article 12 *ibid*,

¹⁰ See the provisions of Article 12(2) *Ibid*

¹¹ See the provisions of Article 16 of the Convention, *Ibid*

¹² The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949

¹³ See the ICRC Commentary, available on www.redcross.org/ihl accessed on 22 September, 2018

¹⁴ *Op. Cit.*, . foot 63

following group of persons namely the armed forces members who are wounded, sick or shipwrecked, hospital ships and medical personnel, civilians who accompany the armed forces. Specifically the Convention¹⁵ mandates that parties in battle take all possible measures to search for, collect and care for the wounded, sick and shipwrecked. By the provisions of Article 22, hospital ships cannot be used for any military purpose. They cannot be attacked or captured. The names and descriptions of hospital ships must be conveyed to all parties in the conflict.

Protection of Prisoners of War

This Convention¹⁶ replaced the Prisoners of War Convention of 1929. It contains 143 articles whereas the 1929 Convention had only 97.¹⁷ The categories of persons entitled to prisoner of war status were broadened in accordance with Conventions I and II. The conditions and places of captivity were more precisely defined, particularly with regard to the labour of prisoners of war, their financial resources, the relief they receive, and the judicial proceedings instituted against them.¹⁸ The Convention establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.¹⁹ The Convention's 143 articles require that prisoners of war be treated humanely and respected,²⁰ adequately housed and receive sufficient food, clothing and medical care.²¹ Its provisions also establish guidelines on labor, discipline, recreation and criminal trial. Note that the Convention provides that prisoners of war may include the following: Members of the armed forces, Volunteer militia, including resistance movements, civilians accompanying the armed forces. By the Convention, Prisoners of war must not be subjected to torture or medical experimentation and must be protected against acts of violence, insults and public curiosity.²²

By Article 17 of the Convention, Prisoners of War are required to provide to their captors only their name, rank, date of birth and military service number while female Prisoners of war by virtue of Article 23 must be treated with the regard due their sex. Prisoners of Wars must be housed in clean, adequate shelter, and receive the food, clothing and medical care necessary to maintain good health.²³ They must not be held in combat areas where they are exposed to fire, nor can they be used to "shield" areas from military operations. They may be required to do non military jobs under reasonable working conditions when paid at a fair rate The Convention requires that the names of prisoners of war must be sent immediately to the Central Tracing Agency of the International Committee of the Red Cross²⁴ and they shall be allowed to correspond with their families. Prisoners of war shall be treated as citizens of the host country and be subject to their laws. Prisoners are subject to the laws of their captors and can be tried by their captors' courts. The captor shall ensure fairness, impartiality and a competent advocate for the prisoner.²⁵

Protection of the Civilian Protection

The Geneva Conventions, which were adopted before 1949 were concerned with combatants only, not with civilians. The events of World War II showed the disastrous consequences of the absence of a convention for the protection of civilians in wartime. The fourth Convention²⁶ adopted in 1949 takes account of the experiences of World War II. It is composed of 159 articles. The bulk of the Convention deals with the status and treatment of protected persons, distinguishing between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory. It spells out the obligations of the Occupying Power vis-à-vis the civilian population and contains detailed provisions on humanitarian relief for populations in occupied territory. By Articles 13 and 32, civilians are to be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion or political opinion while by Article 14, hospitals and safety zones may be established for the wounded, sick, and aged, children under 15, expectant mothers and mothers of children under seven. Article 18 equally guarantees the inviolability of civilian hospitals and their staff during wartime. The Convention also provides for the care of children who are orphaned or separated from their families. Article 27

