

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

MASTER'S THESIS

**THE PROTECTION OF CIVILIANS IN THE
INTERNATIONAL HUMANITARIAN LAW**

Ahmed Iskan Saeed

NICOSIA

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ABSTRACT

Since the beginning of history, Humanity is suffering from the calamities of the tragedy of war. Because armed conflicts and war are inclusive, on limits restricting it. Not bounded by rules that control behavior of the belligerents war threatens life without discriminating between the strong and the weak. Without differentiating between an aggressor and an innocent, war causes destruction and ruin to the human being. In the old ages victims of war were exposed to the most severe treatment and received not enough protection, a collection of legal rules was set up to control the behavior of fighter and which aim at protection of man and respecting his rights during the armed conflict, this collection has been defended as (International Humanitarian law). Which fully rejects killing and torturing persons arbitrarily, and does not allow violence and mistreatment. Two protocols were attached to Geneva's four Agreements, these protocols, that were the outcome of efforts exerted in this field, were signed in 1977.

The importance of this study arises at a time that world witnessed the events of the armed conflict. Other aggression on Arab land aimed at destroying the Palestinian people and it's live as well as to exterminate its entity, also the American aggression on Iraq which aimed to destroying the Iraqi people and its civilization .Through these aggressions, these authorities violated the principles of human law and their rules, represented by treating war prisoners and hitting the civil targets in the Arab land and the other sides of the world. The necessity of the research to know the principles of international human law thus the writer put the research into Three chapters in the first chapter the writer talk about the developing of the international human law and their sources and the important common principles. In second chapter the writer, talk about the civil protections and its concept and people protection in the war and the last the writer has studied the role of state and the international organization to apply the international human law and the judicial role of international criminal courts. Especially the international criminal courts which are permanent and that is temporary. In the third chapter, the writer suggested some recommendations and a conclusion for this study. At last, the writer hopes that he has done the best and he knew he has done little and hopes to do much better in the future.

ÖZ

İnsanlığın başlangıcından beri, insanlık savaşların felaketlerinden acı çekmektedir. Çünkü silahlı çatışmalar ile savaşlar kapsamlıdır ve sınırsızdır. Savaşan tarafları bir kurala uymamakta olup zayıf kuvvetli ayırt etmeden masum suçlu bilmeden savaş imha eder ve insanlığı tahrip eder. Eski çağlarda savaş kurbanları şiddetli muameleye maruz kalırlar ve yeterince koruma görmemekteler idi. Silahlı çatışmalar esnasında savaşçıların davranışlarını kontrol edebilmek için ve insanı koruyabilmek için bir de insan haklarına saygı göstermeyi garantilemek için birtakım kurallar koyulmuştur. Bu takım kurallar (Uluslararası İnsancıl Hukuk) diye nitelendirilmiştir, keyfi olarak insanları öldürmeyi ve işkence etmeyi tamamen reddetmektedir ve şiddet ile kötü davranmaya izin vermemektedir. Cenevre'nin dört antlaşmasına ek olarak iki tane protokol daha eklenmiştir. İki protokol Cenevre Dört Antlaşmasına ek olarak eklenmiştir, sözkonusu protokoller bu alanda emeğin geçen uzmanların sonucudur, ve 1977 yılında imzalanmıştır.

Bu araştırmanın önemi silahlı çatışmalar gördüğü bu âlemde ortaya çıkmaktadır. Arap arazileri üzerine yapılan diğer saldırganlıklar Filistin halkını ve yaşamını ezmeye girişmektedir ve kimliğini imha etmeye çalışmaktadır. Irak'a karşı yapılan Amerikan saldırganlık da Irak halkını ve uygarlığını yok etmeyi hedeflemekte idi. Bu saldırılarla, bu makamlar insan hukuku ilkeleri ile kurallarını ihlal etmiştir, esirlere karşı kötü davranışlarda bulunmak, Arap arazileri ile diğer dünya yerlerinde sivil hedefleri vurmak şeklinde meydana gelmiştir. Bu araştırmanın önemi ise Uluslararası İnsan Hukuku ilkelerini bilmek ve netice olarak yazar araştırmayı üç bölüme ayırmıştır: Birinci bölümde yazar Uluslararası İnsan Hukuku kaynakları ile gelişmesi ile genel önemli ilkeler üzerinde durmaktadır. İkinci bölümde ise yazar, sivil koruma kavramı ile savaş dönemi sırasında halk koruma meselelerini ele almaktadır. Son bölümde yazar, uluslararası insan hukuku icrasında devletin rolü ile uluslararası örgütlerin rolünü, uluslararası ceza mahkemelerinin yargısal rolünü tartışmaktadır. Özellikle uluslararası ceza mahkemeleri, çünkü bunlar daimi, diğerleri ise geçici. Üçüncü bölümde yazar bazı sonuçları ortaya çıkartmakla bazı tavsiyelerde bulundu. Son olarak yazar, emeğinin en iyisini etmiş olduğunu, azını da etmiş olduğunu itiraf ederek gelecekte daha iyisini yapmayı dilemektedir.

Dedication

Dedication This dissertation is dedicated to my gracious family (my Father Iskan Saeed, my Mother Sabah Younis, to soul my big brother Alan Kokhi and my brother Mohammed Kokhi , sisters Jihan And Jwan) that encouraged me and supported me psychologically and financially in all stages of the study until to writing master thesis. At Last I dedicate this thesis to every person who helped me achieve my goal of writing this thesis.

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Secondly, I want to thank Associate Professor Dr Volkan Resat Gunel for his support in all my academic endeavors. Special thanks to the department of Law who equipped me with all the resources I needed to achieve my goal of attaining my master's degree.

Thirdly, it is with great honor and respect that I acknowledge my mother and father, they have been my source of strength and wisdom and for that I am deeply grateful.

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ABBREVIATIONS

| | |
|-------------|---|
| IHL | International Humanitarian Law |
| IHRL | International Human Rights Law |
| UNSC | United Nations Security Council |
| ICRC | International Committee of the Red Cross |
| GC | Geneva Conventions |
| ICC | International Criminal Court |
| UNGA | United Nations General Assembly |

INTRODUCTION

Through centuries, the war was method of settling a dispute between nations. In that time the war was inclusive, has no restrictions or limitations by any rules that regulate the attitude of the combatants during the fighting. When the enemy tries to complete vanish the other party, killing children, women and prisoners and torturing them when everything is allowed in the war.

According to what humanitarian catastrophe caused by warring, the demands on regulating combatant's attitude increased. To mitigate the brutality of its impact. Due to the development of the community's war range increased. In order to achieve the states its goals and ambitious and to guarantee its interests. Due to what mass chaos caused by warring. The international community started to work for limiting the use of power or threading in the use of power. Prohibiting the war as much as it is possible. Through establishing conventions and agreements and instituting regional and international organizations. Through international organization charters the world became internationally prohibited. Thus, describing military actions taken by states as hostilities.

As it is known that human being were in terrible horrors because of the wars. Particularly in the 18th, 19th, 20thcenturies and the first decade of the current century. As result of the absence of humanitarian rules that govern the war. In all of these wars, the enemy tries to achieve to the goals without considering the humanitarian principles that should be adopt during wartime.

The need to activate the International Humanitarian Law to rescue the victims of war and armed conflicts increased. The humanitarian sign emerged in the 19th century and some of other calls before that, all of those calls was asking to regulate the states interests. Humanity started to work on issuing rules through it to mitigate the impact of the fighting's evil. Protecting victims regardless of their participation in the combat or not. Enacted rules that regulate the attitude of the combatants in the wars which representing the conventions and agrehb ements established to mitigate the hostilities terrifying horrors and what humanity results from destruction and disrespect of human rights. All the conventions and agreements

known as International Humanitarian Law. Which it will be discussed in the body of this study.

The importance of this study emerges from the modernity of the topic. The negligence of the Kurdish universities especially the faculties of law and politics regarding this topic motivated the writer to select the topic. That is how the importance of this study is not objective only but, it is importance emerge from researching it in such circumstances. After the Iraqi occupation and the international effort and concerns to spread the rules of international humanitarian law and human rights.

There are many motivations for selecting this topic. Generally, starting with the long history of breaching the IHL until these days, human being faced many experiences in breaching the IHL. Particularly in Iraq, in one hand we faced multi flagrant violations of the IHL by multinational forces led by American States and Britain. on the other hand Iraq faces infinitive violations of breaching the IHL committed by al-Qaida and the Islamic State against the Iraqi population. And as mentioned Lack of researches, studies by the Kurdish Universities that studies the IHL define the actions made by international community to prohibit war catastrophes and to limit the extension of violations in the wartime.

The term of international humanitarian law is relatively new, but the rules and principles is the most important branches of public international law, thus, this research focused on the subject of civilian protection in the conflicts of international Humanitarian law. Meantime, the importance of this study in this time emerge from increasing of the wars around the world. Even after the end of cold war and the effective interfere of the international criminal justice to pursue international criminals in all around the world. Despite of that ICC had main role in facing the crimes of violations of the international humanitarian law but still those violations are too many. In that case the curriculum necessity needed to write the study in 3 chapters and an introduction and conclusion.

At the end, it cannot be claim that this study is an inclusive full comprehensive research. But it was aimed in this study to show all the facts and evidence in order to describe the formal and informal actions have been taken to protect civilians in the International Humanitarian Law.

CHAPTER ONE

What is the International Humanitarian Law

The international humanitarian law wasn't made from nothing; it is a set of values and ethical principles which calls on rejecting wars that happen between states and peoples, so that they return to peaceful solutions for problems that arise between countries and states. In case that the war didn't happen, humanitarian consideration should be taken into account.

The international humanitarian law is considered one of the public international law sections. At the beginning it was commonly known as the "law of war", then it developed to "the law of armed conflicts" until it settled on the current use of the term "the international humanitarian law"⁽¹⁾.

There were different standpoints about the real title of the international law. Different views between calling it international humanitarian law considering that humanity comes before internationalism. Other view adopted that internationalism belongs to the natural of law itself; this was the opinion of the International Committee for the Red Cross .

The term international humanitarian law is considered the latest terminology that was used in the international jurisprudence. It was used for the first time by the International Committee for the Red Cross in the documents that was submitted to the conference governmental experts which held its first round in Genève in 1971⁽²⁾.

This term means the set of rules and principles that place restrictions on the use of force in time of the armed conflict, in order to: First: reduce the effects of violence on combatants beyond the necessary extent required by military necessity. Second: sparing the people who don't participate directly in hostilities .For information on the opinions of the scholars about the definition of international humanitarian law and its development stages, the research is divided into two requirements:

¹Ahmed Fadi. Saeed.(2003) The International Humanitarian Law, A Guide For The Applications At The National Level, 1 Edition,Cairo, International Committee For The Red Cross, Arabs Future Office, , P17.

²Dr. Mahmood Sharif Bsyoni, Entrance To The Studies Of International Humanitarian Law, The New Rose Yousif Printing Houses, Cairo, 2003, P3.

1.1 The Concept Of The International Humanitarian Law

There are many expressions which express the international humanitarian law such as, (the law of war), (the humanitarian law), (applicable legal rules during the armed conflict) and (the law of armed conflicts), although the expression (international humanitarian law) has become more common in modern literature. Since the diplomatic conference that was held in Geneva between the years (1974-1977) under the logo “Reaffirmation and development of the international humanitarian law in the armed conflicts”¹.

It was defined that (international humanitarian law is a big section from the public international law that is inspired by human feeling which focuses on the protection of human in case of war)².

It is defined by other view as “set of rules which seek, for humanitarian reasons ,to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict”³.

The opinion goes last in the section of international humanitarian law as international law which targets “a group of international law rules that targets situations of armed conflict which protects people or injured persons due to the conflict. In other words, it is the protection of notables whom have direct relation to the hostile operations”. We have many notes on the previous definitions which are:

First: in the first definition, the moral character prevailed on the international humanitarian law, since it enters the circle of science ethics not the science of law which is mandatory and got it out of the legal norms that are peremptory norms.

Second: the first definition mentioned the protection of people in case of war, but it didn't mention the ways of this protection or its source and implementation mechanisms.

¹ Michael N. Schmitt, Louise Arimatsu, Yearbook Of International Humanitarian Law -Published By Springer Science & Business Media, 2012,P110

² Ahmed Mansour, A Star Of David, Joseph Preferred The Electronic Group Retrieved 10.1 .2016 From, [Www.Almoharer.Net](http://www.Almoharer.Net) ,.

³ What Is International Humanitarian Law, Retrieved 10.2 .2016 From https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf

Third: the second and third definition also came with the previous defects. In addition to that it focuses on the protection of the victims of conflicts, what is logical is that law prevents them victims not the means of protection of victims, perhaps from other humanitarian work methods to confirm that they are not moral humanitarian principles and legal rules.

Another definition came for this law which is: “the international humanitarian law is not limited to the stated rules in The Hague and Geneva four conventions, protocols and their annexes, but to all humanitarian norms derived from any other international agreement, from the principles of international law and from the principles of humanity and the public conscience”¹.

Another definition goes to as “it is one of the public international law branches which aim to protect the people who are affected in the case of armed conflicts and their sufferings. It aims also to protect the funds that haven’t direct relation with military operations.”²

It is also defined as the applied law in the armed conflicts, which means the international conventions and customary rules. It solves the humanitarian problems directly in the international and non-international conflicts. The rules of this law is limited to humane considerations that gives the right of the parties to the conflict to choose methods and means of warfare, it aims to protect persons and properties that are affected by the conflict. The expression (International Humanitarian Law applicable in Armed Conflicts) has been summed to (The Law of Armed Conflicts) or (human rights applicable in armed conflicts)³.

It is also defined as (a group of principles and provisions governing the ways and means of war, according to the protection of civilians, patients, wounded combatants and prisoners of war)⁴.

According to the definitions mentioned above, we can conclude a set of properties of International Humanitarian Law which are:

¹. Ahmed Abo Alwafaa, The General Theory For The Humanitarian International Law In The Public Law And The Islamic Law. 1edition, The Arabic Renaissance Publishing House, Cairo, 2006, P3

²Satneselaf A Nhelak, (Brief Introduction To The International Humanitarian Law), Translated By Riyadh Al Qaysii , The International Review Of The Red Cross, Cairo, August, 1984, P9

³Dr.Abd Al Ghanney, International Humanitarian Law, The Study Of Comparing The Islamic Law, 1st Edition, The Arabic Renaissance Office, Cairo, 1991,International Humanitarian Law P9

⁴Dr.Zedanmarybot (Introduction To The International Humanitarian Law) Within The Folder Of Human Rights, Studies About The Regional And International Facts.

First: the international humanitarian law is one of the public international law branches however it is a distinct one in which addresses its speech to the states for the favor of individuals. Whereas the traditional theory of public international law, was seen to regulate the relationship between states and defines the relationship and the duties of states towards each other.

Second: the international humanitarian law is not applied on the international conflicts only, but it is also applied on the internal non-international armed conflicts.

Third: the international humanitarian law does not only include The Hague and Geneva law sand their protocols, but it also includes all the rules of convention and other international customary stemmed from humanitarian principles and general conscience.

Fourth: the peremptory rules of international law are general and abstract¹The source of this characteristic is the international custom binding and also normative treaties, because it organizes topics related to humanity as a whole. Therefore does not fall within the framework of reciprocal relationships between states by application. This is confirmed by the decision of the Vienna convention on the law of treaties in 1969. The peremptory norm in article is defined as:

A norm which is accepted and recognized by the international community in all its states as an inviolate standard, and cannot be modified except by new rule in the public international law that has the same characteristic. It decided in article 60 (the provisions that prohibit retaliation against protected persons contained in such treaties have the nature of *jus cogens*).

Fifth: the international humanitarian law aims to:

- a- The restrictions on the right of the parties to the conflict to choose methods and means of warfare.
- b- The protection of persons and objects of religious and cultural property and environment in the event of armed conflict.

Sixth: the aim of international humanitarian law is the protection of human and property. It is a protective legal norm that prevents the occurrence of the act, not just after the act happen, or when individual become victim of armed conflict.

¹Ameralzmary, Quoting Dr.Sherifatlem, Lectures On International Humanitarian Law, 5th Edition, Cairo, 2005, P10.

We can express it by saying: (A wise guy who finds a solution for the problem before falling in it, not the one who looks for the solution after falling in it) In the light of the foregoing, we can define international humanitarian law as follows, a group of international legal norms preventive just with human dimensions seek to limit the effects of international and internal armed conflict, it protects the people who don't participate or stopped participating in the offensive acts, civilian objects, religious places, cultural properties and natural environment through restricting the means and methods of warfare.

1.2 Stages Of Development Of International Humanitarian Law

It is commonly agreed that modern, codified International Humanitarian Law (IHL) was born in 1864, when the initial Geneva Convention was adopted.¹ However we cannot deny the historical fact that ensures the existence of humanitarian rules. The war gained special importance with the emergence of Empires and States. The outlook differed from era to era; it differs according to the applicable rules in our current age but no less in content on the latest findings of contemporary norms and laws. Therefore, we will not offer a historical study, but we will review each era of the ages and look briefly for these historical roots that we call today (international humanitarian law

1.2.1 In The Ancient Ages From (4000 B.C. - 395 B.C.)

The international humanitarian law is not new, but it has roots in the depths of history. The laws of war are in fact old as the war itself and as the life on Earth. In about 2000 B.C., nations began to be formed and relations between people developed which showed the first roots of what is called now (International Humanitarian Law)².

In the East, Hammurabi (1750-1792) B.C. the sixth Babylonian king has appeared³. He issued his famous law after thirty years of his rule. The rule of Hammurabi was divided into

¹Fundamental Of IHL Historical Development Of IHL , Retrieved 10.06.2016 From <https://www.icrc.org/casebook/doc/book-chapter/fundamentals-ihl-book-chapter.html>

²Dr. Mohammed Fhadalshalala, International Humanitarian Law, Knowledge Facility, Alexandria, 2005, P11.

³Prof. Shaeab Ahmed Alhamdani, The Law Of Hammurabi, Dar Al-Hikma, Baghdad, 1979, P14

an introduction, 282 articles and epilogue. He stated in the introduction “I decide these laws so that the strong doesn’t enslave the weak, to spread justice in the country and so that good people enlighten the country”.

In India, the law of Manu¹ in about the year (1000 B.C.), has necessitated (the warrior shouldn’t kill a surrounded enemy, escaped prisoner, sleeping or unarmed enemy, a peaceful non-combatant person and an enemy intertwined with other discount.

