

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

MASTER'S THESIS

**ROLE OF THE UN SECURITY COUNCIL IN IMPLEMENTATION OF
INTERNATIONAL HUMANITARIAN LAW**

MOHAMMED JALAL RASHID

NICOSIA

2016

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

MASTER'S THESIS

**ROLE OF THE UN SECURITY COUNCIL IN IMPLEMENTATION OF
INTERNATIONAL HUMANITARIAN LAW**

PREPARED BY

MOHAMMED JALAL RASHID

20145040

SUPERVISOR

Asst.Prof.Dr. Derya Aydin Okur

NICOSIA
2016

ABSTRACT

The study is an examination of the role of the UN Security Council in implementation of the rules of the International Humanitarian Law. The undertaking of this study stems from the numerous criteria that can be used to determine the extent to which the UNSC plays its role in the implementation of the IHL. Such criteria can also be used to determine the effectiveness of the IHL as well. The most appropriate and effective way of assessing the effectiveness of the IHL is its ability to deal with on-going predicaments. The study outlines limitations, challenges and issues affecting the implementation of the IHL by the UNSC and proffers insights about what can be done to improve the effectiveness of the UNSC in implementing the IHL. The results from the study have shown that the UNSC has played a significant role in the development and implementation of the IHL. However, this institution has not been the only body that has contributed to the implementation of the IHL.

Key words: International Humanitarian Law, United Nations Security Council, Human Rights.

ÖZ

Çalışma Uluslararası İnsancıl Hukuk kurallarının uygulanmasında BM Güvenlik Konseyi'nin rolünü incelemektedir. Bu çalışmanın girişimi Birleşmiş Milletler Güvenlik Konseyi'nin Uluslararası İnsancıl Hukuk uygulanmasında oynadığı rolün boyutunu tespit etmek için kullanılabilir çok sayıda kriterden ileri gelmektedir. Bu kriterler aynı zamanda Uluslararası İnsancıl Hukukun etkinliğini belirlemek için kullanılabilir. Uluslararası İnsancıl Hukukun etkinliğini ölçmek için en uygun ve etkili yol devam eden açmazları ile başa çıkabilme yeteneğidir. Çalışma Birleşmiş Milletler Güvenlik Konseyi tarafından Uluslararası İnsancıl Hukukun uygulanmasını etkileyen sınırlamaları, zorlukları ve sorunları özetlemekte ve Uluslararası İnsancıl Hukuku uygulamadaki Birleşmiş Milletler Güvenlik Konseyi etkinliğini artırmak için neler yapılabileceği konusunda görüşler önermektedir. Çalışmanın sonuçları Birleşmiş Milletler Güvenlik Konseyi'nin Uluslararası İnsancıl Hukukun gelişimi ve uygulanmasında önemli bir rol oynadığını göstermiştir. Ancak bu kurum Uluslararası İnsancıl Hukukun uygulanmasına katkıda bulunan tek kurum olmamıştır.

Anahtar Kelimeler: Uluslararası İnsancıl Hukuk, Birleşmiş Milletler Güvenlik Konseyi, İnsan Hakları.

DEDICATION

This dissertation is dedicated to my gracious family (my father Jalal Rashid my mother Balqees Ali , sisters Jihan Zainab and Zahraa) that encouraged me and supported me psychologically and financially in all stages of the study until to writing master thesis.

ACKNOWLEDGEMENTS

I would like to extend my appreciation and thanks to my supervisor Assistant Professor Dr. Derya Aydin Okur who has been my guide in completing my thesis. Her outstanding intellect inspired me to do the best for this work and for that I am very thankful. I will forever remember the time well spent with you and all the knowledge that you passed on to me.

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

To my father and mother, sisters thank you so much for the financial resources as well as emotional support.

Lastly, I am deeply grateful to the assistance offered by my uncle Falah Ali whose valuable and astonishing insight have helped me achieve my objective.

TABLE OF CONTENTS

ABSTRACT	iii
ÖZ	iv
DEDICATION	ii
ACKNOWLEDGEMENTS	iii
TABLE OF CONTENTS	iv
ABBREVIATIONS	vi
INTRODUCTION	1
CHAPTER ONE	3
1.1 Introduction.....	3
1.2 Overview the IHL	3
1.3 Applicability and scope of the IHL.....	5
1.3.1 International armed conflict and the IHL.....	5
1.3.2 Non-international armed conflict and IHL.....	5
1.3.3 NAC Application Criteria	6
1.4 Limitations of the IHL	7
1.5 Challenges and Issues	7
1.6 Compliance of the IHL	10
1.7 The transaction of the IHL.....	12
CHAPTER TWO	14
ANALYSIS OF THE UN SECURITY COUNCIL	14
2.1 United Nations Security Council	14
2.2 Worldwide Associations in Armed Conflicts	15
2.3 Reasons for the involvement of the UNSC in the IHL.....	17
2.3.1 War between Iran and Iraq.....	18
2.3.2 Armed conflict on the territory of the former Yugoslavia.....	19
2.3.3 Rwanda.....	20
2.4 Instruments to Conquer Violations of the IHL	21
2.4.1 Claims Commission	22
2.4.2 Human Rights Mechanisms	22
2.4.3 International Criminal Court	23
2.4.4 International State Responsibility	24

2.4.6 Ombudspersons.....	26
2.5 New Concepts Threatening Peace	26
CHAPTER THREE	28
EVALUATION OF THE EFFECTIVENESS OF THE UN SECURITY COUNCIL IN IMPLEMENTATION OF THE RULES OF THE INTERNATIONAL HUMANITARIAN LAW	28
3.1 The Effectiveness of the UN as an Organization.....	28
3.2 The Security Council as an International Humanitarian Law enforcer	32
3.3 The contributions of the United Nations bodies to the development and implementation of the IHL	33
3.4 The Effectiveness of the Measures	38
3.5 Humanitarian policy and the United Nations.....	39
3.5.1 General Assembly.....	39
3.6 The Legitimacy of the Applying Measures	40
3.7 Human Rights Commission	44
3.8 The contribution of non-state international institutions to the development and implementation of the IHL.....	46
3.8.1 International Red Cross and Red Crescent Movement	46
3.8.1.1 Legal status	46
3.8.1.2 ICRC and the development of the IHL.....	46
3.8.2 The international institute of humanitarian law	50
3.8.3 The international Red Cross and Red Crescent movement.....	50
3.8.4 The IHL and the ICC.....	51
CHAPTER FOUR.....	55
CONCLUSION AND RECOMMENDATIONS.....	55
4.1 Conclusion	55
4.2 Recommendations.....	57
REFERENCES.....	59

ABBREVIATIONS

EU – European Union

IACHR – Inter-American Commission on Human Rights

ICC – International Criminal Court

ICRC – International Committee of Red Cross

IHL – International Humanitarian Law

IAC – International Armed Conflict

NAC – Non-international Armed Conflict

NATO – Northern Atlantic Treaty Organization

UN – United Nations

UNSC – United Nations Security Council

INTRODUCTION

The implementation of the International Humanitarian Law (IHL) has been advanced and threatened by various events occurring throughout the globe. These events have posed a challenge to the IHL and also exposed its weaknesses. The occurrence of these events globally has sparked enquiry into the effectiveness and purpose of the IHL. It is obscure if power is law or the IHL reigns as the universal law. The effectiveness of the IHL is constantly under scrutiny because of the notable repercussions of armed conflicts in Latin America, Europe, Asia, Africa, Syria, Iraq and Afghanistan. The actions taken in attempts taken to curb terrorism by the US have raised criticism over the circumstances under which intervention is acceptable and also the mode of intervention that is acceptable. Attempts to combat terrorism have had a crippling effect on the effective implementation of the IHL. Furthermore, nations and parties have adhered to the IHL at guideline and requirements to a relatively low extend.

