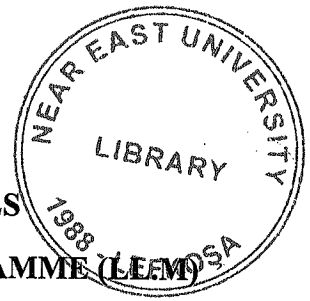


**NEAR EAST UNIVERSITY**  
**GRADUATE SCHOOL OF SOCIAL SCIENCES**  
**MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)**



**MASTER'S THESIS**

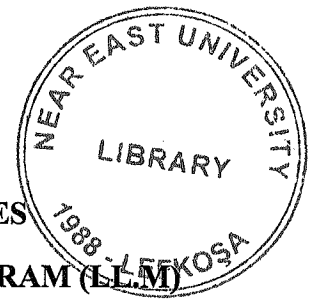
**THE APPLICATION OF INTERNATIONAL HUMANITARIAN  
LAW**

**BAZAR RASHID ABDULRAHMAN**

**NICOSIA**

**2016**

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**NICOSIA**  
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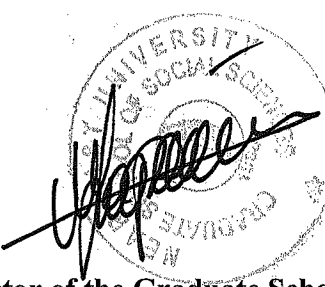
  
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**DECLARATION**

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I Bazan R. Abdurahman, hereby declare that this dissertation entitled  
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## ABSTRACT

The International humanitarian law (IHL), the law of armed conflict, aims to be a relief from the scourge of war by protecting combatants who were unable to fight, or those who are participating in combat at all, as well as, the protection of civilian and cultural property.

For this purpose, the IHL has several characteristics: the law applicable during armed conflicts only and it is one of the department of public international law and enjoys the same mandatory strength, and that became possible within the establishment of the ICC international criminal allows for perpetrators of breaches of IHL.

To sum up what we have done, the mandatory rules of IHL and criminally punishable nature of that, especially when these contrary international crimes prescribed in article (5) of the basic system of the ICC (1998). It stated that the IHL has several mechanisms to ensure its implementation at the domestic level and at the international level these are internal mechanisms in States commitment to passing legislation necessary for the application of IHL.

As for the IHL enforcement mechanisms at the international level it is mandated criminal mechanism of the ICC of (1998) which had become competent to trial of cases of blatant violations of IHL for international crimes provided for in the system. As well as, the United Nations Organization (UNO) and its organs as the Security Council of international mechanisms on the application and observance of IHL, also, prevent and stop any violations, through the application of Chapter VII of the Charter and the decisions of military and non-military sanctions.

**Keywords:** International Humanitarian Law (IHL) and its Characteristics, The Effectiveness of IHL on the Protection of Persons and Property, The Application of IHL Internationally and Internally.

## ÖZ

Uluslararası İnsani HUKUK, Silahlı Çatışma Hukuđu, sivil ve kültürel varlığın korunması kadar savaşamayan veya hiç savaşı katılmayan savaşçıları koruyarak savaş felaketinden kurtulmayı hedefler.

Bu amaç için , UIH birçok özelliklere sahiptir : sadece silahlı çatışmalar sırasında uygulanabilen yasa ve kamu uluslararası hukuđun bir bölümüdür ve aynı zorunlu gücün keyfini çıkarır, ve ICC' nin kuruluşunun içinde mümkün olur, Uluslararası suç UIH'nin ihlallerinin faillerine izin verir.

Yapmış olduğumuzu özetlemek gerekirse, özellikle ICC'nin (1998) temel sisteminin (5). Maddesinde bu karşıt Uluslararası suçlar buyurulduđu zaman UIH'nin zorunlu kuralları ve bunun suça cezalandırılabilir doğası ortaya çıkar. UIH'nin Uluslararası ve yerli düzeyde uygulamasının sağlanmasından emin olmak için birçok mekanizmasının olduđu belirtilmiştir. Bunlar UIH'nin uygulanması için devletlerdeki gerekli olan geçen mevzuata bađlı iç mekanizmalardır.

Sistemde öngörülen Uluslararası suçlar için UIH'nin bariz şekilde ihmallerinin davasının duruşmalarında yetkili olmuş olan 1998'in ICC'nin suç mekanizmaları için zorunludur. Bunun yanı sıra, Birleşmiş Milletler Örgütü (UNO)ve onun organları, UIH'nin uygulaması ve gözetilmesi konusunda Uluslararası mekanizmaların Güvenlik Konseyi olarak tüzüğün VII. Bölümünün uygulanması ve askeri ve askeri olmayan yaptırımların kararları doğrultusunda herhangi bir ihlali önler ve durdurur.

**Anahtar Kelimeler:** Uluslararası İnsani Hukuk (UIH) ve Özellikleri, Kişilerin ve Mülkiyetin korunması üzerinde UIH'nin Etkinliđi, Uluslararası İnsani Hukuđun Uluslararası ve Dahili Uygulaması.

## **DEDICATION**

I am very pleased to dedicate this to my parents, brothers, sisters, teachers, friends and fellow members without whom it was almost impossible for me complete my thesis work.

## ACKNOWLEDGEMENTS

I would like to gratefully acknowledge various people who have been journeyed with me in recent years as I have worked on this thesis.

Firstly, I owe an enormous debt of gratitude to my beloved wife, Niroj, and my three children, Pary, Bina, Shah.

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Thirdly, I would also like to acknowledge with much appreciation the crucial role of the staff of Near East University, who gave the permission to use all required sources and the necessary materials to complete this dissertation.

A special thanks to my family. Words cannot express how grateful I am, to my mother, and father for all of the sacrifices that you've made on my behalf. Your prayer for me was what sustained me thus far. Thank you for supporting me for everything, and especially I can't thank you enough for encouraging me throughout this experience.

BAZAR R. ABDULRAHMAN

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## **LIST OF ABBREVIATIONS**

IHL : International humanitarian law

ICC : The International Criminal Court

SU : Soviet Union

IC : International Court

GC : Geneva Conventions

UN : United Nations

ICRC: The International Committee of The Red Cross

HC : Hague Conventions

US : United State

IJC : International Justice Court

FBI : Federal Bureau of Investigation

GAUN : General Assembly of United Nations

GA : General Assembly

## INTRODUCTION

Since the emergence of human on earth, wars accompanied him, until it becomes a feature of human history, during which he used the worst brutal methods and excessive bloodshed and destroy everything that stood in its path. So you need to put some sort of rules into account during armed conflicts which limit the freedom of the warriors to choose what they want from the ways of fighting and its means. Also, war's phenomenon made the emergence of legal principles of humanity and common values based on the need to protect the human rights, dignity and work to be sure of his safety, all of these rules will be taken within humanitarian law.

The IHL derives its rules from a group of the convention and customary sources and seeks to use it to regulate the conduct of hostilities. It equally provide greater platform for protecting the victims of international and non-international conflicts. This legal system have identified some actions that engaging in such actions will cause a gross violation for the rules of IHL, it requires the perpetrator to sign some documents which will deter the perpetrator from indulging in such action, this is done by signing necessary punishment in case it proved his responsibility.

The existence and enforcement of IHL at the international level is not only about what has been mentioned earlier, whether temporary or permanent ICC, but there are many intergovernmental organizations such as the UN and its' organs such as the UN Security Council and the GA. They monitor largely over the government's commitment of states to the application of IHL, as it is providing reports about civilian circumstance on situations of armed conflict, during which the UN Security Council interfere with binding decisions to stop the conflict, maintain the international peace and security decisions. There are also international organizations, non-governmental, the most important are ICRC and the International Organization for Red Crescent, and the Medicine Sans Frontiers organization can be online by its humanitarian tasks in any international or non-international armed conflict to present reports about any breaches of IHL.

The Security Council sees to the implementation of the rules of IHL into two types of mechanisms that have non-judicial nature of the economic punishments, while the second type is to humanitarian intervention.

The rules of IHL are considered peremptory rules, it is not permissible to agree with its violate because it regulates an important aspect and evaluate a fundamental obligation to protect the fundamental interests of the international community. Due to the technical development in the field of military industry and their methods of operation, the number of offenses committed has increased sharply. But violating the legal rule does not mean lack of its existence; it must be a distinction between the existence of the legal base and its effectiveness. The violation effect on the efficiency of legal rule, not on its existence, this can be applied in all branches of law including IHL.

### **The Theoretical Framework of The Study**

The dissertation contains five chapters, the first chapter consist the introduction and the importance of the study, and the research problem and also the purpose and methodology of the study, along with the most important public references. The Second Chapter will include the definition of IHL and its sources and its Characteristics, especially that it applies during armed conflicts only, and this is what distinguishes it from international human rights law. The Third Chapter will highlight the effectiveness of IHL in the protection of persons and property during international and non-international armed conflicts, through reporting and integrating it in the internal legislation, particularly penal law. The Fourth Chapter is going to include the existence and the enforcement of IHL internally and internationally, where looking the role of international organizations of UN and the role of non-international organizations, such as, the High International Committee for Nations in applying and monitoring of the implementation of IHL, and then the role of international criminal courts to punish for the violations of IHL. The Fifth Chapter, contains conclusion, recommendations and the researcher outcomes.

### **The Research Problem**

- The research problem is concerning those States that do not take the required action to ward off the violation, therefore this study comes like an answer to this problem.
- That there are fundamental differences between countries in terms of their interest in the application of IHL.
- As well as, there are problems related to sovereignty, it may be disabled in the way of how to apply IHL.

## **Objective of The Study**

The aim of this study is to identify the obligations of States regarding to the existence and enforcement of IHL and the means that have to be taken for this purpose:

- Revealing the extent of the application of IHL in conflicts.
- Highlighting the existence and enforcement of IHL, whether internally or internationally, and indicating nations' role.
- Indicating the role of the UN and in particular the role of ICC and the UN Security Council to monitor the presence and application of IHL.
- Clarifying the importance of reporting and teaching of the international law for institutions, military college, and police's curriculum in order to educate people about its rules.

## **The Significance of The Study**

Working on the enforcement of the presence of IHL has a great significance because it can protect States from the international responsibility and consequence, or subjecting its responsibility and citizens for criminal prosecutions at the national or international level. For this reason, recently the States interest in the enforcement of IHL have been increased. Also, the establishment of Councils and National committees that involved in the implementation of IHL, which is ultimately aimed at safeguarding human dignity and to distance him from the yard in armed conflicts, which is prohibited by international law, and resorting to peaceful means for marketing ,Article (2-4) of the Treaty of the UN, however, wars are still breaking out and armed conflicts are increasing around the world nowadays, which highlights the growing importance of the IHL, and interest of the way of how to apply it at the national and international level.

This topic became more important after growing phenomenon of prosecution of the Heads of States for their crimes that are violating of international law, it appeared from the trial of the Second World War criminals in Nuremberg, Tokyo... Etc.

## **The Research Methodology**

Our study will be based on the analytical method according to the topic which is associated with the presence and the application of IHL and the interpretation of the

phenomena that associated with it, according to legal sources that are available to us and relevant to the research topic.

