



**NEAR EAST UNIVERSITY  
GRADUATE SCHOOL OF SOCIAL SCIENCES  
DEPARTMENT OF LAW  
MASTER'S PROGRAM**

**MASTER'S THESIS**

**THE IMPORTANCE OF THE ROLES OF  
INTERNATIONAL HUMANITARIAN LAW IN  
ARMED CONFLICTS REGARDING TERRORISM**

**Rawand Mustafa RASOOL**

**NICOSIA  
2016**

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**NICOSIA  
2016**

**NEAR EAST UNIVERSITY  
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Department of Law Master's Program**

**Thesis Defence**

**Thesis Title: The Importance of the Roles of International Humanitarian Law in  
Armed Conflicts Regarding Terrorism**

**We certify the thesis is satisfactory for the award of degree of Master of Law**

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## ABSTRACT

In the past and present, conflict between members of the society, States against States have been an issue that will never go into extinction. Factors have wrapped itself in different forms for parties to conflict to see reasons why blood must flow. Also, aggrieved groups have not also made conflict a subject to be swept under the carpet. While expressing violence, it has been noticed that both the general public are mixed together with no clear understanding of the rules of war again. In clear teams, conflict has metamorphosed into a phenomenon call terrorism where aggrieved groups, for political reasons and some extreme ideologies, vent violent rage on innocent civilians. Record has shown that terrorism is turning into a global agendum that has attracted the attendance of States of the world to address.

This research aims to give an illumination into the importance of the roles of International Humanitarian Law in Armed Conflict as regards terrorism. It tries to explain the Laws of armed conflict and the principles required to separate civilian objects from military objectives. It also give details to the protection that the law provides for the innocent civilians who are not taking part in any form of hostilities. With the existing Conventions and Laws, coupled with works of scholars, this study successfully makes recommendations and conclusions on the impact of law to check terrorism.

**Keywords:** International Humanitarian Law, Armed Conflict, Terrorism, military objectives, civilian objects.

**DECLARATION**

I hereby declare that this master's thesis titled as "*The Importance of the Roles of International Humanitarian Law in Armed Conflicts Regarding Terrorism*" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

... /.... / 2016

Rawand M. RASOOL

## **ACKNOWLEDGMENT**

I would like to extend my gratitude to God who helped to bring this research work to completion. First, I would like to thank Professor Volkan for providing me the opportunity of being part of his group. I am so deeply grateful for his help, professionalism, valuable guidance and support throughout this research and through my entire program of study that I do not have enough words to express my deep and sincere appreciation. I would also like to acknowledge my Advisor, Nabi Berkut, and I am gratefully indebted to him for his very valuable comments on this thesis.

My thanks also go to my classmates for their numerous conversations and help. Finally, I must express my very profound gratitude to my parents for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of researching and writing this thesis. This accomplishment would not have been possible without them. Thank you.

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## **ABBREVIATIONS**

AP: Additional Protocol

CRC: Convention on the Rights of the Child

ECOMOG: Economic Community of West African States Monitoring Group

ENMOD: Environmental Modification Techniques

GC: Geneva Convention

GC: Geneva Convention

IAC: Internal Armed Conflict

IAC: International Armed Conflict

ICC: International Criminal Court

ICJ: International Court of Justice

ICRC: International Committee of Red Cross

ICRC: International Committee of the Red Cross

ICTR: International Criminal Tribunal for Rwanda

IHL: International Humanitarian Law

ISIL: Islamic State of Iraq and the Levant

LOAC: Laws of Armed Conflicts

NIAC: Non-International Armed Conflict

POW: Prisoners of War

UN: United Nations

UNEP: United Nations Environment Programme

## CHAPTER ONE: INTRODUCTION

### 1.1 Background of study

Terrorism is no more a new occurrence in the world but systematic tool to inflict terror and vulnerability in a society with the motive of achieving political objectives. It majorly attracts attention through frightening of people and once this becomes successful, there would definitely be a significant human and social harm.

Efforts by States and international body to fight terrorism has inevitably led to strict restrictions on some traditional liberties of people. In as much as the concepts to tackle terrorism is metamorphosing, one thing still remains, which is the substance or the elements that colours the goals of terrorism. This is the isolation and exploitation porous and weakest points of the targets. Telling the line of history, for example, from Iraq, to Iran, Nigeria, France, United States and to all States which have been victims of terrorism, they have witnessed random gun-shootings, detonation of dangerous explosives or kidnappings of people who are not prepared and armed (and are basically considered as innocents or guilty targets) with the high hopes of degrading the public confidence bestowed on the government on sit.

One very paramount ingredient in the understanding of terrorism is not the end result or aftermath of an action and but the intent of the action. The thin line that separates the

“legitimate event of 15<sup>th</sup> October 2010 that killed Qari Hussain, the Pakistani Taliban through the Hellfire missiles fired from a Predator or Reaper drone which did not only kill him but lead to the death of about 1, 147 people (Ackerman, Spencer2014) and the event on the 14<sup>th</sup> August 2007 that killed 520 people and injured 1500 people in a coordinated bomb attack that featured five fuel tankers driven by suicide bombers into crowded villages belonging to Kurdish members of the Yazidi religious sect before they were detonated almost simultaneously in Al-Qataniyah and Al-Adnaniyah" (Butcher, 2007).

It can be seen that both of them still caused unintended and intended damages to lives of unarmed civilians.

However, terrorism that used to be a State terrorism which was demonstrated in the time of Maximilien Robespierre and a small faction of Jacobin party that dominated France for a period in 1793-1794 has gone international knowing no border. Before it went international, record has it that a revolutionary terrorism was displayed in Russia when Vera Zasulich, a daughter to a noble, made the attempt to kill M. Trepov, Prefect [military governor] of St. Petersburg on 5<sup>th</sup> February 1878 with the intention to rid Russia of a tyrant. Also, national terrorism was also orchestrated in the time when Algeria demanded separation from France and Ireland as well from England

One component of international law which has been used to respond to terrorism is International Humanitarian Law (IHL). It governs the conduct of armed conflicts and provides protection to civilians and those who are no longer taking part in hostilities (the wounded, the sick and the prisoners of war) and strictly prohibits the means and method of warfare. According to the ICRC commentary, IHL does not recognize an international armed conflict between States and non-State actors as this would accord armed groups the same privileges enjoyed by members of regular armed forces (Gertrude 2011). It seeks, for humanitarian reasons, to limit the effects of armed conflict by setting out rules on the ways in which war may be waged. It deals with the fact of war without concerning itself with the reasons for a particular conflict or its legality. Its provisions apply to all victims of war, regardless of which side they are on, the reasons for the conflict or its legality, or the justness of their cause.(Cohen 2013) IHL does not provide a definition of terrorism, but prohibits most acts committed in armed conflict that would commonly be considered “terrorist “if they were committed in peacetime. (Icrc.Org 2015)

Acknowledgement to the General Assembly and Security Council of United Nations which have over time condemned “as criminal all acts, methods, and practices of terrorism wherever and by whomever committed”(Un.Org 2015) Nevertheless, the Resolution 1269 of October 19<sup>th</sup> 1999 of the Security Council of United Nations went further to condemn “all acts, methods, and practices of terrorism as criminal and

unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security (Un.Org, 2015). In the four Geneva Conventions coupled with the two additional protocols in 1997 clearly stated that civilians are to be protected under any and all circumstances. Even though, IHL has been viewed as a big obstruction to military and law-enforcement operations conducted as part of the US-led “war on terrorism (Rona, G. (2005). Without mincing words, IHL makes a bold framework which has the provision to deal with acts of violence related with terrorism within the context of armed conflict.

## **1.2 Statement of problem**

The focus of this paper is to carefully examine the importance of the role of International Humanitarian Law such as International Committee of Red Cross (ICRC), in armed conflict regarding terrorism (Red Cross 2006).

ICRC is the guardian of IHL with a special mandate under humanitarian law treaties, even though, it cannot ensure the application of IHL, but implore States and parties to armed conflict to respect and ensure respect for it (IFRRCSRC 2015) this work shall discuss the variety of operational and other activities that ICRC has developed which aims at improving respect for IHL both in peacetime and armed conflict.

This paper will critically examine the issue that stand behind the menace of armed conflict regarding terrorism and how the role of International Humanitarian Law has helped to protect victims of armed conflict by prohibiting all attacks on them. Hence, this project tackles issues bothering on what factors brought about the evolution of IHL? What factors keeps it going? How does it work? Whether or not humanitarian law aims to mitigate human suffering caused by terrorism and also to address some fundamental questions connected with the notion of International Humanitarian Law in checking armed conflict regarding terrorism (ICRC.N.D.)

Terrorism, a world order destabilizer, needs to be separated from other forms of insurrections, this paper would give definitions and general definition to it. It shall however discuss the root causes and consequences of terrorism including the objectives of terrorism as regard its ability to change the political, social, psychological or economic structures or policies of a perceived enemy State or territory by means of force. This study would also add to its focus some issues involving terrorism and international humanitarian law: the categorization of the nature of armed conflicts in which terrorist are involved; and the determination of the status and treatment (including detention) of terrorist suspects apprehended in the course of an armed conflict.

Another area of focus is the fact that terrorists display shameless disregard for the rules of international behavior and accepted moral codes while at the same time hiding behind the very rules and moral codes to prevent the free world from protecting itself, hence, bright x-ray will be given to how effective is the application of the existing IHL to the fight against terrorism. It will also explain the multitude of means of the anti-terrorism campaign which includes intelligence gathering, police and judicial cooperation, extradition, criminal sanctions, diplomatic and economic pressure, financial investigations, freezing of assets, efforts to control the proliferation of weapons of mass destructions ( Icrc 2003).

Taking a look at the history of terrorism, when rules are formed against any act of terror, there was no foresight that a living soul(s) would turn themselves/him/herself to a living bomb to facilitate the termination of lives of innocent civilians along with themselves/him/herself or a democratic State engaging in fights against a web of terrorist organizations in units or in colony. This study will give understanding to how the present rules have been interpreted and applied to effectively check terrorism.

Many arguments have been raised if it is appropriate for governments to engage in negotiation with terrorist or aggressively, with strategy, seek out to cripple and crush them wherever they are. Does IHL embrace the idea of States (likely to be a victim of terror) to take battle to the terrorist, interrupt their agenda, and oppose them before the strike? This would be answered in this study.

Numerous laws have been passed to counter terrorism both at local and international levels. Much recent counter-terrorism legislation is seriously wide-ranging and has impacted huge numbers of persons, in particular nonviolent activists and tribal marginal groups, thereby undermining civil liberties and fundamental human rights (Liberty-Human-Rights.Org.Uk 2015). This work will examine excesses of these laws and why it should be considered necessary or not.

### **1.3 Aims and objectives of the study**

This work aims to acquire a perspective on attempts to understand the human experience and factors that shape activities of terrorists and re-examine the effect of terrorism on humans

Also, it looks at the general idea behind the development of IHL from its inception till date and finding out what it seeks to promote and to understand how it is being applied in situation of armed conflict regarding terrorism.

Accordingly, this study makes a thorough appraisal on the role of IHL in checking armed conflicts regarding terrorism and also makes attempt to address its relationship with other agencies and other instruments which helps to facilitate humanitarian action during terrorist attacks within the scope of armed conflict by giving protection to the victims and also by implementing its rules and sanctioning any violations.

This study aims to explain the duty of States to oblige to the respect for the Principle of Discrimination and Proportionality in the fight against terrorism which can be termed as “counter terrorism”.

Lastly, the aim of this work is also to make suggestions and recommendations based on the findings of this work in order to further promote that the idea that terrorism would easily degenerate into utter barbarism without the existence of IHL which restricts the conduct of parties to armed conflict (Geneva Academy of International Humanitarian Law and Human Rights, 2014).

#### **1.4 Research Questions**

The following are the questions of this research:

- 1 What is the meaning of terrorism in the concept of International Humanitarian Law, IHL;
- 2 Does IHL make provision for protection of terrorist;
- 3 Does IHL protect civilian in case of terrorism;
- 4 What is the role of International bodies (for example ICRC) and States in ensuring the implementation of IHL.

#### **1.5 Significance of the study**

The significance of this study is to bring out the understanding of how and the extent in which the roles of IHL enhances the protection of victims throughout the world of armed conflicts regarding terrorism and highlighting the legal protection afforded to different groups including children, women, combatants and the environment.

#### **1.6 Research methodology**

In the course of this study, the correlative research method of deductive reasoning would be adopted. Also, the sources of data will be both primary and secondary sources of information. The primary source of data will include legislations and conventions, while the secondary sources will include textbooks, journals, articles, magazines and lecture materials and internet.



## **1.7 Structure of the study**

This study provides an overview of the importance of the role of IHL in armed conflicts regarding terrorism. It will not fail to cover important rules and principles that prohibits terrorism in the law of armed conflict. In this study, there are five chapters which treat the issues the research seeks to examine.

This first chapter includes the background of study, Statement of problem, aims and objectives, significance of study and research methodology employed.

Chapter two could be said to be the foundation chapter for this work as it deals with the definition, purpose, and development of IHL as well as what terrorism is all about.

Equally, chapter three gives an insight into the legal frame work for IHL by revealing its sources and the fundamental principles regulating the law of armed conflict regarding terrorism.

Chapter four put emphasis on some specific issues the role of IHL in checking terrorism through the protection of the unarmed civilians, and how IHL provides for the protection of the natural environment during armed conflicts.

Chapter five broadly focuses on the implementation and enforcement of international law through instruments of humanitarian action as well as national implementation measures and punishment for breach which promote the idea of IHL in checking terrorism. This chapter concludes with an attempt of making recommendations.

## **CHAPTER TWO: DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW**

### **2.1 Definition and Purpose of International Humanitarian Law**

In 2004, the Appeals Chamber of the Sierra Leone Special Court held a position that ‘it is well settled that all parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties ( Giacca, G. 2014).

According to the Inter-Agency Standing Committee Task Force on Humanitarian Action and Human Rights 2004, International humanitarian law is comprised of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts ([interagencystandingcommittee.org/node/2943](http://interagencystandingcommittee.org/node/2943), 2004) Its principal aims are to protect persons and property that are, or may be, affected by the conflict – for example civilians and prisoners of war and civilian objects - and to reduce the right of the parties to a conflict to use ways and means of war of their choice ([interagencystandingcommittee.org/node/2943](http://interagencystandingcommittee.org/node/2943) 2004) .

This is similar to the definition given by the ICRC, IHL and it can be seen that non-State parties to an armed conflict legally confined to the provisions of IHL and this non-State parties includes non-State actors: private citizens, armed groups, national liberation movements, and international organizations([Globaljusticecenter.Net/Blog/?P=49](http://Globaljusticecenter.Net/Blog/?P=49), 2015) (i.e al-Qaeda). In the last four years, well over 60 countries were the theatre of armed conflicts – whether inter-State or non-international - with all the devastation and suffering that these entailed, chiefly among civilian ([rcrcconference.org](http://rcrcconference.org), 2015). As said earlier that IHL relates to simply circumstances of armed conflicts, it does not regulate terrorist acts committed in peacetime. It also becomes applicable irrespective of the lawfulness of the original usage of force. Besides, IHL also clearly criminalizes acts of terrorism against civilians in the hands of the opposition, coupled with increasing terror

in the midst of the civilian populace by parties engaged in armed conflict in the conduct of conflicts. These proscriptions, which can be compared to acts with the singular determination to cause intimidation among civilians, are supplementary to the previously stated rules intended to protecting civilian and property.

Since World War II, the term IHL has likewise been utilized by researchers to incorporate criminal acts against mankind seeing that that classification of law violations has risen up out of war crimes, despite the fact that it is presently irrelevant to war atrocities and is relevant in periods of conflict and peacetime; and terrorism, in so far as that criminal act was initially a more extensive expansion of law violations against humankind, which applies as far as war and peace

IHL concerns itself with the fact of war and not the aim for a particular conflict or its legality; its provisions apply to all sufferers of war, irrespective of which side of the parties to conflict they are on the reasons for the conflict or its legality or the fairness of their grounds (Redcross.Org, 2015). Persons or properties that are vulnerable to conflicts have well been secured by the rules of IHL such that the methods and means that parties to conflict may want to adopt are restricted for humanitarian purpose.