In the ancient Greece there was recognition that certain acts are additional customs and traditional principles rejected automatically by the humanitarian public conscience² Historian Herodotus^(*) said “even in the 5th century B.C. there were certain prohibited behaviors”.

The Persian envoy was killed by Alotinin and Alasbartian is no assignee in breach of human laws and the law of human race in general, not only a law that is applicable on the foreigners only. Zoroaster has recognized this law and bowed to it, that’s when he responded to the suggestions by resorting to similar retaliatory measures. He shouldn’t be like the people of Sparta who had violated the law of all people by killing his messengers and that he is not going to do the same thing which is not important. ³

Herodotus: is the first great historian in Greek history. He was born in about the year (484 B.C.) in Halikarna mite Beccaria and died in Athens about the year 426 B.C.

1.2.2 The Middle Ages (395 B.C. – 1453 AD)

The principalities and feudal kingdoms have appeared in Europe in the middle Ages, especially after the advent of Islam in the seventh century, and were characterized by two kinds of wars:

A-Internal wars in the countries, which aimed to eliminate the feudal lords in order to consolidate the sovereignty and unity.

¹Revue International, Delacroix- Rouge, No, 403, Huikket, 1952, P. 56.

²Prof. Mahmud Sharif Basyoni, Previous Resource, P20.

³ Géza Herczegh ,Development Of International Humanitarian Law ,Akadémiai Kiad?, 1984,University Of Virginia,University Of Virginiap,65.

B- Wars between nations for independence

Despite the harshness of the belligerent parties in their dealings with each other in general and with the civilian population in particular, this particular eras has witnessed later on certain disputes to make some of the methods and means of fighting armed conflicts and wars in a more humane way.

Christian and Islam religions have played a big role in that, and specifically to restrict the disposal of the belligerent parties in their dealings with the victims of war and the civilians, as well as in the identification and choosing methods to run combat operations¹.

Equestrian education has contributed in the international law in somehow. Declaring war and the legal status of the negotiators and the prohibition of certain weapons are the heritage of horsemanship. But such self-imposed restrictions have not been applied by everyone .For each of the Greeks and ancient Romans, the rules of war were applied only to sovereign civilized nations. Wars took place in a period of history, Christian and equestrian met when the Crusaders conquered Jerusalem in 1099 AD and slaughtered the population. When Sultan Saladin entered Jerusalem in 1187, a stunning variation in the act has been observed , Muslims did not kill and did not mistreat any of the enemies, as the Sultan assigned a special protection patrols for Christians, then he released the rich prisoners in exchange for ransom, and the poor ones without any charge⁽²⁾.

1.2.3 The Modern Ages (1453-1789)

At the end of the fourteenth century, an act took place that was one of the biggest turning points in the military history, which is the appearance of the firearm; it replaced the authority of Feudalism to the authority of state, abolished private and slavery wars, and also noted interest in the prisoners who were released by ransom is a g, as well taking care of the wounded people.

In the sixteenth century, the new formation of the state and the decline of the Papal authority has led to a new concept for the law of nations, is called (Law between Nations) if political entities have become subject to the law rather than individuals¹

¹Deep Akawi, International Humanitarian Law, State And Law Institute, The Academy Of Sciences In Kiev, 1995, P. 21.

The success of the American revolutions in 1776 and the French in 1789 had a major impact on the moral basis of international humanitarian law development who depicts the ethics recruited in (Is there a leader or a fighter does not want his opponent to applaud him while fighting, and respect him after he win, I have seen my cavalry visiting their wounded enemies and warming them with their coats I blessed the fate that gave me the opportunity to lead such men)

1.2.4 The Current Era (1789-1918)

With the beginning of the modern age in the mid-nineteenth century, the international relations have witnessed intensive efforts between the countries for the legalization and regulation of international customary norms, which had originated in the conduct of hostilities and the protection of the civilian population and victims of wars and armed conflicts, and those rules was soon turned into mere habits and customs to written legal rules in the second half of the nineteenth century, through the codification of these rules, and those norms in the form of international agreements or statements or in forms of instructions from the government addressed to the armies in the field.²

The most important international conventions, which sent the first nucleus for the development of international humanitarian law are: Paris statement in 1856, Geneva Convention of 1864, the Declaration of Saint Petersburg for 1874, and the Hague Conventions for the first peace of 1899 and the Geneva Convention in 1906, the Hague Convention of 1907, and we'll look in detail these international conventions in the subsequent second topic³

¹Dr. Jan Bkety, International Humanitarian Law, Its Development And Principles, The Publisher Maahd Henry Donan, Geneva, 1984, P24.

² Michael Bothe, The Handbook Of International Humanitarian Law, OUP Oxford, 2013m P213

³ International Review Of The Red Cross (ICRC), The Seventh Year, No. 40, P. 465.

https://www.loc.gov/r/rfd/military_law/pdf/rc_sep-1967.pdf

1.2.5 The Contemporary History Of The (1918 - onwards):

The Contemporary international humanitarian law, which was made with the first Geneva Convention of 1864, has witnessed various stages of development which often came in the wake of wars, and to fill the growing need for humanitarian aid resulting from the development of weapons in the types of conflicts, and the most important agreements signed in this age are:

Protocol of 1925, the Geneva Conventions of 1929, and the four Geneva Conventions of 1949 and the Hague Convention of 1954, the 1972 Convention and the Additional Protocols of 1977 to the four Geneva Conventions of 1949 and the Convention in 1980, and the Convention in 1993, Additional Protocol of 1996 to the Convention in 1980, and the 1997 Convention, and the Rome Convention of 1998 and Protocol III to the Geneva conventions of 1949, held in Geneva on 8 December / December 2005 on (red crystal badge). We will discuss in detail these agreements in the subsequent second topic¹.

1.3The Legal Nature of The Rules Of International Humanitarian Law

The international humanitarian law is consider as a part of war law, Therefore, since the war was threatening the existence of the states themselves and while all their energies are conscripted for battle, the rules of war are threatened more than others if not to abide by the international humanitarian law .in addition, the war obstruct the impose of penalties on those who violate these rules.²

The international humanitarian law is a law which concern to the state and it conclude and applied by the states. Therefore, the international humanitarian law it's only a sequel of interests of the parties (any state) nevertheless the people who have power within the state they often can practice a positive influence in the formulation and application of law Under the pressure of general opinion.

¹ In Arthurnoseyoum, International Humanitarian Law, The Answers To Your Questions, Publications International Committee Of The Red Cross (Icrc) Retrieved From <https://www.icrc.org/eng/assets/files/other/icrc-002-0703.pdf>

²Roberta Arnold, Noëlle N. R. Quéniwet, International Humanitarian Law And Human Rights Law: Towards A New Merger In International Law, Brill, 2008, P223

However, the legal nature of the fundamental Conventions has been differed, each one of them has its own Independent nature that Organized war procedures.

1.3.1 The Legal Nature Of Customary Rules That Are Installed In The Hague.

Conventions in 1899, 1907 and can be performed as follows: This convention affected by traditional concepts of international law arose in spaciousness, where the theory of voluntary, which sees at the rules of international law as reciprocal contractual relations between, states. As a result this convention was act as the international rules and only among states. The reciprocal and contractual character for this convention shows in overall participation condition and which provides that The provisions of the Convention does not apply to relations between all the warring parties unless all the warring parties are parties in the Convention, even between the warring parties that bounded with the convention and that's so the bound by the convention cannot have any effect on the balance of power between warring parties .The interactive character also appears in the is permissible to The interactive character also appears in permissible to resort to reprisals or retribution measures during the fighting as a penalty for violation of the provisions of the Convention by one of the warring parties what allows the other party to take these actions that violate the provisions of the Convention, in turn, or other provisions of international humanitarian law.¹

The four Geneva Conventions of 1949 represent a fundamental shift in international humanitarian law, following the world war, which suffered from the horrors of humanity twice in the first half of the twentieth century, the establishment of the World Trade Organization, the United Nations and the beginning of the international movement for the protection of human rights, these agreements came modern notions, contributed in development of an important aspect of international humanitarian law conferred upon it the characteristics distinguishing it from other branches of public international law from several key aspects that are :

¹ A. C. Kiss, J. G. Lammers,Hague Yearbook Of International Law, 1990,Brill Academic Pub, 1991,P129

A. The Reciprocal Character And The Inadmissibility Of Revenge, Or Reciprocity:

If the (pacta sunt servanda) base were the fundament of every agreement ¹It is the supporters of voluntary doctrine in international law it could not commit to an international treaty unless its parties, as a general rule, As for supporters of the objective doctrine. ²

They see the opposite is the possible departure of the effects of a treaty to non-parties in certain cases, notably those of treaties known as the normative treaties. The 1949 Geneva Conventions fall in this category of international treaties, they are of normative treaties, conventions or that exceed the contractual framework, applicable to non-parties agreeing upon. ³

This was confirmed by the second common article to the four Geneva Convention of 1949, which states: if a dispute party wasn't part to this convention, the States (the parties) which remain bound in their mutual relations, and it adheres to the Convention about the state and if the latter accepted and applied the provisions of the convention.

Rejecting the interactive nature shows, also, that the four Geneva Conventions of 1949, to take any retaliatory action against persons and property protected by the Conventions on common material, (46, 47, 13 and 33) even as a reaction to violations of other side.

Article (46) of the Geneva Convention of 1949 (prohibiting reprisals of wounded, sick or employees who are protected by this Convention, or building or tasks that are protected also)

The refusal was based on the interactive nature also, these conventions are not subject to the condition of reciprocity and if it recognized that, as a general rule, the non-implementation of a party to a treaty may eventually lead to degradation of the other party of its obligations or justify cancellation of the Treaty, this doesn't apply to Geneva Conventions, where they remain valid in all conditions and is not subject to the conditions of reciprocity, it was not

¹ Georges Abi-Saab, *The Geneva Conventions, 1949, Between Yesterday And Tomorrow, Studies In International Humanitarian Law, The Future Of The Arab House*, Cairo, 1999, P. 352.

² *Les Rapports De La Volonté dans les traités, Lois And Les Traités Contracts, Melanges de Férrière*, I, Athene 1961, P. 351.

³ Izz Al-Din Fouda, *The Legislative Role Of Treaties In International Law, The Egyptian Journal Of International Law*, Vol. 27, Cairo, 1971, P 7.

logical to accept that the party warrior resorts to ill- treatment of prisoners or killing them, because his opponent had committed such crimes.

This is based on the principles of humanity underlying international humanitarian law, because if international conventions aimed at preserving the interests of the parties, the situation is different in the Geneva Conventions of 1949, it aim to maintain the interests of mankind through a set of substantive rules, which announces to the world the guarantees are the right of every person.

The Vienna Convention had reaffirmed the law of treaties of 1969 , the interactive nature of the refusal and condition of reciprocity in international humanitarian law conventions generally stated in article (60)(3) provides as follows¹ :- (Any gross violation of a multilateral treaty by a party gives to the other parties the right to suspend the implementation of the Convention in whole or in part, and any breach of any provision considers as a gross violation and is the basis for multiple purpose.) The same article also stipulates that this rule does not apply to provisions concerning the protection of the individual included in the ally of a humanitarian character, in particular provisions prohibiting any kind of reprisals against individuals who are protected by the conventions.²

B- Address People Other Than States:

Geneva Conventions of 1949 featured that it exceeded the traditional concepts that the international agreements are based on, for speaking directly to entities other than States. For example, members, non-governmental organizations (Red Cross and Red Crescent), and people who seek to get their right to self-determination, as well as members of the armed resistance to certain conditions, these agreements granting them rights and hold them obligations, directly and away from affiliates countries, and has this sense confirmed the common Article (7) to the four Geneva Conventions of 1949 as follow:³

¹ Saeed Salem Goueli, The Legal Aspects Of Countermeasures In General International Law, Published Economic And Legal Magazine, Faculty Of Law, University Of Zagazig, Sixth Edition, 1994, P. 138

²The Vienna Convention On The Law Of Treaties Of 1969.https://App.Icrc.Org/Elearning/Understandingdetention/Story_Content/External_Files/Geneva%20convention%20iv%20%281949%29.Pdf

³Iv Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War 1949 Retrieved On 11.06.2016 From https://App.Icrc.Org/Elearning/Understandingdetention/Story_Content/External_Files/Geneva%20convention%20iv%20%281949%29.Pdf

(It's not permissible for the wounded or sick people as well as the medical and religious personnel to waiver in any conditions partly or entirety the rights granted to them under this Convention or under special agreements referred to in the previous article, if founded)

C- The Nature Of Jus Cogens OF Geneva Conventions 1949:

Internal legal systems classified the rules into two types:-

Complementary rule that the parties may agree on what opposes. Jus and rules that may not agree on what opposes, the internal law called the jus cogens (the rules of public order).

The idea of peremptory norms or rules of public order is based on the need to protect the basic concepts and values in society and protect the same legal system. It is not envisaged that there would be a legal regime without being abide by people to maintain or to have absolute freedom of contract without any restrictions.¹

In particular, the idea of (public order) is one of the fixed concepts on all domestic legal systems, but it's not imaginable that it could be without developed legal system. And the public international law defines such a division also. Where the international jurisprudence categorizes the international rules into two main classifications:-

Consensual Rules: - which is the rule that explains obligated power with the principle of (the committed one is the slave commitment) that leaves the person of the international law the freedom of determine the scope of the executive of its sovereignty in relation to other sovereignty. Or international organization and these rules can be modified in violation rules.

The jus cogens: is the one that cannot be agreed on what opposes it.

The international jurisprudence insures on the humanitarian international rules, it categorized in the range of jus cogens that it's not permissible to agree on what it opposers. This is stipulated in article (60) of Vienna Convention for treaties law of 1969. After mentioning the possibility of decomposition from the obligations contained in multilateral treaties. In case one of the parties breaches these obligations stipulates that the provisions relating to personal protective humanity in international humanitarian law will be exception. The contained rules in the Geneva Conventions, because of their nature jus differ from other rules of international

¹Mohamed Abdel Salam, Espionage Conflict Between Egypt And Israel Is Constantly On The Site www.Newbbc.Com , May 12, 2016.

law. This means that the execution of international humanitarian law is not subject to any condition it was ; it is not permissible for the state to suspend the execution of the convention, if the other party do some work or the availability of certain political or military conditions far from the texts of conventions.

D -The Absolute Character Of The Protection Rules:

The absolute character of the protection rules that contained in Geneva Conventions of 1949 shows by reading common materials (6.6, 6, 7) and (7.7, 7 and 8). Where article (6) of the First Geneva Convention states as follows: (Furthermore, the special agreements expressly provided for in Articles 10.15, 23.28, 31.36, 37.52,the high Contracting Parties may conclude special agreements on any of the issues that see separate provision, nor any special convention adversely affect the situation of the wounded and the sick, or the status of medical and religious personnel services, as defined in this convention or whereby longer rights confers upon them .¹

(And the benefit of this convention continue to the wounded and sick, medical and religious personnel services, as long as the Convention is applicable to them, unless there where explicit provisions to the contrary contained in the aforesaid or in subsequent convention or if this party or that of the conflict parties have taken a more suitable measures for them).

Under the previous mentioned article, other conventions used by the parties of the 1949 Geneva Conventions will be canceled and detract from the protection rules under the Geneva Conventions, and by the violation concept , Naturally these parties may conclude convention allows the increased protection, and this rule will be applicable even after the end of armed conflict (common Article 51, 52,131,148), the victorious party cannot impose on the defeated party to relieve him of his responsibility for violating the conventions and the rights of persons protected in the peace treaty, for example.

Article (7) of the First Geneva Convention stipulates that: (the wounded and sick, as well as medical personnel and chaplains, they are not permissible to waiver in any case partly or completely for the rights granted to them under this Convention, and by the special conventions referred to in the previous article if any) .

¹Abdul Hussein Shaaban, Civilized Dialogue, 1970, Published On The Website www.Rezgr.Com , March 2 ,2016.

This provision means that the individual cannot be waived by agreement for the protection afforded to him by the convention.

In other words, the conventions protect the weaker party against his weakness; he cannot enter into a contract with another party to reduce or cancel the protection or to exempt the other party from the effects of violations of its obligations.

The absolute protection character as evidenced as well as from the obligation under first common article on states parties not only to respect but also to ensure respect for the conventions in all cases. Each one of them takes overseeing work responsibility on the best application of the conventions by all other parties, regardless of whether this application is touched directly or not, in other words, the conventions have decided the collective liability of the circle of states parties to make each guarantor, solidarity and guarantor to respect its provisions.¹

E) The Entry Into Force Of The Geneva Conventions Of 1949 Erga Omnes

Given the importance of interests and values aimed at protecting the Geneva Conventions of 1949, it occupied the bases rank higher than others, not as the only peremptory norms or public order rules, but as such applicable rules omens that applies to face all the members of the international community. Thus its available interest situation to each member of this community demanding implementation. Even if the violations couldn't touch the member directly, which means that both of them can initiate public proceedings or popular, a suit known in Islamic law calculation to ensure the correct application of the Conventions in all circumstances.²

The first common article expressed that through the Geneva Conventions of 1949, which included a provision consider as the nucleus of collective responsibility system and the text was as follows:

(The High Contracting Parties undertake to respect this convention and to ensure respect in all circumstances)

¹Mohamed Abdel Salam Full-East, Mercenary Men Dirty Errands, Community Magazine, Issue (1636) On The Site www.Almujtamaa-Mag.Com , May 2,2016

²Dr.. Saeed Salem Goueli, The Special International Conventions On International Humanitarian Law And Legal Nature, Quoting The Book Of International Humanitarian Law, The Prospects And Challenges, Part 3, 1st Floor, Al Halabi Legal Publications, 2005, P. 270.

In light of the above, we can conclude that international humanitarian law draws its provisions from a wide range, variety, from multiple international conventions and parties, the restoring to such conventions began in the second half of the nineteenth century, increased in the second half of the twentieth century, and the provisions of these agreements spins in general, around two major themes: the organizing tools and methods of warfare, and the protection of victims of armed conflict, and we noted that international humanitarian law conventions, include peremptory rules of international public order, are not subject to the principle of reciprocity, and it is binding on all, without exception, because it aimed at protecting the entire humanitarian community.

