

AN APPRAISAL OF INTERNATIONAL HUMANITARIAN LAW*

Abstract

International Humanitarian Law is a branch of public international law. It is that portion of international law which is inspired by considerations of humanity. It aims to minimize the suffering of those not, or no longer, taking part in hostilities and to render the fighting more humane by restricting the use of barbaric weapons in armed conflict. Although the origins of contemporary International Humanitarian Law can be traced back to the nineteenth century, it is based on principles and practices which are much older. The two principal sources of International Humanitarian Law are Hague and Geneva Conventions, the former setting out restrictions on the means and methods of warfare and the latter providing protection to certain categories of vulnerable persons. It is generally accepted that a large portion of the principles permeating International Humanitarian Law reflect customary international law and, in some cases, peremptory law (jus cogens). As such, it is binding on all States, irrespective of whether they have acceded to the relevant treaties or not. Using the doctrinal method, the paper concluded that although International Humanitarian Law has made a difference in protecting vulnerable individuals and restricting the means and methods of warfare, tragically, there are countless examples of violations of International Humanitarian Law in armed conflicts around the world and a number of other challenges still remain.

Keywords: International humanitarian law, armed conflict, international human rights law, state sovereignty, human rights

1. Meaning of International Humanitarian Law?

Prior to the evolution of international humanitarian law, once there was fighting between states, the ensuing atmosphere was often one where the ordinary laws of peace existing between the warring states is promptly superseded by a state of chaos, brutality and inhumane treatment between the parties to the conflict.¹ To regulate such conduct and reduce the dehumanization of individuals, it was inevitable that a body of law aimed at regulating activities during the theatre of war would be developed.² It was the need for such body of law that led to the evolution of international humanitarian law. International humanitarian law therefore is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the laws of war, the laws and customs of war or the law of armed conflict.³ International humanitarian law is a branch of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practice considered by them as legally binding, and general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter. It comprises of all those rules of international law which are designed to regulate the treatment of the individual-civilian or military, wounded or active-in armed conflict. International humanitarian law is a branch of international law dealing with such matters as the use of weapons and other means of warfare, the treatment of war victims by the enemy and generally the direct impact of war on human life and liberty.⁴

Another issue which needs to be treated here is the difference between international humanitarian law and international human rights law. While human rights laws operate primarily in peace time, International humanitarian law apply only to armed conflict and seek to regulate the relationship between adversaries; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. International humanitarian law distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocols I and II. This however, does not mean that human rights are suspended or inapplicable during armed conflicts. Human rights are also applicable during armed conflict as individual rights are

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¹Chris C. Nwigwe, *International Humanitarian Law*, 2010 Readwide Publishers, Accra Ghana, pg 1.

²*Ibid*

³*Ibid*

⁴ See Black's Law Dictionary, 7th ed., p.745

protected.⁵ Finally, international law is the law that governs state relations. It generally seeks to prohibit the use of force but at the same time it does not make the use of force totally illegal. It is provided in article 2(4) of the UN Charter to the effect that: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’.

This general prohibition on the non use of force has been confirmed by the International Court of Justice in the *Corfu Channel Case*⁶ and the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua*⁷ and is considered to be a rule of *jus cogens* – that is, a peremptory norm of international law from which no subject of international law may derogate. The two main exceptions⁸ to this general prohibition are: the right of a state to use force in self-defence or collective self-defence under Article 51 of the Charter, and the right of the Security Council under Article 42 to authorize the use of force to maintain or restore international peace and security by virtue of Article 39. Another exception has been added by scholars of international humanitarian law that humanitarian intervention is the third exception to the rule of non use of force against the territorial integrity of another state.