The effective implementation of the IHL requires an active major force to legally enforces the law. The UN Security Council (UNSC) has been the active military force in international affairs and is expected to be capable of enhancing the effective implementation of the IHL. However, the effectiveness of UNSC as the enforcer of the IHL is affected and limited by various issues and difficulties. To begin with, the very definition of the IHL has notable weaknesses the committee has been unable to rectify, these problems affect the effectiveness and implementation of the IHL. Furthermore, the effectiveness and utilization of the IHL to suppress armed conflict is limited. It is widely agreed that war is not an effective tool in the undermining of terrorist activities.

Researches were employed to assess the capacity of the UNSC to implement and enforce the IHL. The jurisdiction of the UNSC in enforcing IHL is restricted however despite their limited jurisdiction, the UNSC is still capable of contribute greatly to the effective implementation of the IHL. The UNSC also has to act in compliance with the principle set by the UN which occasionally interferes with the effective implication of the IHL. However, the actions of the UNSC are expected to represent the best interest of the masses and the protection of human rights. There is a direct link between the adherence of the UNSC with the UN guidelines and the effective implementation of the IHL. This can be explained as a result of differing levels and means of intervention required by the unique events that are encountered by the council. The

intervention method may result in the UNSC going against the guidelines of the UN. The UN principles may prohibit the effective and relevant courses of action for being executed. This reveals the need for the UNSC to be flexible and accommodating in order to effectively implement the IHL.

The success of the UNSC as an enforcer of the IHL is embedded in the strategic formulation of the IHL. Amendment of the strategic formulation of the IHL entails aligning conducts, statutes or principle of the IHL with the prevailing circumstances. Failure to ratify these elements of the IHL to meet the current events would render the IHL ineffective in dealing with humanitarian issues. This necessitates an agreement on standard of acceptable grounds for the amendment of the IHL, which accommodate the appropriate stakeholders and addresses the factors that undermine the effective implementation of the IHL. This may include a redefinition of the IHL and conflicts are very high that its definition has inherent weakness which extend to its effectiveness.

Despite the stirred evaluations, the IHL has been a strong influence which has contributed essentially in advancing peace and human rights. Moreover, with the extent to which calamities such as atrocities, violence, genocides, war crimes, terrorism and violation of human rights, are proliferating and very high, it can be ascertained that the ability of the IHL to yield desired results hinges on the assessment of its effectiveness, examine elements that are undermining its effectiveness, evaluation of the roles that are being played by the UNSC and solutions that can be adopted to enhance its implementation and effectiveness. This study therefore seeks to outline the role played by the UNSC in the implementation of the IHL and identify issues that are undermining its implementation and effectiveness. Furthermore, the study will also endeavor to proffer solutions that can be used to enhance implementation and effectiveness by outlining frameworks and possible amendments to existing statutes and regulations.

CHAPTER ONE

OVERVIEW OF INTERNATIONAL HUMANITARIAN LAW, VIOLATIONS, CHALLENGES AND ISSUES

1.1 Introduction

There are so many criteria that can be used to determine the extent to which the UNSC plays its role in the implementation of the IHL. Such criteria can also be used to determine the effectiveness of the IHL as well. The most appropriate and effective way of assessing the effectiveness of the IHL is its ability to deal with on-going predicaments. This chapter therefore seeks to outline a series of global events that affected the IHL. In this regard, it will outline current issues and challenges in the implementation and effectiveness of the IHL.

1.2 Overview the IHL

IHL can be viewed as a law that is composed of a combination of statutes and regulations that strive to curb the impacts of armed conflict with the intention of safeguarding humanitarian objectives.¹ It is synonymously referred to as the law of armed conflict and is meant to restrict warfare methods and safeguard the lives and health of those who are not part of the hostilities. Alternatively, the IHL can be regarded as a mechanism that governs national relations between nations. The origins of the IHL dates back to the 19th century in which efforts were being made to change warfare methods and it is contained in the Geneva Convention of 1949.² After the formation of the IHL, this was followed by a series of conventions that sought to augment and improve the effectiveness of the IHL and these are;

- Biological Weapons Convention of 1972.
- Conventional Weapons Conventions of 1980.
- Chemical Weapons Conventions of 1983.
- Ottawa Convention on personnel mines of 1997.
- Optional Protocol on the involvement of children in armed conflict.

¹ ICRC (2004). What is International Humanitarian Law? Advisory Service on International Humanitarian Law.

² Alkortaivi. A, (1970). Public International Law, Al-Ani Press, p. 45.

The IHL thus seeks to;

1. Distinguish between non-international and international armed conflict.
2. Placing a distinction between those who are part of the hostilities and those who are not.
3. Curbing the effects of war.

There are five principles that govern the operations of the IHL and these are;

1. Placing a clear cut between combatants and civilians: The IHL states that an attack cannot be launched on civilians but rather can be on combatants.
2. Curbing unnecessary suffering: The IHL suggests that unnecessary suffering must be avoided and this also encompasses unnecessary suffering of militants and combatants.
3. Necessity: This implies that an attack can be launched on the basis that it is necessary to do so and hence it places restrictions on the methods of attack and the types of weapons that are used. The principle of necessity therefore aims at reducing incidents of casualties in the event of war by all costs.
4. Hors de combatant: this Principle requires that those that are injured, sick or have been captured be protected and not to be attacked or killed.
5. Proportionality: This requires that the risks emanating from war be weighed against the extent to which property may damage or the number of civilians who may be killed.³

Establishment and adoption of the IHL emanates from efforts to curb human suffering that is promulgated by war and render the best possible assistance to victims. It must be noted that the formulation of the IHL is solely based on addressing the humanitarian side of the consequences of war.⁴ This entails that IHL does not put into consideration reasons that necessitated the war. This then means that it is based on two basic concepts of the law which are centered on curbing war (*or ius contra bellum*) and preventing the utilization of force (*ius ad bellum*). As evidenced in Article 2, paragraph 4 of the UN Charter which restricts the utilization of force thereby violating the independence or integrity of another nation. However, the UN Charter outlines in chapter VII that there are exceptions under which such restrictions can be considered to hold.

³ Santiago, D. M, Humanitarian Law in Armed Conflicts: Protocols I and II to the 1949 Geneva Conventions, Law Journal, 1979, p. 188.

⁴ Alkotoivi, A. Public International Law, Op. Cit, p. 46.

Significant impediments in the use of the IHL also lie in the difficulties that may be encountered in identifying the offending nation in the midst of international armed conflict that has violated the UN Charter.⁵

1.3 Applicability and scope of the IHL

The applicability and scope of the IHL is assumed to be of limited nature and magnitude.⁶ One of the significant areas to which the applicability and scope of the IHL is limited is on the war against terror. This is made more serious by the absence of rules that can stipulate the conditions under which the IHL can be applied. This means that both customary and conventional laws do not lay proper guidelines that can be utilized to apply the IHL. Application of the IHL can thus be regarded as a general approach governed by the Additional Protocols and Geneva Conventions. The Additional Protocols and Geneva Conventions categorized armed conflict can be categorized into non-international and international armed conflict (NAC and IAC).

1.3.1 International armed conflict and the IHL

The Geneva Convention (1949), 1-IV establishes guidelines for applying the IHL and Common Article 2 lays down the scope of applicability of the IHL. Armed conflict is defined as an act that involves the use of arms following acts of misunderstanding or conflict irrespective of the level of denial of the existence of the war that may be acknowledged by the parties. The major characteristic of IAC is that it is between two states and hence any conflict between a state and any party which does not constitute to be called a state, is not an IAC.

1.3.2 Non-international armed conflict and IHL

As for the Common Article 3, it regards NAC as either stimulated by rebels against a state or between rebels. It also lays the foundation under which the NAC can be applied and these are stated as follows;

1. When the insurgents are regarded to be very aggressive and antagonistic.
2. Acts of insurgents are resembling characteristics of a state.
3. When the revolting Party has a military capacity and occupies a certain territory.