CHAPTER TWO

CATEGORIES OF PROTECTED CIVILIANS IN INTERNATIONAL ARMED CONFLICTS

Legal Scholars Oftentimes talk about the categories of protected civilians during international armed conflicts, Specified by the international humanitarian law, that applies to this conflict and recognizes the principles of respect and protection. The truth is that giving special legal status to certain persons Individuals or groups mainly stems from the principle of distinction between combatants and non-combatants. Which based upon (International Humanitarian law). Since ancient times this principle was inherent in the wars. Anyone who observe the commandment of the prophet Mohammad peace be upon him, will notes that the groups of people and property must remain outside the circle of battles. "Fight in the name of god and on the religion of the messenger of god. Do not kill; any old man, not a child, nor young, nor woman. Do not Hyperbole, take your booty and do well, because God love Good doers".¹ Additionally on the prohibition of the killing Elders, children and women; He added the general principle that prohibit fighting non-combatants in comprehensive manner, The fighters who stop fighting because of illness or injury or who are Trapped in the control of the enemy they are noncombatants also.²

2.1 The Conception Of The International Armed Conflict

The international armed conflict idiomatically: (It is the use of armed force by the belligerents parties, at least, it must be one of them regular army, located outside the boundaries of one of the parties usually begin to declare, and stop field reasons, (cessation of hostilities) or strategy (truce) and ends either surrender agreement or reconciliation).

International armed conflict is the one in which two countries or more fights against each other by weapons, in case of the absence of declaring war or with the declaration of war or in

¹. Abu Dawood Sulaiman Bin Shaggy Sijistani, Sunan Abi Dawood, A Former Source, The Number Of Modern (2614).

² Jenny Kuper, International Law Concerning Child Civilians In Armed Conflict, Clarendon Press, 1997, P87

both situation. Or those where the people suffering against the colonial domination or foreign occupation or against the crimes of racial discrimination, these conflict are subject to large number of international rules, including those set forth in the four Geneva Conventions of 1949 and Protocol I of 1977.¹

International armed conflicts are of two types: limited, and extensive (war), and if the Limited international armed conflict represents the use of armed force for specific place and period to achieve a certain goal, it will match with war conditions. The wide-international armed conflicts characterized with the extension of its framework, with the extension of the operation on large scale between the two countries or the warring states. The word war even used in the limited armed conflict.

This mean that the international armed conflict, characterized by several characteristics. They take place among the states, or more precisely between the persons of international law, which include using of armed force, whether in land or sea or air. As well as it is characterized by the wide of its operation on a relatively large scale. Finally armed conflict aims to achieve a certain goal, such as the case of forcing a country into submission to the demands of the Aggressor State, or the occupation of part of its territory, or to act or refrain from action, or seek to destroy the determination of a specific country or its ability to resist.²

As for the declaration of state of war, states in the modern era 1453-1789 decided to declare ware before starting the aggression, because it will consequent rights and obligations between them on hand , and between them and the neutral states, and foreign countries on the other hand.

All of this was customary rules, the ethics of international law cover it. The Hague Conference has addressed in 1907 the issue of how the war started, and ended. At the conclusion of the agreement which is the third agreement the following were decided.

First, the war shall not start only after prior unambiguous notification. This notification shall be either in the form of a reasoned declaration of war, either in the form of a final warning, in which the war is declared between the parties if the country did not obey the requests of the other country.

¹Article 3 Of The Regulations Respecting The Laws And Customs Of War On Land, The Hague, October 18 / October 1907, (M. A. S. A). D Retrieved On 11. June 2016 From [Http://Avalon.Law.Yale.Edu/20th_Century/Hague04.Asp](http://Avalon.Law.Yale.Edu/20th_Century/Hague04.Asp)

²Lewis Maaloufjesuit, Upholstered In Language, Literature, Science, Op. Cit., P. 801.

Second, the war must be reported to the neutral countries immediately. The war shall not result in any effect only after the arrival of the report, even if it was telegraphically. Nevertheless, no neutral countries has the right to invoke after the arrival of the declaration unless if it has proven that the country did not receive the declaration.

The Dutch government has proposed in time of the discussion of this agreement that twenty-four hours, should be provided at least for the declaration and began the hostilities. However, this proposal ignored, and by that, there is no law that prevents on the state to surprise the attacked country starting the hostilities act after the announcement directly, even by minute one. This is what Germany did in World War II with all States that was attacked, and what Japan did when the destruction of the US fleet in the port (Pearl - Harbor) and some of the British fleet cut in the Pacific.

In addition, states were not acknowledging the existence of a state of war existed between itself and others to ignore the provisions of war law on themselves. In the Sino- Japanese conflict 1932-1931 although the fighting between them was extensive, but the two sides have denied a state of their war. So as result The Hague Conventions of 1907 and the Geneva Conventions of 1925 provisions were not applicable to the case of (no war). Therefore the need to reconsider the provisions that existed to regulate the cases of war was increasing. It was put forward 1938 in the 15 conference held by the International Committee of Red Cross. an so it was after efforts have been made to reconsider the laws of war, where he developed new texts expansion of the scope of the wars that applicable to them the Hague Regulations and the rules of the 1925 Geneva.

In 1949, after establishing fourth Geneva Conventions, the provisions of the situation in this regard states ¹ This Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties even if one of them did not recognize the state of war. Convention shall apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if this occupation meets with no armed resistance. If you were not one of the countries of the conflict party to this Convention, the state's parties to the conflict remain bound by it in their mutual relations as it adheres to the Convention for that State if the latter accepts the provisions of the Convention and implemented.

¹Article 2 Common To The Four Geneva Conventions Of 1949.Op.Cit.

This article cut the road to the cohesion of the expediency and allegations that may be occur by these countries in order to get rid of its commitment to performance. There are no need any more to the declaration of war or to the recognition of this convention to oblige them with the rules of this convention. But if the aggressive action took place for whatever reason it is enough to apply the law of war, named after that international humanitarian law, because it was not specified with its meaning as it is stated in Hague convention and it includes all kinds of the international humanitarian conflicts. It will apply on the fighting parties whether they are parties to this convention or not. The obligation still applicable for the member states and effective against its enemies. By that Geneva Convention changed the effects that Hague convention applied 1907. The absence of some formal conditions was not a reason to obey this Convention and a cause of not bidding of its rules by some states.

Things did not stop in the conventions of 1949 that covered with its rules all kinds of international armed conflicts. Some articles added to the international humanitarian law in the first additional protocol 1977, that make from this law to be applicable on new brand of the international conflicts which being led by national liberation movements against colonies and the foreign control and against the foreign occupation and racist regimes.¹

Then in another article the additional protocol elaborated how some of the convention rules are being implemented that completing it from the parties. States that is facing armed conflict from this type shall obligate and respect the rules of this protocol and other conventions that linked to its conflict with the National liberation movement².

Regarding for the national liberation movements article 96 part 2 from the first protocol states, that authority that represent the population collaborate with higher party contracted in armed conflict from the mentioned type in article 4/1 from the same protocol shall agree on applying convention and the agreement and this appendix (protocol), and the effect of this declaration shall appear against the authority who inter the convention and this appendix under the application phase, to the mentioned authority immediately describing it as part of the conflict in an immediate effecting. Mention authority shall exercise same rights and obligations that gived to the higher part contracted to the convention or first additional protocol. As the obligation of this protocol and convention is obliged on all parties equally.

¹Article 1 P-4/1.Four Geneva Conventions Of 1949.

² Article 96 P 1, Ibid

The characterization of the International armed conflict and the armed conflicts not international the internal. It is the conflicts that apply on the region of one of the higher party from its armed force and armed force dissident or organized groups armed and exercise on the party region part of the authority and control. That made it capable of doing armed operations continuously coordinated implementation of this Annex¹.

These conflicts happen inside the international border of specific state for example: rebellion or armed insurrection for the separation from central authority, or demanding for certain things to achieve. Revolved between revolved between the regular armed forces of the State and the dissident armed forces or other irregular groups, and therefore no longer an internal conflict situations of internal disturbance and stress (such as riots and violence occasional rare). However, the internal armed conflict.

However, the internal armed conflict. It can turn into force during or at the end of the international armed conflict in many conditions including:

First, considering the effects, if victorious rebels or insurgents, as in this case, a new state may appear, if the purpose of the revolutionaries separation, or a new government if the aim was to overthrow the existing government truly.

Second, in the case of recognition of insurgent by other states as an insurgent fighters or revolutionaries, thus internal armed conflict towards them will have international implications.

Third: third state may intervene in an armed conflict to rebel side and this intervention will raise the article 2 same to the four Geneva convention according to these forces while it result into the entry force ,Article 3 the Convention between government rebels or the. Or the evolution of the internal armed conflict to an international conflict, where it becomes the belligerents have different nationalities and their actions are attributed to more than one country, which is what happened in the former Yugoslavia.²

¹G.I.A. O. Draper, The Relation Ship Between The Human Right Regime And The Law Of Armed Conflict, Icrc, Genera, 1971, P. 203.

²Philippe Breton, (Actualitedudroitint, Humanitarian Applicable Dans Les Conflict Arms) Hubert Thierry, Levolutiondudroit, Melangsofferts, Apedone, Paris, 1998, P. 59.

Fourth, the internationalization of the conflict should be relevant to the intervention of international forces as UN or to regional organization. Decided to intervene for humanitarian reasons to send troops to solve the international conflict with a solution and negotiated settlement as when happened in Cambodia, which ended with an armed conflict and the establishment of Paris convention.

According to this the rules of the international humanitarian law the special one with the internal conflict will inter to the force in one hand and specially the rules of article 3 the common with Geneva Convention which is characterized as customary rules specialized with the international armed conflicts.

2.2 Rules Of The Protection Of The Civilian People

Since the creation of the human being, the violence created. Enclosed with the diligent pursuit of the human for peace, and during that period since the beginning of the history human societies created self-contained groups shall fight and handle the tasks of war. It was not coincidence that thought the history the society declaration that the heads of its fighters is the guaranty of insurance of its security and protection of civilians. The protection rules of civilians in the international humanitarian law concentrated on two basic pillars:

First, humanitarian rule; it is the commitment of the parties to the conflict, who do not have an absolute right to attack the enemy. In which it will make the civilian population outside the scope of effect of the military operations.

Second, it is military rule, representing in the commitment of the parties of the conflict to focus their operations to the destruction and to weaken the military sources deductible. Rules of international humanitarian law devoted very important principle recognized by the international system, which prohibited directing The military operation against civilians population as long as combatant are the only party who is resisting. They are obvious target for the operations. But civilians should not be the object of the attack as they must not participate in the fighting.

The expression of this principle implicit for the general protection of the civilian population and essential pillar of the law of war. International humanitarian law protects persons and a

number of places and things. Prevents the use of a number of means and methods of warfare and humanitarian law sets out basic legal safeguards for the protection of civilians as follows:

First, the fundamental guarantees of international humanitarian law is a set of rules to ensure a minimum level of treatment for each person under the authority of conflict party to the. These rules stated in the first Geneva protocol should be respected in every time and place from all parties of this agreement. It represent the human rights declaration applicable in time of war. It can fill the gaps that may occur in the law, it complementary not inconsistent with provisions that ensure greater protection for some categories of persons¹.

Second: Do not allow any excesses, even if it so requires state security or military necessity and therefore the breach of fundamental guarantees is serious violations of international humanitarian law, which must be punished with such violations.

Third: to prevent at all times and in all places, affecting the lives and the health and safety of persons, and persons must treated humanely.²

Fourth: the Additional Protocol I of 1977 states: that people to be treat humanely in all circumstances, regardless of their race, color, religion, sex, language, or political opinion.³The military necessity principle was an obstacle to the full protection of civilians. We find this principle available in the rules that impose protection which maintained by the Warring States in the conflict.

As a result, however, civilian people exposed to certain danger arising from military operation, the risks that are either directly or indirectly. Even the civilian population enjoys general protection from the effects of hostilities; there are obligations incumbent upon them as follows:

¹D. Mustafa Ahmed Abulkhair, The Theory Of War In Islam, Published On The Website www.almatshar.com , April 23,2016

²Zakariaazmi Hussein, The Theory Of War To The Armed Conflict, A Study In The Protection Of Civilians In Armed Conflict, Phd Thesis, The Rights Of Cairo, 1978, P. 347.

³Respect For International Humanitarian Law And Ensure Respect For, A Practical Guide For Parliamentarians No. (1), The International Committee Of The Red Cross (Icrc), The International Parliamentary Union, Translated By Mohammad Dizziness, 1999, P. 15.Also Available On https://app.icrc.org/learning/understandingdetention/story_content/external_files/geneva%20convention%20iv%20%281949%29.pdf

First, non-participation in military operations. Secondly Do not take an active role in the war effort .Third: stay away as much as possible, and not to be present within the circle of military targets or near so as not to cause the risk of inflicting them directly .Basis from above, the amount of general protection of civilian people depends on the amount of their refraining in the previous work.

Based on the above, we note that the Fourth Geneva Convention of 1949 focused protection of the civilian population in the occupied territories, and do not provide the means of adequate protection of civilians during armed conflict. It is also limited to protection of victims of international armed conflicts, and it does not provide protection to all victims of armed conflict Civilian protection is not applicable on citizens of neutral states or the states that is the enemy of the warring state to one of the belligerents. As long as there were diplomatic representation with the state on its territory.

On the other hand, the Fourth Convention was limited to protecting civilians who are in the hands of the enemy, from enemy's attacks. Especially from the long-range missiles, and air strike, missiles that have caused, increasingly and continuously, the greatest number of harm, victims among civilians since First World War.¹

Fourth convention last one of the four red cross conventions. The adoption of fourth Geneva Convention was to protect the civilian, which represent genuine contribution to international humanitarian law development. For the first time in history, we find internationally provision deals extensively with the fate of civilians in time of war.

2.3 Civilian Protection In The International Armed Conflict.

Civilians are often subject to terrible ordeals in today's conflicts, and sometimes they are direct targets. Massacres, hostage-taking, sexual violence and harassment, deportation and forcible movement of people, looting and deliberate deprivation of food and water, health care, represent some of the practices which spread terror and suffering among civilians.

¹Respect For International Humanitarian Law And Ensure Respect For, A Practical Guide For Parliamentarians No. (1), The International Committee Of The Red Cross (Icrc), The International Parliamentary Union, Translated By Mohammad Dizziness, 1999, P. 15.

The concept of protection idiomatically: it is the legal relationship established between two states because of putting one of the state under the wards of the other willingly or forcibly, under the wards of the other State. Protection defined in the first case (agreement protection), and in the second as the (colonial Protection)¹ and the protection is maintenance of others from the dangers and suffering which they may expose and defend them and provide them with assistance and reinforcement.

2.3.1 Conception Of Civilian People And Other Protected Groups And Other Fighters.

First: Conception of Civilian People.

The conception of civilian people in fourth Geneva Convention 1949 in Article 4 defined as: persons this convention is protecting are those who find themselves in any moment and in any way in an occupation or conflict situation. Under the authority of a party of the conflict they are not belonging to, or under occupied state, they are not its citizens. This convention does not protect the citizens of a non-protected country. However, the citizens of neutral state in the territory of warring state and citizens of warring state they will not considered as protected persons. As long as the state to which they belong represented normal diplomatic representation in the country, that fall under its authority). That the provisions of Title II of the Fourth Geneva Convention, the widest in the application as defined in Article 13. Stating, which decided to protect the general people groups without distinction of race, nationality or religion, political views, a desire to mitigate the suffering caused by armed conflict.

According to the conception of this convention, persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. August 1949. or the Geneva Convention to improve the condition of the wounded, sick and shipwrecked at sea (Second Convention), or the Geneva Convention relative to the Treatment of Prisoners war (third Convention). They will not considered as protected persons by this convention.

Article 5 from the mentioned convention states two kinds of exceptions where this convention will not be applicable

¹. Ahmad Gift Of God, Political Dictionary, Arab Renaissance Publishing House, Cairo, 1968, P. 480.

- A.** If the parties of the conflict believed with the existence of suspected person protected by the convention in territory of the engaged party and threaten the security of the state. If his activity proved this person should be deprive from the privileges and rights given by this convention, which may harm the security of the state if it is awarded to him.
- B.** If a protected person arrested on charge of spying or destruction or because of being suspected in engaging in activities dangerous on the security if the state. This person will be deprive from the rights that war security provide.

Second: categories determined special protection by international humanitarian law:

A. children:

International humanitarian law protects children and is the most important rules are applicable as follows ¹

1. Treatment of newborn babies same place as treatment of wounded.
2. Children under age of 15
 - Shall be received in safe areas and hospitals
 - There recruitment in the armed forces is prohibited
3. The evacuation of children temporarily in order to protect them (in the case of the besieged territory).
4. Prohibit children participation in the combat operations
5. Importance of reunite separated families as result of armed conflict.
6. Prohibition of implementing death penalty on those who have not reached the age of 18 at the time of offense.
7. The need of educating children.
8. Prohibition of recruiting children under the age of 18 as soldiers compulsory in the armed forces or groups.

¹Sharif Atlam, D. Mohammed Maher Abdallah, (M. E. S. D. A) Former Source Material (14, 17.23, 25.27, 38.50, 51.68, 76.81, 82.89, 94.132 0.136) / C 4, Articles (8.70, 74.78) / 1, And Materials (4.6) / 2.

B. Women

Women enjoy the granted protection for civilians, if they were part of the armed forces of the adverse party; they enjoy equal treatment for men.¹

In addition, IHL states other aspects for women's protection.

1. Protect them against all forms of humiliation or personal attacks on the honor, including rape or indecent assault.
2. Give the highest priority to consider issues of women pregnancy, mothers of young children they arrested, detained, or interned for reasons related to the armed conflict.
3. It is prohibited to implement the death penalty on pregnant women or mother of young children who are having dependent children.
4. Women who are deprived from their liberty for reasons related to armed conflict shall be separated from men and supervised by women .

C. Hostages: it prohibits taking of hostages, taking them and killing them considered as war crime.

D. The protection prescribed for relief workers: Fourth Geneva Convention imposed on the occupying state to provide for the civilian all what they need from food supplies, medical supplies, as well as may not take over the supplements before checking the adequacy of the need of civilians. As occupying authority must allow protected persons in the occupied territories to receive individual relief consignments sent to them taking into account the security measures considered coercive. Fourth Geneva Convention of 1949 and Protocol I of 1977 to the parties to the dispute also imposed on Each High Party to allow and facilitate rapid and unimpeded passage missionaries and relief equipment for workers with them, in which sent to the civilian population even if they are affiliated to the other warring party.²

¹Nesty International, The American Threats Of The International Criminal Court, Citing The Site www.Ara-Amnesty.Org , Dated April 4, 2016.