2. History and Origin of International Humanitarian Law

International humanitarian law is rooted in the rules of ancient civilizations and religions.⁹ Warfare has always been subject to certain principles and customs. Universal codification of international humanitarian law began in the nineteenth century.¹⁰ Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare, particularly the World War II. These rules strike a careful balance between humanitarian concerns and the military requirements of States.¹¹ As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law. The beginning of humanitarian law was in 1864¹² with the first Geneva Convention; the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Influenced by one of the bloodiest battles of the nineteenth century in *Solférino*,¹³ a witness of that carnage, a businessman from Geneva named *Henry Dunant*, was appalled not so much by the violence of that battle, but rather by the desperate and miserable situation of the wounded left on the battlefields. With the help of the local inhabitants, *Dunant* immediately decided to collect and care for the wounded. Back in Geneva, *Dunant* published a short book in 1862, *A Memory of Solferino*, in which he vividly depicted the horrors of the battle: ‘When the sun came up on the twenty-fifth June 1859 it disclosed the most dreadful sights imaginable. Bodies of men and horses covered the battlefield: corpses were strewn over roads, ditches, ravines, thickets and field’.¹⁴

Dunant proposed that nations should form relief societies to provide care for the wounded in wartime. This laid down the foundation for the Geneva Conventions and the establishment of the International Committee of the Red Cross. On 22 August 1864 twelve nations signed the first Geneva Convention, agreeing to guarantee neutrality to medical personnel, to expedite supplies for their use, and to adopt a special identifying emblem (which since 1870s has been the red cross on a white background).¹⁵ Developing alongside the Geneva Conventions were The Hague

⁵See the Advisory Opinion of the ICJ on the Threat or Use of Nuclear Weapons, ICJ Reports 1996, 226 at para.25

⁶*Corfu Channel* ((U.K. v. Alb.), International Court of Justice 19 49, (I.C.J.) 4

⁷ *Military and Paramilitary Activities(Nic. v. U.S.)*,International Court of Justice, (Nic. v. U.S.), 1986 (I.C.J.) 14

⁸See Murphy, *Op. cit* for his discussion of possible exceptions with respect to rescue of foreign nationals and humanitarian aid drops.

⁹International Committee of the Red Cross, ‘An advisory Service on International Humanitarian Law’(2004). Available on https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf. Accessed 2 October, 2019.

¹⁰*Ibid*

¹¹*Ibid*

¹²Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864 available on <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/120?opendocument> accessed on 21 September, 2018. The Convention of 1864 was replaced by the Geneva Conventions of 1906, 1929 and 1949 on the same subject. However, it ceased to have effect only in 1966 when the last state party to it which had not yet acceded to a later Convention (Republic of Korea) acceded to the Conventions of 1949

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ The Red Cross emblem on a white background, fluttering in the wind, holds different meaning for different people. For a person in trouble, it signifies hope and comfort. For others, it conveys trust and strength, a sign of hope. Available on <https://www.icrc.org/en/document/red-cross-emblem-sign-hope>. Accessed 2 October, 2019.

Conventions¹⁶ created by states in order to govern the conduct of war. The Hague Conventions are various international treaties that emerged from The Hague Peace Conferences in 1899 and 1907. At these conferences limitations on armaments, for example a prohibition on the use of air bombs and chemical warfare, and expansion of armed forces were proposed. The two Conventions established a model for multilateral meetings to create international laws, and subsequently influenced the formation of the League of Nations in 1919. The outbreak of the World War I (1914-1918) tested the effectiveness of the body of laws existing at the time. The invention of airplanes in 1903 led to a new type of warfare which had not been foreseen by the draftsmen of the previous Conventions-Hague and Geneva Conventions. To cure this anomaly, the Hague Rules of Aerial Warfare¹⁷ were formulated in 1923 though they were not formally adopted but it presented an attempt by the international community to formulate rules to govern aerial warfare and by extension to protect civilian population. Because it was never legally adopted, the Rules were disregarded in the World War II.

The Hague Conventions as opposed to the Geneva Conventions, which are concerned with the treatment of personnel and civilians, mainly detailed the permitted conduct for war. The Geneva Conventions adopted prior to 1949 were concerned with the treatment of soldiers; following the events of World War II it was understood that a Convention for the protection of civilians in wartime was also crucial. All these factors influenced the Geneva Convention of 1949 immediately after the World War II. To complement these are the 3 Additional Protocols of 1977.