In addition to regulating the means and methods of warfare, IHL outlines the rights and duties of parties to an armed conflict and the potential role of humanitarian agencies regarding assistance (Haider, 2013).

The expression “International Humanitarian Law is applicable to armed conflict” is often abbreviated to Humanitarian Law; though the military tends to prefer the expressions “Laws of Armed Conflicts” (LOAC) or “Law of War” (Bouvier & Langholtz,2012). IHL is not applicable in circumstances of internal violence, such as demonstrations, disturbances, unrests, or internal tensions ( Diakonia , 2013).

IHL is a part of public international law; public International Law is a broad set of treaties, customary law, principles and norms (eisf.eu, 2012). The background customarily controlled relations just between States. It has advanced, be that as it may, to cover a various range of individuals. IHL is noteworthy in this respect, as it identifies

commitments for both States and non-State armed groups that belong to an armed conflict.

Furthermore, IHL embodies a steadiness concerning military requirements and humanitarian concerns in the framework of conflicts. Humanity, as a basis of IHL, signifies the most vital concern during conflict to lessen suffering and loss of lives, and to give care humanitarily and respectfully to victims of conflict. The reasoning of military requirements provides what is needed to realize military set objective, as long as these requirements conform to IHL. The harmonizing of humanity and military requisite is comprehended in the setup of IHL norms of distinction and proportionality (Ijrcenter.Org,2012). Armed conflict participants are required to differentiate, at all times, between civilians and combatants and between civilian objects and military objectives (Icrc.Org, 2015).

Additionally, an attack may not be launched if it is anticipated to cause (Ijrcenter.Org, 2012). “incidental loss of civilian life, injury to civilians [or] damage to civilian objectives which would be excessive in relation to the concrete and direct military advantage anticipated (Crimesofwar.Org, 2015). Supplementary to IHL standards comprise of the onus to take procurements to deal with the non-military personnel populace before and amid the attack, the avoidance against bringing about of pointless suffering or unnecessary harm, and the counteractive action of unpredictable attacks. The essential rules of IHL includes:

1. Persons who do not or can no longer take part in (Apollos,2015). the hostilities are entitled to respect for their life and for their physical and mental integrity (Redcross.Org.Hk, 2015). Such persons must in all circumstances be protected and treated with humanity, without any unfavorable distinction whatever (Redcross.Org, 2015).
2. It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting;

3. The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared and the Red Cross or Red Crescent on a white background is the sign protecting such persons and objects and must be given its due respect;
4. Captured combatants and civilians who find themselves under the authority of an adverse party are entitled to respect their life, dignity, personal rights and their political, religious and other convictions. Violence or reprisal should not be utilized against them and they are qualified for exchange of happenings with their families and get helps;
5. Everyone must enjoy basic judicial guarantees and no one may be held accountable for an offence he has not committed and no one may be subjected to physical or mental torture or too cruel or degrading corporal punishment or other treatments (International Law & Human Right, 2015)

All parties to an armed conflict, whether they are States or non-State actors are bound by the relevant rules of IHL. This case even though only States may become party to international treaties and thus to the four Geneva Conventions and their Additional Protocols. States Parties must not only 'respect' but also 'ensure respect' for IHL in all situations (icrc.org, 2016). While the obligations of non-State armed groups may differ from those of sovereign States, most of the customary rules of IHL apply to all parties to a conflict. Non-State armed groups are generally bound by the treaty IHL rules which is also valid in non-international armed conflicts (icrc.org, 2014).

In conclusion, States not party to an armed conflict are required neither to encourage a party nor violate IHL nor to take such action as would assist in the commission of violations of IHL. This obligation is generally interpreted as requiring States not party to an armed conflict to take all appropriate measures to prevent or end violations of IHL committed by any party to the conflict (Exploring Humanitarian Law IHL Guide, 2015).

### 2.1.1 Definition and Classification of Armed Conflict

It is pathetic in the history of armed conflict that civilians highly suffer the brunt of the violation of International humanitarian law committed by State parties and non-State armed groups. Intentional evil act against civilians, coercive dislocation of millions of civilian populace, collateral destruction of infrastructure billions of dollars associated to the living and survival of the civilian populace happens to be some of the forbidden examples of acts carried out every time. Wickedness inflicted on individual unarmed citizens in armed conflicts that violated IHL includes barbaric killings, forced desertion, anguish and unpleasant treatment, heartless degrading of human dignity, sexual violence and so on. Locations where civilians dwell have been used as protection for amours, meetings and sanctuary. Individuals detained in the course of armed conflicts have been dispossessed of their fundamental human rights while in detention coupled with the right to fair trial.

Armed conflict is an expression which covers armed confrontation between two or more States, a State and a body other than a State, a State and a dissident faction and two ethnic factions within a State.

In the *Prosecutor v Jean –Paul Akayesu* the ICTR (Ushmm.Org , 2015). tried to define Armed Conflict. The court referred to the decision of the Appeals Chamber of International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Prosecutor v Tadiac* (supra) where the Tribunal held that armed conflict exists:

“Whenever there is... Protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International Humanitarian Law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities... (Kubai, 2010). According to the Rwandan Tribunal, the term ‘armed conflict’ in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent (tsiotis, 2010).

However, it is very important that armed conflict is classified so as to significantly determine the international law framework and rules applicable to situations and to judge violations of applicable law by State or non-State parties to a conflict. IHL classifies armed conflicts as IAC, NIAC and Internationalized Armed Conflict (Ijrcenter.Org, 2012). Whether or not an armed conflict is IAC or NIAC has significant implications, for instance, Prisoners of War (POW) status as well as combatant status is found only in the rules applicable to IAC (Ijrcenter.Org: 2012<sup>1</sup>). The guidelines regulating the ways hostilities and in addition humanitarian right to use and aid are more in depth in IAC. All in all, the treaty rules related to IAC aggregate near to 600; those appropriate to NIAC are less than 30. This dearth of guidance can pose a challenge because the majority of contemporary conflicts are NIAC (Ijrcenter.Org: 2012<sup>1</sup>).

1. International armed conflicts (IAC): in accordance to Common Article 2 of the 1949 Geneva Convention which IAC exclusively fall under, it was stated that in addition to the provisions which shall be implemented in peace-time, the present (RULAC, 2008). 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 (Icrc.Org, 2015). 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 (Int'l & Operational Law Dep't, 2008).

In other words, for a conflict to be termed 'International Armed Conflict', it essentially has to be between two sovereign States. International armed conflicts includes;

- a. The use of force in war like manner between States whether or not they are recognized themselves being at war.
- b. All measures short of war whether or not they are compatible with the article.
- c. Wars of liberation as set out in the convention.

The ICRC commentary on the above provision revealed that “Any difference arising between two States and leading to the intervention of members of the 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; the respect due to the human person as such is not measured by the number of victims (RULAC, 2008).

When there is an exchange of antipathy between two or more States, International Law considers this sufficient to trigger IHL. When parties to armed conflict commit atrocities, their actions are measured by the rules of IHL. A very good example is the North Korean – South Korean war of 1960.

The application of IHL is not dependent on a formal declaration of war. Formal declaration of war is nowadays occurring only occasionally. For instance, in the Six-Day War of June 1967, Jordan, Kuwait, Sudan, Yemen, Algeria, and Saudi Arabia formally declared war on Israel (Fleck & Bothem, 1999).

2. Non-International Armed Conflict (NIAC): A 2008 public ICRC opinion paper on the definition of armed conflict under IHL defines NIAC as:

“Protracted armed confrontations occurring between government armed forces of one or more armed groups or between such groups arising on the territory of a State (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization (Icrg.Org, 2013).

NIAC may also be defined as a type of conflict which involves the armed forces of a State and other forces within the same State, including terrorist, those who fight liberation wars and rebels of different causes, but does not extend to situations of internal disturbances or tensions. NIAC are governed principally by Geneva Conventions via Common Article 3 and Additional Protocol II (APII) (G.A.I.H&H.R, 2014).



For a situation to be classified as a NIAC, it has to achieve two items which simply are:

- i. The hostilities have to reach a certain minimum level of intensity and form in a collective character;
- ii. There has to a level of organization of the parties.

An IAC on the other hand is a civil war in which the armed in a foreign power intervene (Gasser, 1983). The most noticeable example of an internationalized armed conflict was the conflict in the Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda interfered to help various groups. Such a setting may develop in many, often-intricate situations, which include the following:

- i. A war involving military intervention of, or the overall control exercised by a foreign State in support of an armed group fighting against a government;
- ii. Fighting between two or more armed groups within one State and a foreign State exercising overall control over each of them;
- iii. A war between two foreign States that have militarily intervened in a NIAC in support of two opposing armed groups.

If the foreign State withdraws from the conflict or ceases to exercise overall control, the armed conflict reverts to its non-international status, provided that the situation still meets all the criteria for NIAC (INHL Guide, 2015).

According to Pietro Vierr, a NIAC may be internationalized if; a State victim of insurrection identifies the rebels, insurgents, revolutionaries, or terrorists as belligerent... one or more foreign States assist one of the parties with their own armed forces; or armed forces of two foreign States intervene each in aid of a different party.

However, IAC lacks specific international provisions unlike two distinct categories of international and non-international armed conflicts. There are some conflicts which may

be termed internal involving large groups of fighters or terrorists from abroad, financial and military support from foreign States or even invasions into a foreign territory. In the practical sense, internal armed conflicts are often mixed due to the fact that they occur within the territory of a State, but becomes an internationalized scene when intervention comes from foreign States. In Africa for instance, the conflict in Sierra Leone also comes close to being regarded as a mixed conflict. While it has strictly internal elements, it has external dimensions which involved troops from Liberia and Burkina Faso. The involvement of ECOMOG troops adds another dimension to the conflict. ECOMOG as an organ of sub-regional body of Economic Community of West African States (ECOWAS) fought on the side of the elected government of President Kabbah particularly when he requested the assistance of sub-regional body ECOWAS to reinstate him after being overthrown in a coup.

Many conflicts situations in the world today have effects on the actions of neighboring governments and the international community on a large scale with aspects that has both international and non-international coverage.

## **2.2 Understanding terrorism as a crime**

### **2.2.1 Definition of terrorism**

In many parts of the world, especially Pakistan and Afghanistan, terrorism, war and conflict stop children to go to their schools. We are really tired of these wars. Women and children are suffering, Malala Yousafzai (The Independent, 2013).

Terrorism has been described variously as both a tactic and strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination (Eujournal.Org, 2015). It would not be righteous to ignore the fact that terrorism has no single definition. Its definition has pulled a lot of debates with no explicit definition yet. Within the caucus of world powers, there has been no unification for a definition for this disturbing act.

As an instance, within the U.S. government agencies, the U.S. States Department extracts its definition from Title 22 of United States Code, Section 2656f (d):

“The term ‘terrorism’ means premediated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience.” (The term ‘noncombatant’ is interpreted to include, in addition to civilians, military personnel who at time of incident are unarmed or not on duty (Jeske & Fumerton, 2011).

The FBI endorses a definition entrenched in the U.S. *Code of Federal Regulations*: "Terrorism is the unlawful use of force and violence against person or property to intimidate or coerce a government, the civilian population, or any segment thereof, in further of political or social objectives" (Fbi.Gov, 2015).

The U.S. Defense Department gave a close definition which goes thus: “Terrorism is the unlawful use of threatened use of force or violence against individuals or property to coerce or intimidate governments or society, often to achieve political, religious or ideological objectives (Periscope, N.D.)

In the Europe, The British defined terrorism as: “The use or threat, for the purpose of advancing a political, religious or ideological cause, of action which involves serious violence against person or property (liberty-human-rights.org.uk, N.D.).

The Germans gave a simple definition which seems to be: “An enduring conducted struggle for political goals, which are intended to be achieved by means of assaults on the life and property of other persons, especially by means of severe crimes (Ird.yahooapis.com, N.D.).

Gurr Robert, a scholar on terrorism, gave his own definition of terrorism as: “The use of unexpected violence to intimidate or coerce people in the pursuit of political or social objectives (Barkan, 2015).

Gibbs, in his own words described terrorism as: “Illegal violence or threatened violence against humans or nonhuman objects (Gibbs, 1989).

One common thing about all these definitions is that they express terrorism as an unlawful act. It is painted as a crime meant to terrify people in which this evil act creates fear of walking freely on the streets, fright of taking or sending children to school (such as the case of Columbine), scared of going to work (like the scene of 9/11) or fear of spending beautiful moments in touristic environment (such as brutal attack on tourists in Tunis), the heart attack of flying in the air (like Bin Laden's 9/11) and so on.

### **2.2.2 The traditional view of terrorism**

Before the 21<sup>st</sup> century, terrorism was basically seen to be regional to achieve political aims. In the words of Clarke and Newman, in which they cemented terrorism then that the location of targets is a factor considered which would ease their focus and success (Clarke & Newman, 2007). They hardly carry out operations where there is no proximity to their domain. One thing that was a demerit to crossing border then can be linked to the coded conveyance of their weapons and members across territories coupled with the poor communication systems. This cripples their terroristic aims in carrying out terror outside their jurisdiction. Also included in the styles of the traditional terrorists were their well known motives to knock down incumbent government of a State and thereby enhancing their own power, and also creating fears, killing or threatening to kill anybody.

The world is now in a level where terror can take its place with the highest connectivity that cannot be underestimated. As the world is advancing, so also the organization of terrorism is progressively getting widespread. According to Veryan Khan, an editorial director of TRAC, Nigerian Boko Haram now has a connection with ISIS fostering evil agenda transcontinentally (Foxnation.Com, 2015). A Boko Haram spokesman said in 2011: "Al-Qaida are our elder brothers. We enjoy financial and technical support from them. Anything we want from them we ask them (Clarionproject.Org, 2015).

To get more funds to blend or to fit-in into their giant space, Wechsler indicated that terrorist groups now use criminal means such as drug trafficking to generate revenue

(Defense.Gov, 2015). (Afghanistan's flourishing poppy crops, which the United Nations says are responsible for as much as 86 percent of the world opium supply, are widely believed to be a major source of terrorist funding) (Council On Foreign Relations, 2015). Kidnapping has likewise been known as an amazing approach to raise money for arms, and also basic criminal acts, for example, bank theft. One remarkable thing about terrorism is that they see themselves as one. A terrorist can escape from a State's security and run to another State where a different terrorist group are located to seek refuge, they provide training grounds for themselves for special understanding and teachings of newest approaches to terror. It is imperative to note that a terrorist campaign will almost always fail if it cannot attract substantial internal or international support.

### **Terrorist**

At present, there seems to be no unified definition for who a terrorist is. Also, there is no legal definitions or Conventions that expressly gave a general definition to it. In as much there is still the need to define it, it can be said that:

A terrorist is one who uses violence not in accordance with universally operative rule of law sanctioned and enforced by a World Government representative of peoples of all countries such that universal social justice is the spirit of the law and that the law is seen to be intrinsically good, having the imperative of a moral law (Lokendrajit, 2013).

Flowing from the traditional view of terrorism, nothing would have been known as terrorism without the singular understanding of what makes it what it is today. What keeps terrorism in existence till present day is the symbolic truth that it pots and grooms team-oriented, highly motivated, committed, charismatic, religious fanatics/extremists that are always loyal to a cause either triggered by politics and or religion with no respect to human life or property.