²Nesty International, The American Threats Of The International Criminal Court, Citing The Site www.Ara-Amnesty.Org , Dated April 4, 2016.

E. Paratroopers: in military plane crash parachute will jump in this case two rules will be implemented,

1. It should not attack them during the landing.
2. When they arrive to the land belonging to the enemy party, they must give them chance to surrender before attaching them unless it was clear that they are engaged to hostile acts.¹

F. Missing and dead persons: Rules of international law for armed conflict need to search for missing person report (of the wounded, sick and shipwrecked ... etc.) who allegedly from hostile party as well, and so to take all appropriate action to make it happen. Have it as soon as possible in accordance with the existing conditions. Full report immediately after the end of hostilities². Dead must be buried in known graves; conflict parties must return remains of dead person on the request of the relevant state.

G. Resident foreigners in the territory of one conflicting party: Article 35 of the Fourth Geneva Convention of 1949 states that, a protected person who wants to leave the country at the beginning of or during a conflict entitled to do so, unless their departure is contrary to the national interests of the state. Article 5 states, if the one conflict party believed in suspected resident person in its territory that this person is engaged in hostile activities that threaten the public security of state. Alternatively, if proved he is in this activity is subject to attack the state, such person deprived from the rights presented to him by this convention provisions. Which may harm the security of the state if given to him.

H. If the person arrested protected by the Convention in the occupied territory on charges of espionage or subversion, to the presence definitely suspected of, or engaged in activities hostile to the security of the Occupying Power could deprive a person in the cases required by the truly military security rights of communication provided for in this Agreement.

I. Humanitarian services staff: humanitarian services includes humanitarian work that protected persons by IHL benefits from it. Including moral and material support. They represent the organizations and bodies. We will mention medical and spiritual services personnel and family associations relief volunteer and members of the

¹ Article 42. Fourth Geneva Conventions Of 1949. Op.Cit.

² Article 19 Ibid

defense civil and the staff of the United Nations: Medical Services staff or members divided into three sections, namely: Completely full-time to search for the wounded, sick and shipwrecked, transfer or treated, completely full-time for the management of medical units and establishments. Military personnel specially trained to work when needed. Such as nurses or aid tanker holders searching for wounded. Sick, shipwrecked, transporting them or treading them. However, the spiritual staff they are attached to the armed forces. It is not required from them to totally or partially to treat the wounded spiritually. Because there work in armed forces need to be legally associated to the military, and they need to have formal relationship with the army. As the relationship should be formal between volunteers and the army, so they can have the protection of convention.¹

J. Members of volunteer aid organizations:

- Staff of the Red Cross and Red Crescent organization. As an example. in terms of the national government's recognition of the association to which they belong, Government approval for them to operate during the war as an assistant to the interests of the Army's health. Informing that government peacetime and the rest of parties and informing the enemy during the war. Subordination of those volunteers' staff to military laws and rules wartime, working under the responsibility of the state.
- - Members of the relief societies of neutral country who are doing humanitarian services for the benefit of one of the parties to the conflict, and enjoy the guarantees granted to their colleagues belonging to that party, in term of the availability of some conditions such as informing other conflict parties in their relief voluntary work involvement.
- Civil protection staff / Civil Defense: Article 61 / c of Protocol I states, the civil defense staff are the people who appoint them one of the parties to the conflict. To perform humanitarian missions aimed at protecting the civilian population from the

¹Mohamed Abdel Salam, Espionage Conflict Between Egypt And Israel Continuously, On The Site www.Bbc.Arabic.Com , Dated April 28, 2016.

dangers of hostilities or disasters. Helping them to overcome the direct effects of the attacks and provide them with the necessary conditions of survival.¹

The general principle of the protection of civilians who are required to refrain from acts hostile to civil defense and means of their staff. Acts of civil defense shall not be considered as harmful for the enemy even if they are directed under the supervision of military authority or management. Nor the cooperation between them and the military in the work of the civil protection works or military recruiting to its bodies or utilization of some of the military casualties of the civil defense services, especially if they become hors de combat.

Employees of the civil defense may carry light weapons for civil protection, as not to confuse between them and fighters. If their organization were as military pattern or their work was compulsory, that would not be their right of legal protection.²

United Nations staff and associated personnel: With the growing role of the United Nations in various world conflicts, some countries initiated to embrace an idea of a treaty to protect UN staff and associated personnel, this treaty was approved by the General Assembly of the United Nations at its 49th Convention on safety. This treaty does not apply to any United Nations operation authorized by the Security Council as a measure of the rescue measures under Chapter VII of the Charter of the United Nations with the participation of any of the individuals as combatants against organized armed forces. In which the international law of armed conflict is applicable on the last.

Third: Combatants and fighters practice combat operations during armed conflict that existed between conflicting parties. They are entitled to attack the enemy and resistance. That is why they are also a legitimate target for the enemy in the field of fighting, they are targets to be killed, wounded and this is linked to the implementation of international law provisions in the armed conflict, type of combatants involved in hostilities and nature of armed conflict. Therefore, the legal situation changes depending on the category to which they belong, which can be divided into the following categories: Regular fighters, irregular fighters, and the illegal fighters, and non-combatants.

¹ Protocol Additional To Geneva Convention Retrieved On 11.June.2016 From <https://Treaties.Un.Org/Doc/Publication/Unts/Volume%201125/Volume-1125-I-17512-English.Pdf>

²Amer zemzami, Introduction To International Humanitarian Law, Op. Cit., P. 85.

Regular combatants: means uniformed fighters, the military members of armed forces for party of the conflict participants in the international or non-international armed conflict. Armed forces considered as basic organizer of the regular combatants. They are entitled to exercise hostilities against the enemy and resist it by all legitimate means. Thus they have right to kill or wound the enemy combatants as long as they continue to resist. Armed forces includes different formation, land, sea, air on all categories of combatants. The regular armed forces in the international armed conflicts, regular armed forces (permanent), regular and militia unites.

Members of regular armed forces: Members of regular armed forces are composed of individuals Onshore & Offshore air military units, who exercise the military service, and other group that are part of them They are entitled to direct participation in hostilities, and subject to the internal organization of the regular armed forces of the domestic law of each country. Police forces may added to them in sometimes. Mentioned in paragraph 3 article 43 from protocol I 1977. Its paramilitary enforcement agency extension into law.

The regular armed forces and includes permanent armed forces, which consist of (members of the armed forces of a Party to the conflict and police agencies). It is the regular and militia units and teams of regular volunteers.¹

A. Incorporation of police forces:

Duties of police forces imposes respect for protection law on the preservation of the internal security of the state. However, the nature of these forces and their paramilitary organizational links to the armed forces and thus legal status can be identified in three types of states.²

States those police forces are part of its armed forces in war and peacetime such as Belgium, which announced in the first protocol 1977 that police forces in its country are part of the armed forces in addition to its mission. According to the concept of war of the armed forces of a party to the conflict mentioned in article 43 of the protocol. This is consistent with the substance of paragraph (3) of Article 43 of Protocol I which emphasizes the right of parties to

¹Washington, Pentagon And The Privatization Of The War Against Terrorism, From The Site www.Islammema.Cclarticle1, Dated February 5, 2016.

² Derek Jinks, Jackson N. Maogoto, Solon Solomon, Applying International Humanitarian Law In Judicial And Quasi-Judicial Bodies, Springer, 2014, P473

the conflict in integrating these bodies in the armed forces, on condition to provide notice to the other parties of the conflict for such procedure.¹

Countries integrate police forces in the armed forces in the armed conflict situation. Like Iraq before the occupation on April 9, 2003. Were border police forces, customs offices and police agencies merged with the armed forces. As well as federal republic of Germany, which has police force operating in peacetime with the border guards and can have part in hostilities in time of armed conflict.²

As well as in state of Sweden which has National Guard forces for industry. Groomed for peacetime defend their locations against any aggression actions on the industry, and as such, they are fighters in this case only.

Most states separate police from the armed forces. In this case, police forces which imposed to respect and protect the civilians are protected by the provisions of Fourth Geneva Convention of Annex IV and Section (Protocol I).³

B. Legal Status Of Regular Militia Units And Volunteer Groups:

Regular militia units and volunteer groups from the combatant appointed to protect them. last paragraph (1 / a) of Article (4) of the Third Convention are: (militia teams or volunteers forming part of such armed forces) and we will look to these two groups briefly as follows:

A. Regular And Reserve Units: Regular Militia Groups.

These units consist of military personnel who have served for a certain period in the permanent armed forces of both laid off volunteers because of separation or convoked to perform national service for a temporary period expires after a period of being recruited. This constitute the militia as strategist credited. Called in specific periods of training as it was in

¹Mohammed Hamad Asbali, The Legal Status Of Prisoners Of War In International Humanitarian Law, Knowledge Facility In Alexandria, 2005, P. 23.

²Commentary On The Addition Protocol, Footnote No. 37. P. 518.

³Michael Bothe National Jmple Mentioned Ihl. Proceeding Of On International Colloquium Held At Bad Homburg June 17 – 19. 1988 Mortisusnijh Off Publishers Dordrecht – Boston – London .Available

On https://Books.Google.Iq/Books?Id=7bngmlDr_Ccc&Pg=Pa166&Lpg=Pa166&Dq=Michael+Bothe+National+Sample+Mentioned+Ihl.+Proceeding+Of+On+International+Colloquium+Held+At+Bad+Homburg+June&Source=Bl&Ots=M2v1smf-K0&Sig=2q64iqfad73i88ecmpum2tx-G2m&HI=En&Sa=X&Ved=0ahukewiq7tue9p_Nahvfwbqkhl1satmq6aeihjaa#V=Onepage&Q&F=False

the former Iraqi Army, where the laid off soldier were called to be trained for two months every year. As it was in public emergency or in cases of armed conflict. These units are part of the regular armed forces, the national law of each State regulate militia groups and its unites grant the right to participate in the combat operations in the times of armed conflict. As special corps were formulated in the militia units in the Iraqi army at the Iraqi-Iranian armed conflict 1980 – 1988 And the formation of units of the Iranian Revolutionary Guards, which is part of the public Iranian army which granted the legal status of prisoners of war by the Iraq authorities.¹

b. Irregular combatants:

Combatants who do not belong to regular armed forces defined as irregular combatants. The beginning of the attention to the legal situation started with the legalization of the combatant's situations in general. The reason is their role as a force fighting alongside the regular armed forces in many countries, either to help its forces to confront the enemy, or to carry out defensive operations in the event of the defeat of these forces, or in the absence of these forces at all. Such groups resist the enemy in the framework that all have the right to defend their homeland. These groups divided into members of irregular militia units and irregular volunteers units and varieties of similar fighters similar to volunteers in an irregular situation, including foreign volunteers from irregular persons and individuals from third countries. Who do not make up their own teams, but they join to units of the conflicting party and fight alongside the armed forces as individuals, including non-Iraqi 200 volunteers who met with the United Nations mission in 1985 in Dawdia camp in Tehran they are citizen of 15 state. The volunteers mostly from the Iraqi Army. The mission confirmed that in accordance with the provisions of the Third Convention of 1949, volunteers in should be treated as combatant in the Iraqi Army, so they are entitled as prisoner of war statues and should and should be registered in this place and cannot be considered mercenaries²

Thus, individual volunteers from third country who are joining the armed forces of a party to the conflict shall considered as prisoner of the war when they fall in the hand of the enemy. In accordance to paragraph (a / 2) of Article (4) of the Third Geneva Convention. As well as

¹P. Tavernier: Combatants And Non-Combatants In The Gulf War Of 1980 – 1988 Available On <https://Books.Google.Iq/Books?Id=Xyy7sbs1wryc&Pg=Pa129&Lpg=Pa129&Dq=Tavernier:+Combatants+And+Non-Combatants+In+The+Gulf+War+Of+1980>

²Iran – Iraq War In International Legal Perspective Edt. By Leg F. Dekker. London 1992. P. 134.

Article 43 of Annex I to the Protocol in 1977, which indicate to consider volunteers who are not fighting for money as prisoner of war and excluded from the definition of mercenaries. The other combatants similar to irregular volunteers. They are the national persons who enrolled to the enemy and military advisers.¹

2.3.2 Protection Of Civilian Under Military Occupation

Territory is occupied if the state is not able to exercise its authority in a realistically and effectively, because of the invasion carried by attacking states. As the attacking state maintains the order there as stated in the article 41 of the rules of land warfare² adopted by international law 1880.³ International legal rules state that a region is occupied if the territory is under the control of the colonizing army or military leadership in practice. As the governing authority has moved to the occupier in reality. Occupier shall take all possible measures to restore and ensure safety and public order with the necessity of respecting law in force in the occupied country. All of that unless there are circumstances preventing access to it, is strictly and absolutely. Military occupation governed with many of rules enacted mostly in the protection of civilian persons in wartime 1949 Geneva Conventions, known as the Fourth Geneva Convention⁴ and Hague Convention on the laws of land warfare. Held 1907. As well as laws of land warfare adopted by the International Law Commission in 1880, and the additional Protocol I of the Geneva Conventions of 1977, we can summarize most of the important rules in the following:

- A. Individuals and their properties must be respected under the occupation. Article 49 of the Fourth Geneva Convention states “forcible transfers of protected individual is

¹The Report Submitted By The Secretary-General's Mission To Investigate The Situation Of Prisoners Of War In The Islamic Republic Of Iran And Republic Of Iraq, The Secretary-General's Memorandum No. 16961 / S, Paragraphs 263-267. Retrieved From <http://www.securitycouncilreport.org/atf/cf/%7b65bfcf9b-6d27-4e9c-8cd3-cf6e4ff96ff9%7d/Disarm%20s17911.Pdf>

²Rule Of Land Warfare. Retrieved On 11.June.2016 From Official Record Of 1977, Vol Xv, Para. 106. P 406.

³ Please See http://www.loc.gov/r/rfd/military_law/pdf/rules_warfare-1914.pdf

⁴The Question Of The Observance Of The Fourth Geneva Convention Of 1949 In Gaza And West Bank (Including Jerusalem Occupied By Israel In 1967), Un, New York, 1979, P, 54. Retrieved On 11.June .2016 From <https://unispal.un.org/Dpa/Dpr/Unispal.Nsf/0/Ceee0a514875a47085256d65007b36c9>

prohibited. Exile them from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not is prohibited regardless the reasons. It is prohibited to transfer or deport of parts of the occupying state's own population into the occupied territory.¹

- B. No protected persons shall be forced to serve in the armed forces of the occupying state.
- C. No protected persons will be imposed be house arrested unless it was absolute necessary because of the public security of the protected state to do so.
- D. Refugees of the enemy state shall not be counted as enemies just because they belong to enemy state.
- E. State cannot use the weapon of starvation against civilian .as well as destruction or attack the things that are indispensable to their lives, such as grain silos, agricultural areas, water purification plants, irrigation facilities.
- F. People shall not prosecute people for acts they committed before the occupation with exception of the laws and customs of war.
- G. Regarding the legislative aspect, penal laws of the occupied territories window remains what not abolished the Occupying Power or malfunction if it was a threat to its security or an obstacle to the application of this Convention.
- H. the courts shall apply only the laws that were in effect prior to the offense, which was in accordance with general principles of law, particularly the principle that the punishment be proportionate to the offense, and we must bear in mind that the accused is not a national of the occupation.
- I. Occupying state cannot force civilians to provide loyalty to the enemy power
- J. Must respect the family's honor and rights, the lives of persons and private property, as well as religious convictions and practice, and may not be the confiscation of private property.²

¹Ahsan Hindi, Op. Cit., P. 285.

²Ierc Additional Protocol I Of The Geneva Conventions Of 1977retrieved On 11.June.2016 From

As the rights prescribed for the civilians in the additional first protocol, was the main purpose of Geneva Convention .which strengthened international protection system for civilians in the time of armed conflict. It should be noted that this protocol developed general protection of civilians. It regulate wars of national liberation, and the conceder it as an international war under the fourth paragraph of the first article, and addressed the issue of protection of the civilian population against the airstrikes in the articles 24- 31. Which considered as the most creative legislation. Because it filled the gaps in fourth Geneva Convention. Developed many rights and protection for civilians under the authority to a party of conflict.

2.4 Protection Of Civilian Objects In International Armed Conflicts

Conception of civilian objects and distinguishing them. Attention attracted to secure the public objects of civilian, especially between the first and the Second World War. In order to strengthen the protection of civilian population, or what can follow it from the dangerous and harm as result of destruction.

Fourth Geneva Convention 1949 came up with some of rules and provisions that forbidden the destruction of non-military targets that have special nature. However, it could not cope with the modern forms of the armed conflict. Several provisions described the protection of civilian objects in the protocols of 1977 and in the customary rules of the international law.

2.4.1 Distinguishing Between Military Target And Civilian Objects.

- A. Military target: the target that has military nature or as its location or because of its purpose of use. That its partial or total destruction or disabling or capturing it will prevail definite advantage.¹ Military objectives remain military objective even if civilian people were found inside it. Civilian's persons who are present within the target or in the surroundings are subject to the same risk that the object subjected.

<https://www.icrc.org/Ihl/Intro/470>

¹Samer Ahmed Moussa, A Former Source, P. 5.

If doubts raised about whether an object used for civilian purposes. Such as a place of worship, house, school or any other civil use. It is being used to an effective contribution in military action. Two rules control military targets:

- 1- Military target only can be target for military operation and attacks by other party. And when attacking these targets must take all the necessary precautions by each party at the preparation and execution of the attack on them, if this would damage to civilian objects.
- 2- Military equipment of enemies can be taken as war booty ¹.

B. Civilian Objects:

Places that have civil nature enjoys full protection therefore any attack upon it will be real violation of the provisions set forth in this. Civil Objects and that cannot be under attack or directing the attack to it are:

- 1- Hospitals, health institutions, medical personnel, and ambulances.
- 2- Educational institutions, universities, institutes and schools.
- 3- Service institutions electricity, water and telephone stations.
- 4- Cultural institutions, museums and archaeological areas.
- 5- Places of worship and religious institutions.
- 6- Dams.
- 7- Residential districts and inhabited areas.
- 8- Shelters.