3. Meaning of Armed Conflicts

The 1949 Geneva Conventions as well as the Additional Protocols of 1977 did not offer any definition of the term 'armed conflicts'. This is not an oversight because parties to the treaties deliberately avoided the technicalities that may arise from any given definition. In the previous Conventions¹⁸ before the Geneva Law, states parties could argue that they were not at war and so the laws of war did not apply to them. It was because of this problem that a definition of armed conflict or war was avoided in the Geneva Conventions and the subsequent Protocols. However, the states parties to the 1949 Geneva Conventions have entrusted the International Committee of the Red Cross, through the Statutes¹⁹ of the International Red Cross and Red Crescent Movement, to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof. It is on this basis that the International Committee of the Red Cross offers the prevailing legal opinion on the definition of 'international armed conflict' and 'non-international armed conflict' under International Humanitarian Law. Common Article 2²⁰ to the Geneva Conventions of 1949 states that:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

¹⁶. International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <http://www.refworld.org/docid/4374cae64.html> [accessed 21 September 2018] This is the second Hague Convention. One of the purposes for which the First Hague Peace Conference of 1899 was convened was "the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels. The Conference of 1899 succeeded in adopting a Convention on land warfare to which Regulations were made. The Convention and the Regulations were revised at the Second International Peace Conference in 1907. The two versions of the Convention and the Regulations differ only slightly from each other. All these Conventions were later harmonized in the Geneva Conventions of 1949.

¹⁷. The Rules were never formally adopted by the powers concerned but it set limits to the use of a neutral air space by belligerent parties. Under the Hague Rules of Air Warfare, 1923 (which never became legally binding), neutrals have the right to defend their air space from passage of belligerent aircraft. The emergence of ballistic missiles and space satellites as tools of warfare, however, has raised questions regarding the extent of a state's upper boundary. Available on <https://www.britannica.com/topic/neutrality#ref229020>. Accessed 2 October, 2019.

¹⁸Referring to the Hague Law or Hague Laws of War

¹⁹See Article 5 (2) (g) of the Statutes of the International Red Cross and Red Crescent Movement.

²⁰The term 'Common Article 2' to the Geneva Conventions means that the provisions of article 2 of the 4 Geneva Conventions are common to each other. (They are uniform, in the same that, its provisions are impair material.

In the opinion of the ICRC, an armed conflict occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation.²¹ Relevant rules of International Humanitarian Law may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required. The existence of an armed conflict, and as a consequence, the possibility to apply International Humanitarian Law to this situation, depends on what actually happens on the ground. It is based on factual conditions. For example, there may be an armed conflict, even though one of the belligerents does not recognize the government of the adverse party. The Commentary of the Geneva Conventions of 1949 confirms that ‘Any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place’.²²

Apart from regular, inter-state armed conflicts, Additional Protocol I²³ extends the definition of armed conflict to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation). Jurisprudence The International Criminal Tribunal for the former Yugoslavia has also proposed a general definition of armed conflict. In the *Tadic* case,²⁴ the Tribunal stated that ‘an armed conflict exists whenever there is a resort to armed force between States. This definition has been adopted by other international bodies since then.

Another definition of armed conflict was offered by Schindler²⁵, which he described as ‘The existence of an armed conflict within the meaning of Article 2 common to the Geneva Conventions can always be assumed when parts of the armed forces of two States clash with each other. According to him, any kind of use of arms between states brings the Conventions into effect’. As earlier, it makes no difference and is of no concern that the party attacked offers no resistance or is not able to do. In another scholarly definition which was also adopted by the ICRC Opinion Paper, 2008, it was explained that:

Any use of armed force by one State against the territory of another, triggers the applicability of the Geneva Conventions between the two States. It is also of no concern whether or not the party attacked resists. As soon as the armed forces of one State find themselves with wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual control over a part of the territory of the enemy State, then they must comply with the relevant convention.²⁶