It would be discriminatory to say that some races, ethnic groups, or citizens are potential or likely terrorists and hardly can one describe how a terrorist would look like. Most

terrorist groups have gone to the level of hunting for men and women who cannot be easily identified to be terroristic in nature. They are even unknowingly present in law enforcement agencies, they are found in the intelligence units of forces, they are everywhere unbelievable. Christians or Muslim converts with hairstyles, moves and accents that would make suicidal attacks to be carried out successfully are mostly used to circumvent the highest security mechanisms to identify terrorists. Terrorists are indeed "uncommon" criminals. They are masters of disguise and evasion. They have a tough conviction system which makes them resistant from guilt, shame, remorse, and regret. They take their politics, nationality, and/or religion very extremely. They have tiny or no connection to any legitimate social structure, and even less connection to conventional norms and customs. Indeed, they need to "enforce" their abnormal attachments on others by claiming their ways of seeing things ought to be the conventional way.

According to O-Conner Ale, a Psychologist, he said "the conception of a terrorist has become more complex and dynamic over the past two decades. Before the 1980s, most terrorists were lone assassins who restricted their attacks toward political leaders (Jyi.Org, 2015). He went further by saying "by the mid-1980s, international terrorist organizations began to form. As these organizations began to grow in size, so did the scope of their targets, as many organizations began attacking civilians in addition to political or religious leaders. As terrorism changed, so did the types of people who became terrorists (Legacy.Jyi.Org, 2015).

As the terrorism goes through transition, so also there scopes changes but one thing remains, which is, commission of crime as they struggle for their cause. They are not lunatics or common criminals. A professor of psychology at Bryn Mawr College, Clark R. McCauley said "terrorist organizations avoid people with mental illnesses. These organizations need members that will be cooperative and loyal to the group. Someone without such qualities may jeopardize missions or betray the group (Jyi.Org, 2015).

They are team oriented because they are more sheltered together which enable the group ideologists to stock their members' minds with set of beliefs and values that would change their thoughts, behaviors, and motives. Even if joining the terror group was to

escape poverty or just for youthful exuberance with no intention of killing, this would be changed by making them to have the understanding that the group they belong to is under threat and needs to be defended till death from external belligerences. Like it was said by Rona Fields, a Washington D.C. psychologist “that they [terrorists] believe there's a difference between right and wrong, but when they do something in the name of [their] cause, it's justified (Legacy.Jyi.Org, 2015) .

However, they are not to be confused with criminals because criminals are opportunists (Bodrero, 2000). who are inspired by delicate (financial) needs. According to Dr. David Goldstein, the terrorist is frequently well prepared and state-bolstered. He or she has a particular objective, which is a top priority, and is more representational than devious. Then again, it is a reasonable expression that the ordinary criminal is one who looks for opportunistic targets, has small support, is narrow minded, needs training and may be dissuaded without stress. It is evident that criminals do not have a defined ideology for crime or religious backing for their acts. They do not have an organized school of thought for criminal deeds and neither do they polish themselves to be disciplined or not to be selfish in their ways. Ones they get the cash or articles they want, they disappear.

In fact, there are several laws in place applicable to any form of crime with appropriate punishments. Even in the past before the era of civilization, there were very pitiless punishments for criminals on public grounds with a serious message to warn anyone against crimes. These methods were effective then due to the fear it creates in the minds of potential criminals. We cannot and must not equate this to terrorism of the present day or equate terrorist to criminals. Never! It is easy to make a distinction between a crime and an act of terrorism on the grounds of guilt or innocence proceedings and sentencing procedures. Where a person is caught in the act, faces a judicial body, pleads guilty of the charges, he/she would be sentenced to prison in respect to his crime. In the case of a terrorist that is well trained, prepared, with high believe in a cause that he/she is ready to die for it (Goldstein, 2007). just like in this popular quote that “ONE MANS TERRORIST IS THE OTHER MANS HERO” vice versa takes the shape of the issue. While a criminal will run away from police, terrorist would stay with threat of

detonating bombs on him/her. Unfortunately, when caught before the act or after, they would never plead guilty.

It is not that terrorists are to be given another name, they still remain criminals just like one would call a convicted armed robber a criminal. For instance, the perpetrators of the 9/11 attack on the US which killed about 3000 people and Oklahoma City Federal Building bombing that damaged more than \$652 million worth of property (Standberry, 2012). Are criminals but their magnitude is too nasty against humanity more than against individuals.

### **Root causes and consequences of terrorism**

The absence of a situation cannot exist as a known opposite to the situation. An absence of light is darkness. There could not have been an opposite because light can be measured by its intensity while darkness cannot be measured. This idea can be applied to an absence of good is bad and an absence of love is hate. If there were to be the presence of love, there might not have been religious discrimination and extremism, abject poverty, unjust social system and structure, corruption, political causes, extreme exploitation, systematic violation of human rights, ill judgement, economic marginalization and cultural alienation as a result of globalization in any society (Republic Of Turkey Ministry Of Foreign Affairs, 2015). It is in human nature to develop hate and take advantage of the weaker ones in any society. And till present date, hate has dominated the minds of people so much that they have lost the reasoning that life is sacred and should be spared instead of destroying. To check this human nature, from the past till moment, law has been a powerful instrument to achieve this. It must be stated again that the absence of love streams the cause of root cause of terrorism.

**Lack of Freedom and Human Rights:** From expert analysis, one of those things that was thought to have caused terrorism is lack of freedom and human rights. In other words, a country that practices true democracy is believed to be free of terror while the ones that are autocratic and totalitarian are pregnant with aggrieved people that can cause terror due to fact that they are mostly deprived of their human rights and



freedoms. It is not true because from all perspectives, terrorist have always and mostly attacked countries that are democratic such as U.S., Britain, Nigeria, etc.

**Poverty:** Can the idea be correct that poverty is one of the causes of terrorism? This sounds controversial but one truth is that, according to a quotation credited to the Nobel Peace Prize Laureate Archbishop Desmond Tutu, “you can never win a war against terror as long as there are conditions in the world that make people desperate – poverty, disease, ignorance (Qotd.Org, 2015). This may be truthful. While taking a brief analysis of why it may not be correct, a report from scholars has shown that in 96 countries between 1986 and 2002, there were no links between its economic measures and terrorism America, 2015). On a live Summit, President Barack Obama said “Poverty alone does not cause a person to become a terrorist, any more than poverty alone causes somebody to become a criminal (America, 2015). Anwar Awlaki, the American cleric who took on a leadership role in Al Qaeda in the Arabian Peninsula, was the son of a major Yemeni political figure and Zachary Chesser, who was sentenced to 25 years in prison for trying to join Al Shabaab and threatening the creators of South Park over their depiction of Mohammed, born to a well off family in the Virginia suburbs (Newamerica.Org, 2015). These connections between poverty and terrorism seems to disconnect at the point but does that mean poverty has no connection at all? In 2011, it was discovered that there is a significant connection between unemployment and right wing extremist crimes committed in Germany. In Somali, a lot of citizens living in poor conditions have been mobilized to join Al-Qaeda from statistics. In Northern Nigeria, most Boko Haram members are illiterates with little or no education and poor living conditions. If education were at normal level in these two countries, there may be economic growth, improved health care system and social advancement which may bring terrorism to a mode of extinction. Any connection between poverty and terrorism is indirect, complicated, and probably quite weak (Coursera, 2015).and unnecessary moves to relate poverty and terrorism together may distract policy makers and international bodies from getting the root causes of terrorism

**Ethno-nationalism:** when a sect or ethnic groups desires to secede from a government, this happens rarely by peaceful means. It would mostly lead to the violence through

terrorism. Fighting the government that has that organized military strength may be difficult but using terrorism can be fatal which would not only shake the government but would take lives of innocent citizens. Ethno-terrorism can be dated back to years before World War II started. Ethnicity and race are two different things and cannot be said to be the cause of terrorism. According to Smith, An *ethnic group* is defined as a human population whose members identify with each other, usually on the basis of a presumed common genealogy or ancestry (Llewellyn & Mercer, 2008). Within an ethnic group lies the same culture, religious practice, language and styles. Ethnic identity may contain some genealogical components, but more often, it develops in response to the migration of different groups (Eller, Jack David 1999). *Nationality*, on the other hand, according to the Law Dictionary refers to “that quality or character which arises from the fact of a person’s belonging to a nation or state. Nationality determines the political status of the individual, especially with reference to allegiance; while domicile determines his civil status. Nationality arises either by birth or by neutralization (Thelawdictionary.Org, 2015). On legal terms, an individual can become a nationality either through birthright (*jus soli*), blood (*jus sanguinis*), or neutralization.

The combination of ethnicity and nationality gives birth to ethno-nationality and can be defined as a particular strain of nationalism that is marked by the desire of an ethnic community to have absolute authority over its own political, economic, and social affairs (Imej.Wfu.Edu, 2015) This can pose a threat to the regime in power and to the international community. Hamas is an example of ethno-nationalist groups that runs their own *quasi-state* (the Palestinian Authority) that carry out suicide attacks and bombings to fight for a Palestinian states, and Hezbollah can be said to operate a *state-within-a-state* (southern Lebanon). Another terrorist organization is the Chechen which is also ethno-nationalists for their attacks against the government and people of Russia in the attempt to form their own state (Grothaus, 2015).

Efforts of minority groups in countries pushing for the move to become independent always constitute a cause for terrorism where most will not stop this act of terrorizing until they get what they want.

**Alienation:** Several authors on terrorism have addressed the way individuals in foreign land feel about alienation, which push them to becoming brains behind terrorism especially those living in Europe. Times without number, these people have witnessed discrimination within the countries they reside, resulting in feelings of isolation. They normally migrate from poorer countries, to better off ones to get standard education or get jobs for survival. The moment they get to this new environment, especially the Muslims in Europe, they start to feel alienated (Sageman, 2004). The new host nation seems to totally look well different from where they left in terms of culture and community organization. This causes the alienated people to start considering the communities with cultures like their home countries or others like themselves. Due to these, these foreigners try to move to another community that has similar culture with where they came from so as to feel not discriminated. Growing ill opinions of discrimination always or can frustrate these people to get close to embracing conservative and eventually, extremist ideologies. In the book title Europe's Angry Muslims, points to every foreigners Muslims who immigrated for academic reasons or for asylum and insiders, second or third generation Muslims in Europe and noted that these set of people are subjected to discriminatory social policies, like the headscarf law in France, which makes them to become radicalized (Foreign Affairs, 2009).

The biggest problem here is that most foreigners who have got stay or work permit especially in Europe who have become radicalized owing to alienation they have suffered in this society hold European passports. This can easily allow them to get access to U.S. and other European countries thus creating a threat to not only Europe, however, to the U.S. as well.

**Religion:** The most typical way of thinking today is that terrorism is brought about by religion. In spite of the fact that it is not the fundamental driver for terrorism, religion does assume a huge part in driving a few types of it. It was pointed out in *Inside Terrorism*, that from the Thugs of ancient India that executed to terrorize for the sake of the god Kali to the Jewish Zealots who cut the throats of Romans openly to battle their occupation of Israel, religion (in combination with political/ethno-nationalist actors) has long been a influence of terrorism (Hoffman, 2006).

Today religion as a factor that motivates terrorism has been primarily ascribed to Islamic fundamentalism (however different illustrations, for example, the Aum Shinrikyo cult that completed the 1995 sarin gas assaults in Tokyo, additionally exist). As Sageman depicts that the global Salafi jihad is a general religious revivalist movement with the objective of restoring past Muslim glory in a great Islamist state extending from Morocco to the Philippines, wiping out present national boundaries (CBC News , 2015).

As a driver of terrorism, the genuine threat that religious regulation stances is its consolation of assaults that are more brutal in nature than different sorts of terrorism. By being guaranteed an afterlife gifts in the eternal realm, terrorists are more prone to complete suicide bombings and hit hard via strategies that are harder to protect against.

**Socio-Economic Status:** Terrorists might likewise be driven by a feeling of relative denial and absence of increasing convenience in the society they dwell. Globalization and the current media have given 'those who lack wealth's an intense consciousness of their circumstance contrasted with 'the wealthy'. "Globalization creates an acute awareness about opportunities available elsewhere. This leads to frustration, victimization, and humiliation among growing cohorts of urbanized, undereducated, and unemployed Muslim youth who are able to make comparisons across countries (*Taspinar*, N.D). Considering the economic differences in the middle of themselves and the Western world can make angry some in undeveloped nations, intensifying strain and threats. This permits terrorist links to pick up consideration and section to social orders that have felt wronged by these apparent social inequality or discrimination.

Sadly the main genuine approach to diminish this is through economic advancement of the State, nation, and area, yet that requires some serious time consuming interventions. For a long time to come there will consistently be those that are displeased by the obvious results of the comparism between the state of the wealthy people and their own which inevitably opens the ways to disappointment and resentment. Along these lines, this cause of terrorism is strikingly difficult to battle as globalization considers more instruments of relationship between unstable global socio-economic levels.

**Political Grievances:** An absence of political completeness in States or protests against a certain political request may bring about people to join or make terrorist gangs. Left

and right wing terrorists regularly look for a political framework. In fact, in countries with dictator administrations, most loopholes to create conflict are hardly seen. Angry articulations of political will can swing to savagery as another option for special political frameworks. While to some degree like ethno-nationalist/separatist causes, these political grievances are not conceived from the yearning to make another state yet to change the existing structure inside of the present one.

According to Taspinar, this is also known as a political dimension to relative deprivation; in regards to Taspinar, political Islam is a response to tyrannical governments and its Western supporters (Taspinar,2015).With the information that other individuals around the globe live in representative governments, the resentment just develops among the individuals who live without such political representation, driving disappointed people into the arms of terrorism.

The suggestion here is that governments of the Western world, in their backing of harsh tyrant administrations for their own national gain, have basically made themselves focuses of terrorism of an annoyed and displeased people being governed by these administrations, speaking violence as the only language as an alternative for political expression.

### **The objectives of terrorism**

While trying to state the objectives of terrorism, it is import to separate the old time terrorism from the newest generation terrorism. Terrorist groups with secular ideology and non-religious affiliations must not be put alongside with religiously oriented and millenarian groups even though the ‘newest’ terrorism group have religious inclination which makes them similar to the religiously oriented and millenarian terrorist groups. Two most common factors that influence terrorists’ objectives are the strong ideology of the forming of the terror group and their overt motivation. According to the meaning of terrorism given by Dr. James M. Smith, the Ex-Director of U.S. Air Force Institute for National Security that “terrorism is a physical attack intended to produce a psychological effect”, and corroborated by Gorski that terrorism aims to cause a long-lasting state of psychological weakness and insecurity in the targeted population, it can

be seen that terrorism is staged to weaken or kill the will of masses and control their mindset in rebellion against the incumbent government coupled with rendering such government incapable of performing its fundamental duty of protecting the lives and property of its citizens. This will happen when the government formulate policies in reaction to the terrorist attacks, for example, all airports and seaports in U.S. got the responsive attention of the government after the September 11, 2001 attack which provoked some unions such as the American Civil Liberties Union to lamenting that the blatant discrimination and state-sanctioned bigotry to outright physical brutality which allegedly targeted the people of Arab-descent living in United States (Jos Ilagan's Author Website, 2013).

Addressing the objectives of the 'older' terrorism from 1960s to 1980s, it was a worldwide revolution and transformation where the battle was between capitalism (USA) and Communism (Union of Soviet Socialist Republic) and between Israel and Yasser Arafat's Palestinian Liberation organization that used terrorism as a form of weapon to fight against its target government-enemy (Jos Ilagan's Author Website, 2013). with no history of toppling a government to get power. They are known to kill people and not use themselves to kill themselves and others. While the 'newest' terrorism groups of the present day that features the likes of al-Qaeda, Jemaah Islamiyah, Boko Haram, and ISIL have a very different set of objectives. For example, what the Islamists-terrorists want is to kill unbelievers and thrash all that symbolizes Christianity and Western civilization. Al-Qaeda's objective is to avenge the wrongs committed by Christians and Jews against Muslims over the ages, to re-shape the Muslim world, replacing secular states with a single Islamic political leadership and to drive Americans and other non-Muslims from Saudi Arabia, the home of Islam's holiest sites. (News.Bbc.Co.Uk, 2015). Boko Haram stated their objectives clearly that they want Nigeria to become an Islamic state. These groups see killing of unbelievers as a calling, and they are completely desperate to pierce terror into the society they target in total dishonor for human lives. The non-religious terrorists' objectives will frequently endeavor extremely discriminatory demonstrations of violence to accomplish a particular political point. This frequently aids them to maintain losses of lives and property while still realizing their goals.