The most important features of such protection in the following:

Attacks directed to the shelters for wounded and sick civilians that protected them from effects and hostility facility, base 35.

It is prohibited to Attack against demilitarized zone agreed on by the parties of the conflict.

¹ Article 45 Lipper Legislation

Thus, objects enjoy general protection, meaning that it should avoid any attack on them when launching military operations.

Preventive actions must be taken, presented as taking into account the precautions in attack. Article 57-58 from the first protocol.

Enemy properties may not be confiscated or destroyed, unless it was military necessities.

(Hospitals should not be attacked, unless they are used for harmful purposes to the enemy, and after warning includes period of time).

As well as starvation of civilians also is prohibited or attacking indispensable materials for their survival such as water, food, irrigation water. Civilian properties must be respected even in case of military occupation and so forth Geneva Convention states on the prohibition of destructing properties and funds in article 53(it is prohibited to destroy from the occupying authority. any real estate personal property owned by ordinary people of individual or collective ownership or state-owned. Any public authority, Or for social or cooperative organizations, unless such destruction is an absolute necessity).

Hague Convention of 1907 in article 46 prohibits confiscating of private property, by stating (family's honor and rights should be respected and the lives of persons and private property, as well as religious convictions and practices shall not privately confiscated).¹

As well as article 8 from the statute of the international criminal court states: war crime is destruction on large scale of properties, not justified by military necessity which is performed illegally and intentionally, as well as intentionally directing attacks against civilian objects.

C. Mixed Objectives :

After the description of military targets and civilian objects. Mixed objects emerged. Which may not have military significant importance. Proving that it has military importance is essential condition for the legitimization of the destruction in the prevailing circumstances. Particularly it will be necessary to define mixed targets in this study of same characters. These targets not always are military targets in essence. They are often civilian targets turned to military objectives through the occupation or use, and therefore can be returned to civilian

¹International Committee Of The Red Cross, The Consequences Of The Misuse Of The Emblem, On-Site www.icrc.org , Dated April 15, 2016.

targets easily (such as homes, schools). These targets are located mainly in the area of military operations; any area of site being indefensible by creating hypothesis that it is military target should be dismissed. In this case, there are no commitment except buildings. The hardest issues is the case of defining bilateral military targets because it is directly linked to the strategic bombing. This case it will not deal with targets used for direct fighting. However, with targets that have economic relations with war. Article 57 from the first additional protocol resolved this subject. Restricted the legality of the use of this right in dealing with secondary military targets, it is contingency obligations to avoid causing incidental loss of civilian.¹

Paragraph A from the article 57 of the first protocol states : Second (to take all feasible precautions in the bias means and methods of attack in order to avoid incidents loss of civilian life, or causing injury or damage to civilian objects, and so incidental, to minimizing it in tight scope).

Third: : (to refrain from taking a decision on any attack which may be expected to cross, that losses happen in civilian life, injury, or damage to civilian objects, or a combination thereof losses and damages occur, excessive what is expected to result in the attack in military advantage in direct and concrete way).

As paragraph B. of article 57 from the mentioned protocol state: any attack to be cancel or suspended if it appears that the objective is not a military one, Or if it is subject to special protection. On the other hand, that the attack may be result in losses of civilian life, injury, or damage to civilian objects, or it will occur combination of losses in damages. Overly exceed in the occasional results that expected in concrete and direct military attack. This concept is realistic because even enemies are being destroyed by regular armies. It is wrong to simplify things and think that indiscrimination is a victory. Absolute freedom in indiscriminate destruction prevent the monopoly of these targets, which are crucial. By that, it identifying such targets cannot be considered as military target. Only those that are closely linked to military operations.

If we look today to the needs of any army to manage military operations, substantially: weapons, ammunition, equipment and supplies, fuel, and transportation of all kinds, and then the facilities used directly for the production of the goods or service. It can make up the

¹Nada Hussein Hussein, Islam And International Humanitarian Law, Phd Thesis, University Of Baghdad, 1983, P. 118.

military targets, and as well as this, it is necessary to transport these products to the battlefronts, and then add to the transportation and communication lines suitable partly military character,

The difficulty lies in determining the nature of these facilities that are used in both military and civilian production .in, which it is the mixed target. Any reasonable explanation would be based on the relative importance of these two types of production in accordance with the principle that state, the armed forces are the only legitimate human objectives, and the crowds of the civilian population or individual they are not so.

But we see that military institutions cannot continue their work without workers. That is why they called the workers as (semiconductor fighters) It is generally recognized that the civilians who happen to be within the military targets are exposed to risks related to these objectives. And that their presence does not grant the target any immunity. If the meaning of this idea is these workers are legitimate targets. It will exposed the civilian population immunity in danger because it will be impossible at that time to distinguish between civilians and combatants. This new concept creates class of fighters who are deprived from the rights and privileges granted to fighters. In which there activities are not legitimate and must be fought with full force. Therefore, I think it is important that the state adhere manner of special protection in order to ensure the protection of a large part of civilians and civilian population and object. By developing large-scale system of safety areas. Which looked to the first Geneva Convention 1949. In addition, the idea of demilitarized zones and sites referred by protocol I of 1977.¹

However, the problems raised by the establishment of these areas. Its existence assume pre agreements before the starting of new war. The issue needs the interest of to insure that certain places should be neutralize which does not produce any militaries benefits or strategy for combatants. That these areas will be able to become self-sufficient economically survivor, and it cannot be used for transportation. Finally that the international monitoring system will take place to ensure the non-use of these areas for military benefits.

However, it is better to ensure the protection of civilians and civilian objects and others which in their judgment of the wanton destruction of strategic bombing. which causes mass without discrimination as well as the principle of proportional distinguish between military

¹Articles 23 Paragraph 1 And Articles 14-15 Paragraph 4. Retrieved On 11.06.2016 From <https://www.icrc.org/Ihl/Intro/470>

targets and civilian objects with the benefit of all the guarantees of the civilian population addressed by the norms of international law and the Geneva Conventions and Additional Protocols.

2.4.2 Cultural Objects And Worship Places

International protection of cultural property during armed conflict reflect the expansion of the scope of the international humanitarian law. As has been the case until the mid-twentieth century, to protect the victims of wars of individuals and ease their suffering. However, it was extended to ensure the international protection of cultural property in times of conflict, and this was the expansion of the scope of international humanitarian law to include protection of cultural property as a natural result of what mankind has experienced stretch the devastating effects of armed conflicts. Not only to humans but also to public and private property, especially with cultural and religious character.¹

The first attempt was made in the regulation respecting the laws and costumes of war on land.²

The cultural property and places of worship have great importance to the cultural heritage of the peoples, religious holy places, architectural buildings, archaeological sites, art works or books. These cultural objects and places of worship constitute the common heritage of humanity, so it is natural that custom and contemporary international law aims to protect them, even during armed conflict.

Customs and legal rules control the protection worship places and cultural objects in the time of armed conflict and military occupation:

A. Each party of the conflict respect cultural property:

¹Amr Mohammed Saleh, The International Protection Of Cultural Property In Times Of Armed Conflict, Human Rights Publications Halabi, Cairo 0.2000, P. 16.

²Protection Of Cultural Property In The Event Of Armed Conflict A Challenge In Peace Supporting Operations , Edited By Edwin G. Retrieved From [Http://Www.Bundesheer.At/Pdf_Pool/Publikationen/05_Pcp.Pdf](http://Www.Bundesheer.At/Pdf_Pool/Publikationen/05_Pcp.Pdf)

- 1- Special attention must be given in the military operation to avoid damages allocated to religious or artistic, educational, charitable purposes unless if it is not a military target.
 - 2- Important properties to cultural heritage must not be an object of attack, except in cases required by military necessity. Rule 38
- B. Use of important properties is prohibited that has great importance of the cultural heritage of people, for the purposes of likely to exposed to discrimination or a damage, except in cases required by military necessity), the Rule (39).
- C. each party to the conflict protects the cultural property:
- 1- seizing or destruction of the assigned institutions for religious, charitable, educational, scientific purposes, or the historical monuments of technical, scientific, business purposes is prohibited
 - 2- It prohibits any form of robbery, looting and any acts of vandalism, which affects the great importance of the cultural heritage of a people.
- D. State of the occupation to prevent the illegal export of cultural property from the occupied territories, the return of this property to the competent authorities in the occupied territories) power. The rule (41)

This is the customary international rules that pay particular attention to the respect and protection of cultural property and religious objects.

There are many legal rules and conventions of international protection and respect of cultural property and places of worship during the control or under military occupation and armed conflict, including:

- A. general protection system: -
1. The basic principle governing the cultural objects in times of armed conflict in the parties' commitment to maintain the respect of those of the objects
 2. It is prohibited to exercise acts of reprisal against cultural objects.
 3. must be distinguished cultural objects sign or a special logo

4. article (8) of the Statute of the International Criminal Court (Rome May / May 1998).
That the war crimes among in both international armed conflicts, or conflicts not of an international character. Intentionally directing attacks against buildings dedicated to religion, education, art or science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded, they are not military targets.

B. Special general system

1. the Hague Convention of 1954 on a system called System stated (special protection) and benefiting shelters sheltering movable cultural property in armed conflict, and centers containing monuments and other cultural objects immovable in condition¹
 - To be placed in a sufficient distance away from any public military target. If placed near a military target, it could benefit from special protection if the State pledged not to use the target in the case of armed conflict.
 - Not to be used for military purposes (article 8), if it is used for military purposes other party does not adhere to the protection prescribed (article 11).
 - To be entered in the (International Register of Cultural Property under special protection) and maintained by the Director-General of UNESCO.
2. States is committed to respect the cultural property and prohibit or prevent any theft or looting exposed (article 4).
3. first Protocol to the Hague Convention in 1954, and for preventing the export of cultural property from occupied territory in whole or in part on a number of rules in this regard,
 - Necessityof reservation of the cultural property that came out to the territory of any party to the Protocol.
 - The need to return the property to its original state, immediately after the end of hostilities and cannot be seized to meet the damages of the war.

¹Convention For The Protection Of Cultural Property In The Event Of Armed Conflict, The Hague, May 14 / May 1954. Retrived On 11.06.2016 From [Http://Portal.Unesco.Org/En/Ev.Php-Url_Id=13637&Url_Do=Do_Topic&Url_Section=201.Html](http://Portal.Unesco.Org/En/Ev.Php-Url_Id=13637&Url_Do=Do_Topic&Url_Section=201.Html)

- The occupation authorities shall cooperate with the competent national authority in the occupied territory in order to ensure the protection of cultural objects.

2.4.3 The Protection Of Objects Indispensable To The Survival Of The Civilian Population

The conflicting parties used starvation of civilians' means to put pressure on the will of other party and to force them to surrender. Force them to surrender methods, as they were used economic warfare methods on a wide range of maritime risk and air and ground, as the United States imposed economic sanctions on Iraq since 1990 and until 2003, which led to the economic and psychological destruction of the Iraqi people. As well as Israel currently uses the blockade and economic war against the Palestinian people. These methods leave adverse effects on civilians and combatants alike.

For these reasons, international efforts tended to work on approve the customary rules and legal to protect the things necessary for the survival of the civilian population and for the continuation of normal life and facilities. This protection designed to complete aspects of the protection of the civilian population and the preservation of their lives and their survival or prevent their displacement to other places they live as refugees. Several customary rules come up in the customary international humanitarian law to protect important objects and indispensable to construction of the civilian population, including.

- A. Ban on starvation of the civilian population as a method of warfare. (Rule 53).
- B. To prohibit attacks on indispensable objects to the survival of the civilian population, to be destroyed or moved, or to be disabled. (Rule 54).
- C. Parties of the conflict shall allow passing humanitarian relief for civilians in need, and facilitate the passage quickly and without obstruction, and provides relief without bias or any adverse distinction, with the parties retain right to monitor. (Rule 55).
- D. Parties of the conflict provide necessary freedom of movement to do their jobs for the authorized humanitarian relief team. They can temporarily restrict the movement only in cases of military necessity compelling. (Rule 56).

As the international efforts tended to approve international provisions to oblige warring parties to protect indispensable objects to the survival of the civilian population ¹

- A. To prohibit the attack, destroy, remove or render objects, which are indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, and livestock, drinking water installations and supplies and irrigation works. If the purpose was whether to starve the civilian or to cause them to move or if it was for any other motive.
- B. It is prohibited to starve the civilians as method of warring methods.
- C. Prohibition do not apply if the thing pointed and mentioned in the last points was as the following:
 - 1- If it was for the survival of the members of the armed forces.
 - 2- If it was for the direct support of military action
- D. These objects shall not be made the object of reprisals.
- E. It allows taking into account that requirement for any party to the conflict for the defense of its national territory against invasion.

As the Second Protocol of 1977 stated, including material for the protection of objects to the survival of the civilian population as follows²

- A. It is prohibited the Starvation of the civilian as method of combat.
- B. It is prohibited to attack destroy, remove or render useless objects indispensable to the survival of the civilian population alive, such as foodstuffs, agricultural areas for the production, crops, livestock and facilities, networks and supplies and irrigation works drinking water.

Thus, the rules of Geneva protocol made the rules of strong protection for dignitaries and necessary facilities for the survival of the civilian population to protect their lives.

¹Article 54 Paragraph 1four Geneva Conventions Of 1949.Retrieved On 11.06.2016 From https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule54

² Article 14 Paragraph 2 Ibid

Both provisions was good things that mentioned as an example and not limited. Therefore, they do not restrict the scope of protecting facilities and objects. On the other hand. All images of assault were prohibited against these objects.

2.4.4 Protection Of The Natural Environment

The war has fears and devastating effects. If the war were banned nowadays because of the principles of prohibiting the use of force and resolving international disputes by peaceful means. However, it is still having devastating effects on earth.¹

There is no doubt that impact of the war, among other things, a significant impact on the environment of different elements: land, sea and air.²

From here, it is necessary to focus on protecting the environment during armed conflict. The most dangerous damage that affects the nature caused by radioactive materials and the use of atomic and nuclear weapons it needs dozens and dozens of years to restore the nature to its previous state. Not to mention what damage caused to human from health infections that cause permanent disabilities and deaths.

On 6 August / August 1945, the first atomic bomb dropped on Hiroshima in Japan, which left more than a hundred thousand people, which destroyed the city. Left marks on the city for decades on the nature and environment and the region. Any nuclear explosion leave its mark on the land, air and especially to humans. Experts states that blowing one megatons of nuclear bomb can cause broken spine of each animal within 130 thousand square meters from the scene of blast. One neutron bomb strongly cause the death of every human being is within the area 270 km from the blowing scene. The protection of the environment from radiation danger that threatens all human beings, is possible only through a complete ban of the use of nuclear and neutron weapons.

¹Ahmed Abu Al-Wafa, Book Flags The Rules Of International Law And International Relations In The Law Of Islam, C 7, 1st Floor, Arab Renaissance Publishing House, Cairo 2001, P. 220.

²Protecting The Environment During Armed Conflict, An Inventory And Analysis Of International Law. Retrived On 11.06.2016 Fron [Http://Www.Un.Org/Zh/Events/Environmentconflictday/Pdfs/Int_Law.Pdf](http://Www.Un.Org/Zh/Events/Environmentconflictday/Pdfs/Int_Law.Pdf)

2.4.5 Protection Of Technical And Institutions Contains Dangerous Forces:

Institutions containing dangerous forces are those that attacking on it can affect great losses to civilians. As an example of the dangerous forces that, we can mention: (Dams, power plants, that operate nuclear powered) such as facilities may not be attacked. Even if it was direct military objective.¹it can be attacked if it was used on regular basis and directly and important way to support the military operations. In condition that the attack is the only method this support or this use.

2.4.6 Protecting The Areas Where There Are No Defending Forces Or Demilitarized Or Neutral Areas

The areas where defending forces are not existed. Areas where prone to be occupied by the enemy, or that exist in the region where armed forces are very converges. Establishment of such areas can by unilateral declared to other parties or by an agreement between both parties on conditions:

- 1- All moving fighters and military equipment shall be evacuated
- 2- Military united should not be used in the hostilities
- 3- Not to take any promotion or help of the military operation (Article 59 of Protocol I).
It should be noted that the (Article 60 of Protocol I) states regarding the demilitarized zones that conditions are very close to those areas that has not force to defend. As well as article 15 of the fourth Geneva convention 1949 by an agreement , Created neutral zones, (Neutralized Zones) in areas where fighting is taking place in order to spare the wounded and sick, as well as civilians who are not taking part in hostilities ²

¹Kamal Haddad, The International Legal Regime For The Protection Of The Environment, (B. D), Beirut, 1995.

²Ahmed Abu Al-Wafa, The General Theory Of International Humanitarian Law, Op. Cit., P. 111.

CHAPTER THREE

INTERNATIONAL EFFORTS TO IMPLEMENT INTERNATIONAL HUMANITARIAN LAW:

International humanitarian law like any other law remains a dead letter, if the state parties did not take any legal and practical action to ensure its implantation during armed conflict. There is reason to be careful on the implementation of international humanitarian law more than other laws. The implementation and enforcement of international law in general and IHL in particular is problematic. The international legal system is based on the notion of the sovereign equality of States, and, generally speaking, no State may interfere in the internal affairs of another sovereign State.¹ This law applied on the international and internal conflicts, where people's lives are at significant risk and dangerous. As it is known if the doctor made a mistake caused the death of a person (the patient), but if military commander, made mistake possibly can cause of killing of hundreds or even thousands of people. The IHL should put into force by the state parties to the conventions that make up this law. States parties to the four Geneva conventions agreed on the respect of its terms in all circumstances. that violations of this law is more enormity of a violation of any other law, as these violations can lead to human suffering and loss of human lives that can be avoided in case of knowing this law. Prohibited and put them into practice, and we say in this sense (if the sins of the army worst from the enemy's).²

¹ Information About The Law Nfw, Implementation And The Enforcement Of Ihl, Retrieved On 11.06.2016
From http://www.legalanswers.s1.nsw.gov.au/Guides/Hot_Topics/Intl_Humanitarian_Law/Enforcement_Ihl.html

² Orna Ben-Naftali, International Humanitarian Law And International Human Rights Law, Oup Oxford, 2011, P255

3.1 Role Of States And International Organizations In The Implementation Of The International Humanitarian Law

International Humanitarian Law is the overall legal rules that States are obliged to respect and which are designed to provide the protection of victims of international armed conflicts. First article state: higher contracting parties promise to respect and ensure respect of this annex (Protocol) in all cases.