¹⁵ See Articles 12 and 18 of the Second Geneva Convention, *Ibid*

¹⁶ The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949

¹⁷ ICRC Commentary, *Op. Cit.*, footnote 61

¹⁸ *Ibid.*

¹⁹ Article 18 of the convention

²⁰ Article 13 & 14 of the GC III

²¹ Article 15 GC III

²² See generally the provisions of Article 13, 14 and 16 of the Convention

²³ Articles 50 and 54 of the Convention

²⁴ Articles 70, 72 and 123

²⁵ Articles 82, 84

²⁶ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949

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provides that the safety, honor, family rights, religious practices, manners and customs of civilians are to be respected while Articles 33 and 34 provides that pillage, reprisals, indiscriminate destruction of property and the taking of hostages are prohibited. They²⁷ are not to be subjected to collective punishment or deportation and the civilians cannot be forced to do military-related work for an occupying force²⁸ while they are to be paid fairly for any assigned work.²⁹ Occupying powers are to provide food and medical supplies as necessary to the population and maintain medical and public health facilities while Medical supplies and objects used for religious worship are to be allowed passage.³⁰

However, when that is not possible, they are to facilitate relief shipments by impartial humanitarian organizations such as the International Committee of the Red Cross. Red Cross or other impartial humanitarian relief organizations authorized by the parties to the conflict are to be allowed to continue their activities.³¹ In the same fashion, Articles 79-135 provides in summary that if security allows, civilians must be permitted to lead normal lives. Articles 89-91 provide that internees are to receive adequate food, clothing and medical care, and protected from the dangers of war. Article 106 is to the effect that Information about internees is to be sent to the Central Tracing Agency while Internees have the right to send and receive mail and receive relief shipments.³² Children, pregnant women, mothers with infants and young children, the wounded and sick and those who have been interned for a long time are to be released as soon as possible.³³

Protection of Victims of International Armed Conflict (AP I)

In 1977, two Protocols supplementary to the Geneva Conventions were adopted by an international diplomatic conference to give greater protection to victims of both international and internal armed conflicts. Protocol I³⁴ expands protection for the civilian population as well as military and civilian medical workers in international armed conflicts. Special protections are provided for women, children and civilian medical personnel, and measures of protection for journalists are specified.³⁵ The International Committee of the Red Cross, national societies or other impartial humanitarian organizations authorized by parties to the conflict must be permitted to provide assistance to those in need.³⁶ The Additional Protocol I³⁷ seeks to clarify the military status of members of guerrilla forces in the following manner: It includes provisions granting combatant and prisoner of war status to members of dissident forces when under the command of a central authority. Such combatants cannot conceal their allegiance; they must be recognizable as combatants while preparing for or during an attack. In the same fashion, Articles 51, 54 outlaws indiscriminate attacks on civilian populations and destruction of food, water and other materials needed for survival. It provides that Dams, dikes and nuclear generating stations may not be attacked, nor can cultural objects and places of worship.³⁸ Article 77 prohibits the recruitment of children under age 15 into the armed forces while it is a war crime to use one of the protective emblems recognized by the Geneva Conventions to deceive the opposing forces or to use other forms of treachery.³⁹

Protection of Victims of Non- International Armed Conflict (AP II)

Although Common Article 3 to the Geneva Conventions sets out the basic principles for protecting people in wartime, it is not enough to solve the serious problems of humanitarian concern that arise from internal conflicts. The application of common article 3 has its difficulties. The insurgent party being of the parties to the conflict, is not a party to the Geneva Conventions and thus may serve as an excuse to ignore the provisions of article 3. The government side on the other hand may not want to accord official recognition to the insurgent in order not to apply the provisions of article 3. The provisions of article 3 proved inadequate being the only provision applicable to non-

²⁷ Articles 33, 49

²⁸ Article 40

²⁹ Article 54

³⁰ Articles 55, 58

³¹ Article 59

³² Articles 107, 108

³³ Article 132

³⁴ Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts. The Protocol has 102 Articles

³⁵ See the Provisions of Articles 15, 76, 77 and 79 of AP I.