⁵ ICRC. Strengthening Compliance with International Humanitarian Law (IHL): The Work of the ICRC and the Swiss Government. (2015). Retrieved from <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm> on 12 April 2016.

⁶ Rona, Gabor. "Interesting Times for International Humanitarian Law: Challenges from the War on Terror." Fletcher F. World Aff. 27 (2003): 55.

4. The rightful government to be empowered to fight against the rebellious activities of the insurgents.

1.3.3 NAC Application Criteria

The application process of NAC is not an instant thing. It requires that assessments or examinations be made in relation to;

1. Armed conflict: It can be noted that the application of the IHL hinges on the existence of armed conflicts. The Additional Protocols and Geneva Conventions however do not define the term armed conflict. NAC is difficult to distinguish and may incorporate numerous aspects. For instance, Article 1.2 of the Additional Protocols does not regard tensions or disturbances such as riots as NAC. However, in the same Article under Section II outlines that the ICRC criteria can be used if no consensus is reached about what constitutes a NAC. These criteria however do not regard terrorism as requiring armed intervention.⁷
2. *Ratione loci* (identifying the territory): This guideline forbids that non-state parties should not possess territory though conflicts may ensue in that territory. This further implies that acts of retaliation must occur within that territory and not any other territory as stipulated by Common Article 3.⁸
3. *Ratione temporis* (identification of Beginning and End of Armed Conflict): Recent International Criminal Court (ICC) and the old ICC which pertained to Rwanda and Yugoslavia established that acts of hostility must be present in order for it to be viewed as a conflict. This main reason behind this clarification is based on the prevention of applying IHL to terrorist activities and this is specified in the Yugoslavia Tribunal.
4. *Ration personae* (identifying the parties involved): *Ration personae* requires that the parties to a conflict be identified and this is because such parties have responsibilities and rights which must be performed and safeguarded. The inability to identify concerned parties thus hampers the applicability of IHL. The contrasting feature is that terrorism is not regarded as a conflict and does not apply to pledges against misconducts (*jus ad bellum*) and IHL activities are restricted. Instead, draws its attention on *jus in Bello* (acts

⁷ Alwan, Y. M, Public International Law: Introduction and Sources. Dar Wael Publishing, 2003, p. 23.

⁸ Wexler. L, International Humanitarian Law Transparency. Journal of Transnational Law & Policy, 23, 2013, p. 93-115.

of hostility). Problems of the IHL are more specifically related to terrorism, that is, there is no clear definition about terrorism and what it constitutes.

1.4 Limitations of the IHL

The main target of the IHL is to minimize or eliminate war in the bid to reduce the distress of humans caused by the effects of war. In spite of the adoption of the IHL, there are considerable limitations identified in literature from previous studies. There are various spheres in which the IHL has been receiving consideration criticism and these areas are concerned with the following issues;

- The IHL has been severely criticized in terms of narrowing the scope of armed conflict on the basis that it lacks provision for changes in armed conflict.⁹
- It lacks the ability to properly distinguish events of conflicts according to intentions behind the armed conflict.
- It mainly focuses on international armed conflicts and not local conflicts and hence can fail to positively influence the conflict.¹⁰
- Its assumption that the resultant causes of the war are rational.
- It fails to protect all victims of violence or armed conflict.
- It is difficult to understand because most of its laws are not constant as they change with the legal instrument, type of instrument and concerned legal issues.
- Low compliance rate. This is because the extent to which States have complied with the stipulations of the IHL is very low. This can be evidenced by the increase in the usage of dangerous weapons, the rising number of innocent civilians who are being negatively affected by such series of violations of the IHL.¹¹

1.5 Challenges and Issues

Numerous challenges and issues have arisen pertaining to the IHL and its applicability in different cases. Below are some of the challenges and issues experienced.

⁹ Van Schaack, B. "The Definition of Crimes against Humanity: Resolving the Incoherence". Columbia Journal of Transnational Law, 37, 1998: 787.

¹⁰ Wexler. L. International Humanitarian Law Transparency. Op. Cit, p. 101.

¹¹ Amr Mohammed Saleh, The International Protection of Cultural Property in Times of Armed Conflict, Human Rights Publications Halabi, Cairo, 2000, p. 11.

- **Refusal of applicability of humanitarian law**

More often than not, parties of international armed conflicts will not accept the applicability of IHL. This makes it hard to enforce strategies that would respect the law. States for instance will not acknowledge the existence of cases that fall under armed conflict. Non-governmental authorities may also disagree with the applicability of the law, solely because they are “none” state bodies and cannot be held in contempt for breaking the law.¹²

- **Mixture of conflicts and parties**

There are many different forms of conflict. They range from structure, semi structured to unstructured. The existence of such huge differences makes it hard to set up standardized measures or plans for fostering the respect of IHL. The parties in questions usually differ in terms of knowledge, motives, interest for world recognition or political legitimacy. The level of difference also emanates from the preparedness to discuss the law and conflict.

- **Unawareness of the law**

Not regarding the law is a challenge to the IHL especially in place where non international armed conflicts exist. The military in this case often lacks the necessary training required to be part of the fighting troops. The lack of knowledge about the law diminishes the respect for IHL. It is less likely that the IHL will be noticed when those that should follow the law continuous ignore it and do not adhere to it.

- **Absence of political will to apply the law**

Anybody trying to apply the law may face challenges especially when they lack the political stance to do so. Political will may be hard to comprehend, however, if a particular context is available it would help. The disagreements among party members could pose as a challenge and a military section would appreciate the existence of law while its political representatives may not agree with the implementation of the law or the provisions available in the law.

¹² Mackintosh. M, Increasing Respect for International Humanitarian Law in non-international armed conflicts. International committee of the Red Cross, 2008, p. 22.

- **Security and admission**

Whenever non international armed conflicts exist, safeguarding poses as a problem because more often than necessary there is insufficient security level and the amorphous conflicts exist. The dangers to security or absence of security guarantees can block the access to particular zones or the part takers of the conflict.

- **The principle of distinction as a challenge to IHL**

At the core of the IHL lies the principle of distinction which requests members of the armed conflict to clearly distinguish civilians and attackers.¹³ Armed drones pose as a serious problem towards this theory, especially when concerned with who runs them. One notable fact that armed forces often mix themselves up with civilians so that they could be undetected has caused the IHL committee to have a closer look at the principle. However, the IHL did note that using the civilians group as a form of shield is illegal, on the other side, they stressed that attacking forces should not be stopped from trying to protect or minimize civilian injuries.¹⁴

Drone usage as a form of rebellion against the IHL was encountered but however, the main issue was who would control the drones. Drones have been condemned for increasing in numbers especially the US drones. While some feel that the increasing numbers could lead to an up rise of the drones in form of a terrorist attack, others believe that they aid in the minimizing civilian casualties.¹⁵

- **New technology and the IHL**

The emergence of new technologies has posed as a challenge to the IHL as established by the IHL. The internet has given rise to a new form of weapons that can be operated remotely by members of armed conflict. Of late, the use of automatic systems has been developed. All these developments constrain the IHL in terms of legal and practical problems. Their applicability could have an effect on the humanitarian point of view.¹⁶

¹³ Lewis. M, and Crawford, E, Drones and Distinction: How IHL encouraged the rise of drones, 2014, p. 127.

¹⁴ Mackintosh, M. Increasing Respect for International Humanitarian Law in non-international armed conflicts. Op. Cit, p. 27.

¹⁵ Geza Herezegh, Development of International Humanitarian Law, University of Virginia, 1984, p. 68.

¹⁶ ICRC. The Impact of Technology on the IHL, 2013. Accessed from <https://www.icrc.org/eng> on 12 April 2016.

The biggest challenge by the IHL is that the US often brands any form of warfare performed by non-state parties against them as terrorist. This is mostly experienced in non- international armed conflict. There has been a serious misunderstanding of what really constitutes a terrorist act. The description of nearly all non-State armed gatherings as ‘terrorist groups’ has a huge effect on humanitarian law and can likely obstruct humanitarian acts.