4. International Armed Conflict

According to Common Article 2 which has been examined earlier, an International Armed Conflicts occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation. Relevant rules of International Humanitarian Law may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required. The existence of an International Armed Conflicts, and as a consequence the possibility to apply to this situation, depends on what actually happens on the ground. It is based on factual conditions. For example, there may be an International Armed Conflicts, even though one of the belligerents does not recognize the government of the adverse party. Apart from regular inter-state armed conflicts, Additional Protocol I²⁷ extends the definition of International Armed Conflicts to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regime in the exercise of their right to self-determination like wars of national liberation. The International Criminal

²¹ICRC Opinion Paper on Armed Conflict, 2008. Available on <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>. Accessed on 2 October, 2019.

²²J Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, p. 32

²³.Article 1(4) Additional Protocol I

²⁴.ICTY, *The Prosecutor v. DuskoTadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70

²⁵D Schindler, The different Types of Armed Conflicts According to the Geneva Conventions and Protocols, RCADI, Vol. 163, 1979-II, p. 131.

²⁶HP Gasser, International Humanitarian Law: an Introduction, in: *Humanity for All: the International Red Cross and Red Crescent Movement*, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, p. 510-511.

²⁷Article 1(4) of Additional Protocol I 1977.

Tribunal for the former Yugoslavia proposed a general definition of international armed conflict. In the *Tadic*²⁸ case, the Tribunal stated that ‘an armed conflict exists whenever there is a resort to armed force between States.’ This definition has been adopted by other international bodies since then. However, an internal armed may change to international armed conflict if one of the parties is controlled by a foreign state. In the trial judgment of *Prosecutor v. Dusko Tadic*,²⁹ the international Criminal Tribunal for the Former Yugoslavia ruled that one could only infer the existence of international armed conflict in this case if one could establish that some of the participants in a seemingly internal conflict were in fact, ‘effectively controlled by another state.’

5. Non International Armed Conflict

Two main legal sources must be examined in order to determine what a Non International Armed Conflict under international humanitarian law is. To that extent it is pertinent to recall the provisions of the Common Article 3 to the Geneva Conventions of 1949 as well as Article 1 of Additional Protocol II. Accordingly the Common Article 3 provides that non-International Armed Conflicts applies to ‘armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties’. These include armed conflicts in which one or more non-governmental armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only. As the four Geneva Conventions have universally been ratified now, the requirement that the armed conflict must occur ‘in the territory of one of the High Contracting Parties’ has lost its importance in practice. According to the trial Chamber in *Prosecutor v Dusko*, it was necessary to prove that the rebel group was, for legal purposes, an organ of the government on whose behalf it was acting. The Appeal Chamber however rejected the requirement of ‘effective control’ over forces not its own, in order to be considered as a states’ agents.³⁰

6. The Geneva Conventions of 1949 and their Additional Protocols

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). The Geneva Conventions and their Additional Protocols are at the core of international humanitarian law, the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. Those responsible for grave breaches must be sought, tried or extradited, whatever nationality they may hold. 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 under the auspices of the Red Cross adopted the four Geneva Conventions in 1949. This Convention³¹ 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. The Convention also recognizes the distinctive emblems. It has two annexes containing a draft agreement relating to hospital zones and a model identity card for medical and religious personnel. Nations that ratify the Geneva Conventions must abide by certain humanitarian principles and impose legal sanctions against those who violate them. 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 (violations)’ of the Conventions.³² The First Geneva Convention basically protects soldiers who are *hors de combat* (out of the battle). This Convention,³³ like the others, recognizes the right of the International Committee of the Red Cross to assist the wounded and sick. The Convention³⁴ 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

²⁸ ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70

²⁹ Case No. IT-1-A, Judgment of the Appeals Chamber, 15 July 1999, para 84

³⁰ E Orji, *Responsibility for Crimes Under International Law* (2013) Odabe Publishers, Lagos, p.77

³¹ The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

³² See the Preamble to the Geneva Convention, 1949

³³ See Article 9 of the First Geneva Convention, 1949

³⁴ See Article 12 *ibid*,

subjected to torture or biological experiments.³⁵ 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.³⁶ The purpose of this Convention is to ensure the safety of the wounded and neutral personnel during and after battle. It enjoins both parties to respect the rights of relief agencies and medical personnel no matter the nationality or sex of the persons. .