³⁶ See Articles 17 and 81 AP I

³⁷ Articles 43, 44 AP I

³⁸ Article 53 & 56 API

³⁹ Article 85 of API

international armed conflict hence the need for a treaty to cover internal conflict. The second Protocol additional to the Geneva Conventions⁴⁰ elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars. It does not apply to such internal disturbances as riots, demonstrations and isolated acts of violence. Protocol II expands and complements the non international protections contained in Article 3 common to all four Geneva Conventions of 1949. The Protocol provides that persons who do not take a direct part or who have ceased to take part in hostilities are entitled to respect without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, birth or other status, or any other similar criteria.⁴¹ In all circumstances, such persons are to be treated humanely. Protocol II specifically prohibits violence to the life, health and physical or mental well-being of people. In particular, it prohibits acts of murder and cruel treatment, terrorism, hostage-taking, slavery, collective punishment and pillage. These protections are considered fundamental guarantees for all persons. Children are to be evacuated to safe areas when possible and reunited with their families.⁴² By Article 5, Persons interned or detained during internal conflicts are assured of the same humane treatment as specified by the Geneva Conventions.

2. Common Article One: Embracing a Shared Legal Responsibility

Common Article One of the 1949 Geneva Conventions does not only oblige the parties to an armed conflict to respect the law. It also imposes an obligation on all High Contracting Parties⁴³ to ensure respect of the Geneva Conventions in all circumstances. Hence both during times of armed conflict and at other times, all states must take steps to ensure respect for and refrain from taking any measure to undermine respect for these cornerstone conventions of modern International Humanitarian Law. According to the International Committee of the Red Cross:

Common Article 1 is now generally interpreted as enunciating a responsibility on third States not involved in an armed conflict to ensure respect for international humanitarian law by the parties to an armed conflict by means of positive action. Third States have a responsibility, therefore, to take appropriate steps unilaterally or collectively against parties to a conflict who are violating international humanitarian law, in particular to intervene with states or armed groups over which they might have some influence to stop the violations.

The duty in Common Article 1 is an obligation of means, meaning that States cannot be legally obligated to take steps which they do not have the means to undertake. Importantly obligations under Common Article 1 go well beyond the mere fact of putting a stop to violations, the preventative aspect remains just as important. While Common Article 1 is tantamount to a constitutional pillar of International Humanitarian Law, practical application is often limited due to the general nature of the obligation and challenges involved in its implementation. Yet it is important to emphasize both the legal nature of this obligation and its broad scope of application. Not only does it demand that states directly involved in armed conflict provide genuine legal protection of the rights of war victims, the obligation to ensure respect for International Humanitarian Law in all circumstances obliges all states to take necessary measures to ensure legal protection where parties to an armed conflict do not comply with International Humanitarian Law. An important example is the obligation to cease providing weapons to States that are committing war crimes. Put differently, in order to meet their treaty obligations to ensure respect for International Humanitarian Law, third States may need to take lawful measures including halting arms trade with the State or armed group violating International Humanitarian Law, joining an international arms embargo, and imposing economic sanctions against the offending State or armed group. While such steps may be regarded by some as political in nature, failure to take lawful measures to ensure respect for International Humanitarian Law by a party engaged in ongoing serious violations can also be seen as political. It goes without saying that the legal obligation to ensure respect cannot be met by a textual commitment alone.

3. Armed Conflict and Respect for Humanitarian Law

Respect for International Humanitarian Law is one of the most important obligations of the parties to an armed conflict. International Humanitarian Law applies at all times during armed conflict which includes situations of occupation by virtue of the Fourth Geneva Convention. The parties to the Israeli-Palestinian conflict are therefore

⁴⁰ Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts Protocol

⁴¹ Article 2 AP II

⁴² See Articles 3, 4 & 5 of the Protocol II

⁴³ High Contracting Parties are the state parties to the Geneva Conventions. But since all the states has now ratified the Conventions, there is no more need to refer to the high contracting parties again.