### **Authorized methods investigation and prosecution of terrorism offences**

The main role of doing an investigation is to examine all evidence in a manner, which is reasonable or just for the accused and which must also be admissible in a court of law. In the case of *Fowler v. Padget* (1798) 101 ER 1103 (1798), it was stated that "It is a principle of natural justice, and of our law, that *actus facit reum nisi mens sit rea*. The intent and the Act must both concur to constitute the crime ("Duhaim.Org, 2015). This is the most essential element, which must be known by the investigator while gathering the evidence. His evidence must strongly reveal the individuality of the accused as a prime suspect of a terrorism act. This evidence must show the intent behind the committal of the act which constitutes the *mens rea* of the accused. The evidence must not fail to give a right location where and time when the act of terrorism was committed. All the movements of the suspects before and after the act must be included in the evidence. The *modus operandi* employed by the accused must be featured in the evidence which explains the way the act was planned. All this evidence can be collected through testimony, documentary, physical, digital, exculpatory, scientific, and genetic (Writing.Professay.Org: 2015). While collecting information through digital means, such as using of bugs, wiretaps, the authority involved must have legal justification for this means, the reasonable grounds to do so and must as well consider the right to privacy of the accused.

Investigation needs to be carried out with a warrant issued by the court when there is a need for search so as to gather evidence admissible in court. It can sometimes be carried out without warrant if it is a matter of urgency so that the evidence may be gotten without delay. The highest ranking police officer or depending on the State of concern may apply for warrant from the court or for example in U.K., an officer with the rank of assistant chief constable or above can also give permission for searches in an area in order to prevent acts of terrorism.

When there is a logical platform to believe that a person would commit a terrorism offence or is about to commit such offence, authorities can make an arrest of such person whether he has committed the act or he is about to. Warrant may be applied for

before the arrest is made but in a situation where the terrorist may escape, then such arrest can be carried out without warrant.

Terrorism is an international crime, and, in that capacity, it needs the international community to act to prevent terrorism and the sanction of people executing demonstrations of terrorism. With an international war on terrorism apparently being endorsed by the United Nations (UN), it is the ideal time for the crime of terrorism to turn into a piece of the widespread obligation of countries, with that obligation further assigned to an international institutions, for example, the International Criminal Court, for prosecution and approval.

Under the Article 7 ICC Statute, the ways in which terrorism can be prosecuted is stated clearly. Terrorism can be prosecuted as sub-category of “crimes against humanity”; and the other way of prosecution is as an inhumane act.

1. When terrorism is prosecuted as a sub-category of crimes against humanity, Article 7(1)(a) ICC is invoked in which the major element is murder. The terrorist must have killed or caused the death of person(s). Meaning that it does not have to be aimed at one person, and according to Article 7, it can be systematic involving a lot of targets who are civilian population. Civilian means a non-military target with no armed hostilities. The 9/11 attack is appropriate for this type of prosecution since the acts were multiple and coordinated, causing the death of thousands of people who were performing official duties, in furtherance of Al Qaeda’s terrorist policy against the United States (J.D. F R Y, 2002). Suicide bombing attacks could be viewed as forming part of a broad and organized attack which falls under crimes against humanity. In addition, according to Article 7(1)(e) ICC, hostage-taking which is a form of deprivation of physical liberty with widespread and systematic attack directed against person(s) is under crime against humanity, an example is the Dubrovka Theatre hostage taking in October 2002, together with the Beslan school attack in September 2004, perpetrated in furtherance of the Chechenian battle for independence (News.Bbc.Co.Uk , 2004).



According to Article 7(1)(f) and (k) ICC, terrorism can be prosecuted under torture if it inflicts a grave injury to the mental health of the person. This article is based on the Torture Convention of 1984 which omits the requirement of a connection to a public official (D. R O B I N S O N, N.D.).

Also, as its stated in Article 7(1)(h) ICC:

“Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court (loc.gov, 2009).

Following Article 7(2) (g) ICC, this states that: "Persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; which the person is a party to (loc.gov, 2009).

It requires oppressive intent in view of political, racial, national, ethnic, cultural, religious, gender, also, different grounds universally perceived as impermissible under international law. However, there must be a connection between the persecutory act and any crime or those crimes stated in Article 7(1) ICC which must be within the jurisdiction of the court.

2. When terrorism is prosecuted as inhuman act, Article 7(1)(k) ICC is invoked in which the terrorist must have inflicted grave injury to body or to mental or physical health via inhumane act with intent in which the act was of a character similar to any other act referred to in article 7(1) ICC.

### **2.3 Historical Development of International Humanitarian Law**

The development of IHL had been influenced by religious concepts and philosophical ideas. Customary rules of warfare are part of the first rules of international law

altogether. In this process, the development from the first rules of customary law to the first written humanitarian principles for the conduct of war was also accompanied by setbacks. Some rules which imposed restrictions on the conduct of war, the means of warfare and their application can even be traced back to ancient times (Fleck & Bothe, 2013) The **Sumerians** considered art of war as a state run by the law, which was taking place with a pronouncement of war and was finished by a peace treaty. War was subject to specific rules which inter alia, guaranteed immunity to enemy negotiators (Fleck. & Bothe, 2013).

**Hammurabi** (Ancient.Eu.com, N.D) king of **Babylon**, wrote the “Code of Hammurabi” for the protection of the weak against oppression by the strong and ordered that hostages be released on payment of a ransom. Furthermore, the law of **Hittites** also provided for a declaration of war and for peace to be concluded by treaty as well as for respect for the inhabitants of an enemy city which has capitulated. The war between Egypt and Hittites (Milestonedocuments.Com, N.D.). for instance was thus terminated by a peace treaty.

In the 7<sup>th</sup> Century B.C., **Cyrus I**, king of **Persians**, ordered the wounded Chaldeans to be treated like his own wounded soldiers.

To buttress the understanding of this development, the **Indian** epic Mahabharata and the Laws of Manu already contain provisions which prohibit the killing of an adversary who is no longer capable of fighting and surrenders, forbid the use of certain means of combat, such as poisoned or burning arrows, and provide for the protection of enemy property and prisoners of war.

The **Greeks**, in the wars between the Greek city-States which considered each other as having equal rights, but also in war led by Alexander the Great against the Persians, respected life and personal dignity of war victims as a prime principle (The Federal Ministry Of Defence Of The Federal Republic Of Germany, 1992). They did not touch the Holy places, consulate offices, ministers of God, and ambassadors of the conflicting side and swap over POWs. For instance, the poisoning of sources of water was illegal in conflict.

The **Romans** also accorded to their prisoners of war the right to life. However, the Greeks and Romans distinguished between those peoples whom they regarded as their cultural equals (The Federal Ministry Of Defence Of The Federal Republic Of Germany, 1992). and people whom they considered to be barbarians.

**Islam** also acknowledge essential requirements of humanity. In his Orders to his commanders, the first caliph, “**Abu Bakr**” stipulated, for instance, the following:

“The blood of women, children, and old people shall not stain your victory. Do not destroy a palm-tree, nor burn houses and cornfields with fire, and do not cut any fruitful tree. You must not slay any flock or herds, save for your substance (Fleck & Bothe, 2013).

In many cases, Islamic warfare was not less cruel than warfare by Christians. Under the reign of leaders like “**Sultan Saladin**” in the 12<sup>th</sup> Century, the laws of war were observed in an exemplary manner. Saladin ordered the wounded of both sides to be treated outside Jerusalem and allowed the members of the Order of St. John to discharge their hospital duties (Fleck & Bothe , 2013).

In the middle Ages, feud and war were governed by strict principles. The principle of protecting women, children and the aged from hostilities originated from church father **Augustine** (The Federal Ministry Of Defence Of The Federal Republic Of Germany, 1992).

The putting into practice of respect for holy spaces shaped a right of refuge, for example, the right of refuge, in churches, the compliance of which was judiciously supervised by religious body. The knights battled against one another as indicated by certain (unprinted) rules. The standards of arms were differently upheld by mediators of tribunals of knights. They were connected just to knights, however not to common individuals. The adversary was much of the time viewed as an equivalent combatant who was to be crushed in a respectable battle. It was regarded to be taboo to begin a war without earlier warning

The 'Bushi-Do', the medieval code of honour of the warrior caste of Japan, included the rule that humanity must be exercised even in battle and towards prisoners of war (POW),( Fleck & Bothe, 2013).

In the 17<sup>th</sup> Century, the military tactician Sorai wrote that whoever kills a POW shall be guilty of manslaughter no matter whether such a prisoner had surrendered or fought 'to the last arrow.'

As a decrease in consequence of the knighthood, the innovation of guns or more all, the forming of armed forces comprising of soldiers of armed force, the ethics of war got toughened again towards the in the middle ages era. Contemplations of valor were obscure to these armed forces.

Just as modern days began, there was no refinement or difference among combatant and regular civilian populace. Hired soldiers viewed war as exchange which they took after with the end goal of private interest. Towards the start of modern era, the wars of religion, and especially the Thirty Years War, again involved the cruelest strategies for fighting. The brutalities of this war basically added to the way that law considered the *jus in bello* and set up various directives which were to be complied with by the aggressive.

In the work of Hugo Grotius (the father of modern international law), "De jure belli ac pacis" which got published in 1625, highlighted existing limits to the behavior of opponents during war. A basic change in the character of states to the conduct of war did not come until the beginning of the age of information in the eighteenth Century.

In 1772, Jean-Jacques Rousseau made the following statement in his work, "Le contrat social (Karl EDLINGER, 2015).

“war is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders ... the object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and

surrender, they become once more merely men, whose life no one has any right to take” (Constitution.Org, 2015).

From this dogma, which was soon and mostly recognized, took after that the demonstrations of hostility may just be coordinated against the enemy's military, yet not against the regular civilian populace which does not participate in these conflicts.

In the nineteenth Century, after a couple of provisional misfortunes, helpful and humanitarian point of view kept on making progress. They prompted exceptional activities of individual persons and to the decision of various international treaties. These treaties forced confinements on the method for fighting and the strategies for their utilization.

Florence Nightingale, an English woman, calmed the sufferings of the sick and wounded through her efforts as a nurse in the Crimean War. Later, she made essential contributions towards the renovation of the civil and military nursing systems of her homeland.

In 1861, Francis Lieber, a German-American Professor of political science and jurisprudence at Columbia University; prepared on behalf of President Lincoln, a manual based on international law (Lieber Code), which came into force in 1863 for the Union Army of the United States in the Civil War.

The Genovese merchant, Henri Dunant, who in the Italian War of Unification, had seen the plight of 40, 000 Austrian, French and Italian soldiers injured on the war front of Solferino, in printed his impression in his book, “A memory of Solferino” which he brilliantly illustrated the terrors of the conflict as follows (Fleck & Bothe, 2013):

“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 fields... The poor wounded men that were being picked up all day long were ghastly pale and exhausted. Some who had been the most badly hurt had a stupefied look as though they could not grasp what was said to them... Others were anxious and excited by

nervous strain and shaken by spasmodic trembling. Some who had gaping wounds already beginning to show infection, were almost crazed with suffering. They begged to put out of their misery and writhed with faces distorted in the grip of death struggle (Henry, 2015).

In his book, Dunant not only described the battle, but tried to suggest and publicize possible measures to improve the fate of war victims. He presented three basic proposals designed to mitigate the suffering of the victims of war. To this end, he proposed the following:

1. That voluntary societies be established in every country which, in time of peace, would prepare them to serve auxiliaries to the military medical services.
2. That States adopt an international treaty guaranteeing legal protection to military hospitals and medical personnel.
3. That an international sign of identification and protection of medical personnel and medical facilities be adopted.

These three proposals were simple, but they have had deep and lasting consequences;

1. The whole system of National Red Cross or Red Crescent Societies (of which there are today 188 around the world stems from the first proposal;
2. The second proposal gave birth to the “First Geneva Convention”( Geneva Convention , 1864)
3. The third proposal led to the adoption of the protective emblem of the Red Cross or the Red Crescent.

Dunant’s book enjoyed enormous success throughout Europe. Although it did not present entirely original ideas, the merit of the book is in large part due to the timeliness of its message. At that time, a private welfare association existed in Geneva, ‘the Society for the Public Good.’ Its President, Gustave Moynier, was impressed by Dunant’s book and proposed to the members of the society that they try to carry out Dunant’s proposals.

This suggestions were accepted and five members of the Society, Mssrs, Dunant, Moynier, Dufour, Appia and Maunoir, created a special committee in 1863, the 'International Standing Committee for Aid to Wounded Soldiers.' This committee later became the International Committee of the Red Cross (ICRC).

In 1863, the Committee convened military and medical experts at a conference in Geneva. The aim of that meeting was to examine the practicability and feasibility of the proposals made by Dunant. The results of the meeting were encouraging, and the members of the committee persuaded the Swiss Federal Council to convene a diplomatic conference, whose task would be to give a legal form to Dunant's proposals.

To this end, a diplomatic conference was held in 1864 in Geneva and 16 States represented finally adopted the 'Geneva Convention of 22<sup>nd</sup> August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field.' Its results was an international treaty open to universal ratification (i.e an agreement not limited to a specific region or conflict, with binding effects on the States that would formally accept it) in which States agreed to voluntarily limit their own power in favour of the individual.

For the first time, armed conflict became regulated by written, general law. This original convention has been replaced by more modern and comprehensive treaties. However, it illustrates in a concise manner the central objectives of humanitarian law treaties.

The constant enlargement of the categories of war victims protected by humanitarian law (military wounded, sick and shipwrecked, POW, civilians in occupied territories; the entire civilian population), as well as the expansion of the situations in which victims are protected (international and non-international armed conflicts); regular updating and modernization of the treaties to account for the realities of recent conflicts. For example, the rules protecting the wounded adopted in 1864 were revised in 1906, 1929, 1949, and 1977 respectively.

Two separate legal currents have up until 1977 contributed to this evolution and they are:

1. The Geneva Law, mainly concerned with the protection of the victims of armed conflicts i.e. the non-combatants and those who no longer take part in the hostilities and;
2. The Hague Law, whose provisions relate to limitations and prohibitions of specific means and methods of warfare (I.H.L&THE LAW OF ARMED CONFLICT Peaceopstraining.Org, 2015) .

These two legal currents were practically merged with the adoption of the two Additional Protocols of 1977. The Convention currently in force have replaced the older Geneva Conventions.

In 1993, a comprehensive Convention prohibiting the development, production, stockpiling, and the use of chemical weapons was adopted (White & Henderson, 2013).This treaty supplements the

An optional protocol to the 1989 Convention on the rights of child was adopted. This protocol raises the minimal age for compulsory recruitment from 15 to 18 and calls on States to raise the minimum age for voluntary recruitment above 15. It provides that armed groups should not use children under 18 in any circumstances and calls on States to criminalize such parties.

In 2005, a diplomatic conference held in Geneva adopted a Third Additional Protocol to the Geneva Conventions, creating an additional emblem alongside the Red Cross and Red Crescent and the additional emblem known as the 'red crystal' should provide a comprehensive and lasting solution to the emblem question; also, it will appear as a red frame in the shape of a square on a diagonal on a white background, and is free from any religious, political or other connotations (Icrc.Org, 2015).

Conclusively, it is worth nothing the support lent by the international community to the Treaties of IHL. Since 194 States are parties to these texts, the four Geneva Conventions are now among the most universal instruments of international law. Additionally, 172 States are parties to the First Protocol and 166 States are parties to the Second Protocol



regulating the coordination and cooperation between the members of the international community (IHL&THE Law of Armed Conflict, 2015).