The IHL is repeatedly confronted by the evolution of contemporary armed conflict. Attaining larger security for citizens in armed conflict relies on the application, adherence and administration of IHL. It is the continuous role of the UN Security Council to certify that IHL is able to effectively address the certainties of contemporary struggles and deliver security to targets of armed conflict.

1.6 Compliance of the IHL

Compliance is the most crucial area in IHL and can be defined as the extent to which the IHL is implemented and observed.¹⁷ The need to enforce compliance with the requirements of the IHL stems from vast series of violations that transpired. The issue of compliance still remains one of the notable areas under which the IHL receives criticism. It can be argued that it is difficult to enforce compliance of the IHL during violations because violations are sometimes complex to identify and halt in the midst of their occurrence. In addition, it can also pointed out that there are a limited number of mechanisms in the IHL that can be utilized to deal with violations.¹⁸ In spite of the existence of some mechanism of the IHL that are directed at curbing such violations, they are rarely applied. Much can also be said about circumstances and extent to which the IHL can be applied. This is because the IHL’s applicability is limited to international scale and does not apply to non-international matters.

Built on the standards of flexibility, appreciation for human rights and the tenet of law, a key goal of the European Union (EU) is to advance itself with worldwide humanitarian law. The reason for these Guidelines is to set out the apparatuses accessible to the EU and its

¹⁷ ICRC. Strengthening Compliance with International Humanitarian Law (IHL): The Work of the ICRC and the Swiss Government, 2015. Retrieved from <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm> on 12 April 2016.

¹⁸ Al-Sarhan. A, Public International Law, Dar Al-Nahda, Al-Arabia, 1969, p. 37.

organizations and bodies to advance consistence with global humanitarian law by third nations and non-State performing artists working in these nations.¹⁹

The EU has applied a number of strategies in order to enable compliance of the IHL. These are;²⁰

- Demarches and open explanations condemning infringement of worldwide helpful law with regards to a conflict;
- Emergency administration operations, particularly by gathering data for utilization in the ICC or in different examinations of war violations;
- Overall population proclamations, stressing the need to guarantee consistence with worldwide helpful law;
- Participation with other global bodies, particularly the United Nations, the pertinent local associations and the ICRC;
- Political discourse, both with regards to equipped clashes and in peacetime;
- Preparing and giving instruction in global humanitarian law, particularly for law requirement authorities and military staff, and the financing of projects for preparing and training in universal helpful law in third nations;
- Prohibitive measures and endorses against the gatherings to a conflict;
- promotion by the EU of fighting exemption for atrocities and consolation of third nations to sanction reformatory enactment to rebuff infringement of global humanitarian law;
- The allowing of licenses for the price of arms to an importing nation. The European Code of Conduct on Arms Export gives that an importing nation's consistence with global humanitarian law ought to be considered before licenses to be given to that nation are allowed.

¹⁹ ICRC. Strengthening Compliance with International Humanitarian Law (IHL): The Work of the ICRC and the Swiss Government, Op. Cit. 2015.

²⁰ Kant. I, Political Writings in Reiss, H.S. (Edited) London, University of Cambridge Press, 1970, p. 37.

1.7 The transaction of the IHL

When looking at the establishment of the IHL, it dates back to 4000BC. This section aims to look at the brief history of the IHL and how it has transitioned overtime. A division based on the manmade laws and the divine religious laws is looked into by the researcher.

1.7.1 The ancient ages

IHL goes way back to the ancient ages of history. Literature suggests that the laws of humanity are as old as the earth. Around 2000 B.C when states established and people began to relate to one another which marked the first stage of the IHL²¹.

Hammurabi was categorized into segments, 282 articles and epilog. He expressed in the presentation “I choose these laws so that the tough do not conquer the frail, to spread equity in the nation such that great individuals edify the nation”. In India, the law of Mano around 1000 BC has required that soldiers should not be harmed when they are unarmed, a non-combat and also a prisoner that has run away should not be harmed as well.

1.7.2 The middle ages

Even during the time when Islam was dominant around the middle ages in Europe, the IHL still got recognition. The IHL can be noted during different types of wars. Firstly, the war among states for the fight of independence. Secondly the wars within the states had the purpose which was to relegate the lords in power so as to establish unity and sovereignty.

There was so much brutality within these contexts, but still there was need to prioritize humanity. Studies or previous research show that religion has played a major role in the IHL, particularly to confine the transfer of the hostile gatherings in their dealings with the sufferers of war and the regular people, and also in the distinguishing proof and strategies to run battle operations²².

Equestrian training has contributed in the IHL in by one means or another. Proclaiming war and the legitimate status of the arbitrators and the denial of specific weapons are the legacy of horsemanship. Yet, such deliberate confinements have not been connected by everyone. For each

²¹ Omar Saad Allah, *The Development of International Humanitarian Law*, First Edition, Beirut, Dubai Media Incorporated West, 1997, p.87.

²² Deep Akawi, *International Humanitarian Law*, State and Law Institute, the Academy of Sciences in Kiev, 1995, p. 35.

of the Greeks and old Romans, the views of war were connected just for sovereign humanized countries.

1.7.3 Modern ages

As the modern ages approached, the first notable acts of the IHL recognition were evident in the military history when the use of the firearm began to take its toll²³. The aspect of feudalism was replaced by the government in most nations and the existence of slavery came to an end and particular emphasis was placed on those harmed or affected by the war.

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

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.

1.7.4 Present time

At the beginning of the current age in the mid-nineteenth century, the universal relations have seen concentrated endeavors between the nations for the legitimization and control of global standards, which had begun in the behavior of threats and the assurance of the nonmilitary personnel populace and victims of conflicts and those guidelines was soon transformed into simple tendencies and traditions to composed lawful doctrines in the second half of the nineteenth century, through the codification of these principles, and those standards as worldwide assertions or proclamations or in types of directions from the administration tended to cater for the armed forces in the field.

The most important universal traditions, which sent the principal core for the improvement of IHL are: Paris proclamation in 1856, Geneva Convention of 1864, the Declaration of Saint Petersburg for 1874, and The Hague Conventions for the main piece of 1899 and the Geneva Convention in 1906, The Hague Convention of 1907.²⁴

²³ Kolb, Robert. "The relationship between international humanitarian law and human rights law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions." *International Review of the Red Cross* 38. 324, 1998, p. 409-419.

²⁴ *International Review of the Red Cross (ICRC)*, the seventh year, 1987, No. 40, p. 46.

CHAPTER TWO

ANALYSIS OF THE UN SECURITY COUNCIL

2.1 United Nations Security Council

The Security Council was established in 1945, with the main goal of delivering security, peace and justice. The Council uses the humanitarian intervention in order to attain this goal. This means that post hoc rationalization for the uses of violence could be difficult in trying to adhere to the law. The UN has approved upon three values of humanitarian interference: usage of military force, interferes in the target state's internal affairs, and reacts to crises where countries' interests are not unswervingly endangered. To apply a decision, the UN seeks the Security Council to authorize military power.²⁵

The existence of the Security Council is of paramount importance. The Security Council, which was established by the UN Charter, is governed by 6 main organs. The main aim of the Security Council is to offer a peaceful environment for everyone. As stipulated in the charter, the reasons why the Security Council exists within the international humanitarian law is so that;

- Security and peace prevail at international level.
- A crucial factor of the Security Council is to establish a friendly atmosphere between or among nations.
- To organize and work together as the states in solving problems.
- Encouraging and fostering the respect for human rights.
- To exist as the epicenter of harmonizing nations.²⁶

²⁵ Security Council Resolution, No. 1265 Dated 17/9/1999.

²⁶ Mohamed Y. Mattar, International and Regional Human Rights Conventions, 2013. Retrieved from human rights agreement.<http://www.mofa.gov.qa/en/InternationalCooperation/GlobalIssues/Pages/HumanRightsInternationalTreaties.aspx>.