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strictly bound to respect every applicable rule of International Humanitarian Law without exception or derogation. In particular Israel being the occupying power has extensive obligation to respect the rules of international humanitarian law. Without respect, rules become meaningless. The notion of respect for international obligations finds expression in the Vienna Convention on Law of Treaties.⁴⁴ Under Common Article One⁴⁵ of the Geneva Conventions, which codifies the notion of respect, parties to a conflict must respect all applicable rules of International Humanitarian Law in all circumstances. It is also important to observe that International Humanitarian Law binds all parties to armed conflict and it is immaterial that one of the parties did not recognize the other party as a state. It may be argued that those who have never fought in an armed conflict have little insight into the realities of war or the practical application of International Humanitarian Law. Ultimately, so the argument goes, the warring parties are the ones best placed to know when a violation has occurred. While this may be true, the essentially self-regulatory nature of international law's approach to enforcement of International Humanitarian Law means that punishment and accountability of serious violations has often been found wanting. For the victims' point of view, leaving accountability to the parties often leads to impunity.

4. War Crimes and Accountability in International Law

In addition to Common Article One, legal accountability for violations of International Humanitarian Law requires implementation of the obligations to search for and prosecute those who have committed grave breaches of the Geneva Conventions. As noted earlier, all grave breaches constitute war crimes⁴⁶ and can be prosecuted as such. Under customary law, States have an obligation to search for and prosecute perpetrators of all serious violations of International Humanitarian Law not merely grave breaches of the Geneva Conventions. These International Humanitarian Law obligations are not restricted to the parties to the conflict. All States party to the Geneva Conventions must cooperate in the search for and prosecution of those who commit such violations. Not all violations of the Conventions are treated equally. The most serious crimes are termed 'grave breaches,' and provide a legal definition of a war crime.⁴⁷ The first and second Conventions provides that grave breaches shall involve any of the following acts, if committed against persons or property protected by the Convention namely: willful killing, torture or inhuman treatment including biological experiments, willfully causing great suffering or serious injury to body or health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.⁴⁸ The third and fourth conventions are contained in article 130 and 147 of the Conventions respectively and they provides that willful killing, torture or inhuman treatment including biological experiments, willfully causing great suffering or serious injury to body or health, compelling one to serve in the forces of a hostile power and willfully depriving one of the right to fair trial are considered grave breaches.⁴⁹ The fourth Convention provides that taking of hostages, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly; and unlawful deportation, transfer, or confinement of persons to which the convention applies amount to grave breaches.⁵⁰

Legal consequences of violations of International Humanitarian Law are not limited to those under the law of State responsibility. Such behavior can lead to individual criminal responsibility. Persons who aid, abet, order, supervise and jointly perpetrate international crimes involving violations of International Humanitarian Law can be held individually responsible. Under the Rome Statute of the International Criminal Court, serious violations of International Humanitarian Law and grave breaches of the Geneva Conventions are classified as war crimes.⁵¹ However, the Statute of the International Criminal Court codifies the most widely accepted regime: a non-exhaustive list of 38 war crimes. The reason why this list is non-exhaustive is because international law is constantly evolving. In time, certain conduct may become a war crime if it meets the essential criteria (a serious breach of international, having grave consequences for the victim, and one which has been criminalized under treaty or customary law).

⁴⁴ Article 26 thereof

⁴⁵ The provisions of Article 1 of each of the Geneva Conventions are common and urge all parties to any armed conflict to respect the provisions thereto.

⁴⁶ Article 8(2) of the Statute of the International Criminal Court otherwise called the Rome Statute provides that war crimes means grave breaches of the Geneva Conventions of 12 August 1949, namely any of the acts against persons or property protected under the provisions of the relevant Geneva Convention.