## **CHAPTER THREE: LEGAL FRAMEWORK FOR INTERNATIONAL HUMANITARIAN LAW**

### **3.1 Geneva Conventions of 1949 And Its Additional Protocols**

In 1949, an international conference of diplomats built on the earlier treaties for the protection of war victims, revising and updating them into four new conventions (American Red Cross, 2013). of August 12, 1949. The Additional Protocols of 1977 and 2005 supplement the Geneva Conventions. The Conventions apply in all instances of declared war, or in some other armed conflict between states (ICRC Opinion Paper, 2008). They furthermore apply in circumstances where military of another state, despite when there is no conflict, deficiently or completely include a state. From another perspective, the The Geneva Conventions and their Additional Protocols are international treaties that contain the most important rules limiting the barbarity of war by protecting 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) (ICRC Opinion Paper, 2008).

Nations humanitarian principles and enforce legal sanctions against defaulters who go against them. Countries who are party must ‘ratify any legislation needed to be responsible for operative severe sanctions for persons committing or ordering to be committed any of the grave breaches (violation)’ of the Convention (ICRC Customary IHL, 2015).

The First Geneva Convention builds up a protection wall in favour of soldiers who are *hors de combat* out of the battle. The 10 Articles of the original 1864 version of the Convention have been expanded in the Four Geneva Convention of 1949 to 64 Articles that protect (Simpson, 2015). the following:

1. Wounded and sick soldiers
2. Medical personnel. Facilities and equipment

3. Wounded and sick civilian support personnel accompanying the armed forces
4. Military chaplains
5. Civilians who spontaneously take up arms to repel an invasion (Geneva Convention, 1949).

This Convention, comparable to the others, identifies the freedom of the ICRC to help the injured and the sick. The Red Cross and Red Crescent national societies, other approved fair-minded aid organizations and unbiased governments might likewise give humanitarian administration (Article 9, GC I, N.D.). The injured and sick should be regarded and secured without discrimination on the ground of sex, race, nationality, religion, political convictions or other reasons. They shall not be murdered, annihilated, exposed to torture or scientific experiments, and they must be allowed to enjoy adequate care and safety against pillage and hostile treatment (American Red Cross, 2013).

Furthermore, the Convention made provision for all armed parties to a conflict for scanning for and gathering the injured and sick, especially after fight, and convey the data in respect to this to the Central Tracing and Protection Agency of the International Committee of the Red Cross (ICRC) ICRC Annual Report, 2014).

The Second Convention fine-tuned or amended the protections of the First Geneva Convention to echo conditions at sea. It secures injured and sick combatants while on board ship or at sea. Its 63 Articles apply to the following:

1. Armed forces members who are wounded, sick or ship wrecked (Convention (II), 1949).
2. Hospital ships and medical personnel;
3. Civilians who accompany the armed forces.

The detailed provisions of this Second Convention will be discussed in the consequent paragraphs.

This convention mandates that parties in battle must take all possible measures to search for, collect and care for the wounded, sick and shipwrecked. 'Shipwrecked' refers to anyone who is adrift for any reason, including those forced to land at sea or to parachute from damaged aircraft (American Red Cross, 2013). Also, it provides that, while a warship cannot capture a hospital ship's medical staff, it can hold the wounded, sick and shipwrecked as Prisoners of War (POW), provided they can be safely moved and that the warship has the facilities to care for them (American Red Cross, 2013). The Parties to the conflict may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead (ICRC, Treaties And States Parties, 2015). Neutrality here would mean that they are going to help and they must not be captured.

It is germane to note that hospital ships cannot be utilized for any military objectives; they cannot be attacked or apprehended; the names and descriptions of hospital ships must be conveyed to all parties in the conflict (American Red Cross, 2013). Religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected (Icrc.Org, 2013). On the off chance that they are caught, they are to be sent back to their side as quickly as time permits.

The Third Geneva Convention sets out specific rules for the handling of POWs. The Convention's 143 Articles require that POWs be treated humanely, adequately housed and receive sufficient food, clothing and medical care. Its provisions also established guidelines on labour, discipline, recreation and criminal trial (Bonn, 2010). It is important to note POWs may include the following:

1. Members of the armed forces;
2. Members of militia or volunteer corps including organized resistant movements;
3. Members of regular armed forces with allegiance to illegitimate government or authority;
4. Civilians accompanying the armed forces;

5. Inhabitants that respect the laws and customs of war who carry arms to resist invaders without prior knowledge (Icrc.Org, 2013).

Specific provisions of the Third Convention include:

- a. POWs must not be subjected to torture or medical experimentation and must be protected against acts of violence, insults and public curiosity (Icrc.Org, 2015).
- b. POWs are required to provide to their captors only their name, rank, date of birth and military service number;
- c. Female POWs must be treated with the regards due to their sex;
- d. Captors must not engage in any reprisals or discriminate on the basis of race, nationality, religious beliefs, political opinions or other criteria;
- e. POWs must be housed in a clean, adequate shelter and receive the food, clothing and medical care necessary to maintain good health; 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 nonmilitary jobs under reasonable working conditions when paid at a fair rate;
- f. Names of POWs must be sent immediately to the Central Tracing Agency of the ICRC; POWs are to be allowed to correspond with their families and receive relief packages;
- g. 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 prisoners;
- h. Seriously ill POWs must be repatriated (returned home);

- i. When the conflict ends, all POWs shall be released and, if they request, be sent home without delay;
- j. The ICRC is granted the special rights to carry out humanitarian activities on behalf of POWs; the ICRC or other impartial humanitarian relief organizations authorized by parties to the conflict must be permitted to visit the prisoners privately, examine conditions of confinement to ensure the Conventions' standards are being met and distribute relief supplies (Redcross.Org , 2015).

In respect to the Fourth Geneva Convention, Civilians in areas of armed conflict and occupied territories are protected by the 159 Articles of the Fourth Geneva Convention. The essential provisions of this Convention include:

1. Civilians are to be protected from murder, torture or brutality and from discriminate on the basis of race, nationality, religion or political opinion (Redcross.Org, 2013).
2. Hospitals and safety zones may be established for the wounded, sick, and aged, children under 15, expectant mothers and mothers of children under seven;
3. Civilian hospitals and their staff are to be protected (Redcross.Org, 2013).
4. This Convention provides for the care of children who are orphanage or separated from their families; the ICRC'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;
5. The safety, honour, family rights, religious practices, manners and customs of civilians are to be respected (Bond, Hastings, Pollak, & Kling, 2009).
6. Pillage, reprisals, indiscriminate destruction of property and the taking of hostages are prohibited;

7. Civilians cannot be forced to do military-related work for an occupying force; they are to be paid fairly for any assigned work;
8. Occupying powers are to provide food and medical supplies as necessary to the population and maintain medical and public health facilities;
9. Civilians must be permitted to leave normal lives; they are not to be deported or interned except for imperative reasons of security; if internment is necessary, conditions should be at least comparable to those set forth for POWs;
10. Children, pregnant women, mothers with infants and young children, the wounded and sick and those who have been interned for a long time are to be released as soon as possible;

In light of the foregoing, it is worthy of note that: “All the Four Geneva Conventions contain an identical Article 3, extending 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 (Geneva-Academy.Ch, 2015).

1. Persons taking no active part in the hostilities, include 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 treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria ( Pictet, 1960). To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons (Icrc.Org, 2015).
  - a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - b. Taking of hostages;

- c. Outrages upon personal dignity, in particular, humiliating and degrading treatment;
- d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people (Icrc.Org, 2015).

2. The wounded, sick and shipwrecked shall be collected and cared for.

### **3.2 The Protocols Additional To The Geneva Conventions of 1949**

In 1977, two Protocols supplementary to the Geneva Conventions were adopted by an international conference to give greater protection to victims of both international and internal armed conflicts (Geneva Conventions, 1949). As of 2010, 170 nations have ratified Protocols I and 165 have ratified Protocol II. Any nation that has ratified the Geneva Conventions but not the Protocols is still bound by all provisions of the Convention (Geneva Conventions, 1949).

Protocol I expands protection for the civilian population as well as military and civilian medical workers in international armed conflicts. Specific provisions of Protocol I include;

1. Special protections are provided for women, children and civilian medical personnel and measures of protection for journalists are specified
2. Use of weapons that “cause widespread, long-term, and severe damage to the neutral environment” are prohibited (Geneva Conventions, 1949).
3. Protocol I seeks to clarify the military status of members of guerilla forces in the following manner: it includes provisions granting combatant and POW status to members of dissident forces when under the command of a central authority;



such combatants cannot conceal their allegiance; they must be recognized as combatants while preparing for or during an attack;

4. It outlaws indiscriminate attacks on civilian populations and destruction of food, water and other materials needed for survival (Avery, 2015).
5. Recruitment of children under age 15 into the armed forces is forbidden;
6. 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 (Geneva Conventions, 1949).
7. Protocol II on the other hand, elaborates on protections for victims caught up in high-intensity internal conflicts such as civil war; it does not apply to such internal disturbances as riots, demonstrations and isolated acts of violence; Protocol II expands and complements the non-international protections contained in Article 3 common to all Four Geneva Conventions of 1949; its specific provisions include ((Geneva Conventions, 1949).
1. Prohibition of violence to life, health and physical or mental well-being of people, in particular, it prohibits acts of murder and cruel treatment, terrorism, hostage-taking, slavery, and outrages on personal dignity, collective punishment and pillage. These protections are considered fundamental guarantees for all persons (Grover, 2010).
2. Persons interned or detained during internal conflicts are assured of the same humane treatment as specified by the Geneva Conventions (Geneva Conventions, 1949)
3. Attacks are forbidden on civilian and on “objects indispensable to civilian survival” such as crops, irrigation systems or drinking water sources, cultural objects, and places of worship.

Lastly, in December 2005, a Third Additional Protocol to the Geneva Conventions was adopted that provides for another distinctive emblem, the red crystal. The red

crystal is an optional emblem, equal in status to the Red Cross and Red Crescent; The Red crystal may be used in environments where another emblem could be perceived as having religious, cultural or political connotations (Geneva Conventions, 1949).

### **3.3 Hague Convention**

The law on Hague as a branch of International Humanitarian Law sets limits to the conduct of military operations. Its rules are intended to prevent or at least reduce death or destruction, as far as the hard reality of war allows. They establish the rights and duties of belligerents in the conducts of operations and limit the choice of means to injure the enemy. The law of Hague has a wider field than the law of Geneva but also possess a humanitarian character, though less specific, because the principal is to attenuate the evils of war and violence which is unnecessary for the purpose of war to weaken the resistance of the adversary.

It is however pertinent to note that the law of Hague and the law of Geneva which are the major branches of IHL draw their names from the cities where each of them was initially codified. It has been said that the law of The Hague originates in reason rather than sentiment, in mutual interest rather than philanthropy. The law of Hague is addressed directly to the high command of the armed forces, to commanders of military formations and to members of general staff since its rules exert a direct influence on the planning and execution of military operations in war while humanitarian law relating to the protection of the wounded and the sick, POWs and civilians in occupied territory is the responsibility of services in the rear and of the civilian authoritarians.

The 1899 Conference also adopted the Martens Clause, a clause adopted to resolve a stalemate at the conference regarding the status of resistance fighter who take up arms against an occupying authority (Nsw.Gov.Au, 2015). It first appeared in the preamble of the Hague Convention as follows:

In cases not covered by the Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of International Law derived from established customs, from the principle of humanity and from the dictates of public conscience (lois.justice, N.D.).

The clause testifies to that the completeness of humanitarian protection; in the absence of an explicit rule of certain type of conduct, it may not be assumed that such conduct is permitted. On the contrary, a solution must be found that, like IHL in general, meets the requirement of human behavior.

The Hague Regulations have governed many wars in the 20<sup>th</sup> century and some of their provisions are still in force. They determined the rights and duties of belligerents in the combatants, and they limited the choice of weapons.

Some resolutions confirmed three essential principles of IHL which must be observed by all governments or other groups in armed conflicts. The three principles can be summarized as follows:

1. The rights of parties to the conflict to adopt means of injuring the enemies is not unlimited;
2. It is prohibited to launch attacks against the civilian population (bibliothek, N.D).
3. A distinction must be made at all times between persons taking part in the hostilities and members of the civilian population, to the effect that the latter be spared as much as possible

The confirmation of these principles by the UN laid the ground work for development of IHL by the Diplomatic Conference of 1974 – 1977; both protocols relating to international armed conflicts and Protocol II relating to non-international armed conflicts (Gasser, 1995).

In reinforcing a principle of the law of armed conflicts which states that: "In any armed conflict, the right of the parties to the conflict to choose methods and means of warfare is not unlimited" (Pejic, 2001).

This basic rule is supplemented as follows: "It is prohibited to employ weapons, projectiles and material and methods of warfare of a nation to cause superfluous injury or unnecessary suffering" (Icrc.Org, 2015).

Also, it is prohibited to employ methods or means of warfare which are intended or maybe expected to cause widespread, long terms and severe damage to the environment (Seybolt, 2014).

Among the prohibited method of combats are *perfidy* described as acts inviting the confidence of an adversary to lead him to believe that he is entitled to or is obliged to accord, protection under rules of international law applicable in armed conflict with intent to betray that confidence (Dehn, 2008). The misuse in military operations of recognized distinctive emblems, in particular the Red Cross or Red Crescent is reprehensible not because of an individual member of the enemy armed forces, may be adversely affected, but also because such conduct generally destroys confidence in the emblem.

Furthermore, the use of weapons or ammunitions which have indiscriminate effects such as non-detectable fragments, mines and booby-traps and incendiary weapons were prohibited.

Finally, with regards to civilian objects, attacks against historic monuments, works or art or places of workshop which constitutes the cultural or spiritual is prohibited. Objects indispensable to the survival of the civilian population such as foodstuffs, livestock or drinking installations, thereby stressing that "starvation of civilians as means of warfare is prohibited".

### 3.4 Customary International Law

Customary International Law is also an important source of law. It consists of unwritten rules, created by the practice of States, carried out in the belief that they are under a legal obligation to behave in that way. The same rule can sometimes be found in a treaty and form part of customary law.

The Statute of the International Court of Justice describes customary international law as “a general practice accepted as law. It is generally agreed that the existence of a rule of customary international law requires the presence of two elements, namely State practice (*usus*) and a belief that such practice is required, prohibited or allowed, depending on the nature of the rule, as a matter of law (*opinio juris sive necessitatis*) (Irc.Org, 2015).

### 3.5 States Practice

State practice must be looked at from two angles: firstly what practice contributes to the creation of customary international law (selection of State practice); and secondly whether this practice establishes a rule of customary international law (assessment of State practice). Both physical and verbal acts of States constitute practice that contributes to the creation of customary international law. Physical acts include, for example, battlefield behavior, the use of certain weapons and the treatment afforded to different categories of persons (Irc.Org, 2015). Verbal acts include military manuals, national legislation, national case-law, instructions to armed and security forces, military communiqués during war, diplomatic protests, opinions and regulations, pleadings before international tribunals, statements in international fora, and government positions on resolutions adopted by international organizations (Henckaerts, 2005). This list shows that the practice of the executive, legislative and judiciary organs of a State can contribute to the formation of customary international law (Henckaerts, 2005).

The negotiation and adoption of resolutions by international organizations or conferences, together with the explanations of vote, are acts of the States involved

(Icrc.Org, 2015). It is recognized that, with a few exceptions, resolutions are normally not binding in themselves and therefore the value accorded to any particular resolution in the assessment of the formation of a rule of customary international law depends on its content, its degree of acceptance and the consistency of related State practice (Icrc.Org, 2015). The greater the support for the resolution, the more importance it is to be accorded although, decisions of international courts are subsidiary sources of international law, they do not constitute State practice. This is because, unlike national court, international courts are not State organs. Decisions of international courts are nevertheless significant because a finding by an international court that a rule of customary international law exists constitutes persuasive evidence to that effect (Icrc.Org, 2015).

In addition because of the precedential value of their decisions, international courts can also contribute to the emergence of a rule of customary international law by influencing the subsequent practice of States and international organizations (Icrc.Org, 2015).