## **The Research Outline**

### **The Chapter One: What is IHL and its properties**

**Section One:** The Definition of IHL and its sources.

**Section Two:** The Characteristics of IHL and the distinction between it and the international human rights law.

### **The Second Chapter: The Effectiveness of IHL in the Protection of Persons and Property during International and Non-international Armed Conflicts.**

**Section One:** The effectiveness of IHL in the protection of citizens during international and non-international armed conflicts.

**Section Two:** The effectiveness of IHL to protect property during international and non-international armed conflicts.

### **The Third Chapter: The Presence and Application of IHL Internationally and Internally.**

**Section One:** The Presence and application of IHL internally.

**Section Two:** The Presence and application of IHL internationally.

# CHAPTER I: WHAT IS THE IHL AND ITS CHARACTERISTICS

## 1.1 What is The IHL and its Characteristics

It was fashionable for many years to release the name of IHL on the large scale of public international law, which is inspired by human feeling, and focuses on the protection of the endive lvidual. It seems that the term IHL combines two different paragraphs in its nature, one of which is legal and the second is moral.

The IHL is a branch of public international law, despite its update, it is very important for humanity, because of the great role that human has in the organization of the war, and the heavy effects that occurred as a result of it.

It is intended that IHL was applied in the armed conflicts. The international rules which were established by a treaty or custom, was devoted particularly to solve the problems of a humanitarian character resulting directly from international and non-international armed conflicts, which can find humanitarian considerations of the right of the conflicted parties to resort to what they choice of methods or means for fighting, and it protects persons and properties that were affected by the conflict (Sassoli, Antoine, 1999, p.30).

With the increasing of the international and internal wars and the emergence of many separatist territories who are trying to separate from their native country by declaring the insurgency and holding weapons, as is the case in the Balkans, and the SU and the ongoing war in Iraq and Afghanistan, Lebanon and Palestine. These, and other conflicts confirm the urgent need for the IHL and respecting the GC, which its application takes a new path after the signing of the Primary System of Rome in (July 17, 1998) and that it was established for the ICC, which has become a competent punishment for the violations of IHL that have become international crimes.

### 1.1.1 The Definition of IHL

The definition of IHL has been known as a set of principles and organized judgments meant for special war methods, besides protecting the civilian population and the sick and wounded fighters who are prisoners of war (Sassoli, Antoine, 1999, p.5).



The IHL can be defined by its accurate meaning, it is that important part of general international law applicable to armed conflicts, that is containing a set of principles and customary rules governing the behavior of warriors in an armed conflict in the discharge of their rights and duties which were recognized in these rules, relating to the conduct of hostilities that limit their rights to choose the means and methods of the war (Anthony, 2010, p. 61).

Targeting in particular for the protection of victims of international or non-international armed conflict, they are fighters who are unable to fight in the battle, and unarmed people, including civilians who are not involved in the fighting at all, it will protect them and protect some property and objects which has no link to the battle that can be or not the target of fighting, or the subject of any inhumane treatment as a result of the hostilities.

It can also be defined "as a set of international rules formulated by the international conventions and customary rules that apply during the time of armed conflict, in order to conceal the scourge of these conflicts and reduce its effects. It is aimed by these rules to protect persons who does not involved in hostilities, such as civilians or members of medical services, or those, who have stopped their participation in hostilities, such as, the wounded, prisoners, and patients". This law includes rules that protect senates and money which does not have a direct relationship with the military operations like the civil senates, cultural, religious and medical senates, as its rules aimed to restrict the right of conflict parties to use what they like from the methods and means of war and because of humanitarian reasons (Sassoli, Antoine, 1999, p.7).

### **1.1.2 Characteristics of IHL**

We are exploring from the previous definitions of IHL several particular characteristics, which are distinctive from other branches of international law, which are going to be explained in the coming sentences as follow:

#### **The IHL is The Applicable Law in Armed Conflict**

This feature that characterized the IHL will be shown in the labels that apply to it, as it said to it the law of war and the law of armed conflicts. Therefore, the field of the application of IHL is limited to the specific case of all the cases of the applying general international law

which is the case of war. The war case has started since the announcement of war, according to the official authorization, or it starts with the outbreak of battles and the start of military operations. However, this war ends with the stopping of fighting and military operations at all by contacting a peace treaty or peace. (Sassoli, Antoine, 1999, p.20) Nevertheless, the permanent halt of the war, whether because of the agreed armistice between both sides, because of the rearrangement of forces or processing them will never end the war. The survival of aggression and occupation would retain the right to legitimate resistance to defend its people and territory until the defeat of occupation.

The armed conflict that has a right to apply the IHL is all the conflict between the armed forces to get the rights to protect their interests. Which is opposite to the right and interests of the other side, either this conflict happening between two countries or several countries, or internal conflict happen between two sides and several groups within one country, (Geneva Call, 2007) .

And the effectiveness of IHL launched into real practice. Thus, it is resorting to this law and demand respect as long as the conflict exists. As long as, the military operations occur between two parties even if they are intersecting, the armed resistance operations of the occupation are subject to the IHL, if they were implemented at spaced periods relatively. Even if there is no operation for a considerable period as long as the case of war persists and there was occupation.

Fighters enjoy during the conflict by the protection of IHL, regardless of their belonging to any party, whether they were belonging to the aggressor party or offended party. This Law aims to alleviate the scourge of war and reduce their impact on both by banning the use of certain weapons or by restricting its use.

The fighters who have given up their weapons or became unable to fight, such as, wounded patients and prisoners of war protected by IHL. That, the fighters should belong to one of the most legitimately warring factions, therefore, he does not enjoy as a fighter and get out of the framework of IHL, including spies or mercenaries who fight for money and they are not belonging to any side of the conflict by any link whether nationality or permanent residence. As well as, non-combatants from civilians such as ,women, elders, kids, journalists and medical members, and others, enjoy by the protection of IHL and it is not permissible to bomb their places ( Thakur, 2000 ).

## **IHL is One of The Branch of Public International Law and Enjoy The Same Mandatory Strength**

It has been mentioned that the IHL is one of the oldest branches of general international law. Its name only recently appears where was codified its rules in the shape of international agreements for a long time, but, it is a branch specialized to one side of the international law, which is the aspect of war.

Therefore, the IHL and general international law are linked to an origin branch, this relationship led to several effects that can mentioned as follow: -

- 1- "If the question arose as to concerning the war, which is resolved under IHL, acts as the special rule restricts the public and limits the scope of applying it, thus the IHL is applied alone on the issue".
- 2- "The general international law is the general legislation for IHL, in the sense that the rules blocking any lack in it, that if there is no decision on the issue in the rules of IHL, either agreement or customary, the rules of international law is to be applicable in that case".
- 3- "The implemented mechanisms of public international law, whether at the international or internal level can be used in the implementation and application of IHL, it can ask for the hand of the UN and its organs such as executive of the Security Council to impose respect for IHL. Thus, it was resorting to the Security Council in numerous occasions for the formation of the ICC to punish those who are responsible of committing criminal crimes".
- 4- "That the rules of humanitarian of international law have binding force. They are like any other legal rules with binding force, and countries should obligate to apply and respect it, if not they will be subjected to international responsibility, and what are the reparations of that, both the international responsibility of the violation of the rules of IHL. As it becomes a special provision, where the perpetrator is a violator of the rules of international crimes, it will be subjected to trial in front of ICC, which was signed in it's statute in the (July 17, 1998) and which came into force at the beginning of (July 2002),

which has the right to eliminate criminal penalties of up to life imprisonment, and it cannot be defended, where official leaders and heads are subject to punishment in front of it. Also violations of IHL constitute international crimes, do not drop by limitation can be tried by whatever was the time that went since the time that the crime was committed (Bianchi, Naqvi, 2011, p. 407).

### **The Consequent Violation of the Rules of International Law, Mandates Criminal Punishments**

The rules of IHL, characterized in that violating the consequent to be jailed, in addition to that, the country has to withstand the international responsibility and what compensation that is attached to it. This is opposite to the violation of other rules of international law, which consequent withstand the civilian international responsibility and giving the compensation instead of criminal penalty.

Therefore, reaching of humanity to the Rome Statute, originating from the ICC in (1998), is considered an important step toward moving the institutionalization of the Criminal Code, especially in light of that court jurisdiction to authorize the court for four sects of the international crimes, namely war crimes, crimes of genocide and ethnic cleansing, and also, the crimes against humanity and the crime of aggression. And it combines the sects of these crimes common factor is that they are all included in the criminal behavior of its material and in the violation of IHL rules.

It should be noted that, the ICC is a permanent court in the sense that it has a permanent registry court book and a General Attorney, which is made up of elected judges. Also, issues referred to them directly by the prosecutor of the court or by a decision of the Security Council, where they can refer the accused directly and the request for arresting them by the preliminary court office, but before the establishment of ICC, a special court was formed under a decision of the Security Council. Then, the court disappeared as soon as the end of the chapters in its case where it ends its specialization. But the specialty of the ICC is a supplementary specialty. Which means that it is going to be held if the national courts of the states did not judge them where it is the owner of the inherent jurisdiction of the court. Nevertheless, if it was clear that this elimination is fake or unable to trial, the complementary jurisdiction or reserve held for the IC, available from ICRC Customary IHL (Pictet, 1985, p.67 ).

## **1.2 Sources of IHL and Distinguishing it From Similar Laws**

This section will address two demands, the first demand will explore the sources of IHL, and in the second one it will illustrate the differentiation of IHL and other laws similar to it.

### **1.2.1 Sources of IHL**

#### **Ancient Humanitarian Principles That Contributed in Finding The Sources of IHL**

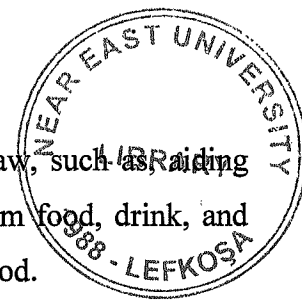
To codify the HC of (1899 and 1907), the laws and customs of war which are as old as humanity itself and which settled over the centuries and have established several principles, the most important of which is the principle of Knighthood.

**The Principle of Knighthood:** Is a principle that root the noble character in the fighter that prevented him from a war or attacking unarmed people or ruin the injured or prisoner or killing women and children not involved in the fighting. The principle of knighthood was also named by, Military Honor, which requires the respect of loyalty that have been given, and the prohibition of the use of the weapon, which is not consistent to be used with the honor or do an act of treason or exploitation, that is incompatible with the principles of Knight and the values of brave heroes. The war, according to this principle is an honorable struggle that fighter must not intend to a behavior or conduct inconsistent with the honor of Knight (Bianchi, Naqvi, 2011, p. 365).

But the principle of knighthood was dominated by the principle of reciprocity treatment, in the mean that, if a side has stuck to it the other side should stick with it. But, if abandoned him, abandoned by the subordination of the other party, if one of the parties abused the treatment of prisoners of war or civilians, it is the other party's right to abused the treatment of prisoners of war or civilian who were also under his control according to Inter-Agency Standing Committee Humanitarian Coordination Group (2010).

