An Examination of International Humanitarian Law of Armed Conflict: Perspective from the Legal Issues on War Crimes in Africa

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Abstract
The practice of law of war has its modern origin from international laws of armed conflict which vehemently prescribes laws governing resort to force and also seeks to regulate the conduct of hostilities. Its extension to the protection of innocent civilians against their killings and subjection to inhuman or degrading treatments is of paramount to this study against the backdrop of violation of such provisions by war criminals, led to the birth of international humanitarian law. Therefore, this article seeks to examine relevant cases of war crimes in Africa and its legal implications. The study argues that international humanitarian law on armed conflict governs the treatment of prisoners of war, civilians in occupied territory, the sick and the wounded personnel, prohibits inhuman methods of warfare and protection of human rights in situation of armed conflict (war). Furthermore, the study posits that any violations of these prescribed rules in the conduct of armed conflict simply known as war, invariably constitutes war crime and that offenders should not go unpunished. The paper made use of archival materials, historical analysis and review of related literature documents to address the issue of international humanitarian laws on armed conflict as it should be sustained. This study concludes that there should be adequate unilateral and collective security and sanctionable measures by the United Nationssufficient enough to protect innocent civilians, basic survival infrastructures, surrendered combatants, prisoners of war during armed conflict and that any warlord(s) who must have acted in contrary to the law of war as was codified at the Hague Conference of 1889 and 1907 as well as in fundamental breach of international law should be prosecuted accordingly by the International Criminal Court.

Key words: Armed, international, law, Crime, and humanitarian

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1. Introduction and Literature Review

Historically, it could be said that what is today law of war has its modern origin from international humanitarian laws of armed conflict which prescribes laws governing resort to force (jus ad bellum), and also seeks to regulate the conduct of hostilities (jus in bellum). The law governs the treatment of prisoners of war, civilians in occupied territory, the sick and the wounded personnel, prohibits methods of warfare and protects human rights in situations of armed conflict (war). Hence any violations of these prescribed rules in the conduct of armed conflict simply known as war, constitutes what could be referred as war crime.

The Humanitarian Laws of Armed Conflict (Law of War) provides that belligerents remained subject of the law of nations (international law) and the use of force against undefended villages and towns is forbidden. The law defined those entitled to belligerent status and dealt with the measures to be taken as regards to the occupied territory. The law also provides for the rights and duties of neutral states and persons in case of war, and emphasizes the prohibition on the usage of arms, projectiles or material capable of causing unnecessary suffering people. However, there were inadequate measures to enforce such rules with the result that much appeared to depend on reciprocal behavior, public opinion and the exigencies of morale. During the inter-war period in Europe, a number of conventions that were held as at then, dealt with rules concerning the wounded and sick in armies in the field as well as prisoners of war. The arguments reached in the inter-war conventions were replaced later by the Four Geneva Red Cross Conventions of 1949 which dealt respectively with the amelioration of the condition of the wounded and sick in armed forces in the field; the amelioration of the

condition of the wounded, sick and shipwrecked members of the armed forces at the sea; the treatment of prisoners of war and the protection of civilian persons in time of war. The Fourth Convention was an innovation and significant attempt to protect civilians who as a result of armed hostilities or occupation (war), were in the power of a state of which they were not nationals.

The basic foundations and fundamental principles underlying of the Geneva Conventions system, is that persons not actively engaged in warfare should be treated humanely. A number of practices ranging from the taking of hostages to torture, illegal executions and reprisals against persons protected by the conventions are prohibited; while a series of provisions relate to more detailed points, such as the standard of care of prisoners of war and the prohibition of deportations and indiscriminate destructions of property in occupied territory. In 1977, two additional Protocols to the 1949 Geneva Conventions were adopted. These additional Protocols of 1977 built upon and developed the earlier Conventions.

The rules of international humanitarian law of armed conflict seek to extend protection to a wide range of persons. The basic distinction made has been between combatants and those who are not involved in actual hostilities. The Geneva Convention of 1949 for instance provided for the protection of war victims and also covers the wounded and the sick in land warfare; the wounded, sick and shipwrecked in warfare at sea; prisoners of war; and civilians. Article 2 of the Convention provides that "the Conventions shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of High Contracting Parties even if the state of war is not recognized by them; and to all cases of partial or total occupation of the territory of a High Contracting Party,

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even if the said occupation meets with no armed resistance"

The rules contained in these Conventions cannot be renounced by those intended to benefit from them, this precluding the possibility that the power which has control over them may seek to influence the persons concerned to agree to a mitigation of protection. A war crime is an act that constitutes a serious violation of the laws of war that gives rise to individual criminal responsibility. Examples of war crimes include intentionally killing civilians or prisoners, torturing, destroying civilian property, taking hostages, performing a perfidy, raping, using child soldiers, pillaging, declaring that no quarter will be given, and seriously violating the principles of distinction and proportionality, such as strategic bombing of civilian populations. The concept of war crimes emerged at the turn of the twentieth century when the body of customary international law applicable to warfare between sovereign states was codified. Such codification occurred at the national level, such as with the publication of the Lieber Code in the United States, and at the international level with the adoption of the treaties during The Hague Conventions of 1899 and 1907. Moreover, trials in national courts during this period further helped clarify the law. Following the end of World War II, major developments in the law occurred. Numerous trials of Axis war criminals established the Nuremberg principles, such as notion that war crimes constituted crimes defined by international law. Additionally, the Geneva Conventions in 1949 defined new war crimes and established that states could exercise universal jurisdiction over such crimes.

In the late 20th century and early 21st century, following the creation of several international courts, additional categories of war crimes applicable to armed conflicts other than those between states, such as civil wars, were defined. The broader definition of war crimes

generally accepted by the international community includes the following offenses:

Crimes against peace: The concept of "crimes against peace' or "aggression" relate only to the initiation of war and not to its later conduct. Such offenses are primarily crimes of the politically responsible leaders of a country. The theory is of comparatively recent origin, although it is related to the notion of the "just war," described below, The Nuremberg Tribunal had considerable difficulty in determining the origin of the concept of 'crimes against peace" in international law. It relied chiefly on the Kellogg-Briand Pact of 1928, which had condemned "recourse to war for the solution of international controversies" (Article I).

Crimes against humanity: The concept of crimes against humanity does not always or necessarily mean a crime committed during a war. If a nation engages in the systematic slaughter of its own inhabitants (such as the systematic oppression by the Nazis of German Jews and Gypsies before war began in 1939, or the Turkish massacre of Armenians in 1915), those responsible would be guilty of "crimes against humanity" even if there were no international hostilities at the same time. War crimes are now accepted by most authorities as subject to universal jurisdiction, though of course the issues involved are extremely sensitive and highly political.