The practice of armed opposition groups, such as codes of conduct, commitments made to observe certain rules of IHL and other statements, does not constitute State practice as such (Crawford, & Pert 2015). While such practice may contain evidence of acceptance of certain rules in non-international armed conflicts, its legal significance is unclear and, as a result, was not relied upon to prove the existence of customary international law (Icrc.Org, 2015). State practice has to be weighed to assess whether it is sufficiently 'dense' to create a rule of customary international law (Icrc.Org, 2015).

To establish a rule of customary international law, State practice has to be virtually uniform. Different countries must not have involved in considerably not the same ways. The jurisdiction of the international court of justice shows that contrary practice which, at first sight, appears to undermine the uniformity of the practice concerned, does not prevent the formation of a rule of customary international law as long as this contrary practice is condemned by other States, they are not of a nature to challenge the existence of the rule in question; States wishing to change an existing rule of customary international law have to do so through their official practice and claim to be acting as of right (Icrc.Org, 2015).

Also, for a rule of general customary international law to come into existence, the State practice concerned must be both extensive and representative. It does not, however, need to be universal; a ‘general’ practice suffices; no precise number or percentage of States is required (Icrc.Org, 2015). One of the reasons why it is difficult to place a particular amount on the level of involvement essential is that the measure is in a sense *qualitative* rather than *quantitative*. This denotes that it is just an inquiry of the number of States to partake in the practice, and also which States.

Similarly, States whose population is in need of humanitarian aid are “specially affected” just as are States which frequently provide such aid. With respect to any rule of IHL, countries that participate in an armed conflict are “specially affected” when their practice examined for a certain rule was relevant to that armed conflict. Although there may be specially affected States in certain areas of IHL, it is also true that all States have a legal interest in requiring respect for IHL by other States, even if they are not a party to the conflict (Henckaerts, 2005).

It is pertinent to note that customary rules are binding on all States regardless of whether the State ratified a treaty setting out the same rule (Dill, 2014). Examples of customary norms include prohibition of slavery, prohibition of torture, prohibition of genocide, prohibition of indiscriminate attacks against the civilian population etc (Unicef.Org, 20

The key plus of customary rules has to do with its ability to bind on all States. However, while treaty rules are clear and it is straight forward to determine what States are bound by a particular treaty, it is harder to determine whether a particular rule has attained customary law status as well as what its precise content is (*Inter-Agency Standing Committee Workshop For Humanitarian Coordinators International Humanitarian Norms & Principles Guidance Materials*). To identify “general” practice on the other hand statements of third States on the behavior of belligerents and on a claimed norm in diplomatic form have to be considered. Similarly, Military manuals are even more important, because they contain instructions by States restraining their soldiers’ actions, which are somehow “statements against interest (Sassòli, Bouvier & Quintin, 2011). Too few States, generally Western States, have however sophisticated manuals available to the public to consider their contents as evidence for general practice in the

contemporary international community (Shiferaw, 2015). In addition, some of them are claimed to reflect policy rather than law. For all these reasons, particular consideration has to be given in the field of IHL to treaties as a source of customary international law- in particular to the general multilateral codification conventions and the process leading to their elaboration and acceptance (Icrc.Org, 2016).

Taking an overall view of all practice it may, for example, be found that a rule of the two 1977 Additional Protocols corresponds today to customary law binding on all States and belligerents, either because it codified (*stricto sensu*) previously existing general international law; it translated a previously existing practice into a rule, because it combined, interpreted, or specified existing principles or rules, because it concluded the development of a rule of customary international law or finally because it was catalyst for the creation of a rule of customary IHL through subsequent practice and multiple consent of States to be bound by the treaty (Nieto, 2003). It is therefore uncontroversial that most, but clearly not all rules of the two 1977 Additional Protocols today provide a formulation for parallel rules of customary international law (Shiferaw, 2015).

Although, IHL is a branch widely codified in widely accepted multilateral Conventions, customary rules remain important to protect victims on issues not covered by treaties, when non-parties to a treaty are involved in a conflict, where reservations have been made against the treaty rules, because international tribunal prefers- rightly or wrongly- to apply customary rules and because in some legal systems, only customary rules are directly applicable in domestic law (Shiferaw, 2015).

The comprehensive study recently completed by the ICRC clearly demonstrated that the great majority of the rules of the Geneva Conventions and the Additional Protocols have now acquired a customary nature (Icrc.Org, 2015). The study also leads to the conclusion that most of the rules on the conduct of hostilities – initially designed to apply solely to international armed conflicts – are also applicable to customary rules in non-international conflicts, thus considerably expanding the law applicable in those situations. Given the time consuming nature and other difficulties of treaty-making in an international society with more than 190 members and the rapidly evolving needs of war victims for protection against new technological and other inhuman phenomena.



As elements of customary international law, the four principles of distinction, military necessity, proportionality and humanity which will be further examined in the subsequent paragraphs complement and underpin the various international humanitarian instruments and apply to all States, except to those that persistently object to them (Mrema, Bruch, & Diamond, (2009). These principles, however, are not based on a separate source of international law, but on treaties, customs or general principles of law. On one hand, they can and must often be derived from the existing rules, expressing those rules' substance and meaning. On the other hand, they inspire existing rules, make those rules understandable and have to be taken into account when interpreting those rules.

## CHAPTER FOUR: THE ROLE OF IHL IN CHECKING TERRORISM

### 4.1 The Prevention of Sexual Violence

Atrocities committed during terrorism in the recent years stress the need to take traditional State-centric conceptualization of security to a higher level. In history, so many acts have been known to colour warfare in which one of the most known acts is rape and other forms of sexual violence. Even though beheadings and blasting of bombs are not exempted from terrorist's acts, but to be precise, the regular rape, kidnapping and women trafficking are considered as a terrorist acts to be connected humanitarian issue. IHL specifically prohibits rape and other forms of sexual violence both in international and internal armed conflict. In the U.N. Resolution 1325 (written in 2000), it was said that women bear the brunt of war (Manson, 2015). Factually, the use of sexualized violence has been exclusively ill-used as a way to target families and whole communities which forces them to submit to the waves of the terrorists. For example, the United Nations estimated that IS has forced some 1,500 women, teenage girls, and boys into sexual slavery (Stakelbeck, 2015). Amnesty International released a blistering document noting that IS abducts whole families in northern Iraq for sexual assault and worse ( Although, it is not common to hear all cases of sexual violence reason being that the victims may feel humiliated, ashamed or embarrassed and the societal culture and religious leaders are also not helping.

As being witnessed on every street, victims of sexually violence in Iraq of the Islamic State have resulted to suicide as a form of covering up the agony of this act. A quick look at the abducted women of Yazidi who are victims of the modalities of ISIS in relations to sex slavery, it can be said that they are being traded by ISIS fighters. Even though this group claims to be a religious organization, they have justified there sexually violence act to be religious by expressing that the victims are defaulters of the Law of Islam. In the words of President Barack Obama, he said that the IS enslaves, rapes, and

force women into marriage. Terrorists in general use sexual violence as a means to uproot and eradicate entire communities, thereby making power more readily available to opposition groups. In the real sense, the ISIS has employed sexual violence to carry out ethnic cleansing against the Yazidi minority in Iraq. Over a thousand women and children have been abducted and exposed to sexual violence, rape, forced marriage, sexual slavery or enforced prostitution (Brooks, 2014). From the words of escapees, they have turned women to gifts or promise for their terroristic acts. And the women in the camp of the terrorist, they are forced to get pregnant and reproduce. Also in Afghanistan, the Taliban and other extremists have used sexual violence to weakened communities, the rule of law and long-established traditional values (Un.Org, 2015). In the West Africa, precisely Nigeria, a terrorist group named Boko Haram have been exploring brutal means to violate women even though there name means no to Western Education. This group which has made a pledge of allegiance to IS vowing to push forward its expansion (Filip, 2015). They abducted some 270 school girls from Chibok on 14 April 2014 and shortly after, 50 girls managed to escape but the rest are still missing amid reports they are being used as suicide bombers, raped (Ludovica, 2015) and enforced to get married to their hostage taker.

The International Committee of Red Cross defined “sexual violence as an act used to describe acts of a sexual nature imposed by force, or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power directed against any victim – man, woman, boy or girl Icrc.Org, 2015). Sexual violence as a weapon of terrorism does not concern itself with race, ethnic group or tribe, but aims at gender. Sexual violence in terrorism is in due course a grander problem that legal actions need to be applied rigorously to proffer solution to this problem. Financial support and international collaboration greatly affect the ranging facets of dealing with aftercare services for survivors, dialogue with terrorists,” establishing rule of law and the trust in legal systems, among other aspects of peace-building. It is known that wartime sexual violence has of recent years benefited from a law enforcement focus: international standard-setting developments and civil rights activists have succeeded in shifting priorities and in 2008 UNSC resolution 1820 identified sexual abuse in conflict as a threat to international peace and security requiring forceful response (Akkaoui, 2015).)

It is important to state that this act can constitute a war crime, crime against humanity and torture which can be a stride to securing the victims. As said earlier, it is highly prohibited as an instrument of war under IHL. Article 27 of the Fourth Geneva Convention of 1949 protects women against “attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”, it was added as it is stated in Additional Protocol I (1977) that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault. However, Additional Protocol II (1977), which applies to non-international armed conflict, prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault (Clg. Com, 2015).

In the G8 Foreign Ministers’ meeting that was held in April 2013, Prevention of Sexual Violence was a main topic of discuss. UK Foreign Secretary William Hague, who launched an initiative on preventing sexual violence in conflict in May 2012, said: "Our good must be a world in which it is inconceivable, that thousands of women, children and men can be raped in the course of a conflict because international framework of deterrence and accountability makes it impossible".

Notwithstanding, in the view of the foreign secretary, IHL remains clear about the prohibition on rape and other forms of sexual violence in international and internal armed conflicts which does not exempt Terrorism. It violates not only the human rights but other national and religious law and hence must be prosecuted.

#### **4.2 Protections of Children in Armed Conflict**

Since the history of terrorism, children have been part of victims of this terrorism as an act. It could be through direct participation as a child soldier or terrorist, or being wounded by stray bullet or suffering from the death of his or her parents who are victims of terrorism or through a breakdown in law and order leading to widespread sexual violence. It is clear that terrorists aims at innocent civilians which includes men, women,

young or old. But from a salient angle, it is not too common that attacks towards children by the terrorist are higher over older civilians. However, there are no such terrorism acts that will not involve children. Some are kidnapped, transported and confined in secret holding grounds (Ispcan.Org, 2015). In fact, incidences have shown those terrorists are now majorly targeting children to pass their message to the world. In Afghanistan, between 2009 – 2010, this country has witnessed about 20 gas poisoning attacks. During the Taliban rule from 1996 to 2001, girls and women were banned from education and the workplace (Af.Reuters.Com, 2015). US government led a military move to take power from this Islamic group and due to this, there have been rising insurgency against the government in power. In one of their suspected attacks, there was a release of pesticide-type chemicals in schools; no fatalities have resulted, but a total of at least 636 children were injured, some seriously (Johnston, 2015).

In the words of Ms. Zerrougui, ISIS forces have infiltrated into Northern Iraq and up to 700 children have been killed or maimed in Iraq since the beginning of the year, including in summary executions (Brooks, 2014). School is one of the best places to find huge number of children and terrorist have been maximizing this opportunity because it is a powerful symbolic target (Flanagin, 2015). In 2014, a self-proclaimed Al-Qaeda operative shot and killed seven outside a Jewish school in Toulouse, France, in Mar. 2012. Malala Yousafzai was attacked and a bullet was shot at her in the face in bus while leaving school.

Schools have been used by terrorist to store harms. According to Ban Ki-Moon, the UN Secretary-General, he lamented in dismay why the Palestinian militant group would put United Nations schools at risk by using them to hide their arms (The Tower, 2015). This may turn schools to lawful military targets and exposing the children to massive attacks from opposing forces. The principle of proportionality and military necessities still applies here to reduce casualties but it will still expose the kids to attacks.

In one of the well-known magazine called Foreign Affairs, it has described ‘the rise of the child terrorist’, identifying the use of children as a tactic of ISIS and the Pakistani Taliban (GITTO, 2015). Even though these children may not have a deep political undertone of what they are doing, but the with the help of the adult terrorists, they are

shaped, trained, orientated and brainwashed about the ideological basis of what they want them to do. They are the ones found on the front lines, participate in suicide missions, and act as spies, messengers or lookouts (Human Rights Watch, 2015). Some are at times given drugs while about to carry out missions to boost their confidence towards any obstacle, to which they quickly come to be drug addict. In Sierra Leone, terrorist fed children a mixture of gunpowder and cocaine (Essex.Ac.Uk). Sometimes, children are given drugs before engaging in suicide or other attacks to erase their fear.

Two events happened just in days; where a boy, 10-year-old from Kazakh executed two Russian members of ISIS accused of being spies and three Nigerian girls around age 10, putting on explosives to be detonated at good locations (Bloom, Horgan, 2015) In a statement accrued to a 14-year-old boy defector, he said “ISIL prefers young children more than adults because they can convince children and wash their brains and once recruited, children make obedient soldiers (Spellman, 2015) Some high ranking terrorists or leaders majorly hunt for children to be abducted, reason being that, they are seen to be submissive, highly enthused and loyal. They can be influenced easily since they lack the ability to decipher what is right and wrong and can be taught to be ruthless fighters. Destabilized by fear and ruthlessness, children can execute the most ghastly violence. Cases of children being uses as tools can be seen in Palestinian territory where they are heavily kitted with explosives and instructed to permeate through a specific targeted location in the Israel. The use of children is now becoming alarming as hatred is planted into them and making the children to believe that terrorism is a lifetime course and the best opportunity to survive.

In the event of armed conflict, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities (Unicef.Org, 2015). Given the particular susceptibility of children, the Geneva Conventions of 1949 (hereafter GCIII AND GCIV) and their Additional Protocols of 1977 (Additional Protocol I and Additional Protocol II) lay down a series of rules according them special protection (Upes, 2015). Children who take direct part in hostilities do not lose that special protection (Icrc.Org, 2015). The Additional Protocols,

the 1989 Convention on the rights of the child and its recent Optional Protocol, in particular, also set limits on children's participation in hostilities (Unicef.Org). The Optional Protocol of 2000 of the Convention on the Rights of the Child (CRC) magnifies upon the protections for children in armed conflict. Other treaties governing the use of weapons in armed conflicts also provide for such protections to an extent. Furthermore, customary international law contains a wide range of protections for the civilian population and children in particular.

Waging war against terrorism mostly constitute negative implications for children. As it is known, terrorists twist things and precisely laws of war for their benefit. While combating terrorism, children are held hostage and in detention. They are used as human shields. The use of space to fight terrorists most often leads to serious injury and death of these children. This brings up the higher level of concern of protection when planning a military move to fight terrorism. Some are captured and apprehended for their engagement with terrorist under barbaric conditions that goes against conditions that violate international standards of juvenile justice in places like Afghanistan, Iraq and Guantanamo Bay (Bobmccarty.Com, 2015).

The IHL has properly addressed terrorism by condensing the serious violation against children into six categories which are killing and maiming, sexual violence, recruitment and use, denial of humanitarian access, abduction and attacks on schools and hospitals.

As it is stated under Article 7 of the Rome Statute which created the ICC, any individual or group that carries out a "widespread or systematic attack directed against any civilian population" commits "crimes against humanity" and may be prosecuted before the Court. Argument have been made that there is no existing international judicial organ that would prosecute which automatically exempts ICC from having jurisdiction to conduct trial of an alleged suspect in the case of terrorism. This in another sense means that in a situation where a national court did not prosecute or extradite an alleged person, no court will take responsibility of jurisdiction. Going by the meaning of Article 7, only war crimes which constitute of crime against humanity lies in the function of the court to prosecute when the national courts have been exhausted (meaning court of last resort for war crime). However, it crystal clear that terrorism employs diverse means with no

single unified definition and with no one way pattern and must be treated or considered a one type of crime. This can be a good reason why, for example, in the case of Nigerian Boko haram, the alleged sponsors have not been prosecuted in ICC and ever since the inception of this court in 2002, no case of terrorism has been tried. This calls for the amendment of the Rome Statute of ICC or the creation of a new court that terrorism will be its core jurisdiction. This research will not talk delve into why ICC lack jurisdiction but according to the letters of the Rome Statue that founded ICC coupled with its governing documents, terrorism is out of its jurisdiction.