⁴⁷ E Oji, *Op. Cit.*, p.89

⁴⁸ See Articles 50 & 50 of the GC I & II

⁴⁹ Article 130 GC III

⁵⁰ Article 147 GC IV

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5. State responsibility

Enforcement of international law can be divided into what the violating state must do itself and what others, namely states, must do. The frequently asked questions include what are the general responsibilities of a state violating international humanitarian law? The basic principle of “state responsibility” in international law provides that any state that violates its international obligations must be held accountable for its acts. More concretely, the notion of state responsibility means that states that do not respect their international duties are obliged to immediately stop their illegal actions and make reparations to the injured. The implementation and enforcement of international law in general and international humanitarian law in particular is problematic. The international legal system is based on the notion of the sovereign equality of States, and, generally speaking, no State may interfere in the internal affairs of another sovereign State. The liability of a state for the acts of its agents has already been established. States have been called upon to pay reparation for acts of its agents attributable to it. However, the responsibility for international humanitarian crimes of their nationals have remained controversial and rejected by states. The treaty law governing armed conflict has for long contained a special rule on the responsibility of states for the wartime conduct of their armed forces. Article 3 of the Hague Convention on Land Warfare 1907 reads as follows: ‘A belligerent party which violates the provisions of the Regulations on Land Warfare shall, if the case demands be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces’. This implies liability of states for acts of their armed forces, which may include criminal acts. The general rule is that a state is responsible for all actions of its officials, de facto and de jure. In addition, states have positive obligations to prevent abuses from being committed against people under their jurisdiction.

6. Individual responsibility

Legal consequences of violations of international law are not limited to those under the purview of state responsibility. Certain violations of international law can entail individual criminal responsibility. Persons who aid, abet, order, supervise and jointly perpetrate international crimes can be held individually responsible. International crimes are divided in three groups namely war crimes usually viewed as serious violations of International humanitarian law, crimes against humanity and genocide. It is equally pertinent to note that the 2005 World Document Outcome on the principle to responsibility to protect listed the above three crimes as well as ethnic cleansing as the only crime that will trigger the activation of the doctrine, to warrant intervention to halt serious violations of international humanitarian laws. In such a case, the individual who perpetrated the acts will be prosecuted. For example, Charles Taylor was President of Liberia from 1997 to 2003. Taylor was indicted by the Special Court for Sierra Leone in 2003 on 11 charges of war crimes, allegedly committed between 1996 and 2002, during the Sierra Leone civil war. The crimes included murder, rape, sexual slavery, enslavement, mutilation, and recruiting and using child soldiers. It was this last charge regarding child soldiers that formed the basis of the charges before the Special Court, which heard Taylor’s case in The Hague. It was claimed that Taylor supported rebel groups in nearby Sierra Leone, as part of a plan to control the diamond fields located in that country. Taylor denied the charges. He was found guilty on all 11 charges and was sentenced to 50 years in prison.

7. Third State Responsibility and International Humanitarian Law

Despite the clear legal obligations, it is difficult to completely rely on the warring parties to enforce respect for the rules that they themselves are often breaking. The drafters of the Geneva Conventions were aware of such a challenge and set out clear third state obligations under Common Article One of the 1949 Geneva Conventions which provides that all High Contracting Parties to the Geneva Conventions are responsible to “respect and ensure respect” for the Convention in all circumstances.⁵² Hence, during times of armed conflict and at other times, all states must take steps to ensure respect for (and refrain from taking any measure to undermine respect for) these cornerstone conventions of modern International Humanitarian Law. Common Article 1 is now generally interpreted as enunciating a responsibility on third States not involved in an armed conflict to ensure respect for international humanitarian law by the parties to an armed conflict by means of positive action.⁵³ Third States have a responsibility, therefore, to take appropriate steps, *unilaterally or collectively*⁵⁴ against parties to a conflict who are

⁵²Available on <https://www.diakonia.se/en/IHL/The-Law/International-Humanitarian-Law-1/Introduction-to-IHL/Enforcement-of-IHL/> accessed on 23 September, 2018

⁵³ Article 1 Common to the Four Geneva Conventions of 1949.

⁵⁴Emphasis mine. The obligation on the part of third states to either collectively or unilaterally take steps to halt violations of laws of war is at the center of the tension between sovereignty and intervention. Though the Geneva Conventions is a legal binding document in terms of all nations having ratified them, the only obligation on the part of the state is as stated in Article 26

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violating international humanitarian law, in particular to intervene with states or armed groups over which they might have some influence to stop the violations. In addition, when it comes to grave breaches all states shall actively search for war criminals within their borders even if the crimes were committed in another country and the criminal is a non-citizen and bring them to court or extradite them as soon as possible.⁵⁵ Third states violate international law if they aid or assist violations of international law committed by another state. Peremptory norms are norms accepted and recognized by the international community of states as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. These obligations include non-recognition, non-assistance or cooperate to bring an end to the violation. The rationale for these special obligations is the gravity of breaches of peremptory norms which affect the international community as a whole.