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

This Convention³⁷ 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 63 articles specifically applicable to war at sea. For example, it protects hospital ships. It has one annex containing a model identity card for medical and religious personnel.³⁸ This Convention³⁹ 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 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 Convention⁴⁰ mandates that parties in battle take all possible measures to search for, collect and care for the wounded, sick and shipwrecked. The Convention defined 'Shipwrecked' to anyone who is adrift for any reason, including those forced to land at sea or to parachute from damaged aircraft.⁴¹ A warship cannot capture a hospital ship's medical staff, it can hold the wounded, sick and shipwrecked as prisoners of war, provided they can be safely moved and that the warship has the facilities to care for them.⁴² By Article 21 of the Convention, appeals can be made to neutral vessels, including merchant ships and yachts, to help collect and care for the wounded, sick and shipwrecked and those who agree to help cannot be captured as long as they remain neutral.⁴³ 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. The Convention further provides that religious, medical and hospital personnel serving on combat ships must be respected and protected. If captured, they are to be sent back to their side as soon as possible.⁴⁴

Protection of Prisoners of War

This Convention⁴⁵ replaced the Prisoners of War Convention of 1929. It contains 143 articles whereas the 1929 Convention had only 97.⁴⁶ 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.⁴⁷ The Convention establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.⁴⁸ The Convention has five annexes containing various model regulations and identity and other cards.⁴⁹ The Third Geneva Convention sets out specific rules for the treatment of prisoners of war (POWs). The Convention's 143 articles require that prisoners of war be treated

³⁵ See the provisions of Article 12(2) *Ibid*

³⁶ See the provisions of Article 16 of the Convention, *Ibid*

³⁷ The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949

³⁸ See the ICRC Commentary, available on www.redcross.org/ihl accessed on 22 September, 2018

³⁹ *Op. Cit.*, . foot 63

⁴⁰ See Articles 12 and 18 of the Second Geneva Convention, *Ibid*

⁴¹ See Article 12

⁴² See Article 14 thereof

⁴³ Article 21(2)

⁴⁴ See Articles 36 -37 of the Convention

⁴⁵ The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949

⁴⁶ ICRC Commentary, *Op. Cit.*, footnote 61

⁴⁷ *Ibid*,

⁴⁸ Article 18 of the convention

⁴⁹ ICRC Commentary, *Ibid*.

humanely and respected,⁵⁰ adequately housed and receive sufficient food, clothing and medical care.⁵¹ 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.⁵² 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. The Convention⁵³ made general provisions prohibiting those captured not to engage in any reprisals or discriminate on the basis of race, nationality, religious beliefs, political opinions or other criteria. Prisoners of Wars must be housed in clean, adequate shelter, and receive the food, clothing and medical care necessary to maintain good health.⁵⁴ 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 Cross⁵⁵ 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.⁵⁶ Seriously ill prisoners of war must be repatriated (returned home) to their country without conditions.⁵⁷

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 Convention⁵⁸ 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. It also contains a specific regime for the treatment of civilian internees. 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. The International Committee of the Red Cross’s Central Tracing and Protection Agency is also authorized to transmit family news and assist with family reunifications, with the help of Red Cross and Red Crescent national societies.⁵⁹ Article 27 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. They⁶⁰ are not to be subjected to collective punishment or deportation and the civilians cannot be forced to do military-related work for an occupying force⁶¹ while they are to be paid fairly for any assigned work.⁶² 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.⁶³