We conclude here that the principle of knighthood that by the honorable fighters always adhered to it by the honorable fighters and consider it an integral part of the military honor that they will die without it. It was the first nucleus in the establishment of the rules of IHL, where it contributed to the reduction of the scourge of war and reduce their impact and gave it a kind of principles and values of military honor. It has also contributed to the establishment

and development of other rules of international law and humanitarian law, such as, <sup>1</sup>aiding patients and treatment of the injured and solicitude them and giving them food, drink, and care, where those rules derived its existence from the principle of knighthood.



**The Principle of Necessity:** The principle of necessity is focused in the context of IHL on the notion that the use of the methods of violence and force in the war was stopped at the end to overwhelm the enemy and achieve the goal of the war, which are the defeat of the enemy and victory. If this goal is achieved and the enemy was defeated and surrendered, the victorious party will be refrained to persist in directing hostilities against the other side.

As a result of "the dominance of necessity principle in the IHL, several rules, including: restricting the use of weapons and confined it in scope and what is necessary to resolve the war without exceeding, that the necessity should not be exaggerated. Therefore, it has reached agreements that prohibit the use of certain weapons, such as, the agreement of prohibiting the development and production of bacteriological, biological and toxin weapons, and destroying these weapons in (10 April 1972). Along with this, the agreements that prohibit the use of environmental modification techniques for military purposes or for any hostile purposes, dated (December 10, 1976). The agreement of prohibition of the use of certain conventional weapons, which can be considered as excessively injurious that signed at Geneva on (10 October 1980), protocol about fragments that cannot be detected, dated (10 October 1980). The first and second protocols on the prohibition of the use of mines, and booby-traps that dated in (3rd May 1996). The protocol for the prohibiting or restricting the use of incendiary weapons, Protocol III Geneva (10 October 1980), (Pictet, 1985, p.59 ).

Despite those results some scholars have prohibited to take another way for the principle of necessity, taking the case of necessity as a justification for breaching the rules of customs of war itself. Thus, this side has rejected taking of necessity, some supporters of this side want to reject the principle at all in the law of war. It cannot justify the principle of prohibiting weapons under the name of the necessity, in the sense of legalizing used, in the case of fearing of the disappearance of the structure of the country and its existence.

Therefore, it must limit the meaning of necessity in the context of IHL in the limits of what serves its principles and rules, which is not a cover for breaching the rules and customs of war, that became an illegal order. But, if they take the necessary as a justification for the protection of IHL's categories, that must be applied. An example of that could not justify the

bombing of schools, hospitals and populated areas under the pretext of hiding its relative forces, and there were a military necessity justified that. But, it can be invoked to justify the necessity to restrict the use of conventional weapons from tanks, aircraft and artillery, which is already permitted weapons in the war, that could be genocide to the civilians with the rebels, where should limit fighting with light weapons to avoid the loss and indiscriminate damages and excessive.

**The Principle of Humanity:** Implication of this principle, which constitutes the core of IHL to avoid the use of cruelty and brutality acts in fighting, trapping civilian population and subjecting them to harsh living conditions and starve them and prevent providing them with building materials, food and baby milk is incompatible with the principle of humanity and all the rules and customs of war, (Pictet, 1985, p.63 ).

Also incompatible with the principle of humanity, the use of drugs to prevent births equipped with bombs and explosives and is executed on civilians or the use of firebombs or cause laceration skin tissue or causing chopping parties or the use of bombs equipped with depleted uranium which cause environmental damage in the long term, in addition to the cancer diseases.

### **The Sources of IHL**

It has been said that the IHL consists of customary rules governing the relationship between the warriors, and the relationship between them and non-combatants. It is said that, they are stable rules and customs that reflects the principles of the knighthood, necessity and humanity. It is also said that, human civilization contributed by its different sects of Pharaonic or Islamic or Roman or European in the formation of IHL.

However, Western scholars with the support of Arabic scholars believe that, despite of what was being shown to them from conclusive evidence - that Weber's Law is a first serious attempt to codify the laws and customs of war and that has been approved by the US President Lincoln on (April 24, 1864) during the American Civil War (Solis, 2010, p.231).

### **The Geneva Agreement of 1864 to Improve The Fate of Fighters, Who was Wounded and Sick in The Battlefield, and Other IHL Conventions**

Many thanks go to the Swiss scholar Henry Dunant, who was behind holding the agreement of (1864), what he saw from the appalling tragedies in the battle of, Solferino, that



took place in (1959). Therefore, he called for the establishment of a committee for the relief of victims of armed conflict, which develop its form and name. It was called ICRC, which is already established in (1863). A year later, at the invitation of the Swiss Federal Council – he responded to the invitation of the first president of ICRC, Henry Dunant, in a diplomatic conference for the adoption of the agreement" that have been referred to it, (Solis, 2010, p.221).

Then, a number of international agreements have followed it, the most important were the HC of (1899), (1907). After that the GC of (1929), then all of these rules have moved with respect to which was linked to the IHL to the four GC of (1949) and its two Protocols of (1977), which are still considered the primary nerves of the ICC for the year (1998) refer to these agreements and refers to violations of this convention can be considered international crimes, Courseware International Committee of the Red Cross (nd).

Based on this previous offer, those agreements and others that are related to the IHL can be considered as a convention source for this law. The custom of the norms and customs of stable war can be known as a source for this law. As long as that IHL is a branch of public international law, it can be said that the source of this law that is stipulated in the "Article 38 of the basic system for the IJC, it is also a source of IHL which is as follows:

- 1- *"International conventions and treaties ,especially those that are related to IHL, where the principle restricts the private and public limiting their application".*
- 2- *"International custom, as evidence of a general practice accepted as law".*
- 3- *"The general principles of law recognized by civilized nations".*
- 4- *"Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law". (military and paramilitary activities in and against Nicaragua, 1986).*

## **1.2.2 The Distinction Between The IHL and Similar Laws**

Some people may be confused between the IHL and other branches of similar law, especially the international law of human rights. Some people might also believe that the IHL relates to human rights generally, while, it is regarded to human rights during war. Therefore,



there are similarities and differences necessitating to distinguish between them, as well as between the international criminal law and IHL.

## **1- The Distinction Between IHL and The International Human Rights' Law**

### **A-Similarities Between The Two Laws**

- 1- During peacetime human rights can be applied as a rule, so that states must abide to it, but, at the time of war, it is suspended to a large proportion of these rights, because the state that is a party to an armed conflict live in exceptional circumstances, which may force it to suspend human rights that it cannot be done spontaneously, it is left to the discretion of the state, (Provost, 2002, p.156).
- 2- The same result and conditions can be applied to the human rights during armed conflicts, although some of human rights can be excluded from the commentary, it shall not be suspended, whether in the time of peace or war. The most prominent of these rights, was human right that can be protected from torture, which is not subject at all to the suspension in the time of war as it is at peace.
- 3- There are some rights that can be decided at the time of war and it has no counterpart at the peacetime such as, military service in the countries which belonged to it. While it arise at the time of war and in the circumstances of military occupation that has a new right at the lack of forcing a person in the occupied territories to military service in the army of occupation. There are rights, that received assurances at the time of war more than what is stipulated in it at the peacetime, like human right of not conducting medical or scientific experiments without his satisfaction. But, in the peacetime, there is a provision of one year that has been mentioned in the Article (7) of the International Convention for Civil and Political Rights (ICCPR), which states that it is not permitted to subject an individual without his free satisfaction for medical or scientific experimentation, (Delupis, 2000, p.264).

### **B- The Differences Between IHL and Human Rights**

- 1- The IHL protects human rights in general at the time of war and peace. In other words, it is a comprehensive law for all kinds of rights, in all circumstances. While, the IHL is a special law for the protection of the specific types of rights, in particular exceptional circumstances, it is a matter of armed conflict (Draper, 1971, p.1437).

- 2- The international law of human rights aimed to protect individual against arbitrariness and abuses of the state which followed by that individual, meaning that it regulates the relationship between the individual and his nation. Whilst, the IHL intended to protect the nationals of enemies at the time of armed conflict, therefore it is interested in the organizing the relationship between states and nationals of enemies' countries at the time of armed conflict, (Provost, 2002, p.156).
- 3- The written rules of IHL is considered as an oldest and earlier rules in emerging, if you compare it with the rules of international law for human rights.
- 4- The four GC of 1242 include the protection of categories that were not at the interest of the international traditional law to human rights, like wounded, shipwrecked and prisoners persons.
- 5- It has a right in this life to enjoy a high degree of protection in the law of human rights, while, in the IHL that officially recognized that it has a right to shoot the warriors.
- 6- In the law of human rights, human has the right to be judged instead of detention without trial. Whereas, in the IHL warriors have a right to detain enemy fighters without trial (Draper, 1971, p.1430).

## **2- The Distinction between IHL and the International Criminal Law**

The International Criminal Law is a branch of the general international law that applies to international crimes, which decides their corners and penalties assessed to it, that is required by an ICC by the name of international community for the peace and international security.

We must differentiate between the international criminal law and the international criminal law as, discover to the law of armed conflict (2010), the first one can be applied to denominations of international crimes that have been included in Article (5) of the system of ICC. *"Which consists of four denominations, they are the crimes of war, crimes of genocide, crimes against humanity and the crime of aggression"*. The international criminal law does not apply to these parts of the international crimes, it is rather applied to organized crime across the national borders, which are punishable offenses under the internal law of nations. But, they are committed in several countries, or of the people who are belonging to several countries as the crimes of counterfeiting money, drug trade, and human trade, or the crimes of terrorism, which were not included in the previous four sects of the international crimes with

it an international crime and should have been given the same description, although, it is an international crime and should enjoy the same description. Nevertheless, the difference over the definition of terrorism and the deliberate confusion between the movements of legitimate armed resistance and the liberation movements and its description as terrorist acts, this, inserted it in the international crimes in the primary system of Rome for the year of (1998), (Cherif, 2008, p.55).

Thus, the international criminal law is a branch of the internal law shall be punished for the crimes that has a global nature to commit in several countries or by people belonging to several countries, that raise the problem of criminal law which have to be applied and the way of achieving judicial cooperation between the authorities of two countries or the country that is responsible of the crime, as well as, the exchange of criminals or convicted people ... etc, While, the international criminal law applies on international crimes that set out its corners and the punishment on it in the primary system of Rome for the year of 1998 and other international agreements that are related to those crimes, (Cherif, 2008, p.60).

Respected to the distinction between IHL and international criminal law, some people believe that the relationship between the two laws as they are branches of public international law - which come close and interact and overlap to a large extent to has the possible to obtain the international criminal law, in the IHL, which may constitute one law. Where the tools of the first one can be an application and implementation for the second one. This side has concluded several excuses to support their theory ,the unity of laws, which are as follow:

A-Both laws work in one framework which is achieving the peace and security of the human at the global level.

B- Both laws belong to one category of the public international law and take its sources from the international conventions and international usages, especially that of the international criminal law that may arise within the confines of IHL, where it deprives the violations of IHL, to shape by this the international criminal law, that satisfies the interests of international community, which can re-format interdiction rules that can be determined by IHL. The establishment of the ICC is a judicial tool at the international level, will lead to the erosion of the differences between the two laws where the court would become an effective tool for the establishment of the principles of IHL, (Arai, 2009, p.153).