Crimes of Genocide: Genocide is an intentional action to destroy a people (usually defined as an ethnic, national, racial, or religious group) in whole or in part. The hybrid word "genocide" is a combination of the Greek word yévoç ("race, people") and the Latin suffix -caedo ("act of killing"). The United Nations Genocide Convention, which was established in 1948, defines genocide as "acts committed with intent to

destroy, in whole or in part, a national, ethnic, racial or religious group". The term genocide was coined by Raphael Lemkin in his 1944 book Axis Rule in Occupied Europe; it has been applied to the Holocaust, and many other mass killings including the genocide of indigenous peoples in the Americas, the Armenian Genocide, the Greek genocide, the Assyrian genocide, the Serbian genocide, the Holodomor, the Indonesian genocide, the Guatemalan genocide, the 1971 Bangladesh genocide, the Cambodian genocide, and after 1980, the Bosnian genocide, the Anfal genocide, the Darfur genocide, and the Rwandan genocide. Others are listed in Genocides in history and List of genocides by death toll. The Convention states that it is not just the acts of genocide themselves that are punishable, but also "conspiracy to commit genocide," "direct and public incitement to commit genocide," the "attempt to commit genocide" and "complicity in genocide." It is the specific intention to destroy an identified group either "in whole or in part" that distinguishes the crime of genocide from a crime against humanity.

However, crimes against humanity is a broader concept since it covers murder, enslavement, deportation, imprisonment, torture, rape, or other persecution of any identifiable group (political, cultural, gender), and not merely a national or ethnic group covered by the crime of genocide. Thus the International Criminal Court charter contains a very broad definition of crimes against humanity, including any "widespread or systematic attack directed against any civilian population" (Article 7(1)). If crimes against humanity take place in the midst of a war and are directed against civilian populations of another country, these acts can constitute both war crimes and crimes against humanity. In fact, the Nuremberg Tribunal frequently combined its discussion of war crimes and crimes against humanity under a single heading and found various

persons guilty of both counts under a single discussion of the evidence.

The Political Instability Task Force estimated that, between 1956 and 2016, a total of forty-three genocides took place, causing the death of about 50 million people. The United Nations High Commissioner for Refugee (UNHCR) estimated that a further 50 million had been displaced by such episodes of violence up to 2008. Since it was initially formulated in 1948, in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the definition of 'genocide' has remained substantially the same. The definition is followed by a series of acts representing serious violations of the right to life, and the physical or mental integrity of the members of the group.

In the African perspective, the Mapping Report notes that "The question of whether the numerous serious acts of violence committed against the Hutus (refugees and others) constitute crimes of genocide and has attracted a significant degree of comment and to date remains unresolved." The report repeatedly stresses that this question can "only be decided by a court decision on the basis of evidence beyond all reasonable doubt". With that caveat, the Mapping Exercise drew the following conclusions: The scale of the crimes committed against the Hutu ethnic group in the DRC, which probably involved tens of thousands of victims, are illustrated by the numerous incidents listed in the report: the extensive use of edged weapons (primarily hammers) and the apparently systematic nature of massacres of survivors after the camps had been taken suggests that the numerous deaths cannot be attributed to the hazards of war or seen as equating to collateral damage. The majority of the victims were children, women, elderly people and the sick, that were often undernourished and posed no threat to the attacking forces. Numerous serious attacks on the physical or mental integrity of

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members of the group were also committed, with a very high number of Hutus shot, raped, burnt or beaten.

However, the report also points out there are "a number of countervailing factors that could lead a court to find that the requisite intent was lacking, and hence that the crime of genocide was not committed." These include "facts which tend to show that the APR/JAFDL spared the lives, and in fact facilitated the return to Rwanda of very large numbers of Hutu, which militate against proving a clear intent to destroy the group." Also the intent underlying the killings, rather than being to destroy the group in whole or in part, could be interpreted as collective retribution against Hutu civilians in Zaire suspected of involvement with the cxFAR/Interhamwe, reinforced by the *Armée Patriotique Rwandaise/Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre* (APR/AFDL) conviction that upon destroying the camps, all Hutu remaining in Zaire were in sympathy with the perpetrators of the 1994 genocide in Rwanda. Consequently, the report notes, "it is important that a frill judicial investigation take place, in order to shed light on the reported incidents" in 1996-97. "Only such an investigation and judicial determination would be in a position to resolve whether these incidents amount to the crime of genocide."

2. Perspectives from Legal Issues of War Crimes in Africa

(i) The Case of Rebel Commanders in Darfur Region of Sudan:

In December 2007, the ICC Prosecutor announced the opening of a new investigation into the targeting of peacekeepers and aid workers in Darfur. In November 2008, the Prosecutor submitted a sealed case against three alleged rebel commanders in Darfur whom he accused of committing war crimes during an attack on the town of Haskanita on September 29, 2007. Twelve African

Union peace-keepers were allegedly killed and eight injured in the attack. In May 2009, ICC pretrial judges issued a summons to one of the three suspects, Bahar Idriss Abu Garda, to appear before the Court. Abu Garda reported to The Hague voluntarily, where he denied the accusations of involvement in the Haskanita incident. In February 2010, ICC judges declined to confirm the Prosecutor's case against Abu Garda, contending that there was insufficient evidence to establish that he could be held criminally responsible for the attack on peacekeepers. In June 2010, two other rebel commanders sought by the Prosecutor, Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, voluntarily surrendered to the Court. Their names had not previously been made public. Banda, a former military commander in the rebel Justice and Equality Movement (JEM), and Jerbo, a former leader in the Sudan Liberation Movement (SLM)-Unity faction, each face three counts of war crimes related to "violence to life," intentionally directing attacks against a peacekeeping mission, and pillaging. On March 7, 2010, ICC judges confirmed the charges against Banda and Jerbo, paving the way for a trial.

(ii) The Case against Omar Hassan Ahmad al-Bashir in Sudan: On March 4, 2009, ICC judges issued an arrest warrant for Sudanese President Omar Hassan al Bashir. The warrant holds that there are "reasonable grounds" to believe Bashir is criminally responsible for five counts of crimes against humanity and two counts of war crimes, referring to alleged attacks by Sudanese security forces and pro-government militia in the Darfur region of Sudan during the government's six-year counter-insurgency

campaign. The ICC warrant states that there are reasonable grounds to believe attacks against civilians in Darfur were a "core component" of the Sudanese government's military strategy that such attacks were widespread and systematic, and that Bashir acted "as an indirect perpetrator, or as an indirect coperpetrator." In his application for an arrest warrant, filed in July 2008, the ICC Prosecutor affirmed that while Bashir did not "physically or directly" carry out abuses, "he committed these crimes through members of the state apparatus, the army, and the Militia/Janjaweed" as president and commander-in-chief of the Sudanese armed forces. The arrest warrant is not an indictment; under ICC procedures, charges must be confirmed at a pre-trial hearing. The decision to issue a warrant is expected to take into account whether there are reasonable grounds to believe that a suspect committed crimes as alleged by the Prosecutor and whether a warrant is necessary to ensure the suspect's appearance in court. Although many domestic legal systems grant sitting heads of state immunity from criminal prosecution, the Rome Statute grants the ICC jurisdiction regardless of official capacity. Human rights organizations hailed the warrant, the first issued by the ICC against a sitting head of state, as an important step against impunity.