It is in this regards that States have strengthen their function in respect to protecting their children via the development of legislations, strong policies and legal activities against proliferation of terrorist.

#### **4.3 Protection of the Natural Environment in Armed Conflict**

The first body of law to consider in an analysis of the protection of the environment during armed conflict is international humanitarian law (IHL). The relevant provisions of IHL treaty law for the protection of the environment during armed conflict can be divided into three main categories:

1. Those that directly address the issue of environmental protection, the general;
2. Principle of IHL that are applicable to environmental protection, and;
3. The provisions that can be considered to provide indirect protection to the environment during times of conflict (Mrema, Bruch & Diamond, 2009).



### **4.3.1 Provisions specifically aimed at Protecting the Environment During Armed Conflict**

#### **1. Additional Protocol 1 to The 1949 Geneva Conventions, Article 35(3) and Article 55(1) (1977)**

It is very important to treat terrorism regarding the protection of civilian populations and the environment as a germane issue to tackle. Growing environmental ruin through terrorism, as well as concern over military tactics employed during counter-terrorism needs the application of the two provisions in Additional Protocol 1 that explicitly addressed environmental harm.

Article 35 concerns basic rules regarding the means and methods of warfare. Paragraph 3 stipulates that ‘it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread long-term and serve damage to the natural environment (Icrc.Org, 2015).

Moreover, the article further provides specific protection for the environment within the context of the protection granted to civilian objects; it also explicitly prohibits attacks on the environment by way of reprisals (Mrema, Bruch, Diamond, 2009).

#### **2. UN Convention on the Prohibition of Military or Any Other Use of Environmental Modification Techniques ( ENMOD) (1976)**

The ENMOD Convention was established as a reaction to the military tactics employed by the United States during the Viet Nam War; these included plans for large-scale environmental modification techniques that had the ability to turn the environment into a weapon, for instance by provoking earthquakes, tsunamis, or changes in weather patterns- what some commentators have called it ‘geophysical warfare (Mrema, Bruch, & Diamond, 2009). The Convention was also a reaction to the use of large quantities of chemical defoliants (death, cancer and other illness, mutations, and birth defects) and long term environmental contamination, as well as very significant destruction of forests and wildlife (Mrema, Bruch, & Diamond, 2009).

ENMODs aim was to prohibit the usage of environmental change systems as a means of war.

Article (1) requires that “each state party to this convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or several effects as the means of destruction, damage or injury to any other state party (Mrema, Bruch, & Diamond, 2009). Hence, while the Additional Protocol 1 aim to protect the natural environment *per se*, ENMOD prohibits the use of techniques that turn the environment into a “weapon.” Although (United Nations Environment Programme) UNEP helped convene the negotiations that led to the ENMOD Convention, it has not had a systematic role in monitoring its implementation and enforcement (Mrema, Bruch, & Diamond, 2009).

Use of depleted uranium 45 munitions and other recently developed weapons, this being stated in article 36 of additional protocol 1 to the Geneva Conventions, which is binding on 168 states and requires them to ensure that any new weapon, or means or method of warfare, does not contravene existing rules of international law; IHL also prohibits weapons and means or methods of warfare that cause superfluous injury or unnecessary suffering, or having indiscriminate effects or cause widespread, long-term and severe damage to the natural environment (Icrc.Org, 2015).

#### **4.4 Protection of Journalists and News Media Personnel in Armed Conflict**

“Every journalist killed or neutralized by terror is an observer less of the human condition. Every attack distorts reality by creating a climate of fear and censorship (Donders, 2015).

One of the greatest threats to freedom of expression around the world is the violence committed against journalists practicing their profession in conflict situations. An alarming number of journalists have been targeted or killed when reporting about terrorism (Yadav, 2015). Journalist venturing into war zone who seeks to cover in the conflict areas places themselves at risk of injury or death by their acts. Journalists have

long assumed a special importance in terrorism news. In armed conflict, journalists are among a precious few remaining actors capable of exposing illegality (Yadav, 2015). Journalists want to be as close as possible to the events, while, the parties of an armed conflict or a terror situation often see the unpleasant truth exposed by journalist as a threat leading to cruel treatment to journalist (Yadav, 2015). Nonetheless the media should not be seen as a lawful target, even provided they are employed for propaganda reasons, except they are being ill-used to bring about grave breaks of humanitarian law. Journalists and media personnel also benefit from precautionary measures such as the principle of proportionality and the obligation to give advance warning. Geneva Conventions and additional protocol 1 both of which regulate international armed conflicts offer some protections for journalists during times of armed conflict (Icrc.Org, 2015).

Journalists, media professionals and associated staff play an essential role in informing the public and the international community. This is all the more so in situations of armed conflict, where access to information may be difficult; they witness what is happening on the ground, gather and disseminate information about events and can help identify serious violations of human rights and international humanitarian law (Yadav, 2015). The term journalist, according to a 1975 draft United Nations convention, is defined as;

“The word journalist shall mean any correspondent, report, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as their principal occupation”. Thus, the term ‘journalist’ encompasses ‘all representatives of the media, namely all those engaged in the collection, processing and dissemination of news and information including cameramen and photographers, as well as support staff as drivers and interpreters (Yadav, 2015).

One of the most dangerous works in the world is journalism in armed conflict with the highest susceptibility to dangers of war. According to Hassan Shaaban, head of the Center for the Legal Protection of Journalists in Iraq, told Human Rights Watch (HRW) that, “Terrorists are systematically targeting journalists (Adriaensens, 2015). Some have even been facing another form of threat from the government security agencies when he

added that the government is not even protecting them. Their properties are sometimes seized; some are arrested for covering issues that are politically motivated in relations to terrorism. The environment is hostile to them; both the terrorist and even the government may consider them unwanted witnesses and went to obstruct their mission. To create a constant freedom of information and proper protection of those who gather the information is very important during armed conflict. As civilians are accorded protection, so also should be accorded to the journalists when performing their duties and they should not be separated from a civilian identity.

The independent journalist has to be strictly distinguished from the war correspondent, who is a member of one of the conflict parties or who accompanies their military units; the power of media reportage in times of armed conflict was affirmed by the International Criminal Tribunal for the Former Yugoslavia, in the *Brdanin and Talic* case (Yadav, 2015).

In the instance, the Appeals Chamber affirmed that:

“.....Journalists reporting on conflict areas play a vital role in bringing to the attention of the international community the horrors and realities of the conflict... indeed.... It was the brave efforts and reporting of journalists in the former Yugoslavia that, in part, contributed to the establishment of the tribunal (Kerr, 2004).

The scope of IHL is to separate persons participating and otherwise from harm during conflicts. Consequently, no instrument of IHL expressly covered the issue of action or speech as a freedom given to them. They do not grant the right to enter a territory without the consent of the authority controlling it; they do however set the grounds for their legal protection whenever they find themselves in a context of an armed conflict (Icrc.Org, 2015).

#### **4.4.1 Historical Development of International Law Protecting Journalists**

At the international level, Journalism has been given much recognition. Indeed, the League of Nations convened a Conference of Press Experts in 1927, adopting a number of resolutions regarding issues such as the treatment of foreign journalists and the provision of identify cards for journalists as a means of preventing violence against journalist (Yadav, 2015). All of these resolutions suffered from non-adoption but protection for journalists got adoption when it was infused into the 1949 Geneva Conventions.

The first laws of armed conflict to provide special protection for journalists were included in the 1863 Lieber code and it provided that; “Citizens who accompany an army for whatever purpose, such as settlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such (Lieber, & Sheppard, 2011).

When international laws on the law of armed conflict were being debated in The Hague, a provision regarding journalists was included in Article 13, and was reiterated in the 1907 Hague Regulations concerning the Laws and Custom of War on land, annexed to the fourth Hague Convention of 1907; Article 13 of the regulations provides that: (Yadav, 2015).

“Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters are entitled, in case of capture, to treatment on par with that extended to prisoners-of-war, on the condition that they are in possession of suitable accreditation- a certificate from the military authorities of the army which they were accompanying (Icrc.Org, 2015).

This provision was included in the 1929 Geneva Convention relative to the treatment of prisoners of war, in Article 81; with the update of Geneva conventions following the World War II, the provision regarding correspondents was retained and expanded (Yadav, 2015). Geneva Convention III relative to the Treatment of Prisoners of War, Article 4A provides that:

“Prisoners of war, in the sense of the present convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy....(4) persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model (Crawford & Davies, 2014).

Thus, war correspondents are to be afforded prisoner of war status and treatment as an expansion of The Hague protections and those of the 1929 Geneva Convention (Crawford & Davies, 2014). The journalist who have connection with the military components with proper identity shall be accrued the protections said above. Any independent Journalists in the battle field are not eligible to the protection of the Convention.

#### **4.5 The Protection of Journalists as Civilians**

When the laws of conflict was reviewed, the exceptional position of journalists during war got endorsed in the 1970s. Under article 79 of Additional Protocol I, journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of article 50, paragraph 1 provisioned that they take no action adversely affecting their status as civilians (Kaurinovic 2008). The commentary to the protocols notes the importance of protecting journalists that

“The circumstances of armed conflict expose journalists exercising their profession in such a situation to dangers which often exceed the level of danger normally encountered by civilians. In some cases, the risks are even similar to the dangers encountered by members of the armed forces, although they do not belong to the armed forces. Therefore, special rules are required for journalists who are

imperiled by their professional duties in the context of armed conflict (Icrc.Org, 2015).

Finally, Journalists engaged in dangerous professional missions in areas of terrorism shall be considered as civilians within the meaning of article 50. They shall be protected as such under the Conventions and this protocol, provided that take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in article 4 (A) (4) of the third Convention (Icrc.Org, 2015). They may obtain an identity card similar to the model in Annex 11 of this protocol and this card, which shall be issued by the government, of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located shall attest to his status as a journalist (Icrc.Org, 2015).

#### **4.6 Protection of Medical Units, Medical Personnel and Religious Personnel**

Articles 12-15 of the 1977 protocols supplement the existing rules on the protection of medical units and civilian medical and religious personnel. In this respect, the first point of interest is how these categories are defined in the protocol. Medical unit can be defined as;

“Establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment – including first-aid treatment of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centers, preventive medical centers and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary (Icrc.Org, 2015).

Medical personnel on the other hand, as defined in Article 8 (c), are ‘those persons assigned, by a party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operation or

administration of medical transports (Icrc.Org., (2015). Such assignments may be either permanent or temporary'. Article 8 (c) lists three categories of persons who are included under the term in any event:

- (I) Medical personnel of a party to the conflict, whether military or civilian, including those described in the first and second Conventions, and those assigned to civil defence organizations;
- (II) Medical personnel of National Red Cross, Red Crescent and Red Lion and Sun Societies and other national voluntary aid societies duly recognized and authorized by a party to the conflict;
- (III) Medical personnel of medical units or medical transport described in article 9, paragraph (Icrc.Org, 2015).

The units or transports indicated under (iii) are those units or transport which have been made available to a party to the conflict for humanitarian purposes' by a neutral state or aid society of such a state or by an impartial international humanitarian organization (Kalshoven & Zegveld, 2011)

Furthermore, Religious Personnel can be defined to be;

Military or civilian persons, such as chaplains or Imams, who are exclusively engaged in the work of their ministry and attached;

- (i) to the armed forces of a party to the conflict;
- (ii) to medical units or medical transports of a party to the conflict;
- (iii) to medical units or medical transport described in article 9, paragraph 2;  
or
- (iv) to civil defence organizations of a party to the conflict (Icrc.Org, 2015).

Additional Protocol I is a supplement of the Geneva Convention, it fortifies the protection for unbiased war medical care, it gives details into medical-care provision to



mental-health issues. It maintains that the condition that the status of medical personnel, transports, and units—even so-called civilian medical personnel—be centered on the recognition and authorization of a party to the conflict (HLS PILAC, 2015). It also prohibits imprisoning of medical personnel on medical duties if it does not deviate from the ethics of their job. The Additional Protocol expressly recognizes that certain acts committed against medical personnel, units, and transports may constitute grave breaches (HLS PILAC, 2015)

Some countries that have not agreed with Additional Protocol I includes Israel, Pakistan, Somalia, Turkey, and the United States. They have claimed it does not reflect good law or sound policy. It is believed that it supports terrorism. However as it was said earlier, IHL protects those involved in medical care and the means they use to do so. Unfortunately, some States in terrorist controlled regions have been attacking health care givers and there facilities, for example, according to physicians for Human Rights, it had documented 313 attacks on medical facilities and the deaths of 679 medical personnel in Syria since protests against the regime of Bashar al-Assad began in March 2011 until the end of August 2015. It was added that “Syrian government forces have been responsible for more than 90% of these attacks which constitutes a war crime (Chulov & Malik, 2015). So many health facilities have been destroyed leaving victims dispossessed of medical care with the life of medical staffs at danger. Drugs are now even unavailable to administer to victims due to the cut and destruction of production plants. Over 469 Syrian health care workers have been imprisoned by the Assad government and accused of terrorism for giving medical cares to victims. At present, doctors are exiting: in fact, more than 15,000 Syrian doctors have run away to overseas because they are now vulnerable to risk. Also, during the recent Palestinian-Israeli conflict, Israel has been harshly criticized for its strikes on Gaza’s hospitals (Ahmed, 2014).

With regards to IHL, States thereby must and have come into a point of understanding that it is important to place medical care for the wounded and sick above any form of conflict. IHL expressly made it known that injured fighters, even terrorists, must not be

denied medical care. More so, medical units that are used to commit, and perpetrate activities outside humanitarian function, will lose its protection.

Article 15 states and elaborates the principle that civilian medical and religious personnel 'shall be respected and protected. It further restates and emphasizes the obligations of occupying power responsibilities under article 56 of the fourth Convention and call for this power to give civilian medical personnel in occupied territories every support to assist them to carry out to the best of their ability, their humanitarian tasks. It is understandable that the said power may not, on the contrary, oblige them to act in a way which is not compatible with their humanitarian mission.

#### **4.7 Protection of the Wounded, Sick And Ship Wrecked**

“Members of the armed forces and other persons who are at sea and who are wounded, sick or ship-wrecked shall be respected and protected in all circumstances.”

It is very rare to find warfare on the sea involving terrorists which means protection ascribed to wounded and sick victims of arms conflict on sea as regards terrorism would not be delved into.

The core existence of Geneva Convention was to care for enemy forces but a question stands to be answered; is it proper to protect people that are responsible for extreme violence and bloodshed witnessed every day in terrorist controlled States?

Protecting a suspected terrorist injured and sick is the right thing to do. All human beings irrespective of their race, ideology, religion, status or gender deserves right to live ones they pose no any sort of danger any more. Having guns or bomb tied round the waist of a seriously wounded terrorist, such person may not be considered to be protected till he has no such deadly objects on him or her with the presence of security agencies to watch him or her. They are to be given unbiased attention they deserve, by the opposition force or the regime at opposition. Medical personnel are to respect them.

Dzhokhar Tsarnaev who master-minded the Boston Marathon attack was seriously injured. The spirit of the core value of IHL was displayed in his case. He was moved to Federal medical detention center for treatment. His death would have actually pleased a lot of victims that were affected directly or indirectly but the truth is that a lot of useful information would have died with him and no lesson would have been learnt from the tragedy. IHL has it in its principle to allow fair trial, conviction and necessary punishment to be given to any guilty terrorist but it is never to be in the hands of people or medical experts to deny a victim the required medical treatment based on prejudice since a victim's legal and political consequence to his action is not in their hands; or government combatants to put judicial verdict of death on a wounded or injured terrorist with no threat any more from him.