Despite the similarities that it has, there were also some fundamental differences between the IHL and the international criminal law are as follow: -

- A- The IHL can just be applied during the war, and the international and internal armed conflicts, while, it does not link to the application of international criminal law during war or during the existence of an armed conflict, but it is applied mostly after the end of war, then it searches and investigate with who have committed international crimes.
- B- The international criminal law has its special principles such as, the principle of criminal legality where it cannot trial and punish the crime unless that it is stated herein previously, while the IHL cannot be dominated by those principles.
- C- The International criminal law serves as an impact, or as a result of the infringement of IHL, therefore, its application comes later at the committing violations of IHL, ( Arai, 2009, p.324).

## CHAPTER II: THE EFFECTIVENESS OF IHL ON THE PROTECTION OF PERSONS AND PROERTY

After the outbreak of the first World War (1914 - 1918) and the inadequacy of legal rules, to provide the necessary protection for the victims of war, a conference was held in Geneva in July (1929) at the invitation of the Swiss Government to convene a diplomatic conference. The conference was attended by representatives of (47) States to revise the rules on the protection of war victims and report more rules to protect those victims.

This Conference resulted in the three conventions on the protection of war victims of the military. The first concerning the amelioration of the condition of the wounded and sick soldiers in the field and the amelioration of the condition of wounded, sick and shipwrecked members of the armed forces at sea, and has paid the third Convention on treatment of prisoners of war, (Sassoli, A.Bouvier, 2000, p.250).

But humanitarian atrocities committed during World War II drew attention to the need to bridge shortfalls in these conventions, leading to an International Conference in Geneva attended by delegations "from 59 countries in (1949)", and some international bodies, to lead the work of this Conference for the holding of four humanitarian conventions currently represent the bulk of the law of war, which are "the four Geneva Conventions, (Roberts, Guelff, 1977, p.435).

These agreements have addressed most of the issues relating to the rules of war and armed conflict, and ensuring the legal protection of the wounded, sick, prisoners, civilian population, civilian installations and public and private property, including those in the occupied areas.

Perhaps the most important developed by the Geneva law is to create a minimum level of protection for the parties to non-international armed conflicts, and not leave them at the mercy of the victorious enemy, claiming they do not have the requirements prescribed by the law of war.

To confirm and develop the GC of (1949), to bridge the basic gaps that have been neglected in these agreements and to strengthen the international rules that protect the civilian population from the effects of the military operations and other actions hostile, it was decided to adopt two optional protocols to the GC of (1949) and in (1977), as it expanded these two

Protocols scopes of protection afforded by the rules of agreements Geneva to victims of armed conflict, (Sassoli, A.Bouvier, 2000, p.262).

It is often talking about the protected persons and groups protected during armed conflicts, it has identified IHL, which applies to such disputes these groups acknowledged the principle of respect and protection.

The fact is that a special legal status for certain individuals or groups stems mainly from the principle of distinction between combatants and non-combatants of the IHL, in spite of this ambiguity almost knock them out, but humanitarian efforts aimed at strengthening the protection of civilians did not stop there, but it tried to reinforce this principle by establishing the principle of parallel go hand in hand and complement each other. It is the principle of distinction between military objectives and civilian objects side by side, for the protection of the civilian population emptied of all content and even unimaginable without concurrent protection of objects that harbor them.

## **2.1 The Effectiveness of IHL to Protect Civilians During International and non-International Armed Conflicts**

The civilians affected in one way or another by the consequences of armed conflict, and it doesn't need to analyze or study for recognition as war casualties among civilians. Although, obviously they must remain outside the circle of battles, contemporary conflicts tend to reverse it and failed to address the situation of the most affected by the war at (1949) the conclusion of the Fourth GC, relative to the protection of civilian persons in the time of war, after it became clear that "the Hague Regulations" were inadequate to ensure necessary protection . While, its articles that deal with specific aspects of the relationship between the occupier and the occupied population, along with significant additions made in the first Protocol of (1977) in relation to the other three conventions. However, section four of which came the sequel to the Fourth Convention, article (4) of the Fourth Geneva Convention of (1949) to persons protected by *"those who find themselves at a given moment and in any manner whatsoever, in the event of a conflict or occupation, under the authority of the party to the conflict of which they are not nationals or occupying power are not their nationals"*, article (4) of the Fourth Geneva Convention of (1949)

According to the lack of text in identifying the legal concept of the civilian population there was a significant impact on the violation of their rights and subjected to the most

horrendous suffering and crimes and genocide, article (50) of an additional Protocol so to the GC of (1977) to establish a definition of civilians which stipulates that:

*"Civilian is anyone who does not belong to the category of persons referred to in the first, second, third and sixth positions, and in paragraph (A) of Article four of the Third Convention and Article 43 of this Protocol. In case of doubt about whether a person is a civilian or non-civilian, that person is a civilian"*, article (50) of an additional Protocol so to the GC of (1977).

Within the civilian population all civilians.

The Fourth Convention and the first Protocol have selected the general provisions for the protection of civilians in armed conflict, and is prohibited in all cases of acts of coercion and torture and collective punishment and revenge, hostage-taking, displacements, and civilians have the right to leave the enemy, receiving relief supplies and doing business allowed. These provisions also clarified the terms and circumstances of the arrest and transfer of people to the territory of another State, (Dinstein, 2004, p.143).

Focusing the rules of protecting civilians in IHL on two essential issues:

The obligation of the warring parties by limiting military operations directed towards destroying military force to the other party and weakened, not total annihilation for nationals of the other party.

Prohibition of military operations directed or any other hostile operations against the population as long as not involved already in combat.

### **2.1.1 The Legal Protection of Women in times of Armed Conflict**

#### **Distinguish Time of Armed Conflicts Between The two Modes for Women**

##### **A-Women Warriors**

whether in the international armed conflicts, and their status as combatants as prisoners of war, or in non-international conflicts and their warriors and arrest mode when receiving, were part of the armed forces of the adversary, they enjoy equal treatment with men.



## **B- Women as part of the civilian population**

Women get benefit from general protection approved by the IHL conventions to civilians, such as the prohibition of acts of coercion and torture and collective punishment. Hostage-taking, displacements or indiscriminate attacks and acts of violence, (Sassoli, A.Bouvier, 2000, p.268).

Women enjoy special protection under IHL, however, the women during armed conflicts, inter alia, remains unknown, since women were subject to additional risks because of the imprisoned, it ensured that the rules of IHL, special protection for them, it is worth mentioning that the four GC of (1949), in addition to the two additional protocols of (1977), which included nineteen judgements specifically applicable to women. These rules are of limited importance, many of them aimed at the protection of children. The purpose of the conventions generally is to ensure special protection for pregnant women and nursing mothers in General, despite the importance of such protection, except that the provisions of the GC have not seen never aware of quality problems experienced by women in times of armed conflict, nor does it take into account the difficulties that beset them not only in their role as mothers or their vulnerability to violence. The provisions of the protocols did not bring new regarding protection of women generally, where it continued to focus attention on pregnant women and mothers of young children, protection from sexual violence.

The four GC of (1949) and its additional protocols of (1949) are the main instruments concerning the protection of women in armed conflicts, and the purpose of the agreements is to ensure special protection for pregnant women and nursing mothers and attempt to reduce the vulnerability of women about sexual violence in conflict period.

The IHL prohibits certain acts in all times and against all persons of these acts: rape, torture and abuse. Therefore, the international community and States to prevent the Commission of such acts against women and girls also bear the responsibility of States to prosecute and punish criminals who commit these crimes against humanity.

The article (27) of the Fourth GC of (1949), was decided for special protection of women stipulate that "*women shall be protected in particular against any attack on their honor toxic against rape, enforced prostitution or any form of indecent assault*", the article (27) of the Fourth GC of (1949). As rape and sexual violence are the most manifestations of violence suffered by women during the second world war, although this article represents a



recognition that rape is not acceptable in periods of armed conflict, it did not recognize the gravity or seriousness of the problem. In fact, this provision does not fall under the system of grave breaches of IHL, which allows for the prosecution and punishment of persons who did not respect the provisions of the agreements.

### **2.1.2 Legal Protection For Children in Times of Armed Conflict**

The interest of children began following World War, I when the League of Nations adopted the so-called Geneva Declaration, which guarantees child care regardless of their race or nationality, but it did not recognize the child as part of civilians only in the GC of (1949). Although the Fourth GC relative to the protection of civilian persons not expressly provides for such protection, and there is no text as a basis for such protection. It was not necessary to wait the additional protocols of (1977), so this point is exceeded, the article 1/77 of the first protocol provides that "children must be the object of special respect and to guarantee their protection against any form of indecent assault. We must provide them with the parties to the conflict take care and help they need, either because of their age or for any other reason (Roberts, Guelff, 1977, p.421).

Children must be the object of special respect and to guarantee their protection against any form of indecent assault. We must provide them with the parties to the conflict and take care and help they need, either because of their age or for any other reason.

It was essential to examine the protections available to children in times of international armed conflict, and those available to them in the non-international armed conflicts.

#### **Children in Armed Conflict**

Children are the most vulnerable category of damage between the victims of armed conflict or its consequences in recent years, increased attention to the protection of children, especially after the emergence of signs that children are not only victims of armed conflicts, but, also become armed and playing a positive role in disputes in many parts of the world, it was essential to examine the status of the child as a first fighter and then as a second civilian during the international armed conflict and non-international, (DCAF, Geneva Call, 2011, nd).

### **A. Child as a Combatant**

Workers in the field of humanitarian action observed the phenomenon of widening the participation of children in hostilities, which may range from providing indirect assistance to the fighters, the transfer of arms, ammunition and exploration works, and recruited them into the regular armed forces and other armed groups, (Goodwin, Ilene, 1994, p.52).

The Geneva Agreements of (1949) and the first Protocol of (1977) did not reach the prohibition of the recruitment of children, but it had banned the recruitment of those under 15 years where only article 77/2-participation in hostilities directly, bring to light article 77 (2) of the first Protocol of (1977) provides that: *"the parties to the conflict shall take all feasible measures to ensure that children who have not attained the age of (15) in hostilities directly, and that these parties, in particular, that Refrain from recruiting them into their armed forces, and this means that those under this age do hostilities"*, article 77 (2) of the first Protocol of (1977).

The Fourth Convention also ensured in article (24) *"for chaperoned that parties to the conflict not to leave, these children and their business, and that the duty of care for these children is the responsibility of the occupying Power"*, and review previous rules we find that child protection of civilians in armed conflict constituted one of the fundamental principles of IHL and is a universally agreed principle *"children to not be a target of any military action"*, because we must guarantee their security and their safety in any armed conflict Located anywhere in the world, article (24) of the Fourth Convention (1949).

### **B. The Child As Part of Civilians**

Apply for protection under the provisions of common Ibid, article 3 of the (1949) GC and those which came from additional Protocol II of (1977) on children aged civilians, but that the second protocol for with special protection is reflected, for example, encourage the evacuation of children from areas of fighting after the approval of their parents, in addition to giving children the right to care and support and the need to take all measures for family reunification and the right to education and religious and moral education to the desire of the parents in the event of detention or detained children under 15 years of age and prohibits the death penalty against those who has not attained the age of 18 at the time of committing his crime, (Goodwin, Ilene, 1994, p.52).