8. Israeli-Palestinian Wars and International humanitarian Laws

During the Israeli-Palestinian Gaza conflicts in 2008-2009, 2012 and 2014 respectively, it was recorded that Israeli troops killed well over 2,000 Palestinian civilians alone.⁵⁶ Many of these attacks were deliberately targeted at the civilian populations contrary to the provisions of the Geneva Conventions. These attacks amount to violations of international humanitarian law due to a failure to take all feasible precautions to spare civilians. By Articles 13 and 32⁵⁷, civilians are to be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion or political opinion while by Article 14, hospitals and safety zones may be established for the wounded, sick, and aged, children under 15, expectant mothers and mothers of children under seven. Article 18 equally guarantees the inviolability of civilian hospitals and their staff during wartime. The Convention also provides for the care of children who are orphaned or separated from their families. Israel has never observed any of these provisions during her conflict with the Palestine, rather Israel always justify her acts on the civilian populations on the ground that Hamas are using the civilians as human shield. Israel uses lethal force against Palestinians demonstrators and according to Sarah, this is a serious human rights violations.⁵⁸ These attacks amount to war crimes, including the targeting of apparent civilian structures.

In the West Bank, Israeli security forces have routinely used excessive force in policing situations, killing or grievously wounding thousands of demonstrators, rock-throwers, suspected assailants, and others with live ammunition when lesser means could have averted a threat or maintained order.⁵⁹ Armed Palestinian groups on the other hand also committed war crimes during these conflicts and at other times, including indiscriminate rocket attacks targeting Israeli population centers. Between the start of the first Intifada in December 1987 and the end of February 2017, attacks by Palestinians killed at least 1,079 Israeli civilians.⁶⁰ The parties to the conflict have all ignored the provisions of article 27 of the fourth Convention which provides for the protection of the civilian populations against all acts of violence or threats thereof and against insults and public curiosity. Both Israel and Palestine have failed to hold those responsible to account. And the international Community too has failed to hold both parties accountable because of the irreconcilable differences between the 5 major world powers who are permanent members of the UN Security Council.

Regarding the illegal settlements in the occupied Palestinian territories, it is pertinent to observe that the Israeli authorities have since 1967 facilitated the transfer of its civilians to the occupied West Bank, including East Jerusalem, in violation of the Fourth Geneva Convention.⁶¹ The Convention provides that occupying power shall not subject the civilian population to mass punishment but Israel subject the entire Gaza population to the incessant security checks, blockade since 2007 which has prevented aid reliefs to those in need. Contrary to the Convention

of the Geneva Convention on the Laws of Treaty. Parties are only expected to observe the treaty in good faith. What happens when the state failed to so observe his obligations? There is no statutory prescription under international law on how best to handle the situation.

⁵⁵ See Article 146 Geneva Convention (IV), and Article 80 Additional Protocol I

⁵⁶ Human Rights Watch World Report 2013, <http://www.hrw.org/world-report/2013/country-chapters/Israel-Palestine>. Accessed on 5 October, 2019.

⁵⁷ Fourth Geneva Convention, 1949

⁵⁸ Sarah Leah Whitson, *Ibid*

⁵⁹ Human Rights Watch, *Ibid*

⁶⁰ See the report of the Israeli Human Rights Organization B' Tselem. Available on <https://www.bteslem.org>>publication. Accessed 14 October 2019. The report demonstrate how Israel has been using security excuses to implement a policy that has made life unbearable for the Palestine.