#### **4.8 Protection of Prisoners Of War**

The International Committee of the Red Cross (ICRC) declared the Geneva Conventions to be the "bedrock of principles and rules that must guide the conduct of hostilities and the treatment of persons who have fallen into the hands of a party to an armed conflict.

No terrorist group is a signatory to or in line with the support of the Geneva Conventions and the treaties to laws of war. Also, it is obvious that Hamas, Hezbollah, and followers of the global Al-Qaeda network despise both the essence and the undertone of international treaties and Convention considered to ameliorate the brutality of war. Bloody attacks in New York, Jerusalem, Bali, Madrid, and Beslan are testament to the fact that these groups seek out to exterminate members of the public instead of taking them as prisoners (Lapkin, 2004). Furthermore, when Islamist terrorists do seize captives, inhumaneness as opposed to protection of their life seems, by all accounts, to be the standard.

According to the criterions that spelt out who should be a prisoner of war by Hague and Geneva Conventions, it says:

- a. that of being commanded by a person responsible for his subordinates.

- b. that of having a fixed distinctive sign recognizable at a distance.
- c. that of carrying arms openly.
- d. that of conducting their operations in accordance with the laws and customs of war.

Al-Qaida attacked US, not Afghanistan, meaning that they would have been ascribed the POW status if they fought as soldiers of Afghanistan. The Commanders of this terrorist group do not accept responsibility of the operations of their members in their deadly acts. They have methods that are secretly executed, their members do conceal bombs and explosives to carry out actions disastrous. They have no regard for the rules of war. This is also applicable to the Taliban leaders funding terrorism. They do not conduct their operations in accordance with the laws and customs of war. No symbols to identify them as team from distance. Total neglect of respect for human lives coloured with brutal ideologies. This stripes them off the status of the POW.

Irrespective of all this barbaric nature of these groups, they deserve to be treated humanely. Reports have shown that, in Iraq, the U.S. trained Special Forces torture and behead ISIS prisoners. On 21 January, the Iraq authorities executed 26 terrorist prisoners less than a week after UN Secretary-General Ban Ki-moon urged the Iraqi authorities to impose a moratorium on executions (Amnesty.Org, 2015). It has been known that the Iraq government are not ready to treat any alleged terrorist as a POW and its seen in the words of Prime Minister Nuri al-Maliki when he said that his government did “not believe that the rights of someone who kills people must be respected (Amnesty.Org, 2015).

The aims of Al-Qaida have to do with the elimination of the influence of American in Muslim States, cutting off the existence of Israel and setting up its Caliphates again. Their ideas may not be legitimate or relevant but there exist a moral duty to preserve life and apply the basic level of humanity to treatment towards them. In particular, they are not to be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner

concerned and carried out in his interest (Umn.Edu, 2015) The Geneva Convention orchestrates this idea of human dignity. The Convention outlaws attacks directed towards innocent civilians. Almost all terrorist groups solely attack civilians. They may be denied status of POW but they should be liable to detention. There are also constraints on transferring inhabitants of occupied territory out of such territory. Geneva Convention III classed terrorists as unlawful combatant but the Guantanamo Bay prisoners are treated not according to the principles of the Convention. Normally, as POW, Geneva Convention prohibits interrogation but allows POW to give their names, rank, age and number. To know who is an unlawful combatant or a lawful combatant, it lies in the hands of the court to decide and US has applied this part of the Convention by allowing the tribunal at Guantanamo Bay to determine a prisoners' status. It is this decision that would reveal if a suspect would be released or sent back to his country.

Through the advisory service on International Humanitarian Law, the ICRC encourages states to adopt national legislation for the implementation and application of humanitarian law at the national level. ICRC legal experts at its headquarters in Geneva and in the field provide states with technical assistance, for example, on legislation to prosecute war criminals such as terrorists or protect the Red Cross and Red Crescent emblems, (Lindsey, 2001) although, States have the primary responsibility for the education of humanitarian law. Over the years, the ICRC has developed a considerable expertise in that field and its delegates often give course especially to armed security forces, state employees and diplomats as well as civilians in general. In these activities, the ICRC whenever possible cooperates with the local Red Cross and Red Crescent societies as indeed with the international federation of Red Cross and Red Crescent societies.

## CHAPTER FIVE: IMPLEMENTATION OF IHL

### 5.1 The Role of ICRC in the Implementation of IHL

The International Community of Red Cross (ICRC) has a precise duty under the Geneva Convention to care for victims of armed conflict and internal violence. The ICRC explores their operations in which it is guided by its fundamental principles. They have, through their fundamental principles, initiated some humanitarian agencies to join hands in helping victims of arm conflicts.

It promotes the safety of lives and prevention of suffering by:

1. adoption of new treaties to make IHL more effective and respond to new needs that arise;
2. ratification and usage, by States, of laws, tools and measures to give effect to these instruments at national level;
3. Awareness and education programmes to make sure armed actors know of, understand and act upon their responsibilities to protect civilians in times of war. It does not fail to place restriction on the use of weapons with indiscriminate effects and suffering on innocent civilians (IRINnews, 2016).

They have the duty to work in line with the full application of international laws of armed conflicts. At both internal and international conflicts, they are to act fairly and neutrally to protect and serve aids to combatants and victims. Also, they have in their duty to inform conflicting sides about the laws in relation to armed conflicts. They are the guardian of the International Humanitarian Laws. They make sure that parties to conflict comply with the laws. Upon the violation of the IHL, the ICRC has the responsibility to correct either of the parties. They operate as discreet diplomats to settle violent conducts between parties and it does not provide evidence before national or international court which is based on its compliance with the principle of confidentiality.

## 5.2 The Role of the International Criminal Court (ICC)

In 1998, the Rome Statute on the International Criminal Court paved the way for the establishment of a permanent court capable of prosecuting individuals allegedly responsible for serious breaches of IHL – and with jurisdiction over crimes regardless of when or where they were committed.

In chapter four as it was said, the court does not have jurisdiction on terrorism but from the argument of scholars, the acts of terrorism can be prosecuted as crimes against humanity. The 9/11 attack against U.S. by Al-Qaida is a call for international community to join hands together and eliminate terrorism from its root at the international level. National laws may no more be effective to curb the menace of terrorism in the nearest future.

Bringing focus on the jurisdiction *rationae materialis*, in the meaning of Article 1 of the Rome Statute, the Court shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern. Article 6, 7 and 8 respectively listed the crimes to be genocide, crimes against humanity and war crimes.

However, jurisdiction *rationae personae* needs to be given a view. Article 25 and 25 of the Rome Statute clearly expresses it that ICC has jurisdiction over natural person who must be above the age of eighteen as at the time the crime was committed. Article 12 stipulates it that ICC's jurisdiction extends to territory of the State's party where crime is committed with no regards to the nationality of the accused. In subsection 2 of Article 12, the criminal will suffer some criminal responsibilities even whether the State he is a nationality is a party to the Rome Statute or not. On the ground of nationality principle, the ICC carry out jurisdiction over people, who are have nationality with State or States parties that have accepted the jurisdiction of ICC. Alleged individuals can go through trial regardless of whether a criminal act has been committed in the territory of a state party. On the other hand, non-state parties are not bound by the provisions of this Rome Statute; they are free to disregard the authorities of the ICC in a situation where a national of a State committed a criminal offence in their own territory.

ICC has jurisdiction for crimes only committed after the Rome Statute came into force. This is known as jurisdiction *rationae temporis*. Besides, States that became a party afterwards, all crimes committed after the Statute came into force are covered. In any case, it would be sufficient that either the criminal act was committed or that the nationality of the author of the crime be party to the Statute for the competence of the ICC to be recognized.

From all the discussions seen so far, no one definition has been given for terrorism, there have been a big challenge for the international community to differentiate between terrorism, national liberation movement and some other movements that apply force to achieve their goals. However, at present, most States have resulted to being selective on which treaties they will be a signatory to and applied to their national laws. This calls for an agreement among States to agree on tackling terrorism at the international level and this is where ICC comes into the scene as the international judicial body to handle this issue of terrorism.

The ICC is right now the main proficient international body that could fill the present crevice in the law and serve as a perfect instrument in the fight against terrorism by maintaining justice. The essential connection between peace and prosecution by an unprejudiced court ought not to be thought little of. With adequate backing of the international community, the ICC could be an effective instrument, and it could be a particularly valid one by prudence of its openness and duty to the legal beliefs regarded by most national legal frameworks. It would be a genuine mishap if the Court were permitted to develop incompetently.

### **5.3 The Role of United Nations Security Council in the Enforcement of IHL**

The Security Council is conferred with the authority to make recommendations or decide upon measures with the purpose of giving effect to the judgments of the International Court of Justice (ICJ), including of course those that might establish violations of international humanitarian law (Roscini, 2010). Also, certain treaties



containing international humanitarian law provisions specifically provide a role for the Security Council in their implementation, i.e., the 1977 environmental modification convention, and the 1993 Chemical Weapons Convention.

The Security Council has adopted a variety of measures in relation to international humanitarian law. It has for instance determined that international humanitarian law applies to certain situations or that certain conduct amounts to a violation of international humanitarian law, it has invited to consider to convene a meeting of the high contracting parties to the Geneva Convention IV and it has condemned or deplored violations and those who perpetrated them (Roscini, 2010). The council has also set up fact-finding bodies (albeit that these have sometimes been preliminary to the adoption of coercive measures). The security council has in various armed conflicts encouraged, urge, called on, demanded and requested belligerent states to comply with international humanitarian law (in general or with regard to specific instruments).

In Resolution 1265 (1999) on the protection of civilians in armed conflict, for the first time the Council urged all states to respect international humanitarian law without reference to a specific conflict (Roscini, 2010). in the cases, the calls have been accompanied by the threat of the adoption of coercive measures in case of non-compliance: it has however been observed that these threats usually have a negligible effect on the conduct of those to whom they are addressed. The Council has also on various occasions called on member States to enhance their legal and institutional ability to counter terrorist activities, including taking steps to: Criminalize the financing of terrorism; freeze without delay any funds related to persons involved in acts of terrorism; deny all forms of financial support for terrorist groups; suppress the provision of safe haven, sustenance or support for terrorists (Beasley,Blackstone,Stinger, 2004). share information with other governments on any groups practicing or planning terrorist acts; cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and; criminalize active and passive assistance for terrorism in domestic law and bring violators to justice (Un.Org, 2015). In the Resolution 1624 (2005) which relates to motivation to commit acts of terrorism, implored UN Member States to disallow such act by law, counteract it and provide no

place of refuge to anybody regarding whom there is reliable and important information giving genuine purposes behind considering that they have been liable of terrorism.

#### **5.4 Prohibitions and Criminal Liabilities Armed Conflict Regarding Terrorism**

Most terrorist-type conduct committed in any type of armed conflict is already criminalized as various war crimes. The reason is due to the fact that IHL forbids attacks directed against civilians which covers indiscriminating attacks; act of vengeance; the use of illegal weapons; attacks on cultural property, objects indispensable to civilian survival, or works containing dangerous forces; or through illegal detention, torture or inhuman treatment. Also, the set of criminal acts against humanity is applicable at the same time as in armed conflict just for the sake of protection of civilian populace against regular attacks.

Moreover, in the Article 33(1) of Geneva Convention IV, IHL prohibits the ‘collective penalties and likewise all measures of intimidation or of terrorism against protected persons in the hands of a Party’ (as in detention or occupied territory) to an international conflict. Article 51(2) of Protocol I of 1977 protects all civilians and it states that “acts or a threat of violence the primary purpose of which is to spread terror among the civilian population” is prohibited. Article 13(2) of Protocol II prohibits this same act in non-international conflict. Article 4(2)(d) of Protocol II additionally prohibits ‘acts of terrorism’ in non-international conflicts.

The International Criminal Tribunal for the former Yugoslavia found that a violation of Article 51(2) of Protocol I attracts individual criminal responsibility in the *Galic* case, in spite of the fact that the article not being listed as a ‘grave breach’ provision. The war crime which has to do with the spreading of terror directly against a civilian population was committed by a operation of sniping and shelling of civilians in the surrounded city of Sarajevo, by purposefully directing the practices of everyday life and in so doing aiming to put civilians in great terror. The crime needed to satisfy the possession of

mainly spreading terror purposefully by the offender, but the actual act of causing terror is not necessary. The *dolus specialis* to spread terror is highly prohibited.

A critical look at the definition of terrorism by 2003 military instruction, it expresses it as violence ‘intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation and coercion’. In 2004, the offences of the two accused detainees of the Guantanamo Bay were wrapped in the above definition.

Also, in IHL offences, national criminal law could be very useful to some acts of terrorism in armed conflict. The criminal law of an occupied territory is highly applicable to civilian and participants of hostilities in the area of international conflict which is an issue with relations to needed amendment so as to make certain the security of the occupying power. In the context of non-international conflict, the national criminal law of a State is valid and useful to criminalize a non-State actor’s terrorism act. To zoom to limelight, IHL allows States to grant amnesties to terrorists when a conflict has got a reputable solution but not for war crimes.

Thus, the common Article 3 of the Geneva Convention, in non-international conflicts, makes provision for a criminal trial which is fair to be conducted by a regular constituted court which has the judicial stand being recognizable.

## **5.5 Summary**

This study sums a critical reflection and appraisal of the role of International Humanitarian Law in the area of terrorism under armed conflicts and to what extent, international humanitarian law as it exists today continues to provide an appropriate response to the humanitarian problems arising from armed conflicts in relations to terrorism by setting up rules to conduct this type of conflict in order to limit its effects among people as well as also formulating measures or mechanisms for its implementation in order to ensure compliance with the rules of IHL by prosecuting and administering punishment against offenders of terrorism.

With respect of most of the issues examined, the study showed that international humanitarian law, in its current state, provides a suitable legal framework for regulating

the conducts of parties to armed conflicts (un.org.2015). The legal framework for regulating the conducts of armed conflicts as discussed in this study is the Geneva Conventions, Hague Rules and Customary laws. However, the study also showed the role of IHL in checking armed conflicts by building on the existing legal frame work and examining different areas the protection of children, women, prisoners of wars, journalists, medical personnel, wounded and the shipwrecked among others as discussed in this work.

## CONCLUSIONS AND RECOMMENDATIONS

This study showed that International Humanitarian Law is fully capable of effectively tackling the problems of terrorism. Under the rules of International armed conflict and the non-international armed conflict, there are some acts of terrorisms that they regulate. In the opinion of the researcher, there seems to be no need for any exceptional status to label terrorist in the context of IHL in which may ridicule the protection existing humanitarily. Terrorist may be targeted for engaging in unswerving acts of violence, detained and prosecuted for alleged war crimes.

Conversely, there are some laws which are not prohibited by International Humanitarian Law but are criminalized by some other laws which include in proportion, attacks on military objectives by non-State forces or prohibited terrorists sects, for example LTTE in Sri Lanka, that are parties to such conflict.

One contrary consequence may be to undermine the adequacy of IHL and its humanitarian commitments. On the off chance that non-state groups get marked and delegitimized internationally as terrorist criminals, any motivation for them to conform to IHL will be forfeited. Staying undefeated will bring along more plain criminal punishment instead of security detention, amnesties and demobilization.

Where a non-State group is considered a party to a conflict with no criminal branding, they must comply with the humanitarian rules. In that wise, there is a great deal of work to do to incorporate terrorist groups to be in compliance with IHL. With their status as a non-signatory to the treaties of IHL, they can be motivated to agree with the customs of IHL such as the agreement stipulated in Article 3(2), unilateral declarations or deeds of commitment, codes of conduct, training, and the creation of disciplinary systems (including 'courts', like those of the LTTE).

Over the years, IHL has been experiencing development; it is strong, bendable and tolerating for more future challenges. Also, it is delicate and can lose its strength if States absolutely render it useless or incompetent. In this situation, States, innocent

civilians will be the ones to suffer this while the terrorist will have more reasons to flourish.

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