Many governments, including France, Germany, Canada, the United Kingdom, and Denmark, and the European Union, called on Sudan to cooperate. Reactions by African and Middle Eastern governments were more critical, with many condemning the ICC or calling for the prosecution to be deferred. The governments of Russia and China also expressed opposition. The

ICC urged "all States, whether party or not to the Rome Statute, as well as international and regional organizations," to "cooperate fully" with the warrant. One analysis noted that while Bashir may risk arrest if he travels overseas, "no one expects Sudan to hand over Bashir, who has been executive ruler of the country for more than 15 years, absent major political changes in the country." Sudanese government officials have rejected the ICC's jurisdiction, though some legal experts argue that Sudan is obligated as a U.N. member state to cooperate because the warrant stems from a U.N. Security Council resolution under Chapter VII. In June 2011, the ICC Prosecutor argued in an appearance before the Security Council that "crimes against humanity and genocide continue unabated in Darfur" at Bashir's behest.

(iii) **The Case against Lord's Resistance Army in Uganda:** The government of Uganda, a party to the ICC, referred "the situation concerning the Lord's Resistance Army" to the ICC in 2003. The Lord's Resistance Army (LRA) is a rebel group that has fought for over two decades in northern Uganda. In October 2005, the ICC unsealed arrest warrants of the first issued by the Court for LRA leader Joseph Kony and commanders Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya. The LRA is accused of establishing "a pattern of brutalization of civilians," including murder, forced abduction, sexual enslavement, and mutilation, amounting to crimes against humanity and war crimes. None of the suspects are in custody. Lukwiya and Otti hadreportedly been killed since the warrants were issued, while other LRA commanders werethought to be in neighboring

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countries. Although LRA atrocities have been widely documented, ICC actions in Uganda have met with some domestic and international opposition due to debates over what would constitute justice for the war-torn communities of northern Uganda and whether the ICC has helped or hindered the pursuit of a peace agreement. Some observers argue that ICC arrest warrants were a crucial factor in bringing the LRA to the negotiating table in 2006 for peace talks brokered by the Government of South Sudan.

In August 2006, rebel and government representatives signed a landmark cessation of hostilities agreement; in February 2008, the government and the LRA reached several significant further agreements, including a permanent cease-fire. However, the LRA demanded that ICC arrest warrants be annulled as a prerequisite to a final agreement, and threats of ICC prosecution are considered by many to be a stumbling block to achieving an elusive final peace deal. The Ugandan government had offered a combination of amnesty and domestic prosecutions for lower-and mid-ranking LRA fighters, and is reportedly willing to prosecute LRA leaders in domestic courts if the rebels accept a peace agreement. In March 2010, the Ugandan parliament passed legislation known as the International Criminal Court Bill, which created provisions in domestic law for the punishment of genocide, crimes against humanity, and war crimes. Ugandan attempts to prosecute the LRA leaders domestically could be said to constitute a challenge for the LRA cases' admissibility before the ICC under the principle of complementarity; however, only the ICC's Pre-Trial Chamber has the authority to make a decision

on admissibility, and only the ICC Prosecutor can move to drop the case.

(iv) **The Case against Callixte Mbarushimana in Rwanda:** ICC judges issued a sealed warrant for the arrest of Callixte Mbarushimana, a Rwandan national and the alleged political leader in exile of the Democratic Forces for the Liberation of Rwanda (FDLR) militia, on September 28, 2010. The warrant cites "reasonable grounds" to believe Mbarushimana was criminally responsible for six counts of war crimes and five counts of crimes against humanity. On October 12 of the same year, Mbarushimana was arrested in France, where he was living as a political refugee. A French court verdict on November 3 paved the way for his transfer to ICC custody on January 25, 2011. The Prosecutor's case against Mbarushimana allegeed that he commanded FDLR attacks against civilians in the Kivus, including murder, torture, rape, and the destruction of property. The United States welcomed the arrest, noting that Mbarushimana has been the target of U.N. and U.S. sanctions since 2008, and indicating U.S. support for the ICC's "ongoing investigations into atrocities that have been committed in the Democratic Republic of the Congo." The government of Rwanda, previously a vocal opponent of the Court, welcomed the prosecution but stated that it would have preferred to try Mbarushimana within Rwanda on charges related to the 1994 genocide.

(v) **The Case against Jean-Pierre Bembo Gombe War Crimes in Central African Republic (CAR):** The government of CAR, a party to the ICC, referred "the situation of crimes within the

jurisdiction of the Court committed anywhere on (CAR) territory" to the ICC Prosecutor in January 2005. In May 2008, the ICC issued a sealed warrant of arrest for Jean-Pierre Bemba Gombo. A former DRC rebel leader turned politician and successful businessman, Bemba had been the leading challenger to incumbent President Joseph Kabila in DRC's 2006 presidential election, and was elected to the Congolese legislature in January 2007. He subsequently went into exile in Europe following armed clashes with security forces loyal to Kabila. The warrant alleged that as the commander of the Movement for the Liberation of Congo (MLC), one of two main DRC rebel groups during that country's civil war (1998-2003), Bemba had overseen systematic attacks on civilians in CAR territory between October 2002 and March 2003.

Bemba's MLC, based in the DRC's north, allegedly committed these abuses after he was invited into CAR by then-President Ange-Félix Patassé to help quell a rebellion. Bemba was arrested in Belgium in May 2008 and turned over to the ICC in July 2008. In June 2009, a panel of ICC judges confirmed three charges of war crimes and two charges of crimes against humanity for alleged rape, murder, and pillaging. The charges hinge on the question of command responsibility: the Prosecutor contends that Bemba personally managed the MLC, stayed in constant contact with combatants, and was well informed about the group's activities in CAR. Bemba's trial opened on November 22, 2010, after ICC judges dismissed various legal appeals. The prosecution has been controversial in the DRC, where Bemba's MLC continues to function as an opposition party. The Office of

the Prosecutor has denied that political considerations played a role in the case, and the government of DRC has denied involvement in the prosecution.