We believe that these provisions have not focused enough on the importance of family reunification and on the registration of children and their evacuation when necessary and to provide them with medical assistance. Whether in the international or non-international armed conflict .

As that, the rules of human rights law for children ensure other rights nothing wrong applied as much as possible, especially to international or domestic armed conflicts affect children deeper and larger than its impact on adults, (Sassoli and Bouvier, 2006, p. 132).

### **2.1.3 The Legal Protection of Wounded Patients in The Armed Conflict**

It means wounded and sick "people either military or civilian persons who need medical assistance or care because of trauma, disease or other disorder or disability of physically or mentally disabled and who was reluctant to any hostile action". These include terms ,wounded and sick, and births and newborns and other people who may need emergency assistance or care, such as disabilities and expectant who are reluctant about any hostile action, (Provost, 2002, p.272) .

Hence, it is clear that IHL affords protection to the wounded and sick, whether military or civilian, provided they should refrain from any hostile action. As a general rule, *"you should respect them and protect them, whatever party they belonged to. In all cases treated them humanely, and effort possible and as quickly as possible medical care required by his condition and must not be discriminated for no consideration only medical considerations"*.

Then you should take care of them and taking care of them regardless of their nationality, religion or national origin, and the party in control of the battlefield to search them and protects them from any attack or any mistreatment or torture prohibits killing or taken hostage or subjected them to any medical procedure not required by his state of health is incompatible with established medical standards which may apply party action his subjects enjoying full freedom under similar medical circumstances, prohibits in particular being of such persons, even with their consent, amputation or excision of tissue or members for the purpose of cultivation, or medical or scientific experimentation on them, and leave them without treatment or care at risk of epidemic or infection.

Article (19) of the first GC of (1949) which States that: "*in no case may an attack on fixed installations and moving units of the medical service, but rather respected and protected at all times by the parties to the conflict*", article (19) of the first GC of (1949).

Article (21) of the First GC of (1949), which stipulated that: "*May not stop the protection due to fixed establishments and mobile medical units of the medical service, unless you use the humanitarian duties in acts harmful to the enemy, but that may not stop the protection only after warning it determines appropriate in all the circumstances a reasonable time without turning*", article (21) of the First GC of (1949).

The protection of the wounded and sick are given one meaning which is the need to respect them and to treat them humanely guaranteed their dignity and that any party to the dispute harmed and harm or undermine the rights and freedoms which reflect the reality of the four GC and the HC by which included provisions that protected persons must be respected and treated humanely dignity while maintaining physical integrity and not prejudice their rights, (Mohammad, 2000, p.142).

So it should be respected by all the wounded and sick and protected in all circumstances, and may not abuse their lives or abused it in any way, and must be accommodated and treated humanely, it must receive to the fullest extent possible and as quickly as possible, the medical care required by their condition, and must not exercise any discrimination for reasons other than medical reasons, so you should protect them and the care with upset whatever their nationality and the side who has a control over the battlefield to search them and protect them from any abuse or bad treatment.

#### **2.1.4 The Legal Protections for Prisoners of War During The International and Non-International Armed Conflict**

The captivity phenomenon inherent to all wars, old and new, and it is associated captive system in the modern international law to combatant status, that must be available in the latter specific requirements for fighting and getting treatment if a prisoner of war in the hands of the enemy, (Sivakumaran, 2012, p. 101).

According to the article (3) of the Hague Regulations states that "*prisoners of war*" are individuals belonging to one of the following categories, who have fallen under the power of the enemy:-

*"Members of the armed forces of conflict side, as well as members of militias, volunteer corps belonging to the armed forces".*

*"Members of other guerrillas and members of other volunteer corps, including those of organized resistance movements that are related to the conflict side and the workers inside or outside their territory, even if this territory is occupied"*, according to (The article (3) of the Hague Regulations) As well, it requires that these militias are teams of volunteers, including organized resistance movements, fulfill the following four conditions:

1. *"The lead person responsible for his subordinates"*.
2. *"Hallmark knows about yet"*.
3. *"Carrying weapons visibly"*.
4. *"To respect the laws and customs of war"*.

The second GC of (1929), is the first conventions of warfare specialty whole paragraphs for the treatment of prisoners of war, Get to the first three articles of the "Hague" and added "*all persons in the armed forces of the parties who are in the grip of an opponent during the hostilities, sea or air*", the Convention itself also kept the wording of article (13) of the Hague Regulations intact non-combatants who follow armed forces.

Based on the principle of humane treatment and branching rules, requiring protection and respect set out in the GC that provide the parties to the conflict to their captives minimum requirements of life, morally and financially, since being caught until it has finished, it must move the prisoners to places far from the theatre and take all precautions when transporting and refrain from endangering their lives in certain areas of the sites protected from the military operations.

## 2.2 The Effectiveness of The IHL to Protect Property During The International and Non-International Armed Conflicts

Civilian protection is based on strengthening the principle established by Jean Jacques Rousseau and the need to distinguish between civilian and military objectives, the protection of individual or groups of civilians discover article (48) of the first protocol of (1977) on fundamental rule stipulates that:-

*"The conflict parties shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives, and to respect and protect the civilian population and civilian objects", article (48) of the first protocol of (1977).*

article (52) of the first protocol of (1977) comes to know military objectives as follows:

*"The limited military objectives with regard to those objects that contribute to effective contribution to military action, whether by nature or by their location or their targets or used, and which achieve the total or partial destruction, capture or neutralization, in the circumstances, while a definite military advantage", article (52) of the first protocol of (1977) of GC.*

But the third paragraph, provides that in case of doubt that what usually dedicated eye for civilian purposes, but used to make an effective contribution to military action, this claim does not raise immunity from it, so that the article (52) of the first protocol had highlighted milestones between civilian objects and military objectives. So States cannot invoke its provisions to avoid ambiguity of its international obligations if it really applied.

Thus, the meaning of civilian objects is a facility which were not military objectives, so it is not objecting that contribute to its nature and position, purpose or use make an effective contribution to military action, such as schools, places of worship, hospitals, bridges and farms and factories and engineering installations, generally everything is dedicated to civilian purposes. In accordance with the first protocol of (1977), the warring parties must distinguish between civilian objects and military objectives so directed military operations against military targets only.

That is why the rules of IHL did not recognize the special legal protection of property necessary for the satisfaction of material and necessary for the survival of human needs and

the Senate. But also it focused on the protection of objects and properties that represent the spiritual and moral needs and which constitute the cultural heritage of peoples, (Solis, 2010, p. 122).

### **2.2.1 The Legal Protection of Private Property During The International And Non-International Armed Conflicts**

Although the preponderance of the GC is the protection of people's report, however, noted that sometimes extends protection of property, available from the law of the Hague of (1907) included many texts that refer to such a protection in accordance with article (23/1) *"prohibits the destruction of enemy property, unless the destruction or seizure was consistent and the requirements of war"*, article (23/1) of the Hague of (1907).

For this, the rules of IHL did not recognize special legal protection to property and objects necessary for satisfying the human needs material necessary to stay alive. But it also dealt with the protection of objects and property, which represents the spiritual and moral needs and that constitute the cultural heritage of peoples.

The first and second Geneva Agreement, prohibits destruction and appropriation of property, not justified by large-scale military necessities and do so arbitrarily and unlawfully, find out the article (53) of the Fourth GC stipulates that *"any destruction by the occupying power of real or personal property track individuals, groups or State or any other public authorities, or to social or cooperative bodies, work is prohibited. Only when there is an absolute necessity for the destruction caused by the military operations"*, article (53) of the Fourth GC in (1949).

Article (52) of the first protocol provides that:-

- 1- *"The civilian objects are not the targets of attack or of reprisals, and civilian objects are all objects which are not military objectives as defined in the second paragraph"*.
- 2- *"The attacks are limited only on military targets and confined to military targets, with respect to objects that make an effective contribution to military action, whether it's nature, location, purpose or use, and which are entitled to full or partial destruction, capture or neutralization, in the circumstances then it is a definite military advantage"*, article (52) of the Fourth GC in (1949).



### 2.2.2 The Legal Protection of Cultural and Religious Property During The International and Non-International Armed Conflicts

The IHL interested in the report of special protection for cultural objects and places of worship against military attacks, given what these objects of great cultural and spiritual value for the civilian population, but they represent a cultural heritage and civilization for people, and sometimes for all humanity.

The cultural properties are the most attractive areas that attract attention in international cultural relations, so that after the search was focused entirely on human and protect them from the scourge of war and destruction, then cultural property in itself became an area of study for the protection that should be enjoyed by those scourges and other risks such as theft, robbery and looting, (Solis, 2010, p. 122).

So that, culture pose the remaining bridges between Nations and peoples, irrespective of differences in lifestyles, methods, political and social choices, and always has been the culture pass every hindrance and does not limit contact between Nations and peoples, which factor or circumstance of time or place, or conditions, (Marco and, B, Antoine Bouvier (2006).

The issues and conditions of losing cultural property for public protection when military necessity entailed coercive, in the article (6) of second protocol, which included some controls and standards for the exercise of this exception, where distinguished between redirect hostilities to cultural property and use the property on the basis of imperative military necessity, according to the Hague Agreement and its second protocol of (1999).

It is necessitated to check two conditions together to lose such protection, which are:

- 1- *"Is that such cultural property has shifted in terms of its function of the military objective".*
- 2- *"There is no practical alternative to similar military advantage to the advantage offered by directing hostile act against this objective, there is no doubt that the achievement of these conditions collectively ensures reduced business opportunity this exception on the demise of the General protection of cultural property".*

The provisions, of the (1954) Hague Convention and that related to the protection of cultural objects are applicable to both international and local armed conflicts in accordance with the provisions of article (19) *"in case of an armed conflict not of an international*



*character occurring in the territory of a High Contracting Party becomes a party to the conflict shall apply at least the provisions on respect for cultural property contained in this agreement", article (19) of the Hague Convention (1954).*

The most notable violations of rules of the conventions relating to the protection of property, which took place in (April 2003) after the fall of Saddam Hussein's ruling, there has been a robbery at the Iraqi Museum Holdings, were looted and smashed thousands of pieces before the eyes and ears of the u.s. Marines who were just meters away from the Museum building and did nothing, and was able to stop the process easily, and not feasible then Washington sending a team from FBI to hold soldiers or to recover lost treasures, the Museum lost nearly fifteen thousand pieces, not recovered only 4,000 pieces each deposit is still here and there in the world and its return is not as easy as possible (Dutli, 2002, p.84) .

### **2.2.3 The Legal Protection of The Environment During The International and Non-International Armed Conflict**

As for the protection of the environment during armed conflict, it has not been given the importance that it deserves in spite of massive environmental destruction of the universe since the first and second world wars, until the diplomatic conference took place in (1977) that was convened by ICRC on the reaffirmation and development of IHL applicable in armed conflict.

Thus, the rules of IHL did not address the issue of environmental protection explicitly and directly till the year of (1977), in additional second protocol.

As the IHL also contains a set of rules that protect the environment indirectly, for example, provisions relating to private property or to protect the civilian population and set provisions for the implementation of the use of certain types of chemical or bacteriological weapons or weapons of mass destruction or weapons excessively injurious or have indiscriminate effects, as well as anti-personnel landmines, (Peter, 1995, p.128 ).