The Security Council also oversees the jobs of UN safeguarding operations on a continuous basis. It keeps reports from the Secretary General and holds meetings in order to discuss different agendas that arise. The Security Council can vote to lengthen, adjust or put a stop to mission commands whenever necessary. As stated in Article 25, the members of the council are required to follow the decisions made by the council. The organs can make suggestions to member states, however the council has the sole authority to enforce decisions which the states are mandated to follow.²⁷

2.2 Worldwide Associations in Armed Conflicts

The (ICRC) as the establishing association of IHL is one of the global associations that have worked energetically in lessening the effect of military mediation on the casualty populace. Helping the IDPs is one of the ICRC's real obligations.²⁸ On account of the ICRC has set out on various projects and exercises some time recently, amid and after the Walk 24-June 09 1999 NATO bombings in the nation.²⁹ With more than 25% of the populace having been living under the neediness level line by 1999 in Broil (In the same place 05), the effect of the NATO shelling in such manner was so extreme. It can be contended that the circumstance clearly declined as the 1999 NATO bombings destroyed the economy and the commercial enterprises which were left battling by the rehashed UN monetary authorizations of the 1990s. The circumstance get to be stiffer over the IDPs who thought that it was hard to get to government help, for example, unemployment advantages particularly as of right now of time when the greater part of them did not have the records required for entitlement.³⁰

In light of this circumstance, the ICRC answered with various monetary projects whose fundamental point was to help the IDP in a troublesome financial environment which included such classes as the youngsters, ladies and the minority bunches. One of the strategies for mediation taken by the ICRC was the Money Collaborator Program. The point of the system was

²⁷ Smith, C. A. and Smith, H. M. Human Trafficking: The Unintended Effects of United Nations Intervention. International Political Science Review, 2010, XX(X), 1–21. Available at: <http://www.college/clark.edu>. Accessed 2 February 2016.

²⁸ Dunne T. Kurki, M. and Smith, S, International Relations Theories: Discipline and Diversity 2nd edition. New York, Oxford University Press, 2010, p. 17.

²⁹ Wieruszewski. R, Application of International Humanitarian Law and Human Rights Law: Individual Complains, in Implementation of International Humanitarian Law, edited by F. Kalshoven and Y. Sandoz. London: Martinus Nijhoff Publishers,1989, p.441-458.

³⁰ Brunner, C. The Situation of Internally Displaced Persons in Serbia and Montenegro, Issues Paper May 2005, [Online]. Available at: <http://www.icrc.org/eng/assets/files/other/icrcserbia-montenegro-idp-issues-05-2015-eng.pdf>.

for the most part to help the IDPs from Kosovo who were living in dejection with an official month to month wage beneath the Base Government managed savings Level (MSSL). With this program, the ICRC, in organization with the Service of Work and Parties and the Commissariat for Displaced people figured out how to help a sum of 7 500 families in Serbia and Montenegro.³¹

2.2 Jurisdiction over the Security Council to the Humanitarian Law

Numerous questions have been raised as to whether the Security Council has powers over the humanitarian law. Referring to the Charter, there is no specific indication as to whether the council has authority with regards to international humanitarian law. However, the importance of the respect of human right is highlighted in Article 1 and 2.³² However, recently the emerging armed conflict and human rights debate has been an issue of much discussion in the UN forum. As explained in the UN human rights council, any form of action that is against the IHL is considered as a damage of human rights too.

In spite of the notion of including some aspects of the IHL in the UN council, this does not translate into the ability of the Security Council to manage and attain the goals required for the IHL. The goal of the Security Council is to maintain peace and security instead of promoting conflicts to arise.

The Security Council exerts power and acts as an arbiter in order to enforce military action when it is required to do so. The Security Council exists to foster peace and not make changes in the world system; this is one of the founding principles of the council and is key to the running of different cases brought forward. According to the charter in Article 39, states that powers can be carried out by the council in situations when there is a threat to peace, breach of peace or criminal acts. It is not the duty of the council to establish laws but however to maintain peace. Another jurisdiction of the council is that it should keep records that designate the preservation of peace and security and agreement with the IHL.

³¹ Smith, C.A. and Smith, H.M. Human Trafficking: The Unintended Effects of United Nations Intervention. Op. Cit. p. 14.

³² Roscini, M. The United Nations Security Council and the Enforcement of International Humanitarian law 1996, ICJ Rep, 2010, p. 341.

2.3 Reasons for the involvement of the UNSC in the IHL

The Security Council has implemented a diversity of actions with reference to international humanitarian law. For example, it stated that IHL is applicable to certain a limited and all cases or that only a particular conduct falls under the IHL. The Security Council enforced departments that seek truth (which sometimes use rough measures to seek the facts). This application of a fact-finding role by the Council has led to the ratification of the international fact finding commission found in article 90 of additional protocol 1.³³

It has indeed driven many different states to adhere to the IHL. The calls enforced by the Security Council aim for the utilization of different instruments as postulated in Chapter VI and Chapter VII. For example, as given in resolution 1265, all states were mandated to adhere to the IHL despite the lack of conflict.

The significance of the Security Council involvement in the humanitarian law is that it goes further to attract states that are not involved in conflict to implement specific strategies.

Moreover, the involvement of the Security Council in the IHL is clearly indicated in Articles 41 and 42 found in Chapter 7 which state that it is the duty of the Security Council to limit the harm of civilians. Specifically, 4 of the sanctions regimes established in 2005 (Côte d'Ivoire, Sudan, the Democratic Republic of Congo (DRC), and Somalia) related to atrocities of human rights or the IHL.

The Security Council has implemented different measures found in Article 41 concerning the IHL however, they are not clearly explained. A good example though is the formation of the international illegal tribunals for the previous Yugoslavia and for Rwanda for the reason of searching and applying justice to the criminals that caused violations of the IHL and the establishment of the UN Reimbursement.

The Security Council is responsible for exercising authority and applying military policies so as to eliminate the threats to the IHL. This view point suggests that there have been tendencies towards the use of military force in order to adhere to the IHL.

³³ Suhal Hussein, Encyclopedia Of International Organizations, the UN / Devices As The United Nations ,c 2 , First Edition , Jordan: Dar Al-Hamed Publishing, 2001, p. 74.

Evidence of this is available in numerous cases, one in particular occurred in 1996 when the ICTY revised its regulations so as to arrest the inductees by international forces in the field where by effective functioning of the tribunals was required.³⁴ The Security Council has also frequently approved UN peacekeeping and peace administration militaries, government coalitions and regional administrations to exercise force in order to safeguard civilians and ensure humanitarian access.³⁵

In the event that when faced with a conflict that undermines worldwide peace and security, the Security Council will center its attention on the reasons for the conflict and will work to discover approaches to determine a good solution to resolve the problem. Understandably, the Council will give careful consideration to issues identified with *jus in Bello*, i.e. issues which emerge as an aftereffect of the conflict. Its essential order is to get rid of the conflict itself. In any case, late occasions have given the Security Council plentiful chance to meet its obligation regarding guaranteeing consistence with IHL by the gatherings to a conflict.³⁶

2.3.1 War between Iran and Iraq

On 20 July 1987 the Security Council embraced resolution 598 which set the conditions for a conclusion to the fight between Iraq and Iran. In spite of the fact that it required some investment for both sides to acknowledge the content, the truce became effective on 20 August 1988. The center of the determination lists three measures to be taken by both sides after the truce: withdrawal of the military to the universally perceived outskirts, check of truce and troop withdrawal by UN eyewitnesses and repatriation of detainees of war.³⁷ There was a discussion which emerged as to whether this clarified the request in which these three measures must be taken, or whether the two assemblies needed to take each of them three all the while. The groups fought for a long time while a defenseless ICRC remained by, not able to perform its order under the POW Convention. From the point of perspective of IHL, the circumstance was completely clear: POWs should importantly be repatriated immediately after the end of dynamic threats. Their repatriation may by no means be connected to the satisfaction of whatever other condition

³⁴ Roscini. M, The United Nations Security Council and the Enforcement of International Humanitarian law, Op. Cit. p. 356.