3. Legal Effects of War Crimes

Post war effects are widely spread and can be long term or short term. Soldiers experience war differently than civilians, although both suffer in times of war, and women and children suffer unspeakable atrocities in particular. In the past decade, up to two million of those killed in armed conflicts were children. The widespread trauma caused by these atrocities and suffering of the civilian population is another legacy of these conflicts, the following creates extensive emotional and psychological stress. Present-day internal wars generally take a larger toll on civilians than state wars. This is due to the increasing trend where combatants have made targeting civilians a strategic objective. A state conflict is an armed conflict that occurs with the use of armed force between two parties, of which one is the government of a state. The three problems posed by intra-state conflict are the willingness of United Nations members, particularly the strongest member, to intervene; the structural ability of the United Nations to respond; and whether the traditional principles of peacekeeping should be applied to intra-state conflict.

a. Gross violation of human rights

Human rights violations during the Syrian civil war have been numerous and serious, with United Nations reports stating that the war has been characterized by a complete lack of adherence to the norms of international law by the warring parties who have 'caused civilians immeasurable suffering". According to various human rights organizations and the United Nations, human rights violations have been

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committed by both the government and the rebels, with the "vast majority of the abuses having been committed by the Syrian government". The United Nations commission investigating human rights abuses in Syria confirms at least 9 intentional mass killings in the period 2012 to mid-July 2013, identifying the perpetrator as Syrian government and its supporters in eight cases, and the opposition in one. The United Nations has since conducted several further studies.

b. Destabilization of Government and Severe Political Violence

When war strikes it ends up affecting government structures along with the people in power of the government. Many times, one regime is removed and new forms of government are put into place. This can be seen in the Second Liberian Civil War where rebels had removed the current leader, Charles Taylor, and with the help of the United Nations deployed a new democratic form of government that stands for equal rights and even has a women president in Ellen Johnson Sirleaf. This change in government was also apparent in Rwanda in 1993 when the genocide finally stopped. The country had shifted from dictatorship to pure democracy and gave both men and women the right to vote. The country also installed a quota system where a certain number of government seats must belong to women. The country's quota was 30% of seats; however women now hold 55% of seats from their own merit. These changes in government also changes the way the country behaves economically. Some scholars, however, have argued that war can have a positive effect on political development.

c. Devastation of Socio-economic Activities and Means of Livelihood

Violent conflicts kill and injure civilians and combatants alike and cause severe psychological damage to those involved in fights, to

those living in war-tom communities and to displaced populations. The levels of mortality and morbidity associated with armed conflict are explained not only as outcomes of fighting but are also for the most part the result of spreading disease and malnutrition. Armed civil conflicts are highly correlated with increases in infant and maternal mortality rates, larger proportion of untreated illnesses and reduction in nutritional levels, even when these are riot directly caused by the initial conflict. For instance, WHO report 2002 show that although refugee women tend to have higher fertility rates than other population groups, their children (girls in particular) have a much lower probability of survival due to the health and socio-economic conditions experienced in refugee camps. These effects are often aggravated by a variety of factors, even after the end of the initial conflict. These include the breakdown of health and social services (which increase the risk of disease transmission such as HIV/AIDS; particularly in refugee camps), decrease food security (possibly resulting in famines), increase insecurity in living conditions and the loss of social capital and political trust.

d. Subjection of Innocent Civilians into Inhuman and Degrading Conditions

Displacement or forced migration results most often during a time of war and can adversely affect both the community and an individual. When a war breaks out, many people flee their homes in fear of losing their lives and their families, and as a result, they become misplaced either internally or externally. Those who are internally displaced face a direct threat because they do not receive the rights that a refugee may receive and are not eligible for protection under an international system. Victims of internal displacements are symptoms of war that are often motivated by communal hatred based on ethnic

background, race, or religious views. External displacements are individuals who are forced out of the borders of their country into another as seen with the Syrian Refugees. This may have a severe economic impact on a country. In 2015, 53 percent of refugees worldwide originated from Somalia, Afghanistan, and Syria. In a Global Trends Report by the United Nations Human Rights Commission, approximately 65 million people around the world have been forced from their home. Out of this number, 21.3 million are refugees, over half of the demographic under the age of 18. Among the top countries absorbing these displaced peoples are Pakistan (1.6 million), Lebanon (1.1 million), and Turkey (2.5 million). In times of violence, people are displaced from their homes and seek places where they are welcomed and periodically meeting places that they are not welcome.

e. Gross Violation of International Humanitarian Law of Armed Conflict

Humanitarian law applies in armed conflict, restricting the actions of warring parties, providing for protection and humane treatment of persons who are not taking part or can no longer take part in the hostilities. Like international human rights law, humanitarian law protects the lives and dignity of individuals, prohibiting torture or cruel treatment, prescribing rights for persons' subject to a criminal justice procedure, prohibiting discrimination and setting out provisions for the protection of women and children. In addition, humanitarian law deals with the conduct of hostilities, combatant and prisoner of war status and the protection of the Red Cross, Red Crescent and Red Crystal emblems. A distinction is generally made between the law designed to protect military and civilian victims of armed conflicts on the one hand, and the laws governing the way war is waged, on the other. The principal purpose

of the four Geneva Conventions was to set out humanitarian rules to be followed in international armed conflict. The Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) lists a number of actions which the parties must refrain from in all circumstances. These include actions that are recognized as violating the most basic human rights, such as violence endangering life, torture and physical or moral coercion, as well as non-compliance with many due process rights. The Convention forbids in the strongest terms the utilization of human shields. It also provides that civilians may not be compelled to work for an occupying power unless certain strict conditions are met (Article 51).

f. Degraded Economic System

The economy may suffer devastating impacts during and after a time of war. According to Shank, "negative unintended consequences occur either concurrently with the war or develop as residual effects afterwards thereby impeding the economy over the longer term". In 2012 the economic impact of war and violence was estimated to be eleven percent of gross world product (GWP) or 9.46 trillion dollars. Everyday activities of a community or country are disrupted and property may be damaged. When people become misplaced, they cannot continue to work or keep their businesses open, causing damages to the economy of countries involved. A government may decide to direct money to fund war efforts, leaving other institutions with little or no available budget. In some cases, war has stimulated a country's economy (World War II is often credited with bringing America out of the Great Depression). According to the World Bank the event that conflicts subside in the country, and in the event that there is a transition to democracy the following will result in an increase economic growth by encouraging

investment of the country and its people, schooling, economic restructuring, public-good provision, and reducing social unrest. Conflict very rarely has positive effects on an economy according to the World Bank "Countries bordering conflict zones are facing tremendous budgetary pressure. The World Bank estimates that the influx of more than 630,000 Syrian refugees has cost Jordan over USD 2.5 billion a year. This amounts to 6 percent of GDP and one-fourth of government's annual revenues". As a result of the Sri Lankan Civil War, Sri Lanka's military spending as a percentage of Gross Domestic Product (GDP), increased from 1.6 percent in 1983 to 3.5 in 2008 and reached an all-time peak at 5.9 percent of Gross Domestic Product in 1995 representing over 20 percent of the government's total spending. Until the war, arms were not nearly a significant amount of government spending and their defense personnel increased from 22,000 in 1989 to 213,000 in 2008. After the war began, however, arms were imported annually in response to increasing violence. By the year 2000, the Sri Lankan government's "import bill for arms was around USD 274 million", a record high during the war.