While, the special provisions that existed to protect the environment, respectively, it has to mention two important treaties to this topic, which are:

The agreement on prohibiting the use of environmental modification techniques for military purposes or for any other hostile, and were adopted by the UN on (10 the December 1976) following damage caused by the Vietnam war, and attacks on the environment and which are prohibited by the agreement are caused by the use of any techniques designed to

modify the dynamic earth, configured or installed by a deliberate change in natural processes, (O,Keefe, 2006, 90).

The first additional protocol to the GC, of (1977), this Protocol has included two articles deal specifically with the issue of the protection of the environment in the period of armed conflict which are:

A .Paragraph (3) of the article (35), which provides that:

*"It is prohibited to use methods or means of warfare which are intended or may be expected to cause severe damage to the natural environment is widespread and long-lasting",* Paragraph (3) of the article (35), of the first additional protocol to the GC, of (1977).

B. Article (55), which States that:-

*"Account during the fighting to protect the natural environment from damage is widespread and long lasting, this protection guarantees the prohibition of the use of methods and means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population",* article (55), of the first additional protocol to the GC, of (1977).

### **Prohibit Reprisals Against The Natural Environment.**

The legal responsibility for violations that are harmful to the environment in the period of armed conflict can be moved in accordance with the General rules of international law regarding State responsibility violation besides the criminal liability of the natural persons, who have committed the violations as war crimes in accordance with the rules of international custom, the article (91) of first protocol of (1977) on the principle of the liability of the receiving States parties that decided *"to ask the parties to the conflict which violates the provisions of the conventions or of this Protocol to pay compensation if necessary, and be responsible for all business Committed by persons forming part of its armed forces",* the article (91) of first protocol of (1977).

Also, article (91) of the first protocol decided that the random attack deliberately striking civilian structures, as well as launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life or injury to civilian persons or damage to civilian objects are considered serious violations,

and thus considered the rule of IHL and war crimes, it is discovered and was reaffirmed in article (8) of the Statute of ICC.

So they must be the adoption of treaties restricting or prohibiting the use of certain means of combat to indirectly contribute to the protection of the environment.

## **CHAPTER III: THE APPLICATION OF THE INTERNALLY OR INTERNATIONALLY**

It means the application of the IHL at the national level that the State shall take all necessary measures to ensure respect for and implementation of IHL and procedures, in the event of armed conflict on its territory in the form of a civil war, as well as the entry into force in its internal legal system.

Addressed by the application of IHL at the national level that the State takes all necessary measures to ensure full respect for IHL and force in the domestic legal order. And that of IHL must apply the provisions implemented by the parties in this law; so it can protect people and objects in armed conflicts, and the meaning of application of IHL which are in peacetime in periods of armed conflict. The conduct of each of the mechanisms provided for in this law guarantees applied and respected in all circumstances, and the application of IHL require specific mechanisms function in time of peace or in times of armed conflict. To participate in the application process the parties, contracting parties and impartial party, in case of failure to respect the provisions of IHL and the party violated the rules take the full responsibility.

### **3.1 The Application of IHL in The Internal Law of States**

The international conventions concerning IHL is directly applicable in domestic law once signed and ratified by the competent State constitutional powers as President or Parliament, or Prince, or the issuance of the necessary legislation to force takes strong domestic law at least, if not rise so does not entail the international responsibility of the State in case of violation. But, the question is does the case different from the rules of IHL the customary Convention?.

#### **The Implementation of The IHL Conventions**

It applies to the IHL agreement as other agreement and their implementation in the domestic law of the States by two means:

**The Approval of Agreement:** The IHL agreement are characterized as an international collective agreements or multilateral, in the sense that they involve the international community, which calls for the drafting and preparation of texts and signed at an International

Conference. This is done by an invitation and attended by all States that meet the call, for development of normative international legal norms which proceed to the norms of international law and therefore are also called normative international conventions, (Sassoli, A Bouvier, 2006, p.239).

It is approved or charity by constitutional authorities competent for certification and approval of treaties, which provide domestic law specified that the signing and approval of the representative of the Executive power in the State, as Head of State or Prime Minister or Foreign Minister, and may be with the consent of the legislature of any parliamentary approval. It may be approved with the consent of both the authorities, any signature of the representative of the Executive authority and then presented to Parliament for approval and then released it from the head of State.

The four GC of (12th August 1949) were held under the invitation of the Swiss Federal government who sponsored the efforts of ICRC, which has struggled to amend the GC for the amelioration of the condition of the wounded and sick in the field of war, of (27 July 1929), and has participated in that Conference. Most of the international community at the time with more than 45 States in the Geneva Conference and ratified by those States and entered into force in (1950).

**Joining to The Convention:** Countries may not participate in the General Conference but they will decides to sign them, but later join the force, to take the necessary action to accede to it, and then be bound by and undertake to respect and implement them as other countries where applicable thereon with rights and obligations. There were no difference between the founding States of the treaty or the organization states, (Saeed, 2003, p.12).

In both cases, approval or accession subsequent, obligation of a State to the Treaty where they become part of domestic law and abide by all of its powers and its members.

### **3.1.1 The Commitments that Required For the Application of IHL into Internal law**

The rules of IHL are binding legal rules impose on States which should be respected and implemented, particularly after the criminal side have signed the Rome Statute of the ICC in (1998) and that the punishment of international crimes, which in fact constitute violations of IHL.

The obligation to the rules of IHL imposes on States the obligation to take specific measures to make IHL directly applicable in domestic law. Such actions abide by the legislation necessary to implement the rules of IHL, (Murphy, 1996, p.76).

#### **A- An Obligation to Pass Legislation Necessary For The Implementation of IHL**

It was reported in the four GA a general text stated that "*the High Contracting Parties undertake to respect this agreement and to ensure respect in all circumstances*".

There are also other provisions common which obliges states to take the necessary steps for the entry into force of the GC and the suppression of the legislative procedures of grave violations hereof, and these texts, article (45) of the first GC of (1949), which says, "*Each party to the conflict, acting through its great leaders to ensure the implementation of advanced materials accurately, although cases not provided for by the regulation in accordance with the general principles of the Convention*", article (45) of the first GC of (1949).

Article (49) of the first GC of (1949) States that "*the High Contracting Parties undertake to take any legislative action necessary for effective penal sanctions for persons committing, or ordering to be committed, a grave breach of this agreement*", article (49) of the first GC of (1949).

Each party is committed to prosecuting accused retired committing such grave breaches or ordering the attack and to bring to justice, whatever their nationality, in accordance with legislative provisions to extradite them to another country for trial of retired as long as the said party has sufficient charge evidence against these people.

*"Each contracting party has to take measures to stop all acts contrary to the provisions of the present convention other than the grave breaches built in the following article".*

These texts show that States commit themselves to take the necessary legislative and administrative measures for the implementation of the conventions, in particular the Statute of the Tribunal for (1998) made jurisdiction or, in the alternative. Complementary to national jurisdiction is the Court's inherent jurisdiction for international crimes under the articles 1 and 17 of its Statute, which requires that States include in their domestic legislation provisions

reflect international crimes, criminalized violations of the GC to ensure respect for and the application in accordance with the previous texts.

## **B- The Legislative Methods That Related to The Application of IHL into Internal Law**

### **1- The Method of Entry The Rules of IHL in he Internal Law of States**

The application of the rules of IHL, in particular those rules which involving the implementation of the commitments contained in the (1949) GC, which may represent serious violations, the need for States to require legislative action to incorporate these rules into domestic law. These rules may be included in the code of military justice or the Criminal Code, Penal Code, (sharif, 2006, nd).

A. Inclusion martial law the obligations of the GC and the IHL.

B. The criminalization of violations of the IHL in the General Penal Code.

### **2- The International Jurisdiction of Universal Competence Prevented to Punish Violations of IHL**

The effective legal methods for the application of IHL in internal law that the national project decide the jurisdiction of national courts to punish violations of IHL, regardless of the person or place to commit any whether committed outside or within the territory of the state and whether committed by one of its nationals or foreigners.

It can decide to universal jurisdiction by the text in internal law, as may be decided in accordance with the international convention, as is the case in the preamble the Statute of the ICC in (1998) which stated that "*the duty of every state to exercise its criminal jurisdiction over those responsible for committing international crimes*", the Statute of the ICC in (1998).

### **The Rule of the State's Failure to issue Necessary Legislation for the Implementation of the Rules of IHL**

It is clear from article (49) of the first Geneva Agreement and similar items to it in ,article (50) of second convention, and article (129) of the third Convention and article (146) of the Fourth GC, which began drafting all by "*the High Contracting Parties undertake to take any legislative action necessary for effective penal punishments for persons committing,*



or ordering to be committed, grave breaches one these conventions", article (146) of the Fourth GC (1949).

This text implies that there exists an obligation imposed on States parties to these conventions to issue the necessary legislation to criminalize violations of the GC, so *"If the State violated this commitment and legislative action is not taken to criminality, it is in breach of an international obligation is imposed on them, the international responsibility of States for the acts of the legislature as the authority in charge of issuing such legislation"*.

As States may not invoke the lack of legislation has decided to abide by the rules of IHL, or criminalizes violations of the GC or decides its principles and rules, because this payment originally contrary to its commitments referred to aforementioned must take necessary legislative procedures to implement those principles and rules.

#### **A Commitment to Not issue Legislation that is Contrary to the Rules of IHL**

It follows the general principle mentioned above that is in article (49) of the first Convention and similar to it that the States sides to the GC required to enact necessary legislation for its implementation would be required to not issue any legislation contrary to the GC, or other rules of IHL, because the issuance of such legislation would arrange its international responsibility.

For example, if it issue a legislation that decides to state fighters, the right of attacking civilians or assault right of prisoners or relieves them from punishment or entitles them immunity from national or international legal proceedings if they have attacks on civilians or prisoners... or other protected categories by the rules of IHL. The State compounded its international responsibility for this legislation in conflict with international obligations, (sharif, 2006, nd).

#### **The Commitment to Cancel any Legislation Contrary to the Rules of IHL**

Also it stems from commitment to take legislative procedures to implement and enforce the rules of IHL. Another commitment has been mentioned in the article (49) of the first GC of (1949) and what similar articles it has in other conventions, it is the need to repeal any legislation or decree or decision contravenes the international obligations of the State *"and especially those alaltzamt contained in the GC and other IHL norms, constitute those offences in itself subject the perpetrators of international crimes and the criminal responsibility and*



*punishment does not push this responsibility to say that Already was applied to internal legislation", article (49) of the first GC of (1949).*

Thus, the States is obligated by their domestic legislation of any act that contravenes to the international obligations, as long as it consequent on the application of this law to violate the rules of international law and order damages to other States or nationals of a foreign State adopts periodontium make diplomatic protection. Therefore, the mere existence of a law is contrary to IHL does not by itself arranges international liability as long as the result after injury to anyone, either if it is applied and the resulting damage here assume international responsibility, it is no responsibility without harm.

### **3.1.2 The Commitment to The Dissemination of IHL**

#### **The Importance of The Dissemination of IHL**

The IHL requires that States need to disseminate the principles and provisions and rules as widely as possible, so that everyone will know what to do and respect if you are experiencing an armed conflict. The dissemination of IHL is one of the highlights of the day's international obligations on the States that have accepted the international treaties on IHL, namely the four GC of (1949) and its two protocols additional of (1977) and the Statute of the ICC of (1998).