⁵⁰ Article 13 & 14 of the GC III

⁵¹ Article 15 GC III

⁵² See generally the provisions of Article 13, 14 and 16 of the Convention

⁵³ Articles 25, 27 and 30

⁵⁴ Articles 50 and 54 of the Convention

⁵⁵ Articles 70, 72 and 123

⁵⁶ Articles 82, 84

⁵⁷ Articles, 109, 110

⁵⁸ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949

⁵⁹ See Articles 24, 25

⁶⁰ Articles 33, 49

⁶¹ Article 40

⁶² Article 54

⁶³ Articles 55, 58

Common Article 3

All four Geneva Conventions contain an identical Article 3, extending general coverage to conflicts not of an international character. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* (out of the fight) by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, Common article 3 listed the prohibitions which parties to armed conflict are forbidden from violating. Article 3, common to the four Geneva Conventions marked a breakthrough as it covered, for the first time, situations of non-international armed conflicts. These types of conflicts vary greatly. They include traditional civil wars, internal armed conflicts that spill over into other States or internal conflicts in which third States or a multinational force intervenes alongside the government. Common Article 3 establishes fundamental rules from which no derogation is permitted. It is like a mini-Convention within the Conventions as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character.

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 I⁶⁴ 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.⁶⁵The 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.⁶⁶Meanwhile Article 35 provides that the use of weapons that ‘cause superfluous injury or unnecessary suffering,’ as well as means of warfare that ‘cause widespread, long-term, and severe damage to the natural environment’ are prohibited. The Additional Protocol I⁶⁷ 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.⁶⁸Article 77 prohibits the recruitment of children under age 15 into the armed forces is forbidden 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.⁶⁹

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

Although Common Article 3 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 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-international armed conflict hence the need for a treaty to cover internal conflict. The second Protocol additional to the Geneva Conventions⁷⁰ elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars. It does not apply to such

⁶⁴Protocol 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

⁶⁵ See the Provisions of Articles 15, 76, 77 and 79 of AP I.

⁶⁶ See Articles 17 and 81 AP I

⁶⁷ Articles 43, 44 AP I

⁶⁸Article 53 & 56 API

⁶⁹Article 85 of API

⁷⁰ Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts Protocol

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.⁷¹ 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, outrages on personal dignity, 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.⁷²

7. Grave Breaches of International Humanitarian Law

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.⁷³ Grave breaches of the first and second Conventions are identical. It 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.⁷⁴ Same prohibitions is contained in the third and fourth Conventions⁷⁵ However, it is to be noted that the Additional Protocol II is silent on the issue of grave breaches or criminalization of such violations. However, because most conflicts today are internal conflicts, it would be outrageous to allow the provisions to remain so. Governments and armed groups will be encouraged by the situation to perpetrate atrocities. Hence, the International Criminal Tribunals using judicial jurisprudence have made attempts to criminalize grave breaches of the Additional Protocol II by judicial interpretation.⁷⁶ The principle was applied in the case of *Prosecutor v. Ivica Rajic*⁷⁷ (aka *Victor Andric*) the court held that 'because the crimes alleged by the prosecutor were directed against civilian persons and property, the Geneva Convention relevant to the case was Geneva Convention IV'. This decision is without prejudice to the fact that the armed conflict involved in this case was a non-international armed conflict which is covered by the Additional Protocol II. Based on the provisions of the fourth Geneva Convention, the trial Chamber first had to consider whether the prosecution had shown sufficiently that the alleged attack on *Stupni Do* took place during an international armed conflict. The Chamber found that, for the purposes of application of the grave breaches provisions of Geneva Convention IV, the significant and continuous is military action by the armed forces of Croatia in support of the Bosnian Croats against the forces of the Bosnian government on the territory of the later was sufficient to convert the domestic conflict between Bosnia Croats and Bosnian Government into an international one.