g. Catastrophic Destruction of Infrastructure

Destruction of infrastructure can create a catastrophic collapse in the social interrelated structure, infrastructure services, education and health care system. Destruction of schools and educational infrastructure has led to a decline in education among many countries affected by war. If certain infrastructural elements are significantly damaged or destroyed, it can cause serious disruption of the other systems such as the economy. This includes loss of certain transportation routes in a city which could make it impossible for the economy to function properly and also for people to be evacuated. Property damage in the Soviet Union inflicted after the Axis invasion was estimated to a value of 679 billion rubles. The

combined damage consisted of complete or partial destruction of 1,710 cities and towns, 70,000 villages/hamlets, 2,508 church buildings, 31,850 industrial establishments, 40,000 miles of railroad, 4100 railroad stations, 40,000 hospitals, 84,000 schools, and 43,000 public libraries.

h. The labor force of the economy also changes with the effects of war

The labor force is affected in a multitude of ways most often due to the drastic loss of life, change in population, the labor force size shrinking due to the movement of refugees and displacement and the destruction of infrastructure which in turn allows for a deterioration of productivity. When men head off to war, women take over the jobs they left behind. This causes an economic shift in certain countries because after the war these women usually want to keep their jobs. The shortage of labor force during the 1980—1988 Iran—Iraq War enabled women to enter fields of employment that had previously been closed to them and absorbed them into a large number of much-needed jobs. In Women and Work in Iran, Povey points, 'The Iran—Iraq war reduced the supply of male labor is one factor. The war increased the number of women seeking work or resisting exclusion. Many women even occupied important positions for the first time". This can also be seen in the Second Liberian Civil War, and in the Rwandan genocide. Women in both conflicts took over their husbands' jobs due to the effects of the war, and received more economic equality as a result.

4. Legal Interpretation of War Crimes

(1) It is a crime against peace that involves the preparation and initiation of war of aggression in which peace is absolutely distorted.

(2) It is considered by law as a crime involving murder, inhuman and degrading treatment against both innocent civilians and prisoners of war.

(3) It is a crime against humanity that involves political, racial and religious persecution of civilian population.

(4) It is a gross violation of fundamental international human rights in a large scale, targeting the extermination of lives and property as well as destructive attacks on infrastructural facilities and development installations. It is generally regarded by international law as crimes committed in violation of international humanitarian law of armed which are punishable as international criminal offence.

(5) It is regarded as an international crime in which people are subjected to pessimistic suffering, serious injury to body and torture prohibited by international law

Therefore, the legal effect of war crime is summarily seen as a crime against peace; crime against humanity; and a crime involving inhuman and degrading ill-treatments of which suspects are liable to international prosecution while culprits risk imprisonment without having any other option.

5. Legal Consequences of War Crime

The Nuremberg and Tokyo Trials: The major attempt to prosecute war criminals occurred in Europe and Asia after World War II were the Nuremberg and Tokyo trials. Throughout the war, the Allies had cited atrocities committed by the Nazi regime of Adolf Hitler and announced their intention to punish those guilty of war crimes. The Moscow Declaration of 1943, issued by the United States, Great Britain, and the Soviet Union, and the Potsdam Declaration of 1945, issued by the United States, Great Britain, and China (and later adhered to by the Soviet Union), addressed the issue of punishing war crimes committed by the German and Japanese governments, respectively. At the war's conclusion, representatives of the United States, the United Kingdom, the

Soviet Union, and the provisional government of France signed the London Agreement, which provided for an international military tribunal to try major Axis war criminals whose offenses did not take place in specific geographic locations. This agreement was supported by 19 other governments and included the Nuremberg Charter, which established the Nuremberg tribunal and categorized the offenses within its jurisdiction. The charter listed three categories of crime:

(1) Crimes against peace, which involved the preparation and initiation of a war of aggression,

(2) War crimes (or "conventional war crimes"), which included murder, ill treatment, and deportation; and

(3) Crimes against humanity, which included political, racial, and religious persecution of civilians. This last category included what is commonly called genocide.

After the Nuremberg and Tokyo trials, numerous international treaties and conventions attempted to devise a comprehensive and enforceable definition of war crimes. The four separate Geneva conventions, adopted in 1949, in theory made prosecutable certain acts committed in violation of the laws of war. The conventions provided for the protection of wounded, sick, and shipwrecked military personnel, prisoners of war, and civilians. Like the convention on genocide, however, the Geneva conventions specified that trials were to be arranged by individual governments.

Other conventions that were revised and added in 1949 were as follows:

First is the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention for the Amelioration of the Condition of the Wounded and

Sick in Armed Forces in the Field was adopted in 1864, significantly revised and replaced by the 1906 version, the 1929 version, and later the First Geneva Convention of 1949).

Second is the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea was adopted in 1906, significantly revised and replaced by the Second Geneva Convention of 1949).

Third is the Geneva Convention relative to the Treatment of Prisoners of War (Convention relative to the Treatment of Prisoners of War was adopted in 1929, significantly revised and replaced by the Third Geneva Convention of 1949).

Fourth is the Geneva Convention relative to the Protection of Civilian Persons in Time of War (first adopted in 1949, based on parts of the 1907 Hague Convention IV).

Two Additional Protocols were adopted in 1977 with the third one added in 2005, completing and updating the Geneva Conventions. They are as follows:

i. Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts.
ii. Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts.
iii. Protocol 111 (2005) relating to the Adoption of an Additional Distinctive Emblem.

The Establishment of International Criminal Court 2002

July 1, 2002, the International Criminal Court, a treaty-based court located in The Hague, came into being for the prosecution of war

crimes committed on or after that date. Several nations, most notably the United States, China, Russia, and Israel, have criticized the court. The United States still participates as an observer. Article 12 of the Rome Statute provides jurisdiction over the citizens of non-contracting states in the event that they are accused of committing crimes in the territory of one of the state parties. War crimes are defined in the statute that established the International Criminal Court, which includes grave breaches of the Geneva Conventions, such as:

(a) Willful killing, or causing great suffering or serious injury to body or health

(b) Torture or inhumane treatment

(c) Unlawful wanton destruction or appropriation of property

(d) Forcing a prisoner of war to serve in the forces of a hostile power

(e) Depriving a prisoner of war of a fair trial

(f) Unlawful deportation, confinement or transfer

(g) Taking hostages

(h) Directing attacks against civilians

(i) Directing attacks against humanitarian workers or United Nations peacekeepers

(j) Killing a surrendered combatant

(k) Misusing a flag of truce

(I) Settlement of occupied territory

(m) Deportation of inhabitants of occupied territory

(n) Using poison weapons

(o) Using civilians as shields

(p) Child soldiers

(q) Firing upon a Combat Medic with clear insignia.