As article 80 state: high contracted parties undertake with the conflicting parties immediately all necessary measures to implement their obligations under the agreements and procedures of this Annex (Protocol).

Second paragraph also states high contracting parties with the conflicting parties to issue orders and instructions to ensure respect for the conventions and this annex .Protocol. Overseeing the implementation.

The International Committee of the Red Cross has established its advisory services,¹since 1996 on international humanitarian law in order to strengthen its support for countries that have started of the implementation of this law at the national level. These services work in close collaboration with the National Societies of the Red Cross and Red Crescent Societies and academic institutions and other organizations.

3.2 Role Of State In The Implementation Of The International Humanitarian Law

Country's obligation with a specific legal rule shall oblige its implementation. First article of four Geneva Convention states that: the High Contracting Parties undertake to respect this agreement, and to ensure respect in all cases. Even in the case of withdrawal from the conventions the withdrawal has no impact on the obligations prescribed by the principles of international law arising from Customs established between civilized nations. The humanitarian laws and public conscience rules.

¹Ihsan Indian, Activation Of The Rules Of International Humanitarian Law In The Methods Of Solid Domestic Legislation, Research Presented To A Symposium Of International Humanitarian Law, The International Committee Of The Red Cross, Daoudi Press, Damascus 0.2001, P. 63.

Respect: it means that the states committed to doing every possible thing to ensure the rules are respected by its organs and also by all those who fall within the scope of its jurisdiction.

Ensure respect: it means that countries, whether engaged or not engaged in a conflict must take all possible steps to ensure the rules are respected by all. Especially by the parties to the conflict.¹

This means that international humanitarian agreements establish a formal and explicit duty on the shoulders of each of the parties to respect these agreements, which make others respect it. This commitment cannot determinate until the fully implantation. As article 26 of Vienna convention 1969, special of the law of treaties states: *pactasuntservanda*.²

In addition to this general obligation, which imposes on the State during the armed conflict, there are other obligations under international humanitarian law by its conventions on the states. To ensure the effective implementation of the provisions of international humanitarian law, the actions taken in peace and wartime.

First: spreading and encouraging the culture of International Humanitarian Law: Spreading this law in peacetime shall be educational work. Which ask to control behavior in the outbreak of crises.³ Ensure the implementation of international humanitarian law during armed conflicts requires prior knowledge of its provisions in peacetime. Even in times of armed conflict to ensure the deployment of awareness and understanding of these rules, which can only be reached through every state effort in spreading the rules of these conventions by defining its rules and training the people of its rules.

An article provided identical material in each of the four conventions (83/1, 144/c3, 47, 48) stating that high contracting parties to spread terms of these conventions on wider scale in their countries in peacetime as in armed conflict times. By including studies in the military and civil education curriculum so that these instruments may become known to the armed forces and civilians and members of the medical and religious services.

¹Stanislav. Onhilak, Op. Cit., P. 40.

²Mohammad Fahad Shalaldehy, Op. Cit., P. 334.

³Atlam Sharif And Mohammed Maher Abdel Wahed, The International Encyclopedia Of International Humanitarian Law And The Red Cross Conventions, Op. Cit., P (65.94, 116 191 293).

As it is provided in article 99 paragraph 4 on the importance of the declaring the convention provisions inside the detainee in a language understood by the detainees, and to teach relevant personnel to monitor the detainee provisions of the Convention and instructions.¹

Implementation of the last provision shall be by the ratification of the state on these three protocols and convention. That would be by publishing the law of ratification in the formal gazette. This procedure is particularly important and that because of its legal feasibility. Convention and agreement of the international humanitarian law become part of national legislation after ratification and by its publication in the official gazette, everyone in the country will have knowledge about it. In fact, the study of international humanitarian law essential found estranging the world better. Any human being shall be interested in the armed conflict topics, who is among us does not become sad when he hear about the seekers for asylum who fleeing from the armed conflict areas. Especially when they are massive numbers, or mass graves or ethnic cleansing that displaced people on large scale or forcible rapes, and starvation of civilians as a method of warfare and other horrors accompanying wars.

Second responsibility of commanders, advisers and qualified people in the armed forces:

Other obligations of states imposed by international humanitarian law to ensure the implementation of the provisions of this law. Create qualified personnel and legal advisors in peacetime.

As article 87 on some of leader's duties states

- A. Mandated military commanders to prevent violations of four conventions and protocol by members of the armed forces who work under them.
- B. To suppress these violations and reported to the relevant authorities if necessary.
- C. Necessity to confirm the leaders of the armed forces who are working under their command are aware of their obligations enshrined in the Conventions and the Protocol.
- D. If violation of conventions or protocol happened. The leaders shall undertake disciplinary and criminal procedures against the perpetrators of such violations.

¹Ahmed Abu Al-Wafa, A Former Source, P. 131.

As for the qualified people to find knowledgeable staff to implement the international humanitarian law. Which would ensure implementation.

Article 6/1 stated that: Parties shall endeavor to prepare qualified personnel in order to facilitate the Conventions and Protocol, particularly with regard to activity of the Protecting Powers.

This arrangement is at the heart of national jurisdiction of each country and the use of these persons, outside the territory of the state, the subject of special agreements between the parties concerned.

As for the legal advisers they play an important role in ensure the implementation of international humanitarian law, they are advising military commanders, and interpret legal provisions and working to determine how to implement it.

Article 82/1 on the role of consultants

- A. Present the advice to military commanders on the application of the conventions and protocol
- B. Present the advice the appropriate instructions that should be given to the armed forces on this subject.¹

Third: Enacting of legislations and the issuance of military laws and regulations of the armed forces:

Responsibility of the state is enacting of criminal legislation defining appropriate penal sanctions in the case of serious violations of international humanitarian law violations, which is what Geneva Conventions stated on 1949 in the articles:

49,50,50,51,129,130,146,147,85,91,28. The agreement of protection of cultural property in armed conflict states high contracting parties The High Contracting Parties undertake to adopt within the scope of criminal legislation all necessary steps to prosecute persons who violate the provisions of this Convention or who order on the opposite of this principles.

Undertaking criminal and disciplinary sanctions on them no matter what their nationality was.

¹Mohammad Yousufalwan, The Deployment Of International Humanitarian Law, Within The Book Studies In International Humanitarian Law, Preparation Of An Elite Of Specialists, Provide D. Mufidshehab, Op. Cit., P. 496.

On the other obligations of States to enact legislation to prevent and suppress the misuse of badges and markings at all times, which is expressed by the Geneva Conventions of 1949 in the articles 53.54 / c 1 and article 43.45 / c 2 Accordingly, each party to the agreements Geneva demands to impose its respect on the armed forces. Because it is the direct responsible on its behavior and work it is the responsibility of states to make regulations and laws for military regulations of the armed forces to insure the implementations of Geneva Conventions 1949 as stipulated in articles 48 / c 1, 49 / c 2, 128 / c 3, 145 / c 4 as well as 84 / 1.¹

Approaches taken by States in order to activate the rules of international humanitarian law:

As the political, legal and judicial systems of the States is not one. Approaches taken by state to implement provisions of this law will not be one. However, vary from one state to another; there are several methods to implement their obligations:

First: private criminal text style:

In this style, the legislation will enact the same words contained in the Conventions and the Protocol. In order to facilitate the task of the judge on one hand and to unify the legislative statutes of the various States Parties of this Convention, on the other hand .One state that used this method Belgium² within the law, issued on June 16, 1993. It was reported in this law the acts which are such as (grave breaches) to the four Geneva Conventions and its First Protocol, also added to the acts prohibited committed under the Second Protocol of 1977. Which had not been provided for and should criminalize violations, which lies to its provisions, mainly because it did not differentiate between acts of international armed conflict or internal armed conflict.

Second insertion method: insertion means grave breaches under the provisions of the national criminal legislation under the provisions of the national criminal legislation, within the provisions of (the General Penal Code) or within the provisions of (Military Penal Code).

One States that took this method was Yemeni military penal code No. 21 issued on July 25, 1998, which included a special chapter on war crimes, and eliminate the provisions of this chapter to punish any act committed in time of international armed conflict or non-

¹Marsaad Allah, Op. Cit., P. 274.

²Sharif Atlam, The International Criminal Court, A Former Source, P. 379.

international. Damage the protected persons and objects protected under international conventions to which Yemen is a party of it.

Third referral method:

It mean to enact legislative brief consists of an article or several articles the domestic law referral to the international provisions the issues of determining serious violations that occurred during the armed conflict, while retaining determining the penalty for every action within the framework of domestic law.¹

Countries that took this method (United Kingdom) in the Act of July 31, 1957 amended on 31 December / December 1978 to include the violations set forth in the First Protocol of 1977

Fourth comparable method: it means issuing patriotic legislations similar to each international crime. Crimes that adhere by international humanitarian agreements of a similar crime stated in internal national legislation. In terms of conditions of occurring of the offense, the amount of penalty and the possibility of mitigating or tightening it. States that took this method (France). The law of 28 August / August 1944. The crime of compulsion of protected person on serving for the enemy armed forces is an international crime, under the same offense within the illegal recruiting of the armed forces contained in the text article 92 of the French Penal Code.

3.2.1 Role of United Nations In Implementing International Humanitarian Law

Access to the victims of armed conflict is always preceded by a preliminary stage to collect information and sometimes complicated negotiations. Today it become challenge, especially because the humanitarian organizations are the only ones dealing with this issue for example; authorities who are undertaking and keeping on peacekeeping has been developed. This development led to civil-military cooperation and thus led to the inserting of political action programs. As well as economical action program which become an increasingly important factor in situations of armed conflict, as influential countries would like to have a stronger voice in the dealing with the issue of civilians in armed conflict.

¹Nagham Isaac Zaya, A Study Of International Humanitarian Law, International Human Rights Law, Doctoral Thesis, University Of Mosul, 2004, P. 216.

Despite of prohibiting the war by international Covenants, It remained one of the method to solve disputes by the nations. It is no longer permissible :threading or use of force against the territory integrity or political independence of any other state, or in any manner not inconsistent with the goals of the United Nations

United Nations Charter article 2 paragraph 3 stated: global organizations objective is to resort the state parties to the peaceful means for the settlement of the armed conflict and that means the inadmissibility of the use of force before resorting to peaceful means. This mentioned essentially in the preamble of the United Nations: we are the peoples of the United Nations determined to save succeeding generations from scourge of war. Which twice in our lifetime has brought untold sorrow to mankind. To reaffirm faith in fundamental human rights, in the dignity and worth of human person. in equal rights of men and women and nations large and small.¹ This desire by the UN and international community to erase the specter of war and strengthen the bonds of international links, which led this organization to ensure peacekeeping, and seeking to disarmament and the prohibition of the war and to find effective ways to promote peace and peaceful settlement of disputes. In recent years, there has been a great shift has led to a change in its contents and basic concepts. This transformation is reflected in that there is a global trend led by the United Nations Commission aims to develop and apply the rules and principles of international humanitarian law applicable in armed conflict. This resulted in setting new rules represent a constructive addition to the principles of international humanitarian law efforts.

First: UN support of the IHL through international conventions

UN supported international humanitarian law through several conventions, declarations and resolutions from General Assembly and the Security Council on the occasion of armed conflicts, whether existing or in anticipation of armed conflict.

The important UN conventions regarding this are:

- A. Convention on the Prevention of Genocide and Punishment approved in General Assembly in 1948.
- B. Prohibition of the Use of Nuclear Weapons:

¹ Un, Preamble Retrieved <http://www.un.org/en/sections/un-charter/preamble/>

At the end of WW II, the peoples of the world found itself in the face of the most terrifying weapon, after nuclear energy discovered. The seriousness of this topic was discussed in heated debate. It was not clearly prohibited in the IHL Conventions, because these agreements was prior to it.

Till now it has not been subjected to the rules under the General Treaty, but the United Nations General Assembly has prohibited it in a resolution 1961, strictly forbidden as a breach of the principles of its charter and the humanitarian principles.¹

C. The Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water: was in 1963 the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water signed.² Although the treaty has not held under the auspices of the UN, the General Assembly approved it. The parties announced that they seek to achieve the cessation of all experimental explosions of nuclear weapons forever and they are determined to put an end to the pollution of the environment with radioactive materials.

D. Convention of restricting and prohibiting the use of certain weapons. Which may cause excessive injurious and indiscriminate effects and the annex protocols with it. UN Conference adopted the ban and restrictions on the use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, held in Geneva the following instruments on October 10 / October 1980.

1. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Which May Because Excessive Injurious or that have Indiscriminate Effects.

2. Protocol on fragments that cannot be detected by X-ray.

3. Protocol on Prohibitions or Restrictions on the Use of Mines, inclusion and other devices.

4. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons.³

E. Chemical and bacteriological weapons: the General Assembly recommended that States that have not yet acceded to the 1925 Protocol banning military use of asphyxiating gases, or

¹Jean Pictet, *International Humanitarian Law*, Op. Cit., P. 59.

²Abdul Karim Alwankhudair, *Mediator In Public International Law, And The Third Book, Human Rights*, Amman, 1997, P. 244

³Sharif Atlam D. Mohammed Maher Abdel Wahed, (M A S T A), Op. Cit., P. 488

toxic, or the like, and of Bacteriological Methods to join to the protocol. The convention of Prohibition of the Production and Stockpiling of Bacteriological 1975 has entered into force and four conferences held 1980.1986, 1991.1996 As well as a special conference held in 1994, the United Nations General Assembly discusses also regularly issues relating to the Convention

As the chemical weapons convention entered into force on April 29, 1997¹ the Chemical and Biological Weapons Convention reflect the care from nations of the world to promote the principles and rules of international humanitarian law, which prohibits the use of certain weapons, to take additional measures to ensure the prohibition of the development, production or stockpiling of these weapons.

E. Non-Statutory Limitations to War Crimes and Crimes against Humanity: The General Assembly adopted the Convention, which entered into force on 1970.

F. Article (29) of the Convention states the following:

- 1- War crimes defined in the primary law of Nuremberg military court issued on 8 August 1945, in particular the (serious crimes) and enumerated in the Geneva Convention of 12 August 1949 for the protection of war victims.
- 2- Crimes against humanity, whether in war or peacetime. Defined in the primary law of the Nuremberg International Military court issued on 8 August 1945,

G. Fighters for freedom UNGA in 1973 identified legal status of fighters who are struggling against colonial and racist regimes for right of self-determination, principles agreed on are: -

1. This kind of struggle is a legitimate struggle and agree with the principles of international law.
2. Violation of the legal status of combatants entails full responsibility in accordance with the rules of international humanitarian law.

H. Protection of women and children :

¹Fantineromatov, The Political Dimension Of The Agreement (Silent Weapons), A Translation. Sz Sabri And His Group, The International Review Of The Red Cross (Icrc) Version, The Tenth Year, No. 55, June 1997, P. 293.

UNGA has issued in 1974 the declaration on the Protection of Women and Children in Emergency and Armed Conflict. The Declaration states that all acts committed by combatants during military operations or in occupied territories, which make up the forms of repression and cruel and inhumane treatment of women and children, including imprisonment, torture and launch bullets, mass arrests, collective punishment, destruction of dwellings and forcible eviction, are criminal acts.¹

I. Special Status of journalists and protect them:

UNGA addressed the situation of journalists issued resolution dated 1973 Secretary-General of the United Nations to the presentation to the upcoming Geneva Diplomatic Conference, This point been addressed in Article 79 of Protocol I.

H. Mercenaries:

Using of mercenaries against the national movement or for overthrowing governments condemned as a criminal act. The General Assembly, Security Council, Economic and Social Council and the Commission on Human Rights condemned it. Recommendations and resolutions of the General Assembly started to draft (the International Convention against the Use, Financing and Training of Mercenaries 1989. It was clear that first protocol and the article 47 in particular had an impact between the African Convention and the UN Convention on mercenaries.

Second: methods of addressing violations of the International Humanitarian Law principles by UN means .With regard to the United Nations mechanisms for the implementation of the commitments of the international covenants and conventions, there must be beginning to make it clear that the United Nations has not yet been able to develop an effective and active mechanism to compel States to implement their obligations under international conventions. Like the sanctions imposed by the local laws on citizens who violate the law. It is known that of Penal Procedure that the United Nations that imposed are only those contained in Chapter VII of the Charter of the United Nations. For the use of force in situations of armed aggression and violation of international peace and security, under a decision issued by the Security Council no to be opposed by any of the permanent members of the council²

¹ Article 2 Of Prevention Of The Crime Of Genocide And Punishment Of The 1948 Convention.

² Arafa Abdul Salam Saleh, International And Regional Organizations, Public House For Publication, Distribution, Advertising, Benghazi, 1993, P. 486.

The UN with an objective criterion does not solve international problems in accordance with principles of the international law. While these problems solved by the permanent members of Security Council particularly the USA. These actions are being solved electivity and double standards in addressing human rights situations, or the right to self-determination of peoples in this country or that.

The principles and rules of international humanitarian law without implementation will become just theories that IS why all countries in the world shall contribute to strength and develop the implementation of the rules of IHL.¹

World War II experience restricted war by provisions contained in the Charter of the United Nations. Second article from the charter included the following provisions:

Three: all Member States to settle their international disputes by peaceful means in a way that international peace, security, and justice shall not face any dangerous or risk.

Fourth: all Member States to refrain in their international relations from treating or use of force against the regional entity, or independent political of any state, or in any other manner against the goals of the United Nations.

International mechanism to protect the IHL includes General Assembly, the Economic and Social Council, and the Security Council, the International Court of Justice. IHL contain guarantees to implement its rules by provisions provided as compensations or criminal sanctions in case of violation of rules and some actions stated as breach of its rules, which is war crimes.

Although the UN managed human rights violations during armed conflict using a vary methods to investigate human rights situation. Yet it has not succeeded in finding appropriate mechanism because of the breaching of many countries of principles and rules of IHL.

Role of UN has its effect in exposing the nature of states wrong actions and embarrass the states politically and morally before world opinion.

United Nations staff has made many successes in achieving the international collective security. Ensuring the fundamental rights and freedoms of man and remove the causes of tension between peoples.

¹Gerhard Van Glahn, The Law Of Nations, C 1 Translation Abbas Dar-Old New Horizons,, Beirut, (B C), P. 14.