This commitment is important, which is confined to the provision of IHL conventions that it would achieve universal science and especially military men of the armed forces, whether military or police or armed militia. Where these groups address more directly the norms of IHL, as are committed to respect and implement the laws and know of war and the rules of IHL during armed conflict that are engaged in fighting, (U.S. Dep't Justice, nd).

Also, the commitment to the dissemination of IHL is also necessary for the leaders and rulers and officials who do not even fall under the international crimes Tribunal, were not exempting from prosecution official capacity or military rank or of immunities. This, therefore, knowledge of the rules of IHL will protect them and protect them from slipping in the breaches of IHL.

## **International Conventions**

For all the above listed, the four GC of (1949) common article came with the same wording, and reaffirms the obligation of all States undertook to publish the widest, and the obligation of all State organs.

*"the High Contracting Parties undertake to disseminate the text of the present Convention as widely as possible in our countries in time of peace as in time of war. In particular undertakes to include study within military and civil education programmers if possible, so that the principles underlying the knowledge for all people, especially armed combat troops and medical personnel, and religious", article (47) of the first GC of (1949).*

It has been reported with the previous text according to Article (48) of the Second Geneva Convention, and article (127/1) of the Third Geneva Convention and article (144/1) of the Fourth Geneva Convention of (1949).

It has emphasized the duty to publish the law, especially international humanitarian among military men of the army and the police according to article (83) of the first additional Protocol to the GC and the (1977) complex which provides that *"the High Contracting Parties undertake, in peacetime and during armed conflict, as well as the texts of the conventions, the text of the protocols as widely as possible in their own country, by incorporating their studies, especially within programs of military instruction and to encourage the civilian population study until these instruments known to the armed forces and the civilian population"*, article (83) of the first additional Protocol to the GC (1977).

## **How to Achieve Compliance by Publishing**

Checks the adherence to publish the rules of international law through several methods including:

A \_ Mandatory publication in the Official Journal of the State competent to publish laws.

B \_ Publication in the written and audio-visual media.

## **The Commitment to Incorporate Humanitarian Law into The Curriculum**

This commitment stems from the previous commitment to the need to disseminate the rules of IHL and the achievement of the flag by the former Special commitment. It has made

it clear in the earlier texts over the coupling commitment to publish the rules of this law with a commitment to the inclusion of the rules of IHL, in particular the curriculum of military colleges whether they are eligible for both the army or police. Inclusion in the curriculum should be extended to regular colleges and curriculum to achieve informed people and civilian populations.

Also, it should not be limited to just a drawers, but must include the need to actually taught and the need to allocate training her hours, and make international law science essential part of the doctrine of fighter who has to realize that the main task is not only to carry out military orders and obeying the orders of his commanders and superiors and the performance of his duty combat but the application of the rules of IHL in the conduct of combat. Where his style of combat will evaluate and subject to national criminal responsibility, or if it exceeds the international humanitarian rules (Saeed, 2003, p.12).

Therefore, teaching the rules of IHL for the armed forces make an individual where fully conscious and convinced that his engagement not only with military goals were fighters or objects ,principle of legal discrimination, any need to distinguish between military and civilian target where you must not in any way compare the civil goal where civilian populations are protected, but not targeting civilian targets if sought and used by militants as long as they are not used to disguise military operations and launch offensive operations.

### **3.2 Application of IHL Internationally**

The application of IHL has become so special identity after the establishment of the ICC, where its violations became as crimes of international intervention in reference and decided to have serious criminal penalties of up to life imprisonment and reach the perpetrators regardless of their rank and their attributes. If they are to enjoy immunities, which exempts them from ordinary crimes, but it does not exempt them from prosecution for international crimes as it has been established in the Human Rights Council of the UN which ensures respect for human rights, and report to the Security Council or the GA of United Nations. Several international committees and bodies contributes in monitoring respect for the IHL and to take into account and apply it. I will talk about this chapter in two sections, in the first one I am going to address the role of the Permanent ICC and other international courts in the application of IHL. Also, the role of international governmental and non-governmental organizations in the application of IHL shall be discussed in section two.

### **3.2.1 The Role of International Criminal Justice in The Application of IHL**

The second half of twentieth century have marked an increase in the incidence of armed conflicts and the intensification of the ferocity of the violence sometimes so hit all parties to many rules, and established principles of IHL, and it was ironically resulted in a positive effect on reactions stronger than what was commonplace over long precedent, as the international community moved from position to position expressing concern, then, later to take all major steps to establish competent tribunals for Yugoslavia (1993) and Rwanda (1994), (Paust, Bassiouni, ....end , 2013, p.65).

This period also saw the effectively attitude at the international level and to ensure respect for IHL, through the establishment of a permanent International Justice consider violations of IHL in the international or non-international armed conflicts.

Therefore, we will illustrate the role of temporary international criminal courts in the application of IHL in the first demand and I will address the role of the Permanent ICC in the second demand.

#### **The Role of The Temporary International Criminal Courts in The Application of IHL**

The temporary ICC since the Nuremberg and Tokyo trials of (1945) detecting the criminal nature of the norms of international law, and it stated that both constitute mandatory rules and claim that it lacks an element and therefore legal rule properties with the rules resulted in sanctions in addition to criminal sanctions, which is the order of civil penalties and take the compensation and civil liability.

**One of these courts is:-**

#### **The Nuremberg and Tokyo Courts of (1945-1946) to Prosecute War Criminals:**

The international community has the intention that it should be the trial of warlords, the Germans and Japanese were vanquished in war, to trial for international crimes committed during the war. And it did not represent the community of an International Tribunal to try leaders of the allies for their crimes, particularly the abolition of nuclear bombs on Hiroshima and Nagasaki in (1945), therefore, it was the Victor of trials winner. With this it has created a platform for the Nuremberg trials, the Court was formed under the control of law referred to in these rules appended to the London agreement concluded in August (1945), as allied era of

Supreme Commander of the Allied forces create an international military tribunal for the far East, (Geneva Call, 2010).

### **Assessing the Role of The Temporary International Criminal Courts in The Application of The Rules of IHL:**

Despite the fact that those courts with jurisdiction and specific interim issues referred to benefit by just completing the task or issue transmitted, it played an important role and is critical in the application of IHL and show the printer, and that the violation of the rules and obligations with criminal penalties which become involving Governors and senior leaders no matter how long it takes to commit as they counter Crimes not subject to limitation.

The establishment of these courts and the criminal trials has contributed to pave the way towards the establishment of a permanent ICC on (18 July 1998) where international opinion accept the prosecution of war criminals and perpetrators of crimes of genocide and crimes against humanity, particularly after the genocide committed by Serbs in Central Europe and committed by Hutus and Tutsis in Central Africa, Rwanda, (1991). Such courts were established by a decision of the Security Council, and it does not depend on the jurisdiction being the State accused of violations IHL or Court ratified the Statute or have accepted its jurisdiction as it is the case in ICC, (Abdulrazaq, 2008, p.78).

But with all these positive advantages it flawed as temporary where spill once released and ends its competence and not become a presence after the end of the chapter on issues that created it.

### **The Role of The Permanent ICC in The Application of IHL**

Due to the importance of having a permanent international judicial system to punish and hold anyone who commits a crime of assault on the IHL, whether international or civil wars, due to the difficulties that could face national courts, for any reason, including that the party does not recognize the crimes attributed to its soldiers or armies.

As the courts by the enemy to enemy or the victor for the vanquished in the international or civil wars, usually have political backgrounds and unlawful, and in its spirit of vengeance and humiliation, because of these reasons, in addition to developments in IHL, in particular international criminal law, where possible, natural persons accountable for their

actions and crimes at the international level. The international community decided to establish a permanent ICC that have jurisdiction on war crimes and violations and violations of IHL. Bad case of violations of the IHL in armed conflict, international or non-international, which shows through the preamble to the Statute of the Tribunal and the primary goal of its establishment, is to end impunity for perpetrators of international crimes.

The signing of the Statute of the ICC in Rome on (17th July 1998) and entered into force on (1 July 2002) and it had signed and ratified in more than 90 countries – almost all – where both America and Israel on the last day specified for signature on (31 January 2000), (Aksar, 2004, p.73 ).

### **The Jurisdiction of The ICC to Punish The Violations of IHL**

The ICC specialized to punish the four sects of international crimes, namely war crimes, genocide, aggression, crimes against humanity as it was mentioned in article five of the Statute of ICC, and all of these crimes come under the Court's jurisdiction, It is a violation of IHL, (Broomhall, 2003 ).

The Statute of the Court to deal with such crimes that pose grave dangers to humanity and human security addressed by defining acts constituting physical corner, thus cannot be analogies or expansion in it, which has the text of article (22)of the Statute of the Court.

These crimes can be listed to demonstrate its affiliation of the violations of IHL as follow: -

1. The crime of genocide and ethnic cleansing.
2. Crimes against humanity.
3. War crimes.
4. The crime of aggression.

### **The Competent Authority to Submit the Dispute to ICC:**

Those entitled to refer violations of IHL that constitute international crimes within the meaning of articles (5, 6, 7, 8) of this system, the text came out in Article (13)of the Statute of the Court which states that The court may practice its jurisdiction with respect to a crime



referred to in Article (5) In accordance with the provisions of this Statute in the following circumstances:

1. *"If the State party transmitted to the Prosecutor in accordance with article 14, in the case where one or more of such crimes appears to have been committed"*.
2. *"If the Security Council referred the acting under Chapter seven of the United Nations' Charter, the case to the prosecutor seems to be a crime more of these crimes have been committed"*.
3. *"If the Prosecutor has initiated an investigation in respect of a crime in accordance with Article 15 and conclude from this that the Rome Statute may select to view the case of violation of IHL according to the three cases": -*

**The First Case:** Referring the matter by the state party in the court, where it may be decided in accordance with Article (14) to refer to the Prosecutor of the Court, any case that looks for where most of the crimes within the jurisdiction of the Court a crime - and the prosecutor investigating the matter if the complainant State - as much as possible - identifying violations and relevant circumstances and documents supporting to its complaint.

**The Second Case:** The matter be referred by the Security Council, the transformation of Article (13), paragraph (b) of the Security Council, which oversees the peace and international security, which it has under this duty if there is a threat or roads or breach of international peace and security, to intervene to end this dispute under Chapter Seven of the Charter, which is authorized to take military action also authorizes the issuance of measures and decisions, including referral of the matter to the ICC to investigate violations and issue binding court decisions in the Security Council to assume its implementation.

**The Third Case:** referral of the matter by the Prosecutor of ICC, the right of the Prosecutor of the Court to refer the issue are considered to constitute a crime within the jurisdiction of the court, in accordance with Article 15 of the court, that conferred the right investigations proportion on the basis of information on crimes within the jurisdiction of the court and to analyses this information seriously, and may request the assistance of States and UNO organs or the governmental and non-governmental organizations or other sources, (Broomhall, 2003 ).