(r) The following acts as part of a non-international conflict:

(s) Murder, cruel or degrading treatment and torture

(t) Directing attacks against civilians, humanitarian workers or United Nations peacekeepers

The following acts were also included as part of an international armed conflict crime:

(i) Taking hostages

(ii) Summary execution

(iii) Pillage

(iv) Rape, sexual slavery, forced prostitution or forced pregnancy

However, the court only has jurisdiction over these crimes where they are part of a plan or policy or as part of a large-scale commission of such crimes". The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations in 1948 made genocide an international crime that could be prosecuted in the court of any country. Because the Nuremberg trials preceded the convention, however, Nazi war criminals were not prosecuted for genocide. The International Military Tribunal in Nuremberg, Germany, tried 22 Nazi leaders, including one, Martin Bormann, who was tried in absentia. The trial was conducted in four languages and lasted nearly 11 months. All but three of the defendants were convicted; 12 were sentenced to death. The remaining defendants received lengthy prison terms, which they served at Spandau Prison in West Berlin. Subsequent trials were held under the auspices of Control Council Law No. 0, which was used to prosecute accused Nazi war criminals whose crimes took place in specific locales. Japanese defendants accused of war crimes were tried by the International Military Tribunal for the Far East, which was established by a charter issued by

United States Army General Douglas MacArthur. The so-called Tokyo Charter closely followed the Nuremberg Charter. The trials were conducted in English and Japanese and lasted nearly two years. Of the 25 Japanese defendants (all of whom were convicted), 7 were sentenced to hang, 16 were given life imprisonment, and 2 were sentenced to lesser terms. Except for those who died early of natural causes in prison, none of the imprisoned Japanese war criminals served a life sentence. Instead, by 1958 the remaining prisoners had been either pardoned or paroled.

6. Legal Challenges of War Crimes Prosecution

Illegal apprehension of suspects and the exercise of jurisdiction: It would appear that unlawful apprehension of a suspect by state agents acting in the territory of another state is not a bar to the exercise of jurisdiction. Such apprehension would, of course, constitute a breach of international law and the norm of non-intervention involving state responsibility, unless the circumstances were such that the right of self-defense could be pleased. It could be argued that the seizure, being a violation of international law, would only be compounded by practice on the whole demonstrates otherwise. In most cases a distinction is clearly drawn between the apprehension and jurisdiction to prosecute and one should also distinguish situations where the apprehension has taken place on or over the high seas from cases where it has occurred without consent on the territory of another state. A further distinction that has been made related to situations where the abduction has taken place from a state with which the apprehending state has an extradition treaty which governs the conditions under which movement of alleged offenders occurs between the two. A final distinction may be drawn as between cases depending upon the type of offences with which offender is charged, so that the problem of the apprehension interfering with the persecution may be

seen as less crucial in cases where recognized international crimes are alleged. Of course, any such apprehension would constitute a violation of the human rights of the person concerned, but whether that impact upon the exercise of jurisdiction as such is the key issue here.

Variations in approaches are evident between states: The United States Court of Appeals in *United States v Toscanini* held that the rule that jurisdiction was unaffected by an illegal apprehension should not be applied where the presence of the defendant has been secured by force or fraud, but this approach has, it seems, been to a large extent eroded. In *UnitedStates cx reL Lujan v. Gengler,,* it was noted that the rule in Toscanini was limited to cases or torture' brutality and similar outrageous conduct. The issue came before the United States Supreme Court in United States in which the view was taken that the issue essentially revolved around a strict interpretation of the relevant extradition treaty between Mexico and the United States. The Court noted that where the terms of an extradition treaty in force between the states concerned prohibited abduction then jurisdiction could not be exercised. Otherwise the rule in Ker would apply and the prosecution would proceed. This applied even though there were some difference between cases, in that, unlike the situation in Ker, the United States government had been involved in the abduction and the state from whose territory the apprehension took place had protested. In the United Kingdom, the approach has appeared to alter somewhat. Where an accused was taking legal action to quash a decision to proceed with an extradition request, the fact that he had been lured into the jurisdiction was not sufficient to vitiate the proceedings since safeguards as to due process existed in the light of the Home Secretary's discretion and under the law of the state to whom he was to be extradited.

The United States Alien Tort Claims Act: Under this Act, the First Congress established original district court jurisdiction over all causes where an alien sues for a torture 'committed in violation of the law of nations or a treaty of the United States.' In Firlargatia v.Pena-Irala, the United States Court of Appeals for the Second Circuit interpreted this provision to permit jurisdiction over a private torture action by a Paraguayan national against a Paraguayan police official for acts of torture perpetrated in that state, it being held that torture by a state official constituted a violation of international law. This amounted to an important move in the attempt to exercise jurisdiction in the realm of international human rights violations, although one clearly based upon a domestic statue permitting such court competence. The relevant issues in such actions would thus depend upon the definition of the 'law of nations' in particular cases.In Tel-Oren v. Libyan Arab Republic, however, the Court dismissed an action under the same statute brought by survivors and representatives if persons murdered in an armed attack on an Israeli bus in 1978 for lack of subject-matter jurisdiction. The three judges differed in their reasoning. Judge Edwards held that the law of nations did not impose liability on non-state entities like the Political Liberation Organization (PLO). Judge Bork, in a departure from the Filartiga principles, declared that “an explicit grant of a cause of action [had to exist] before a private individual [will] be allowed to enforce principles of international law in a federal Tribunal,” while Senior Judge Robb held that the case was rendered non-justiciable by the political question doctrine.Further restrictions upon the Filartiga doctrine have also manifested. It has, for example, been held that the Alien Torts Claim Act does not constitute an exception to the principle of sovereign immunity so that a foreign state could not sue for violations of the law of nations

under the Act.In Sanchez-Espinoza v. Reagan, suit was brought against a variety of present and former United States executive official for violation inter Alia of domestic and international law with the regard to the United States support of the 'contra' guerrillas fighting against the Nicaragua government. The Alien Tort Claim Act was cited, but the Court of Appeals noted that the statute arguably only covered Private, nongovernmental after that violated a treaty or customary international law and, relying on Tel-Oren, pointed out that customary international law did not cover private conduct 'of this sort'.Thus the claim for damages could only be sustained to the extent that the defendant acted in an official capacity and, even if the Alien Tort Claims Act applied to official state acts, the doctrine of domestic sovereign immunity precluded the claim.

Issues of Extradition: The practice of extradition enables one state to hand over to another suspected or convicted criminal who have fled abroad. It is based upon bilateral treaty law and does not exist as an obligation upon states in customary law. It is usual to derive from existing treaties in the subject certain general principles, for example that of double criminality, i.e. that the crime involved should be a crime in both states concerned, and that of specialty, i.e. a person surrendered may be tried and punished only for the offence for which extradition had been sought and granted. In general, offences of a political character have been excluded, but this would not cover terrorist activities. As noted above, it is common for many treaties laying down multiple bases for the exercise of jurisdiction to insist that states parties in whose territory the alleged offender is present either prosecute or extradite such person. In addition, many treaties provide for the automatic inclusion within existing bilateral extradition treaties between state parties to such treaties of the offence concerned. Many states will not allow the extradition of nationals

to another state, but this is usually in circumstances where the state concerned has wide powers to prosecute nationals for offences committed abroad. Further, the relevance of human rights law to the process of extradition should be noted.