However, through facing a lot of international crises and problems they did not act neutrally. Interests of the permanent members of the Security Council influenced their actions. and the best example of this is the United Nations dealing Gulf crisis, unlike dealing with the solution of the Palestinian problem.

3.2.2 Role Of International Criminal Justice In The Implementation Of International Humanitarian Law

The establishment of these courts and defining its objectives shall be devoted balance in the relationship between justices. Because it is humanitarian concept has no limits in time or place, and between international sovereignty because it's limited concept geographically and politically.

As its establishment represent an important phase in the history of humanity. It was known as phase of global wars that killed tens of millions. On its impact public awareness was started to spread. Military tribunals established in Nuremberg under London Convention rules on 8 August 1945. And the Court of Tokyo on 20 / December 1945.

First: international military tribunals at Nuremberg. Despite of holding many peace treaties after the First World War 1914-1918 such as Versailles treaty 1919. It failed in establishing peace. League of nation was unable to stop the international crises and the breaching of the global peace. That is why many of the comments of the officials was essential reasons for the responsibility of the international crimes especially in time of war.

On October 1941 US president Roosevelt said that terrorism and intimidation cannot bring peace to the countries of Europe. It only spread the hatred that will lead someday to terrible retribution. At the same time, British Prime Minister Winston Churchill stated that sanctions on the crimes is one of the main purpose of the war now. On January 13, 1943 St James Palace, issued by nine European countries stated these countries lay among its goals and objectives the need to punish through fair organized means on the criminals and those responsible for war crimes against humanity.¹ According to this statement, special committee

¹Abdel Wahed Mohamed El-Far, International Crimes And The Power Of Punishment On Them, Public International Law, Dar Arab Renaissance, Cairo 1995, P. 095 Of These Countries Are (Belgium - Czechoslovakia - France - Greece - To Oxmburg- Holnda- Norway - Poland - Yugoslavia) Was Attended By Delegates From (Britain - Australia - Canada - India - New Zealand - Union Of South Africa - The United States - China - Soviet Union As Observers

established to look into war crimes committed. This committee consists of 17 members' state; called (Committee of the United Nations War Crimes)¹

One of the most notable declaration was Moscow on 30 October 1943 by presidents (Roosevelt - Churchill - Stalin). This statement has laid down more specific rules in the field of international criminal responsibility and prosecute criminals decisively. According to this, the court must pursue every person who commits an international crime or crimes against humanity. According to London Convention on 8 August 1945 it create (International Military Tribunal), which is entrusted with the task of doing the trial.

First article of this convention stated an international military tribunal established after consultation with the Supervisory Board on Germany to trial war criminals. With no particular geographic crime. Whether they defined in personal, Or as members in bodies or organization. As desire achieve uniformity in the legal principles that created by this convention. Supervisory Board of Germany issued Law No. (10) On 20 / December 1945 in order to prosecute those who are responsible for war crimes who did not face the international military trial.

Legal problems and criticism faced by the Nuremberg Tribunal:

The court faced a series of legal problems and criticism the most important were:

- 1- Governing Law problem: the governing law by the court was the biggest problems faced that experience for two reasons:
 - Tribunal established to prosecute the senior German war criminals and those were subject to domestic German law as their own Personal Law.
 - Charges against top criminals was to commit acts, which its criminal affect was in unlimited geographical area. Despite the exclusion of the application of German criminal law as a personal law, exclude the application of the regional criminal law, the Charter of the Nuremberg remained silent about the applicable law ². That was on the court to choose one of two methods. Either to exercise its authority in supreme method to choose the applicable law. Or to resort to measure and work on

¹Hamid Al-Saadi, Introduction To The Study Of International Criminal Law, I 1, Knowledge Press, Baghdad 0.1971, P. 63.

²Abdul Hussein Shaaban, The International Criminal Court, Read The Human Rights Problems In A Systematic And Scientific, Journal Of The Arab Future, The Number (281) In July 2002 7, P. 6.

the implementation of the article 28 from the statute of the international permanent court of justice. More often court was forced to special second method within the definition of international crimes.

- 2- Lack of representation of neutral countries and Germany in the formation of the court.
- 3- Distinction of the court to trial the defeated only. Without trialing the victory parties. Nuremberg court did not trial USA on the atomic bomb in Japan.
- 4- Illegality of crimes and sanctions. Defense body based on the accused criminals on this principle on which that this crimes did not happened with establishing Nuremberg charter. This means the failure of legitimate part in one hand and lack of determining penalty on who commit such acts from other hand. Despite all the criticism legal problems faced by the Court. However, these international criminal trials of violators of IHL is actually a lesson for all those who try in the future to commit an offense against the law and customs of war. This Court has set a legal precedent and procedure that will serve as a deterrent in the wars that may arise in the future.¹

Second Tokyo international military court:

In 1 December 1943 On Cairo conference for the allied countries: China, England and America stated that the goal of is an end to Japanese attacks and persecuting criminals. In 1945 in another declaration in Potsdam in July the three allies concentrate on the need of prosecution of criminals especially who have committed crimes against prisoners.

On 2 September 1945 and when Japan surrendered and defeated in the World War II. Marc Douglas Arthur the American as commander in chief of the allied forces in the far east special issued statement in January 19, 1946 to issue a military tribunal for the far east. Headquartered in Tokyo or anywhere determined later.²

This court issued from ten judges representing eleven countries. Ten of them fought Japan and neutral country. The court names(court of Tokyo) because it was held in the city of Tokyo in Japan.³

¹United Nations Crime Commissions, Retrieved On 11.06.2016 From

https://www.loc.gov/r/rfd/military_law/pdf/law-reports_vol-1.pdf

²Abdel Wahed Mohamed El-Far, International Crimes And Punishment By The Authority, A Former Source, Pp. 108-109.

³International Military Tribunal For Far East Of 4 November 1948 Retrieved From

Tokyo court system does not differ in anything fundamental with Nuremberg Tribunal system. Particularly regarding the definition of crimes that should be punished, which is crimes against humanity.

In conclusion, we can say that this military tribunal was first steps to build international penal justice. Despite the criticism on the international military ,that it was a court designed for victories countries and that victor's justice is not legal principle. Because justice has one absolute rule. Does not changes and do not effect by the outcome of the battle. Has no relation with the defeated country or the victorious state.

3.2.3 International Criminal Tribunal Issued Temporary by The Security Council.

Scandals and massacres that accompanied armed conflict that erupted between the former republics of Yugoslavia and the outrageous violations of the rules of international humanitarian law lead to establish an international court for the former crimes by Security Council.

As the ethnic conflict in Rwanda and the ugly massacres that took the lives of hundreds of thousands of innocent people was direct reason to create criminal tribunals to persecute the responsible on the violations of IHL in Rwanda. These independent tribunals present the real formation of the modern criminal justice.

First: The Former Yugoslavia International Criminal Court:

Because of the worsening violations of the basic humanitarian rules in the conflict in the former Yugoslavia. Because of the shock of the bloody event that followed the disappearance of the former Yugoslavia, It was necessary to wait until the acceptance of the international community to establish an international criminal court especially for this country. The Court has already established under Security Council resolution the United Nations No. 808 and 827), adopted at the February 22 and 27 May / May 1993. The court was responsible on Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law

committed in the territory of the former Yugoslavia, starting from the first of January 1991 violations.¹

After Security Council resolution (808) in 1993, the General Secretary was assigned to prepare a draft of this court. 60 days given to the GS as deadline to finish it and to bring this project to the Security Council. To implement this decision the General Secretary issued report include the statute draft of the court commenting on the articles of the statute.²

The statute also provided the individual criminal responsibility, including head of states. For some specific violations committed during the temporary jurisdiction of the Court, and those crimes are –

- grave violations Geneva Convention in 1949.
- Breaches of the laws and customs of war.
- Genocide.
- Crimes against humanity

The statute of the International Criminal Court pointed in the articles 6-7 to the individual criminal responsibility, and Article VI on the following:

(The International Tribunal has jurisdiction over persons under the provisions of this Statute).

The Statute of the International Criminal Court for the former Yugoslavia members provided the Article VII to state the individual criminal responsibility, as follows:

- A. Person who plan, order, commit, help or is keen on planning or execution of a crime referred in articles 2-5 of this statute, will be responsible individually for this crime.
- B. The official character of any accused person. Whether he is Head of State or Government, or Government Official, will not be exempt from criminal liability and will not ease his punishment.

¹Mohammad Yousufalwan, The International Criminal Court, Research Presented To A Symposium Of International Humanitarian Law, Reality And Ambition, Held In Syria, Publisher Of The International Committee Of The Red Cross (Icrc), Daoudi Press, Damascus 0.2001, P. 200.

². M. Cherifbassiouni, International Criminal Court, The New Presses Rose Al-Youssef, Cairo, 2002, P 55.

- C. Any of the acts referred in articles 2 – 5 from this statute has been committed by subordinate r will not absolve his president from the liability if the president knew or should have known that the subordinate was in the process of committing such acts. On the other hand, if he had committed it but the president failed to take necessary and reasonable measures to prevent such acts and punish the perpetrators.
- D. the disposal of the accused person in accordance with the order of his government or the boss will not exempt him from criminal responsibility, but it can be taken into account to reduce the punishment if the International Tribunal decided that justice so require

Second: Rwanda International Criminal Court:

Massacres in Rwanda in Africa resulted from an ethnic dispute. What happened from where many of the killings and mass torture and crimes committed by the tribe (Hutu) in 1994, Which took the lives of more than a million people from the tribes (Tutsi). All of that pushed the government of Rwanda to resort to the Security Council, which had formed a committee of experts to investigate crimes committed in Rwanda in 1994 under resolution no. (935) in 1994.

Security Council issued No. (955) on November 18,¹ 1994 to establish a special criminal court. Based under Chapter VII of the Charter of the United Nations, as the situation in Rwanda constitutes a threat to international peace and security. Its task was to restore and preserve the peace and national reconciliation by the persecution of the persons who are responsible for acts of genocide or other serious violations of international humanitarian law committed in Rwanda.

As well as citizens of Rwanda who are responsible for committing such acts or violations in the territory of neighboring countries in the period from the first of January to 31 December / December 1994. Court consists of three devices, and the Office of the Prosecutor, Registry. The main branch of Rwanda Tribunal in Arusha (Tanzania).

Resolution of Security Council no.955 of the statute was on judicial means of Rwanda tribunal. The article related to criminal liability of individuals was mentioned in the statute in the same way that was mentioned in statute of the International Criminal Tribunal for the

¹Peace Resource Center, Ircc, Retrived On 11.06.2016 From <https://www1.umn.edu/humanrts/peace/docs/scres955.html>

former Yugoslavia in line with Rwanda circumstances. Rwanda tribunal had temporary jurisdiction from the first of January until 31 of December 1994. It is by that similar to the International Criminal Tribunal for the former Yugoslavia, which had the right to persecute crimes of genocide and crimes against humanity, but violations of the laws and customs of war and the Geneva Convention of 1949 private international disputes were not subject to the jurisdiction of the court. Because the conflict in Rwanda had civil nature. While the violations of the third common article in Geneva Convention 1949 and additional Protocol II entered into the jurisdiction of the court.¹

There is no doubt that Rwanda tribunal shall contribute in reducing the cases of impunity in Africa. Because the penalties will be issued will show for military officials and politicians that they will be punished on the violations of IHL in any civil conflict.²

What should be considered by this court is known and specific compared the international military tribunal in former Yugoslavia. Specific in terms of time and even the nationality of the persons liable on committing crimes happened in September 1999. There are approximately 667 people representing 81 countries in this court. Its budget identified for mentioned year by \$68.531.900. Tribunal began Court began its work in November 1995 until August 1999 issued 25 an indictment against 48 people, including 38 in the case of the temporary arresting. At July 1999, the court issued four rulings ranging from life imprisonment and imprisonment fixed they were convicted of mass murder and charges of violating the laws and customs of war and charges against humanity.³

¹Cecil Atel, The International Criminal Tribunal For Rwanda, The International Review Of The Red Cross, No. (58) In January 1998, And (B Died), P. 623.

²Gentaombo, The International Criminal Tribunal For Rwanda, The Role Of The Court In The Framework Of The African Reality, The International Review Of The Red Cross, No. 58, Op. Cit., P. 633.

³Sharif Atlam, The International Criminal Court, The Constitutional And Legislative Adapters (Draft Model Law). International Committee Of The Red Cross, 3rd Floor, Cairo, 2005, P. 27.

3.2.4 International Permanent Criminal Court Issued With An International Agreement.

Establishment of the ICC the first attempt to create a permanent international criminal justice. It was mentioned to establish such court previously in the agreements of forbidden to suppress the crime of genocide and the 1948 Convention on the Prohibition and suppression of the Crime of Apartheid in 1973 with achieving that goal.

In 1989 the UNGA asked international law commission to study the establishment of ICC. This commission embarked to establish primary law for the court from the 42 session to 46 1994-1999. General Assembly established a special committee to study the major substantive and administrative issues of the project and commissioned in 1995, a preparatory committee to prepare a consolidated text.¹ They special committee gathered during 1998-1996 for completing unified copy of the primary law. It was submitted to the diplomatic conference held at the headquarters of the Food and Agriculture Organization in Rome during the period from June 15 to July 17, 1998 and they adopted the statute of international criminal court. We will address the emergence of the idea of the International Criminal Court, and the judicial structure of the Court and its terms of reference and principles and the difference between them and the International Court of Justice, the legal rules and procedures for the investigation and trial, judgment and appeal.

First: the emergence of ICC idea.

Establishing International Criminal Court was dream of United Nations on 1948 when the General Assembly asked International Commission to study the possibility of establishing a permanent international criminal court. However, humanity has always been terrified by the horror of the crimes against them. Trying to realize the dream to establish the court but it was achieved on a small scale, with the formation of the Nuremberg Tribunal, and the Court of Tokyo after World War II.

In the late twentieth century two international criminal courts has been established in Rwanda and Yugoslavia. Unlike previous courts established to look into the crimes occurred in times

¹M. Cherifbassiouni, International Criminal Court, A Former Source, Pp. 75-80.

and specific areas that have seen the Italian capital Rome held the United Nations Diplomatic Conference of Commissioners concerned Establishment of an International Criminal Court from June 15, 1998 until July 17, 1998. Delegations representing 160 countries, 31 international organizations and 136 non-governmental organizations participated the work in the conference as observer's members. Primary law released in this conference. This law considered as an international treaty will take effect after 60 days of ratification by 60 States.

120 state voted to establish the ICC 7 refused to vote for its establishment. While 21 refused to vote. In 31 of December 2000 US President Clinton signed on Rome statute as positive. However, the US role was major since the administration of President Bush on his tasks in 2001. In May, US took unexpected step, which was backing away from the signature of Rome primary law. it launched a global campaign to weaken the court and work on all US citizens evade punishment issued under the jurisdiction of the Court. The representative of Israel has justified the refuse of his government's to establish the court by that settlement should not be major international crimes that jurisdiction falls within the terms of reference of the ICC which means that Israel should be outside the international legitimacy, deduced from the rules of international law.

It is noteworthy that Iraq has taken a positive step during the government of Dr. Ayad Allawi , where he signed the Statute of the International Criminal Court in February 2005, but public opinion surprised because after two weeks when Iraq withdrew without giving reasons or justifications.¹

Despite of passing more than eight years on the establishment of the court statute, Russia has not sign on it. In time, that china did not sign as well. Spain called on behalf of presidency the union and other states to join to the treaty of Rome as fast as they can. Emphasizing the unconditional support from everyone, because the court would be an effective tool in combating impunity from crimes, which was announced by French President Jacques Chirac also. ²

If the Israel state was understandable why we do not have any Arabic country that ratified this court except Jordan. As still eight Arab countries outside signature system. Djibouti has embarked later to ratify the Rome court statute and thus be the second Arab state, while still

¹Abdul Hussein Shaaban, *Ibid.*, P. 5.

the matter raises serious questions about the seriousness of talking about international justice for many of the Arab countries.

On this occasion, we must be point to the benefit of signing international treaty before end of signing time and the importance of ratification and privileges of the pioneering states. Article 125 has identified the Statute of the Tribunal (first paragraph) end of signing on 31 December 2000.

Accordingly, the signatory countries will be participation in Member States Association since its inception, which will give the opportunity to participate in decision-making and in facilitating the emerging work of court. Especially that the first sessions of the Assembly of the member states will discuss the rules and evidence for the court and the various pillars of the crimes falling within the jurisdiction the definition of these crimes.

If this was the features of the signatory country, ratification feature will begin immediately with the ratification of 60 state or that will ratify later.in the first sessions many decisions will be made. Such as election of judges, determining the budget and other procedures. That not ratified Arabic country will deprive it from this privilege. Which is the thing that can be overcome by the signing on the take its place soon in the convention.

Second: principles of the International Criminal Court¹

Based on five principles

- 1- Its international judicial system arose from the will of States parties and signatories that established the court.
- 2- The Court's jurisdiction will be prospectively only and does not intend to work retroactively.
- 3- International court will be complementary for the national jurisdiction. The priority is for the national jurisdiction but the court can exercise its jurisdiction in two cases: first in the collapse of national judicial system. Second in refusing or failing to carry out its legal obligations to investigate and prosecute persons accused of crimes.

¹General Principles Of International Criminal Law, Retrieved On 11.06.2016 From <https://www.icrc.org/eng/assets/files/2014/general-principles-of-criminal-icrc-eng.pdf>

- 4- Court's jurisdiction was limited to three crimes in war crimes, crimes against humanity and the crime of genocide Article 5 from Treaty of Rome.¹
- 5- Punishable responsibility is individual responsibility. It is worth mentioning that the Primary law does not invoke by the immunity arising from official centers of president of state or head of government or cabinet minister or Member of Parliament. where there will be no evade from criminal liability and therefore will not allow applications for immunity based on the official status of the person during the trials, and the members of the armed forces or Community members help them fall under penalty of accountability in order to commit acts that directly or acts committed by their subordinates.²

3.3control On The Enforcement Of International Humanitarian Law

3.3.1 Monitoring System

It has known that any international legal system needs an effective system to control over the enforcement. This what Geneva conventions and its additional protocols did in applying it on the legal system to control the implementation of the provisions of international humanitarian law. Through the protecting power system or its replacement and the International Fact-Finding First: protecting power or its replacement.³Protecting Power is a neutral country or other state, which is not a party to the conflict appointed by party to the conflict and by the opponent. Agree on tasks of Protecting Power in accordance with articles (8) of the First Geneva Convention and the second, third and Article (9) of the Fourth Geneva Convention and Article (2 / c) additional Protocol I of 1977. The alternative is an organization replace Protecting Power in accordance with Article (5/4) of Additional Protocol I. if both parties did not assign any protecting power they shall accept the offer provided by the International Committee of the Red Cross or any other organization. Which all that neutrality guaranteed

¹. Mohammad Fahad Shalaldeh, International Humanitarian Law, Op. Cit., P. 400.