³⁵ Prosecutor v. Tadić, Case no. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 29 (Oct. 2, 1995) [hereinafter Tadić].

³⁶ Benedetto Conforti, the law and practice of the United Nations 177 (emphasis in the original). 2005.

³⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 89, June 8th, 1977, 1125 U.N.T.S.

than the end of dynamic threats. At the season of composing various POWs caught amid the Iran-Iraq strife are as yet holding up to come back to their country.³⁸

If faced with a conflict debilitating universal peace and security, the Security Council will center its consideration on the reasons for the conflict and will work to discover approaches to determine the basic debate. Understandably, the Council will give careful consideration to issues identified with *jus in bello*, i.e. issues which emerge as a consequence of the conflict. Its essential order is to get rid of the conflict itself. Be that as it may, time has given the Security Council abundant chance to meet its obligation regarding guaranteeing consistence with IHL by the gatherings to an armed conflict.

With some cases, there are especially critical representations of the Council's inclusion in advancing international law. Others are said on the grounds that they have brought about the ICRC. In this way, with a likely unintended absence of consideration in drafting a resolution, the Security Council built up an extra obstruction to determining the humanitarian issues remaining after the end of the threats amongst Iran and Iraq. Obviously, the ICRC was vexed about this and inferred that more endeavors must be embraced to improve representatives and UN authorities mindful of the intricacies of the Geneva Conventions. In this way, the ICRC now intermittently sorts out courses on global humanitarian law for negotiators, in New York and Geneva.

2.3.2 Armed conflict on the territory of the former Yugoslavia

As far back as 1991, the Security Council communicated its cause about the circumstance in considerate terms in the previous Yugoslavia and urged the Secretary-General to seek after his endeavors in contact with the ICRC, the UNHCR, UNICEF and other humanitarian organizations³⁹ However, just a year later the Council alluded unequivocally to universal helpful law and specifically to the Geneva Conventions dated 1949, which all the warring gatherings were bound to respect.⁴⁰ The ICRC again ventured into the rupture and advanced over and over

³⁸ Hans-Peter Gasser, *The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations' involvement in the implementation of international humanitarian law* 19-10-1995.

³⁹ Mercier, C. *On the humanitarian issues Crimes sans Châtiment, L'action Humanitaire en ex-Yougoslavie*, Bruxelles, 1994, p 7.

⁴⁰ Security Council Resolution 764, (1992).

and in different structures to the gatherings to the conflict on the region of the previous Yugoslavia, requesting that they regard worldwide humanitarian law.⁴¹

Following the proclamation of an arms prohibition in 1991,⁴² the Security Council chose in May 1992 to force financial transfers against the Federal Republic of Yugoslavia.⁴³ While making no reference to the significant procurements of the Fourth Geneva Convention, the resolution all things considered accommodates the obliged special cases to the ban for especially powerless gatherings, and accordingly consents to worldwide law. As in the Gulf War, the ICRC has kept on sorting out help operations for the advantage of persons in need, as indicated by the principles set around the Geneva Conventions. Problems with the assents administration have emerged predominantly at the level of bureaucratic methods, which have in some cases brought about postponements in doing alleviation operations.

The announcement by the President of the Security Council of 1995 on the truce understanding for Bosnia-Herzegovina is another case example taken by the Security Council which affect ICRC's exercises. In that announcement the Council requests that the ICRC be given access to all parts of the locale and that its representatives be approved to visit persons held in detainment.

In the perspective of such references made by Security Council resolutions to the ICRC and its exercises the question might be asked whether the ICRC likes such explanations, proclamations which may be translated as the ICRC being given guidelines by the Security Council on what it needs to do regarding a particular conflict. Gasser states that he is not mindful of any event in which the Security Council ever endeavored to give such guidelines and along these lines to subordinate the Committee in Geneva to its power. These resolutions must be seen a great deal more as bids - welcome offers - to the gatherings to an armed to conform to their commitments under IHL, including commitments toward the ICRC and its agents.

2.3.3 Rwanda

In succeeding to cope with the unfurling disaster in Rwanda the Security Council proposed a few times to the gatherings in the common war to regard IHL⁴⁴ in its own particular manner the

⁴¹ ICRC Annual Report 1991, p. 87-88.

⁴² SC resolution 713 (1991).

⁴³ SC resolution 757 (1992) and subsequent resolutions. After the Dayton (Ohio) Peace-agreement SC resolution 1022 (1995) lifted the sanctions, subject to certain conditions.

⁴⁴ SC resolution 812 (1993).

ICRC did likewise. The ICRC kept on running a broad humanitarian project in that war-torn nation, including restorative help, following up on missing persons and visits to jails. The sheer extent of the assignment has obliged the different UN bodies and the ICRC to build up systems for coordinating their exercises. Another situation emerged when the UN High Commissioner for Human Rights chose to dispatch to Rwanda a group of field onlookers for human rights matters. Sufficient types of collaboration regarding the complementarity of the two organizations' mandates must be regarded for that also.⁴⁵

2.4 Instruments to Conquer Violations of the IHL

The institutions controlled by IHL have a commitment to both instruct their powers in IHL with a specific end goal to diminish security casualties and to devise and execute fitting systems to guarantee that the commitments forced under IHL are respected. There are various uncertainties in the bid and implementation of IHL as to United Nations powers. In this manner, the UN ought to build up a successful and clear system whereby casualties of claimed infringement of IHL can look for reviews or resolutions. Such a project is vital in setting up the principle of law and responsibility in the post-strife and struggle regions where PSO and requirement powers work.

This thesis will highlight some areas or ways, victims of IHL infringement by an UN PSO or peace authorization operation are compelled to look for few unique systems that are effectively suited to uphold their rights. Victims may guarantee the general duty of the sending state or the person under global law; may issue claims against the people in charge of the asserted human rights infringement; or may possibly look to bring guarantees specifically against the UN, as troop-sending states which do not have the assets to remunerate casualties. In any case, these present systems are wasteful and hard for casualties to distinguish. This area will look at the constraints of existing instruments before proposing options keeping in mind the end goal to illustrate how the UN can all the more adequately execute its commitments under law to guarantee consistency with IHL assurances.⁴⁶

⁴⁵ Sulinih Françoise Bouchet, *Dictionary of the International Armed Conflict*, Trs. Ahmad Masood (Beirut, Lebanon: Dar Flag of Millions) 2005, p. 38.

⁴⁶ Chapman, Peter F. "Ensuring Respect: United Nations Compliance With International Humanitarian Law." *Human Rights Brief* 17, No. 1, 2009, p. 3-11.

2.4.1 Claims Commission

The Claims commissions may serve as a model for how the UN can repay victims for harm emerging from UN operations; in any case, they don't serve as a successful authorization component since they are not worried with discouraging infringement of IHL. There are a few scenarios of cases endeavoring to offer financial review for infringement of IHL including the Eritrea-Ethiopia Claims Commission and the UN's Civil Claims Unit.⁴⁷ In 1991, the UN additionally settled a remuneration commission for harms emerging out of "Iraq's unlawful intrusion and control of Kuwait. This tribunal did not particularly arbitrate affirmed infringement of IHL, however it served as a gathering whereby host governments could submit objections for the benefit of their own nationals for asserted violations. Such commissions may assume a part in recompensing pay to casualties, yet they don't deliver the UN's commitments to guarantee its powers consent to IHL. On the off chance that such a commission is to be utilized to fulfill a claimed infringement, it should be utilized as a part of conjunction with an alternate body that can viably guarantee consistency with IHL.⁴⁸

2.4.2 Human Rights Mechanisms

Of late, a few researchers and experts have proposed that territorial human rights bodies may be a fitting to arbitrate affirmed infringement of IHL. While human rights law permits casualties to assert a rupture of commitments by a state, most human rights bodies have been safe in applying IHL. The Inter-American Commission on Human Rights, in the Las Palmeras case under the watchful eye of the Inter-American Court of Human Rights (IACHR), contended that the Commission had the power to apply "the standards typified in standard IHL relevant to inward armed conflict and stated cherished in Article 3, regular to all the 1949 Geneva Conventions. The Colombian government stated that the Commission surpassed its order and that the IACtHR did not have the competency to apply IHL, in light of the fact that it was not particularly accommodated in its mandate because of these conflicting arguments, the IACtHR overruled a portion of the Commission's examination, and "denied to look at standards falling outside the

⁴⁷ Kant, I. Political Writings in Reiss, Op. Cit. p. 18.