⁶¹ See generally Articles 13-32 of the Fourth Geneva Convention

that the civilian⁶² population under occupation shall not be subjected to collective punishment or deportation and the cannot be forced to do military-related work for an occupying force,⁶³ Israel continue to subject the Palestinians alleged militant to compulsory deportation⁶⁴ and those in Israeli detention forced to do manual labour. If they must engage in any such labour, they are to be paid fairly for any assigned work.⁶⁵ Occupying powers are to provide food and medical supplies as necessary to the population and maintain medical and public health facilities while Medical supplies and objects used for religious worship are to be allowed passage.⁶⁶

The Israeli blockade of the Gaza Strip⁶⁷ since 2007 has caused severe economic hardship to the residents of Gaza and it is a war crime. Instead, the Israeli authorities are gradually populating the occupied territories with Jewish settlers contrary to international law. In 1967, Israel established two settlements in the West Bank: *Kfar Etzion* and *East Talpior*; by 2017, Israel had established 237 settlements there, housing approximately 580,000 settlers. Israel applies Israeli civil law to settlers, affording them legal protections, rights, and benefits that are not extended to Palestinians living in the same territory. Palestinians living in the same territory are subjected to Israeli military law. Israel provides settlers with infrastructure, services, and subsidies that it denies to Palestinians, creating and sustaining a separate and unequal system of law, rules, and services. When possible, the occupying power shall facilitate relief shipments by impartial humanitarian organizations such as the International Committee of the Red Cross. Red Cross or other impartial humanitarian relief organizations authorized by the parties to the conflict.⁶⁸ The blockade of the Gaza Strip since 2005 by Israel has shut out all reliefs operations to the occupied West bank and Gaza Strip thus amounting to a violation of international law.

9. Violations of International Humanitarian Law in the Occupied Palestinian Territories and the Norms of Non-Recognition and Non- Assistance

Third party states have an obligation not to recognize as lawful a situation created by a serious breach of international law arising under a peremptory norm. Nor may they render aid or assistance in maintaining that situation. However, in the Israeli-Palestinian conflict, all third states involved have neglected their responsibility in holding the wrongful states accountable. While Iran and her Middle East allies have refused to recognize Israel and the illegal settlements in the occupied Palestinian territories, they have however failed to prevail on the Palestinians militants from launching attacks against the Israeli civilian populations. In fact, Israel accused Iran of supplying the rockets and technology with which Hamas attacks Israel civilians. The US and the Western allies who are the main supporters of the State of Israel have continued to supply Israel with modern warfare despite knowledge that Israel commits war crimes with those weapons. Dawidowicz has summarized the rationale for the obligation of non-recognition in the following way:

The rationale is to prevent, in so far as possible, the validation of an unlawful situation by seeking to ensure that a fait accompli resulting from serious illegalities do not consolidate and crystalize over time into situations recognized by the international legal order- a concern expressed by the International Court of Justice in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*...In such circumstances, the function of non-recognition is to vindicate the 'legal character of international law against the "law creating effect of facts.

The obligation to all states not to recognize as lawful a situation created by a serious breach of international law is confirmed by ILC Articles of State Responsibility for International Wrongful Acts.⁶⁹ This obligation arises from substantive rules of conduct that prohibit what has come to be seen as intolerable, because of the threat it presents to the survival of States and their peoples and the most basic human values. Several examples have already been recognized by the United Nations. Following the 1967 War in the Middle East, the United Nations General Assembly expressed deep concern at the situation prevailing in Jerusalem, following Israel's decision to place the

⁶² Articles 33, 49

⁶³ Article 40

⁶⁴ Palestine, Occupation and Deportation Policy. Available on nena-news.it or www.aljazeera.com. Accessed 14 October, 2019.

⁶⁵ Article 54

⁶⁶ Articles 55, 58

⁶⁷ The blockade of the Gaza Strip is the ongoing land, air and sea blockade of the Gaza Strip imposed by Israel and Egypt in 2007, after Hamas took control of the Gaza Strip during the Battle of the Gaza, seizing government institutions and replacing Fatah and other Palestinian authority with Hamas Officials.