²M. Cherifbassiouni, International Criminal Court, A Former Source, P. 139.

³Enforcing International Humanitarian Law, Wiliam A. Schabas https://www.icrc.org/eng/assets/files/other/439-460_Schabas.Pdf

that will work as alternative after conducting the necessary consultations with these parties. The parties to the conflict shall accept such alternative. Thus, parties shall put every effort to facilitate the work of the alternative to do the task in accordance with the Conventions and this Annex (Protocol). Representatives of the protecting states shall have the licensed access, without exception mention to reach prisoners of war being held there. Also to reach the center individually without witnesses. As required by the general rule. Whether they spoke personally directly, or hired interpreters as the Protecting Power or its replacement overseeing the implementation of international humanitarian law. The representatives of the Protecting Powers shall not exceed the limits of their mission according to this agreement. They particularly should take into account the requirements of the security of the State wherein they carry out their duties. They shall not restrict their activities unless so required by military necessity only, and have it as an exceptional and temporary. It is noted that the selection of the Protecting Powers shall be based on an agreement between these countries and the Warring States. However, this agreement should not affect the legal system of the disputed parties or on the sovereignty of any territory. Protecting parties will be as intermediaries between conflicting parties. To settle their disputes in all cases that the interest of the protecting powers is available. Particularly in the cases that parties disagree on implementing or interpreting the rules of Geneva Convention.

For this purpose, each protecting party may invite the parties to meeting of their representative. In particular the representative of the authorities responsible for the wounded and sick, prisoners, as well as members of the medical and religious services. When needed on neutral territory chosen in appropriate way. For this purpose, each of protecting parties shall commit to implement the suggestion that presented to them for this purpose. Protecting state may submit proposal if it was necessary. Approved by parties of the conflict by inviting persons belonging to neutral state or authorized be ICRC to participate in this meeting.

Additionally to that protecting powers may organize rescue and assistance operations for civilians from the occupied territories. It is noted that there is no doubt in the importance of the role that can be played by Protecting Powers in monitoring the implementation of the rules of international humanitarian law.

However the success of this role undoubtedly depends on range of factors most important one is accepting this mission by the states, and cooperating of the conflicting state with them.

However, international precedents nations rarely accept to do the job. Cooperation of conflicting parties always is doubtful. Add to that the difficulties faced by the Protecting Powers during the process.

It is obvious from the study that after World War II and since the signing of the four Geneva Conventions of 1949, no state was appointed as protecting state except three times in all conflicts taken place. The Suez War in 1956 and the war in Jammu, Kashmir and Bangladesh in 1961, and the war between India and Pakistan in the years 1971 to 1972.¹ the reason is due to several factors, including that in some conflicts, the parties conflicted were not member of these agreements. In addition, most of the disputes were internal, Or they did not cut diplomatic relations between belligerents therefore they were not under the international control, Or that some of the warring nations tend to deny its state of war, or to distort the facts. This evasion of the condemnation of the United Nations to use military force.

Secondly, the International Fact Finding Commission. Experience proved the hostile relations between conflicting parties. There are several shortcomings in the articles stated in Geneva Convention 1949. First Geneva Protocol 1977 developed this committee. To complete the shortage that was existed in the fourth Geneva Convention. Conferees in Article 90 of Protocol I assured the rule of agreements and the need to establish new device to investigate the facts relating to any particular claim of grave violation. As defined by the Conventions and this Annex Protocol. To work on restoring the respect for agreements provisions. This committee is not judicial body. It is permanent neutral not political body. It consists from fifteen high level creative members who are known for their neutrality. They are elected for five years. All investigations taken by Chamber composed of seven members who are not nationals' parties to the conflict. Including five members of the committee and two special members appointed by conflicting parties. Additional to the evidence submitted by conflicting parties, the committee may be looking for other evidence and conduct an investigation for other evidence. To present the evidence to the parties and conflicting parties have the right to comment of those evidence and object on them.

According to the investigations held by investigation room, the committee present the resulting report to the parties with the adequate recommendations. If it was unable to obtain sufficient evidence to reach the results, the Commission shall inform the parties concerned of

¹Jean Pictet, International Humanitarian Law And Principles Of Its Development, Op. Cit., P. 75. Available On https://books.google.iq/books?id=Kvwvxvuxy4ymc&Redir_Esc=Y

the reasons for this deficit. The committee shall not publish the result unless if both parties requested it.

Formation of the committee requires the approval of 20 countries members in the protocol to accept the jurisdiction of this committee. That is what has been achieved since the declaration of Canada on the acceptance of being the 20th country joined to this declaration. It was held in Bern on June 25, 1991, on the invitation of Switzerland as the depositary of the conventions. In 1949 and Appendices (Optional) Additional Protocols of 1977. Meeting of the fifteen members in the committee. The founding meeting of the Committee in June 1992 took place in (Byrne), was the impact that the adoption of the rules of procedure of the Commission, and most countries that have declared acceptance of the jurisdiction of the Commission so far European countries.

The states agreed on creating new device to strengthen existing mechanisms by implementing IHL. Therefore, the work of this device will depend on the states and the extent of its commitment with the provisions of IHL.

3.3.2 Actions That Need To Be Suppressed.

Suppression of violations of the Geneva Conventions Appendix Protocol I of 1977. Violations caused by the act of omissions it must differentiate between violations and grave breaches and materials that relate directly or indirectly to war crimes. Its punishment enacted in the four hundred articles of Geneva Convention 1949. Articles 1 and 29 and 146 and 147 from the fourth convention of civilian protection. Articles 1 and 29 decide the liability of state and articles 146 and 147 decide liability of individuals.

First article of fourth Geneva Convention 1949 that contracting parted shall respect the rules and make others respecting it. This means that the signatories of the Convention, which is almost all the states, are not only obliged to implement its provisions. But they should force others to implement it.

Article (29) decided the State liability for the acts of its employees. This principle is followed from the obligation placed on the stated in article 1 mentioned previously. And article 144 as well as that imposed on the State party to the Convention to work on the deployment of its provisions to a broader extent possible in their countries. Particularly shall be included in the,

military study to be known by all population. Article (146) require from the state to compel the states parties in the convention to enact national legislation to impose an effective sanctions on the peoples who commit grave breaches mentioned in the articles. As well as the force these countries to be obliged legally and internationally to the need of searching of the accused of criminal acts, and serious violations.

Bring them regardless of their nationalities to their national courts to consider their crimes, or to hand them over to another party for trial on condition that the latter party is sufficient incriminating evidence against these persons.

Fourth paragraph of this article also provide that accused persons benefit from all the judicial guarantees, procedural and self-defense, and should not be less than these guarantees from those contained in Article 105 et seq. Of the treatment of prisoners of war. Third Geneva Convention of 1949. Despite the fact that Article 147 mentioned above merely mentioned ten offenses as the most serious breached and obliged states to punish them as war criminals. Some countries enacted legislations listed some of other breaches as war crime article 147. Yugoslavia has added to it penal code for example, a new material that contains almost all the provisions of the four Geneva Conventions relating to grave breaches of the conventions. And so 125 from Yugoslavia code stated.

This is on the one hand; on the other hand, people who commit grave breaches mentioned in 147 shall be international war criminals. Any state can persecute and punish them. According to articles 1 and 146 from the fourth Convention. ¹if they did not want to handed them over to the countries that they commit their crimes in it or against its properties and their nationals. While the perpetrators of other offenses, which constitute breach for the rules of the convention, shall be condemned as normal criminal who are not punished on their actions. Although the majority of Arab countries twenty-two have signed and ratified the Geneva Conventions, few of them implemented the article 146 from fourth Geneva Convention. Enacted legislative provisions to criminalize violations mentioned in Article (147). The States that wish to enact a penal code to criminalize these violations can follow two methods:

- 1- Enact special code criminalize the ten offenses listed in article 147 from the convention that sets out penalties for the perpetrators. Whether this code appended to the he Penal state law, as Yugoslavia and Hungary did, or military sanctions law as Switzerland ,

¹Uhler Et Autres: (Commentaire De La. Iv: Convention De Geneve) Op. P. 22

where the Swiss military law provide for the punishment for those who violate the provisions of international conventions specific penalties for each violation unless if the General Penal Code sets to these violations higher sanctions.

We should mention here that there is no need to enact any legislation in this term if the state is following the Anglo-Saxon legal system. Which allows the national judge Suppress and Punish an action based on International law directly. Even if this rule is not existed in the national law. If it is then the national law shall be procedures only to decide on the basis of the international rule.

2- Stating to attach each violation of these grave breaches mentioned in Article, (147) with similar breach to it in the penal law and apply the sanctions on it. As France has done under the order issued on August 8 / August special in 1944 to punish war crimes that the enemies commit. Which attached every crime with similar crime in the common penal law for ex. Use of protected persons in military natural works. Inflicted to reservation of freedom in terms of its justification and its legal conditions and penalties. and so is the case of the most important war crimes.

Thus we see that Geneva Conventions of 1949 have had a remarkable development in identify and punish war crimes, it seems in particular in the following points: -

- A. The convention covered principle no crime except by the law. Article 147 criminalized clearly number of grave breaches and as for the rest of breaches, the conventions only stated to take procedures to stop it without defining the exact procedures.
- B. Left determining sanctions for the state itself.
- C. Left the door open for states to reflect in their national legislation some other breaches not mentioned in article 147 from the fourth convention as serious violations and punished with the same sanctions.
- D. Geneva Convention gathered the liability of who committed the violation with the liability of the state that he belong to it. With the primary difference between both liabilities because state liability is a financial liability essentially limited to the payment of a sum of money as compensation to The other state, while the responsibility of individuals is a criminal and financial responsibility together.

3.3.3 Ways To Stop The Violations And Punish Perpetrators:

Role of leaders, where we find among the duties of leaders, the duty which require them to prevent their subordinates from committing breaches of the agreements and Annex (Protocol) first, and the repression and to inform the competent authorities about them if they commit breaches.

As for cooperation between the contracting parties. That allows finding the perpetrators of grave breaches or their assistants and bringing them to trial. Conventions states that the contracting party who arrest the accused of committing offenses and trial them before national courts. He has the right according to legislative provisions, to deliver them to the Contracting Party concerned to trial him on conditions that this other party shall have enough evidence against these persons.

There is another kind of cooperation in case of serious violations in the IHL. Article 89 of Annex I of the Protocol provides that Contracting Parties undertake (to act, jointly or individually, in cooperation with the United Nations and in line with the Charter of the United Nations). Whatever the legal outlets that are used by many countries so as not to extradite or prosecute perpetrators of serious violations of international humanitarian law. The agreements and Annex (Protocol) give the contracting parties clear and limited responsibility. As for the responsibility of compensation, article 91 from annex(protocol) I , party of the conflict who breach the rules of the protocol shall be liable by to pay compensation if the case so requires and be responsible for all acts committed by persons who are part of its armed forces.

The meaning of ‘if appropriate’ is that breaching the protocol or the annex shall result in damaging and loss incurred by the parties to the conflict or neutral parties or national and foreign nationals.¹ As agents of the state, like any other state bodies, they carry liability in case they committed acts of violation of international humanitarian law, and without prejudice to individual responsibility. The role that is played by ICRC in case of violating a precise law. The delegates of ICRC draw authority’s attention to the authorities to what they see as violation of IHL. Whether it was as prohibited act or act of omissions forced by law. Delegates offer concrete proposals in order to avoid a repeat of the violations. They are doing

¹Ahsan Indian, Principles Of Public International Law, In Peace And War, Op. Cit., P. 317.

their best to investigate the facts accurately. Which is the main role of the ICRC. Indeed the ICRC refrain to ask about the identity of who breached or committed violation. It is very difficult to retroactively, intervene in the cases of rules violations. If some violations are easy and clear to be condemned. The fact-finding that lead to prove violations is difficult in other cases.

ICRC often faces complaints by conflicting parties or third parties like, governments, intergovernmental organizations or non-governmental associations and national Red Cross or Red Crescent in particular.

The effectiveness of the secret efforts of the IC, which can cooperate with the form and level according to the importance of the alleged violations. Depends clearly of the confidence relations between authorities and IC. If the rule is that this effort remain confidential, however the ICRC can appeal to the international community declaring these violations in order to demand an end to it.

In the recent years, those calls have increased more and more, especially on some of the important conflicts such as (Somalia, the former Yugoslavia, Rwanda, Lebanon, Palestine, Iraq, Afghanistan).

The internal situation the IC adopt regarding the violations of the IHL are based on the its missions as implementing side of the international humanitarian law. That mission stated in Geneva Convention, and the International Committee of the Red Cross (ICRC) and the International Fact-Finding Commission has no Protecting authority Powers to punish the violations of international humanitarian law. States undertake that responsibility, and must respect and ensure respect for international humanitarian law. States and conflicting parties are in the first place to put an end for violations and punish the perpetrators. It would not be the joint responsibility of the High Contracting position, or state jurisdiction of an international criminal in the future, or international tribunal's problem by the Security Council to replace that responsibility.

As for the ICRC, they do not stand by the parties, it has not legal authority to appear with. Working on the implementation of the IHL impose on the IC to avoid violations and correct them through close cooperation with the parties to the conflict in order to protect and assist victims during conflicts. Hence, its role as a neutral and independent between the warring parties is the foremost role of a practical nature. The committee try to Relief the victims and

to improve their situation in a tangible way, and to intervene in humanity. In this sense. The work of the committee is not to issue the rules but to implement the law on proper way. There is not in its framework to exercise judicial jurisdictions to settle the rights of victim .It cannot in the same time, play the role of champion of justice and charity.

IC shall play specific role in declaring its public situations regarding the violations of the victims. As the maintaining of its procedures, missions may impose some restriction. Particularly in terms of cooperation in the investigation and judicial proceedings procedures. Whether against the parties to the conflict or the victims themselves. Thus, cooperation if happened may result bad impact on the IC. In addition, cause losing confidant of who listen to the ICRC. If that happened, they will be prohibited from reaching to the victims of the conflicts.

CONCLUSION

It can be concluded from the study of protecting civilians in the international law. Group of outcomes and results to is directly connected to the IHL in one hand, and the recommendations that is deemed necessary for the IHL on the other hand. It can be clarified as follows’:

The term public international law launched on the rules that protect human rights during the arms conflicts described afterwards as humanitarian international law. In order to put the humanitarian character on the rules of the armed conflict. International humanitarian law in new term appeared in the nineteenth century .Credits of this term goes to ICRC. This term was one of the terms that agreed on, to refer to the human rights in the armed conflict.

The trial of a criminal in front of preexisting court of the existence of crime, more justice and better than a trial before a court have arisen because of the crime. Because the court will be established on the basis on revenge. On the other hand, the existence of the court before the violation shall prevent the crime make the criminal to start thinking of the sanctions.

Crime of aggression defined in the United Nations General Assembly Resolution 3314 in December 14-1974 session 9, but it will not be in the jurisdiction of ICC. Nevertheless, after this definition of the aggression and the ratification of all parties on this definition. However, it shall not be applicable on the states that did not ratified the amendment. In all cases the crime of aggression shall by applied in the future.

Despite the positive aspects of the permanent International Criminal Court. Such as the establishment of independent public prosecutor and the development of some of the many innovations in the definition of crimes, and to recognize the right of victims in a compensation. However, the court will act as a judicial body under political patronage, where security council will have the highest authority. Which is the only body that can bypass the condition of state agreement when the case is referred to the tribunal. Security Council have the right in preventing the ICC from an action. Through the resolution in Chapter VII of the A UN Charter, the Council can start on Prohibit or proceed the investigation and prosecution for one year, renewable for an indefinite period article 16.

Recommendations

- 1- Scholars of international humanitarian law should take advantage of the features in the peace factors and human rights endorsed by the peace. As such mandatory rules that govern conduct in all cases, as previously mentioned.
- 2- Dialogue among civilizations shall be promoted. Especially between Islamic civilization and Western civilization in order to achieve understanding and cooperation on an equal basis.
- 3- The need to disseminate and educate and circulate the principles of international humanitarian law on the scope of the armed forces. In order to create general cultural situation between citizens. Develop by these principles the bodies and agencies of the state decision makers. Since that these institutions are the places that war declared in it, arms are developed as well as use of weapons of mass destructions and at the end committing crimes against humanity.
- 4- To emphasize that International Humanitarian Law shall not be effective if there are no realistic sanctions and penalties for the violations. As well as working in double standard, policy is terribly unhelpful in the scope of the international humanitarian law.
- 5- The necessity of finding an international agreement states on the identification appropriate penalties for each offense of war crimes and crimes against humanity, And violations of the provisions of international humanitarian law and other grave breaches abide by all states to hand over the perpetrators of these crimes and to be stated in the conventions. And in the domestic common legislation.
- 6- To emphasize the interdependence between the provisions of human dignity and rights during armed conflicts and according to the system of International Humanitarian Law. To respect human rights in all cases.

- 7- The need to facilitate the work of the neutral international organizations, especially the International Committee of the Red Cross (ICRC). To establish and disseminate the rules of international humanitarian law and to support its field efforts.
- 8- The need to establish a quarterly or annual forum and conferences in various capitals of the states. To spread the awareness of international humanitarian law, and the criminal wisdom and its strong arms to protect the civilians in the time of armed conflict. To humanize these rules in the armed conflict.
- 9- The need to agree on the definition of aggression crime of by all countries. So to insert it in the jurisdiction of the International Humanitarian Court.
- 10- The need of making an international criminal tribunal as an independent judicial authority. Away from the effect of the Security Council.
- 11- The Arab countries should think very hard to join to the international criminal tribunal, as to enable the international judicial institution in implementing its functions in the implementation of humanitarian international law.
- 12- The need to take advantage in the lessons and experiences learned in the US occupation of Iraq, the attacks of the Islamic State, and what brought to us in civil rights violations.

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