The Issues of Extraterritorial Jurisdiction: Crimes have arisen in the context of economic issues whereby some states, particularly the United States, seek to apply their laws outside their territory in a manner which man precipitate conflicts with other states. Where the claims are founded upon the territorial and nationality theories of jurisdiction, problems do not often arise, but claims made upon the basis of the so-called effects' doctrine have provoked considerable controversy. This goes beyond the objective territorial principle to a situation where the state assumes jurisdiction on the grounds that the behavior of a party is producing effects within its territory. This is so even though all the conduct complained of takes place in another state. The effects doctrine has been energetically maintained particularly by the United States in the area of antitrust regulation. The classic statement of the American doctrine was made in the case of United States v. Aluminum Co. of America, in which the Court declared that: "Any state may impose liabilities, even upon persons not within its allegiance for conduct outside its borders that has consequences within its borders which the state reprehends."

7. Legal Remedies for War Crimes

States' Obligations on Prosecution or Extradition of Alleged War Criminals: On becoming party to the Geneva Conventions or Additional Protocol 1, States undertake to enact legislation necessary to punish persons guilty of what are known as 'grave breaches' of the Conventions and the Protocol. States are also bound to prosecute in their own courts any person suspected of having committed a grave breach, or to hand that

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person over for trial in another State.A State's criminal laws generally apply only to crimes committed on its territory or by its own nationals, but States are increasingly passing laws that enable their courts to prosecute crimes committed outside their territory.Under International Humanitarian Law, States are required to seek out and punish any person who has committed a grave breach of International Humanitarian Law — irrespective of his nationality or the place where the offence was committed. This principle, known as universal jurisdiction, is essential to guarantee that grave breaches are effectively repressed. Universal jurisdiction provides the basis in international law for State laws that enable courts in one State to prosecute persons who have committed international crimes in a different State.Criminal proceedings for serious violations of International Humanitarian Law, i.e. war crimes including but not limited to grave breaches, must in some circumstances be brought by national authorities. The International Committee of Red Cross study on customary International Humanitarian Law confirms that States have the obligation to investigate war crimes allegedly committed by their nationals or armed forces, or by others on their territory, as well as other war crimes over which they have jurisdiction. They also have an obligation to prosecute, if appropriate, persons suspected of war crimes.Article 6 of the Charter of the International Military Tribunal of 1945 referred to crimes against peace, violations of the law and customs of war and crimes against humanity as offences within the jurisdiction of the Tribunal for which there was to be individual responsibility. This article can be regarded as part of international law. The universality principle was to some extent applied in the Eichamnn case before the District Court of Jerusalem and the Supreme Court of Israel in 1961. Eichmann was prosecuted and convicted under an Israeli law of 1951 for

war crimes, crimes against the Jewish people and crimes against humanity. The District Court declared that far friends limiting states' need of the legislative and judicial organs of every state giving effect to its criminal interdictions and bringing the criminals to trial. The fact that the crimes were committed prior to the establishment of the state of Israel did not prevent the correct application of its powers pursuant to universal jurisdiction under international law. Israel's municipal law merely reflected the offences existing under international law.Nuremberg practice demonstrates that crimes against peace consist of the commission by the authorities of a state of acts of aggression. In theory this is not controversial, but in practice serious problems are likely to arose within the framework of universal jurisdiction. However, whether this category can be expanded to include support for international terrorism is open to question.

Treaties Providing for Jurisdiction: In addition to the accepted universal jurisdiction to apprehend and try pirates and war criminals, there are a number of treaties which provide for the suppression by the international community of various activities, ranging from the destruction of submarine cables to drug trafficking and slavery. These treaties provide for the exercise of state jurisdiction but not for universal jurisdiction. Some conventions establish what might be tern r a quasi-universal jurisdiction in providing for the exercise of jurisdiction upon a variety of bases by as wide as group of states parties as possible coupled with an obligation for states parties to establish such Jurisdiction in domestic law. In many instances the offence involved will constitute *jus cogens*. The view is sometimes put forward that where a normal of *jus cogens* exists, particularly where the offence is regarded as especially serious, universal jurisdiction as such may be created. More correct is the

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approach that in such circumstances international law recognizes that domestic legal orders may validly establish and exercise jurisdiction over the alleged offenders. Such circumstances thus include the presence of the accused in the state concerned and in this way may be differentiated from universal jurisdiction as such. Therefore, the type of jurisdiction at issue in such circumstances cannot truly be described as universal, but rather as quasi-universal. There are a number of treaties that follow the quasi-universal model, that is providing for certain defined offences to be made criminal offences within the domestic orders of states parties; accepting an obligation to arrest alleged offenders found on the national territory and then either extraditing or prosecuting those persons on the basis of a number of stated jurisdictional grounds, ranging from territoriality to nationality and passive personality grounds. Such treaties normally also provide for mutual assistance and for the offences in question to be deemed to be included as extraditable offences in any extradition treaty concluded between states parties. Example is the United Nations Torture Convention, 1984 and treaties relating to hostage-taking, currency counterfeiting, hijacking and drug trafficking.

The Convention against Torture, 1984 provides that each state party shall ensure that all acts of torture are offences under domestic criminal law and shall take such measures as may be necessary to establish its jurisdiction over torture offences when committed in any territory under its jurisdiction or on board a ship or aircraft registered in the state concerned or when the alleged offender is a national or when the victim is a national if that state considers appropriate. Further, each state party agrees to either extradite or prosecute alleged offenders, while agreeing that the offences constitute extraditable offences within the context of extradition agreements concluded between states parties. This

Convention was the subject of consideration in Lx parte Pinochet (No.3), where the majority of the House of Lords held that torture committed outside the United Kingdom was not a crime punishable under United Kingdom law until the provisions of the Convention against Torture were implemented by s. 134 of the Criminal Justice Act 1988.

8. Rules of International Humanitarian Law Applicable to Internal Armed Conflict

A distinction has historically been drawn between international and non-international armed conflicts founded upon the difference between inter-state relations, which was the proper focus for the international law, and inter-state matters which traditional fell within the domestic jurisdiction of states and were thus in principle impervious to international legal regulation. In the area of humanitarian law, this can be seen in the gradual application of such rules to internal armed conflicts. The notion of an armed conflict itself was raised before the Appeal Chambers of the International Tribunal on War Crimes in former Yugoslavia in its decision on jurisdictional issues in the Tadic Case as contained in case No.IT-94-1-AR 72 and 105 ILR, pp 453, 486 and 488. The Appeal Chamber of the Tribunal correctly refused to accept a narrow geographical and temporal definition or armed conflict whether international or internal. It was stated that:

"An armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state".