## **The Role of the Permanent ICC in the Application of IHL**

The international organizations, whether governmental or non-governmental organization of the most important means and mechanisms that have proven effective in the application of IHL in non-international armed conflicts through its ongoing quest to make the rules of IHL due respect and application in all forms of wars and armed conflicts, and reduce its devastating effects on Humanity .

### **3.2.2 The Role of The Organizations in The Application of IHL**

#### **A- The Role of The UN in The Application of IHL**

Since its foundation, the UN seeks to apply IHL to stop and prevent violations through several means by criminalizing the war and initiated the threat or use of force in international relations ,article (2/4) of the Charter of the UN, or by tracking down armed conflicts and work on conflict resolution and termination through the organs of the Chairperson of the GA and the Security Council and the economic and Social Council and the Court of Justice and mediation of the Secretary General of the UN, (D. Murphy, 1996, p.66).

The Security Council could intervene to issue binding decisions under chapter Seven of the charter, it requires to stop the war and intervention by the military or non-military measure will preserve the peace and international security and the elimination of any breach or threat to them, and can intervene to track down violations of IHL to refer the perpetrators of such violations to the ICC where the humanitarian system empowers the Security Council to refer the violations to the court and move the competence to prosecute and punish on the basis of article (13), paragraph (b) if the Security Council acting under Chapter VII of the Charter of the UN, a situation to the prosecutor shows that one or more than one crime have been committed.

The UNGA also plays an important role in preventing violations of IHL and trial to them, especially if the Security Council failed to adopt a resolution because of the use of the veto or the quorum when the vote on the resolution, majority of nine members without any permanent member. It also highlights the role of the GA in its decision to establish the Human Rights Council, which included a 47-member elected from the state earlier, which means an investigation into violations of IHL and human rights and to report to the Security Council and the GA of the UN.



But the role of the GA remains an effect is weak because its authority is limited to making recommendations are not binding and do not possess the mechanisms and tools that will enable them alone to implement what comes out of their decisions or rather recommendations where necessary always enters the Security Council as belonging to issue binding and take military measures resolutions authority, or non-military based on Chapter Seven of the Charter of the UN, (D. Murphy, 1996, p.68).

## **B- The Role of The Human Rights Council and ICRC in The Application of IHL**

### **1- Human Rights Council**

It is a device that was created in the framework of the UN Organization and under the resolution passed by the GA No. (251/60) of (15 March 2006), which consists of representatives of (47) countries representing various cultures and doctrines of the world and all members of the UN numbering 192 countries, and respect the promotion and protection of human rights in various parts of the world. It is proposed actions to be taken to stop human rights violations.

The Human Rights Council had held its first meeting on (18 June 2007) followed by the several meetings held periodically in September of each year, and can hold extraordinary meetings if agreed by the 16 countries make up one third of the members of the Council (Volger, 2009, p.61).

### **2-The Role of the ICRC in Applying IHL**

ICRC was founded in Geneva in (1866), it is an international non-governmental organization, because it is made up of volunteers representing themselves, and do not represent their governments and distinguish basic badge, emblem of mercy in the midst of the fighting.

As ICRC is also working on the basis of special authorization granted to it by the States parties under the four GC of (1949) and their two additional Protocols of (1977), and identifies key axes of this authorization for any action by the International Committee of the two:

1. Providing protection.

2. Humanitarian assistance to the victims of armed conflict, both of which are based on the fundamental principles of international committee, such as neutrality, impartiality and independence .

Therefore, the cost of the Statute for ICRC ,the application of IHL by the Secretariat, ,therefore called to collect everything from information about the national procedures for the implementation of IHL and its proximity to reality of this law and areas of armed conflict in accordance with the functions expressly recognized in the GC, particularly article (9) common article (3) and article (81) of the first protocol and article (18) of the second Protocol.

As well as, the International Committee can play an effective role in resolving some problems such as the exchange of prisoners and supervision of their situation. It can submit its observations on the situation discovered, and take initiatives between the warring parties contracting state for studying and viewing, the work of the International Committee is not confined of a group of countries or even on a specific time period. It is the continuous and sustained action in the definition of the rules of law. It is a limited international humanitarian and applied through specialized publications or scientific seminars, educational programs, training and information, and cooperation programs with the National Societies of the Red Cross and Red Crescent, educational institutions, and meetings with experts and specialists.

In addition, ICRC has a special role and vital undertaking tasks of assistance during legal protection because they are in constant contact with the victims and the parties to the conflict and could draw the attention of international authorities operate for any violations, four GC of (1949).

Also, ICRC has a vital role to the application of IHL through field visits to sites of events that can happen by violations of this law and work to remove them, whether such increases on the basis of a complaint from stakeholders or based on a unique initiative to the State authorities, and often visits the Committee to remove a confidentiality violations so successful endeavors in the investigation of complaints and halt violations but may resort to publicity, if not successful or failed endeavors delegates received due cooperation by reporting these violations expose which makes these countries authorities replaced the attack of international organizations, especially the specific human rights (Higgins, 2010, p.143).

## CONCLUSION

The IHL came to an end to achieve an essential purpose to provide the necessary protection to groups not directly involved in the fighting or categories that become incapable of doing it, and to protect property, installations, civilian objects and not targeted during the fighting. Therefore the IHL was described as a law of armed conflict as the field of application is limited to a relationship that occurs during this conflict, whether international or non-international nature internationally.

Like the rules of IHL as well as other branches of law, its rules are characterized by the compulsory nature, which means that it is binding on all persons by subjects of international law, whether countries followed the three legislative, executive and judicial authorities or ordinary members, in the case of civil wars, and whether the international organizations, which are required to ensure respect for IHL and for that has been supported existing bodies like the UN apparatuses, establishment of the ICC in (July 1998), which tended rules of IHL. A new and dangerous turn where it became the violations of international law constitute international crimes under the jurisdiction of that court, which exempts from succumbing to them a whatever immunities or official capacity.

Therefore, this study examined mechanisms owned by IHL and implementation rules of the application voluntarily or who domestically or internationally and comes on top of mechanisms at the domestic law, the obligation of States to take all legislative measure imposing respect this law makes violations a punishable crimes, explores this commitment obviously from the text of article (49) of the first Geneva Convention which States that "*the High Contracting Parties undertake to take any legislative action necessary to the imposition of effective penalties for persons who Committing or ordering to be committed a grave breaches of such a convention ...*".

It legislative methods that can be employed by States in the application of IHL, to integrate the rules of IHL into its domestic law, by inclusion of its rules and provisions in the penal laws as regular, or special codes such as martial law or other.

There is no doubt that the IHL in the internal law applied across that legislative action, and it would lead to the obligation of the authorities of other State the judicial or executive to ensure respect for this law, where necessary the men of executive authority especially members of the armed forces and the police to its respect, as it private ordinary people also

committed to submit and obey them, otherwise, they will be exposed to criminal penalties prescribed under the courts and judiciary officers.

As also stated that the mechanisms for the application of IHL is the obligation to publish it, we do not mean here the usual official deployment procedures to publish the law in the Official newspaper only, but also by the need to disseminate the principles, provisions and rules on the widest possible scale as one of the international obligations established in the GC of (1949) and article 47 of the first GC, and article (48) of the second Convention, 127 and article (144) of third agreement, only after the additional protocols thereto, of (1977), article (83) and the system of the ICC of (1998), as should include the rules of IHL into the curriculum for the teaching of all groups, especially members of the armed forces and the police as statutory bodies which were directly involved in armed conflicts.

The establishment of the Criminal Court in (July 1998) lead to weaken a new boom on the mechanisms for the application of IHL, where it's become the perpetrators of violations of IHL for falling under criminal legislation punishments in its system and it will not relieve them of that shelter, including enjoying its formal qualities or immunities of (Article 27) of the Statute of the Court.

Moreover, the crimes do not fall under a statute of limitations and does not expire any criminal proceedings where the lapse of time and depends on the application of uniform standards on the perpetrators of international crimes regardless of their nationality and whether they belong to a great or small state and justice are indivisible, and it is destroyed if hit by the double standards and political passions as its success also depend on moving away from the UN diseases, and the domination of the major powers on the organs, particularly the Security Council and the right of permanent membership and the veto, as the case of these diseases would politicize the work of the tribunal and taken a tool to punish states which adopt policies incompatible with the policies of the major powers, punish whoever and condone trial owed allegiance for whatever offences committed.

Finally, it discussed the role of international governmental and non-governmental organizations in the application of IHL, comes on the top of the UN and its organs, in particular, the Security Council entrusted with the protection of international peace and security and intervention direct and of armed conflict with the necessary decisions to stop the war and end the conflict, and to take military and non-military measures to stop the violation of international peace and security, in accordance with Chapter Seven of the Charter, the

Security Council also has to bring perpetrators of international crimes to take over the trial is about.

The research has also discussed the role of other international bodies such as the Human Rights Council, that was established on (15 March 2006), and its referral to the UNGA to practice its jurisdiction with regard to punishments set out in this report, yet thanks to the Security Council in issuing the decision due to the use of its veto power on the part of some permanent members ,US s, France, England etc, and the role of ICRC was clear in the application of IHL and its contribution to the treatment of the wounded and sick people and the exchange of prisoners of war and their visits and supervision of places of detention and to reach the conclusion of many IHL conventions as the four GC of (1949) and the additional protocols of (1977) and the Statute of ICC.

### **The Research Outcomes**

- All States parties of the four GC in (1949) and the additional protocols of (1977) are committed to issue the necessary legislation to be applied and implemented, where forms pursuant to the rules of IHL into domestic law.
- The IHL is the law relating to international or non-international armed conflicts and international law aimed to put a human face on the war to the mitigation of its horrors and reduce their impact, protecting groups is common in the fighting or who were unable to fight such as wounded, prisoners, it is also aimed to protect the facilities and ambulances and the UN agency the buildings for Relief and Works agency.
- The irregularities or violations of IHL have become constitute international crimes under the jurisdiction of national and international criminal courts ,universal jurisdiction, which can move in trial and the signing of criminal penalties for the perpetrators, and does not absolve the submission of a formal recipe or immunities and it does not pass the case about limitations.
- The commitment to the dissemination and teaching of IHL would inform the largest amount of people by the rules of international law, which expands how to apply and respect in the internal law, especially at the outbreak of international or non-international conflict.

## Recommendations

- The inclusion of IHL in the military and security colleges and universities' curriculum, in order to achieve the wide spread of the rules of IHL.
- Ensuring the application of IHL and the decision of protection of war victims through the establishment of effective national and international mechanisms to ensure that, as an International Committee permanent and impartial UN working to monitor the extent of the obligation of States to apply IHL.
- Activating the role of the regional international organizations due to its proximity to areas of conflict and their ability to direct intervention and faster than international organizations, and giving them wider powers to resolve the internal armed conflict and ensure respect for IHL in it.
- The UN of the Security Council must subject its soldiers to control whatever state they belong to, so that it can hold all of the exits on the provisions of IHL, to UN undermine the confidence of the international community as a force for peacekeeping and international security, and not be a bad model for violation of the rules of IHL.
- Expand the area of recourse of the ICC to the Security Council in the event of non-cooperation with States, to include issues which were not resolved by the Council.

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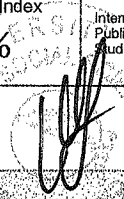
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