⁶⁸ Article 59

⁶⁹ Article 41(2)

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city under a common civil administration.⁷⁰ It considered these measures invalid and called upon Israel ‘to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem.’⁷¹ The United Nations Security Council also refuted Israel’s purported annexation of East Jerusalem, declared it ‘null and void’ and called upon States not to recognize it and a similar call was made regarding Israel’s extension of Israeli law to the occupied Golan Heights.⁷² These illustrations demonstrate that the obligation of non-recognition has been accepted by States and applied in international practice, including in the occupied Palestinian territories. States have an ongoing obligation to comply with UN calls for non-recognition of Israeli serious violations of peremptory norms for as long as they continue. In the Wall Advisory Opinion⁷³, the International Court of Justice (ICJ) held that all States were ‘under an obligation not to recognize the illegal situation resulting from the construction of the wall in the occupied Palestinian territories, including in and around East Jerusalem.’⁷⁴ Yet again the specific steps were not elaborated, although the Court called upon the United Nations to formulate what further action it needs to take to bring an end to the illegal situation resulting from the construction of the Wall.⁷⁵ A second obligation, owed by third states when addressing a serious breach is not to render aid or assistance to the responsible state in maintaining the situation so created. The obligation not to assist “is limited to acts that would assist in preserving the situation created by the breach. It does not cover international cooperation with the responsible state in unrelated fields. In other words, it does not require the complete isolation of the responsible State. However, a State may legitimately avoid all types of international cooperation with the responsible state.

10. Conclusion

International Humanitarian Law contains a set of basic rules designed to protect basic human dignity in the most difficult of circumstances: war. International law remains less developed than domestic legal systems with respect to enforcement of the law. However, it is important to remember that under international law, both states and individuals can be held accountable in different ways for violations of International Law. While primary responsibility for the enforcement of International Humanitarian Law during armed conflict rests with the warring parties themselves, the paper observed that third states also have obligations under international law not to aid or assist a party who is guilty of grave breaches. In the case of violations reaching the threshold of serious violations of International Humanitarian Law and grave breaches of the Geneva Conventions, third States have an obligation to search for and prosecute the perpetrators. In addition to the third state responsibility regime under the Geneva Conventions, general rules on state and individual responsibility also apply during armed conflict. The activities of the both the Israel authorities and Palestine militants in the on-going Israeli-Palestinian conflict have severally violated international law but neither the international community nor the third party states have been able to hold either party accountable for the violations. The paper observed the lack of political will by all parties to the conflict and the international community to halt the continued violations of international humanitarian law. The paper calls for a review of the international mechanism for the enforcement of humanitarian laws to provide for effective means of enforcement of international law.

⁷⁰United Nations Security Council Resolution 2334, 2019. Available on <https://www.un.org/2016/07>. Accessed 14 October, 2019. The resolution states that Israel’s settlement activity constitutes a flagrant violation of international law and has no legal validity. But Israel has continued to occupy the territories and there has not been any international accountability against the occupation.

⁷¹*Ibid*

⁷²*Ibid*

⁷³ The Legal Consequences of the construction of the Wall in the occupied Palestinian Territory (commonly known as Israeli Wall Advisory Opinion) of 9 July 2004 is an advisory opinion issued by the International Court of Justice by a vote of 14 to 1 with Hon. Justice Thomas Buergenthal dissenting. The advice is a non-binding opinion, the Court found that the barrier violates international law and should be torn down. Available on https://en.m.wikipedia.org/wiki/israeli_occupation_of_the_West_Bank. Accessed 16 October, 2019.

⁷⁴The Court was responding to a request from the United Nations General Assembly on the legal question under international law of the Israeli West Bank barrier built by Israel that partially follows the Green line boundary between Israel and the West Bank and partially enters into the Israeli occupied West Bank. The barrier has been a controversial subject and a cause of heightened tensions in the Israeli-Palestinian conflict.

⁷⁵ Israel began construction during the second Intifada in September, 2000, along and exceeding the 1949 Green Line. *Ibid*