International Humanitarian Law applies from the intention of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached or, in the case of internal

conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring states or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place. The Appeal Chamber concluded that the conflict in the former Yugoslavia have both internal and international aspects. Therefore, in its decision based on merits, the Appeals Chamber noted that, "It is indispensable that an armed conflict is international if it takes place between two or more states." In addition, in the case of an internal armed conflict breaking out on the territory of a state, it may become international depending upon the circumstances or international in character alongside an internal armed conflict if:

(i) Another state intervenes in that conflict through its troops, or alternatively if;

(ii) Some of the participants in the internal armed conflict act on behalf of that other state

It is therefore, concluded that the dichotomy between international and internal armed conflicts may be drawn at the point which it can be proven that a foreign state is either directly intervening within a civil armed conflict or indirectly exercising overall control over an armed group fighting in armed conflict. It should be noted that despite the fact that the 1949 Geneva Conventions were mainly concerned with international armed conflicts, Common Article 3 did provide in case of non-international armed conflicts occurring in the territory of one of the parties a series of minimum guarantees for protecting those not taking active part in hostilities, including the sick and wounded. Non-international armed conflicts could, it may be argued, range from full-scale civil wars to relatively minor disturbances. This poses problems for

the state in question which may not appreciate the political implications of the application of the Geneva Conventions, and the lack of the reciprocity element due to the absence of another state adds to the problems of enforcement. In accordance to the provisions of common Article 3, it lists the following as the minimum safeguarding;

1. Persons taking active part in hostilities to be treated humanely without any adverse distinction based on race, colour, religion or faith, size, birth or wealth: To this end, the following are prohibited;

a. Violence to life and person, in particular murder, cruel treatment and torture;

b. Hostage-taking;

c. Outrages upon human dignity, in particular humiliating and degrading treatment;

d. The passing of sentences and the carrying out of execution in the absence of due process;

2. The wounded and the sick are to be cared for.

Common Article 3 was developed by Protocol II of 1977, which applies by virtue of Article I to all non- international armed conflicts which take place in the territory of a state party between its armed forces and dissident armed forces. The latter has to be under responsible command and exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operation and actually implement Protocol II. It does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar notion, not being armed conflicts. In particular, one may note the prohibitions on violence to the life, health and physical and mental wellbeing of persons, including torture; collective punishment; hostage-taking; acts of terrorism; outrages upon

personal dignity, including rape and enforced prostitution and pillage. The provisions further cover the protection of children, the protection of civilians including the prohibition of attacks in works or installations containing dangerous forces that might cause severe lose among civilians; the treatment of civilians, including their displacement, and the treatment of prisoners and detainees, and the wounded and the sick.

Conclusion and Recommendations

This paper has provided that international humanitarian law of armed conflict, as a legal instrument, seeks to regulate the conduct of warfare and armed conflict in such way that certain inhuman attacks are highly prohibited and considered as crimes when launched against non-combatants and those captured or that surrendered. The law aims to protect humanity and human dignity even in times of war or armed conflict for humanitarian and human rights purposes. International humanitarian law in addition to seeking to protect victims of armed conflicts, also constrain the conduct of military operations in humanitarian fashion and so should be strictly complied with. Therefore, in analyzing the rules contained in the Law of Hague (Geneva Conventions on the Law of Armed Conflict), it is important that parties to armed conflict to bear in mind the delicate balance to be maintained between military necessity and humanitarian consideration before carrying out any operation and avoid committing criminal offences known as war crimes.

I hereby wish to conclude this paper by stating that war crime is a crime committed against humanity and an act that engenders gross violation of human rights, carried out via ethnic cleansing, genocide and willful destruction of basic infrastructures necessary to human survival during a warfare or armed conflict. War crime, in any form, should not be

justified, be it provoked or unprovoked, but should be considered a fundamental breach of international humanitarian law.

This paper proposes that for more effective results to be achieved there should be detailed, applicable and effective sanctions coupled with collective security responses and measures in agreement to legal actions against perpetrators of war crimes. War criminals should receive severe punishments that should discourage subsequent perpetration of such acts. It should be considered as one of the woes of the United Nations if these measures cannot effectively wade of the intention to commit and the subsequent execution of such crimes and war in its totality.

The paper also posits that there should always be the need to strictly observe a long outstanding principle in humanitarian law of armed conflict which in practice requires the protections of civilian population against the effects of hostilities. This is pointed to the fact that as far as the civilian population is concerned during hostilities, the basic rule formulated in Article 48 of Protocol I, is that parties to the armed conflict must at all times distinguish between such population and combatant on one side while at the other side is between civilians and military objectives which must direct their operations only against military objectives as is contained in Article 52 (2)

Issues have arisen particularly with regard to the so-called "dual use" objects such as bridges, roads, power stations and so on, as such, care must be taking in clear terms to interpret these so that not every object used by military forces becomes a military target, especially in view of the actual terms used in Article 52 (2) that such objects make an effective contribution to military actions and offer a definite military advantages. Civilians population and individual civilians should not in any way be object of attacks as is contained in Article 51 of Protocol I.

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Therefore, any act or threat of violence in which its purpose is to spread terror among the civilian population should at all times be prohibited and liable to prosecution by the International Criminal Court (ICC).

Cultural objects, religious places of worship and objects deemed indispensable to the survival of the civilian population such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinkable water, installations and supplies, irrigation works so long as they are not used as sustenance solely for the parties engaged in armed conflict should also at all times be protected against any form of attacks during armed conflict.

The rules of the Geneva Conventions should relatively be applied in internal armed conflict that have the potentials of gross violations of the provisions contained in international humanitarian law of armed conflict in order avoid any government or group of bandits, rebels, armed groups or terrorist groups and armed forces special operations operating domestically from hiding under internal matters covered within the principles of sovereignty and territorial jurisdiction.

In addition, there is a need for a proper and detailed procedure by the ICC in the arrest, trial and prosecution of perpetrators of war crimes. If arrest warrants are not an indictment under ICC procedures, then these procedures should explicitly state whether or not charges should be confirmed before trials or if there should be an outright execution of penalties. These procedures should also state if belligerent and rebels groups or government regimes responsible for such acts have rights or hold a position to negotiate, considering that they are humans too and are themselves bound by Universal Declaration of Human Rights.

Finally, this paper calls for the need for domestic laws of individual states to cover and contain penalties and punishments for acts

of genocide, and these laws should exist as binding on all individuals within the state, whether those in authority, civilians or military. This will also call for the reiteration of natural law and its strict enforcement as it considers human life, freedom and wellbeing as sacrosanct against any form of destruction. It also condemns war through which war crimes manifests. This should be upheld above positivist law that accepts certain standards in conducting warfare in which innocent civilians are affected. This paper calls for a rebirth of the general application and practice of natural law and its supremacy over positivist law in dealing with issues of war crime.

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