8. Enforcement of International Humanitarian Law

Sadly, there are countless of violation of international humanitarian law. From Syria to Yemen, Libya and Afghanistan, increasingly, the victims of war are civilians and objects indispensable to civilian existence. However, there are important cases where international humanitarian law has made a difference in protecting civilians, prisoners, the sick and the wounded, and in restricting the use of barbaric weapons. Given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty. That said, striving for effective compliance remains as urgent as ever. Given that international humanitarian law is a branch of public international law, the general rules of state and individual responsibility will apply. It is primarily the responsibility of the warring parties to an armed conflict to respect the rules outlined under international humanitarian law. Respect for international humanitarian law is the most important obligation of the parties to an armed conflict. A State is bound to act in accordance with international customary law, and follow any international treaty it has signed and ratified. This is a fundamental principle in international law called '*pacta sunt servanda*' - agreements must be respected - which follows both from the Vienna Convention on the Law of Treaties,⁷⁸ and

⁷¹Article 2 AP II

⁷² See Articles 3, 4 & 5 of the Protocol II

⁷³ *Oji, Op. Cit.*, p.89

⁷⁴ See Articles 50 & 50 of the GC I & II

⁷⁵ See articles 130 & 147 respectively of GC III & IV

⁷⁶ *Prosecutor v. Tadic* ICTY Appeals, Chamber 15/7/99

⁷⁷ ICTY, CaseNo.16 2

⁷⁸ See Article 26 thereof

international customary law. To respect means that all state institutions, and all other individuals or bodies under their authority, must follow the rules of the Geneva Conventions. A state has a duty to do everything it can to ensure that the Conventions are respected by all (the duty to exercise due diligence). Dissemination of international humanitarian law standards and education of its armed forces and general population is a key element of a state's obligations under the Geneva Conventions. Under Common Article One 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. The Geneva Convention⁷⁹ and the Additional Protocol I provides that states shall also actively search for war criminals within its jurisdiction and bring them to court or extradite them as soon as possible. It is for this reason that the Geneva Convention established the principle of universal national jurisdiction over persons who allegedly committed such crimes.

The UN Security Council acts like the police of the world. Article 24 of the Charter gives the Council the duty to maintain international peace and security and that in doing so, they are deemed to act on behalf of the members. However, even during armed conflict, the UN cannot do much to protect civilians caught up in the fighting unless the 5 super powers who wield veto power agree to a resolution. Also the post war effort of criminal prosecution of the alleged war criminals will not happen unless all the super powers come to agreement. The highest the Council can do is to adopt a resolution ordering humanitarian reliefs. In this regard, the United Nations had created the UNOSOM I Mission in April 1992⁸⁰ to enforce intervention in Somalia in order to help civilians caught up in the fighting. The UN Security Council by Resolution 794 (1992), adopted unanimously on 3 December 1992 on Somalia, determined that 'the magnitude of human tragedy caused the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance' constituted a threat to international peace and security and authorized Secretary-General and member states to use all necessary means to establish a secure environment for humanitarian relief operations in Somalia.⁸¹

9. Conclusion

This paper discussed the meaning of international humanitarian law, the origin and sources of international humanitarian law. The discussion revealed that International humanitarian law provides a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict, to protect persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. The application of International humanitarian law was also considered and it is submitted that the four Geneva Conventions of 1949 as well as the three Additional Protocols of 1977 and 2005 are at the core of International humanitarian law regime. The Conventions and the Additional Protocol I provides for the offence that will constitute grave breaches which are universal crimes for which each state is urged to punish. Though Additional Protocol II did not provide for grave breaches as the other Conventions, the Tribunals however have expanded the interpretation of the Conventions to judicially assume jurisdiction for grave breaches committed during a non-international armed conflict. However, the paper submit that the enforcement mechanism of the international community regarding violations of grave breaches need to be strengthened to reduce the rate of abuse and violations thereof.

⁷⁹ See Article 146 The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, as well as Article 80 Additional Protocol I

⁸⁰Unified Task Force Somalia, https://en.m.wikipedia.org/wiki/Unified_Task_Force last visited on 21 November, 2015.

⁸¹Ibid