⁴⁸ Michael N. Schmitt, Lousie Arimatsu, Yearbook of International Humanitarian Law, Op. Cit, p. 87.

content of the American Convention, for example, the standard way of Article 3⁴⁹. However, the Court did not block the use of IHL standards in those occurrences where the standards were likewise contained in the American Convention.⁵⁰ The European Court of Human Rights, in the Bankovic case, restricted the regional relevance of the European Convention on Human Rights, deciding that the Convention "was not outlined to be connected all through the world."⁵¹ This case exhibits the insufficiency of the Court as a gathering for the mediation of cases of asserted IHL infringement by PSO or requirement strengths since infringement must happen inside the region represented by the Convention to fall under the premise of the Court. The law from the human rights bodies clarifies that human rights courts likely do not serve as a successful avenue "to enhance the usage of IHL" among PSO and implementation operations. The Bankovic and Las Palmeras cases, specifically, outline the challenge of acquiring judgments against the culprits of infringement of IHL in local human rights frameworks. In like manner, such systems do not really give sufficient authorization mechanisms to infringement of IHL by PSO or peace implementation powers.

2.4.3 International Criminal Court

Another source for the settling of affirmed IHL infringement is through the International Criminal Court (ICC). In any case, the wrongdoings counted in the Rome Statute make it exceedingly impossible that PSO or authorization operations to fall under the Court's authority. Crimes against mankind require across the board assaults coordinated against the nonmilitary personnel populace as a component of the crime. Genocide entails the resolve to destroy a country, ethnical, cultural or sacred group. These explanations are past the extent of wrongdoings claimed to have been carried out by the UN to date, and it appears to be improbable that the UN power could take part in such far reaching infringement of the law. Atrocities perpetrated by PSO and authorization operations, in any case, seemingly ought to fall under the purview of the ICC the assaults to achieve the gravity limit and different necessities of the Rome Statutes. Harrington noticed the trouble of considering PSO or implementation operations responsible under the Rome Statute, given that the Statute approves indictment of people for war "violations

⁴⁹ Jan Bkety. *International Humanitarian Law, Its Development and Principles*, The Publisher Maahd Henry Donan, Geneva, 1984, p. 37.

⁵⁰ Allam, W. A. *International human rights conventions*. Cairo: Arab Renaissance, 1999, p. 41.

⁵¹ Cherif Bassiouni, *International Criminal Court, A Former Source*, 2011, p. 64.

which are a piece of a purposeful exertion or arrangement, instead of those which are unpredictably completed for individual satisfaction or other non-coordinated reasons. An examination of media reports of past charges of peacekeeper misuse Cordiality of U.S. Marine Corps. UN preparing operation in Mongolia for multinational powers. Recommends that most asserted misuse include disorderly and unpredictable savagery rather than composed assaults against the nonmilitary personnel populace. Moreover, while the Rome Statute criminalizes sexual inhumanity and different wrongdoings claimed to have been carried out by peacekeepers, indictments under the Statute tend to concentrate on those people who request or plan such violations, instead of the individual perpetrators.

On top of that, jurisdictional hindrances may keep the ICC from practicing locale over charged wrongdoings carried out by PSO or authorization operations. To start with, the ICC works under an arrangement of complementarily with national locales. For the ICC to practice locale, the Court must find that the state can't or unwilling to arraign wrongdoings falling inside the ward of the ICC. As needs be, much like the universal framework set up today, the ICC offers power to national wards to authorize the laws of war on peacekeepers⁵². The UN for the most part consents to Status of Forces Arrangements (SOFAs) with the national administration of the domain where PSO or implementation strengths work, and these by and large administer UN operations. Couches normally block national governments from practicing ward over claimed wrongdoings submitted by the separate nation's powers working inside their region. However numerous states, for example, the United States, have understandings under Article 98 of the Rome Statute whereby host states may not exchange U.S. warriors to ICC ward.

2.4.4 International State Responsibility

Usually all universal rights involve worldwide accountability. The International Law Commission Draft Articles on State Responsibility, which inspect the part of states in the global scheme, reports that behavior of a state institutions will not degrade the quality does not lose that quality since it is the way, for instance, facilitated by a worldwide association, or is even approved by it. Ultimately, the Commission embraced the rule that a harmed state, separately or in combination with a gathering of states, may increase the issue of universal obligation under

⁵² Sharif Atlam, *The International Criminal Court, The Constitutional and Legislative Adapters (Draft Model Law)*. International Committee of the red Cross, Cairo, 2005, p. 18.

global law. Such a convention of state obligation is not adequate to actualize the UN's commitments under IHL. Harmed states are the main elements that may start claims. History demonstrates that asserted infringement of IHL by PSOs and implementation operations ordinarily happen in destabilized locales where the host government might not have the ability to bring a case for the infringement for benefit of the government. For instance, on account of Somalia, no focal government existed that could seek after a case under state obligation regarding affirmed infringement of IHL. The powerlessness of victims to straightforwardly guarantee an infringement of the law of armed conflict by PSO or peace implementation acts may bring about critical danger to victims by denying them satisfactory change while at the same time incompetently upholding the IHL commitments of the force.⁵³

2.4.5 Action in the Jurisdiction of Sending State.

The Secretary-General's Bulletin, the International Law Association, and lawful specialists all suggest that infringement of IHL be arbitrated in national courts. While such a gathering offers a recognizable purview for mediating claims, it is lacking for a few causes. To begin with, such procedures by and large exclude the UN as it is for the most part invulnerable from lawful procedures in local courts. Because the majority of UN strengths originate from nations that are building up their financial and lawful institutions, it is improbable that their household courts could viably handle the entangled charges of misuse happening infer areas from their courts or have entry to assets to repay potential casualties. Furthermore, having such a commitment would serve as a disincentive for troops-contributing states to put their military under the ward of the UN. Also, IHL has customarily been seen as overseeing relations between states, not amongst people and a state. While it is for the most part acknowledged that IHL may "converse rights on individuals there are critical procedural obstacles for an individual authorizing these rights in a state court of the claimed abuser. Applicants have endeavored to utilize Article 3 of the 1907 Hague Convention (IV) pertaining to compensation to prosecute for asserted infringement local courts; in any case, most local courts have decided that Article 3 gives a privilege for remuneration just for state, but not the individual.

⁵³ Antoine A. Bouvier, *International Humanitarian Law and the Law of Armed Conflict*, Second Edition, (Peace Operations Training Institute, 2012, p. 43.

2.4.6 Ombudspersons

The whole idea of ombudsperson started in the local law of a few European nations. An ombudsperson may "get grumblings, explores and makes proposals to the significant parties, however they do not have the power to authorize the recommendations. The Organization for Security and Co-operation in Europe recommended that global foundations use ombudspersons as a way to advance and ensure human rights and IHL. There are a few cases of the viable utilization of an ombudsperson inside worldwide associations. In 1994, the World Bank became the first to implement the ombudsperson within such a huge institution.

2.5 New Concepts Threatening Peace

The factors affecting peace vary in nature. Notably they are a threat to the environment we live in. In the midst of the threat to peace include the utilization of nuclear war or military conflict or even so, the application of weapons of mass destruction. All these issues are factors that pose challenges to peace in the world.

Environmental stress is rarely the only reason of key conflicts inside or amongst countries. However, they can arise from the relegation of subdivisions of the populace and from subsequent violence. This happens when political procedures are incapable of fixing the effects of environmental tension emanating.

Terrorism has been present in the world for more than 2000 years, however, the phenomena is still hard to define and categorize. The lack of a clear definition does not mean that the world has been ignorant of the various acts of terrorism happening all around⁵⁴. The Security Council, is the governing body that looks into such issues as they are mandated to maintain peace and security for the world. The Security Council employs different strategies in solving terrorism, but before doing so they must first analyze the issue and validate it.

It is at the hands of the Security Council to decide on how to act when threats such as terrorism arise. Therefore, the decisions are made by the council for the benefit of security and peace, they should be in line with national level political respects. According to article 39 the decision made are irreversible in nature and must be adhered to. Failure to do so will result in certain measures being implemented by the council.

⁵⁴ Geza Herezegh, Development of International Humanitarian Law, Op. Cit. p. 63.

The Security Council took a place pace in fully adopting the issue of terrorism. This is indicated where the word terrorism was finally used in 1985 after cold war. More emphasis and focus was taken after the September 11 attack, the council finally realized the threat of terrorism to world peace.

Another factor is climate change which has been a prominent threat to peace because it has intensified conflict over limited land and could well fuel significance center location. Increasing sea levels have placed at risk the very existence of island States. Climate change has triggered other worldwide disparities that pose a threat to peace and security of the world. It can be argued that the issue of climate change does not fall under the Security Council. The Security Council criticizes this notion by saying that a link exists in this dynamic environment and this could be linked to security.

Of recent debate, the Security Council officials further noted that the links of climate change and the links of development and security could have an impact on the transnational crime, trafficking of drugs and weapons and the wide spread of HIV/AIDS could rise more predominantly.

At a discussion addressing the council, Margaret Chan who is the director of WHO, said that the current trends of health are distressing and should be addressed. 400 reports of serious health threats were recorded by the organization as a threat to health. The director further noted that increased urbanization and population growth and aging were some of the causes of threats to peace and security. A good example is the EBOLA pandemic virus that spread rapidly in many countries recently, threatening the peace and security of many nations⁵⁵.

The 6668th Security Council meeting advocated for the identification of key challenges to international peace and security as well as conflict hindrance. The main topic of the meeting was titled “maintenance of peace and security”. According to the council members, the dynamic environment that the body is operating in requires the council to pay particular attention to the new problems that continuously occur.⁵⁶

⁵⁵ United Nations Security Council. Security Council 668th Meeting On Challenges Affecting International Peace and Security, 2011.

⁵⁶ Security Councils 666th Meeting As Nature of New Threats Evolves, Security Council, Central to Keeping Peace, Must also Keep Pace, Secretary-General Says During Council Debate on New Challenges. 2011.

CHAPTER THREE

EVALUATION OF THE EFFECTIVENESS OF THE UN SECURITY COUNCIL IN IMPLEMENTATION OF THE RULES OF THE INTERNATIONAL HUMANITARIAN LAW

3.1 The Effectiveness of the UN as an Organization

The many critics of the UNSC have stressed that the body is not following its mandate as the world's security organization. Different scholars view it as an instrument being used by the western powers and Washington. The structure is deemed anachronism with members of the cabinet often basing their decisions on post world war 2 power structure.

The UNSC has often failed to implement its resolutions and meeting its objectives. The effectiveness of the UNSC have been discussed in different ways. These are;

- The SC is the “restricted organization of the Cold War”, and the end of the Cold War has “brought only modest improvements in the body’s performance.
- The UN is “The stamp for legality and consensus”.
- The Security Council “inhibits and does not facilitate cooperation with regional organizations”.
- The Security Council “inhibits and does not facilitate cooperation with regional organizations”.
- Veto is a “hopelessly flawed arrangement” that facilitates self-interest and undercuts the Councils’ morality to act. e) The UN “helps only a small selection of international problems” and “deploys only when there is commitment” not to fight.

The arguments which have been made against the UNSC on imposing sanctions in Iraq stimulated much debate globally. The imposition of sanctions that affected the civilians resulted in the international community to question its effectiveness of the law enforced by the institution. This has prompted the SC of travel and financial restrictions against UNITA in 1997-98. The implication of the sanctions indicated a new course of action taken by the SC. This new strategy

meant that the SC could rely on the rule pertaining to future dangers concerning peace and security. This would reduce the negative effects of sanctions on the IHL.⁵⁷

Even though the implementation of the sanctions against UNITA posed several problems concerning appropriate targets, the body of sanctions viewed this as a way of communicating a message about the importance of compliance without endangering the civilians.

In order to analyze the effectiveness of the implementation of the UNSC rules on IHL is an overwhelming mission, most scholars that undertook this research often use quantitative methodology and they do not possess the adequate skills and instruments necessary to evaluate the effectiveness of countries enforcing laws. Furthermore, the information to conduct an evaluation of the execution measures of appropriate SC resolutions almost certainly also entails an evaluation of the former.⁵⁸

A number of criterion was chosen to aid the assessment of SC resolutions and countries carrying out designated measures. It is paramount to also to assess the legitimacy of the UNSC. Problems and changes in the global world pose trigger or affect the effectiveness of the security system internationally. In specifically, the view that pertinent choices implemented for the upkeep of global peace and safety are taken on the basis of legal values and proven practices is likely to boost their effectiveness.

The third division is worried with an assessment of the usage procedure by states. Since the state reports submitted under the applicable SC resolutions is the principle wellspring of data, a perusing of them has demonstrated significant in surveying the endeavors made by states to execute their commitments. As a rule, one must read between the lines and evaluate the pertinence, or deficiency in that department, of what states say or react to the CTC or the Sanctions Committee. The steady alteration of the SC's methodology to the difficulties of usage will likewise be assessed. In Section 4 the measures of execution taken by states will be broke down against the foundation of some human rights commitments which might be influenced by such measures.

⁵⁷ Bianchi. A, Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion. *European Journal of International Law*, 2006, 17 (5): p 881-919.

⁵⁸ Suhal Hussein Vlawy. *Encyclopedia of international Organizations*, Op. Cit. p. 52.

The reality is also that for much of the world, the UN has carried the stamp of legitimacy and consensus. In this respect a decision by the United Nations, including the legally binding decisions of the Security Council under Chapter VII, may be more acceptable to other governments than pressure from any single nation or group of nations. That is why Lebanon and the United States and Europe all turned to the Security Council to pass a resolution establishing a buffer zone, however imperfect, in southern Lebanon.⁵⁹

The Security Council is also no longer the constrained institution of the Cold War. The UN now deploys many forces in 16 countries on 5 continents. Its military operations are second only to the overseas deployments of the United States. The quality of troops is uneven, and UN peacekeepers are still saddled with Security Council mandates they cannot possibly fulfill. But the picture is much improved from the traumatic period of the 1990s.⁶⁰

A major need of the UN's plan post World War II was Aggregate security. In any case, realists may have the slight edge when they contend that the "rationale of aggregate security has stood out from the challenges of its application". Obviously, there was an extensive feeling of doubt after the Second World War, as highlighted by the Security Committee's 193 vetoes between 1945-1990. The Assembled State's intrusions of Vietnam, Grenada and Panama notwithstanding the Soviet Union's attacks of Hungary, Czechoslovakia and Afghanistan are only a couple of cases of the consistent intermediary war operations led during the time of the twentieth century. This highlighted the inadequacy of the UN's Security Committee in preventing strife, and firmly bolstered realist masterminds, that there is no supranational power [the UN] equipped for wielding overpowering force⁶¹ The realist school view states that worldwide associations utilized by states to actualize their energy legislative issues all the more viably and to seek after self-interest. At the point when taking a gander at contextual investigations including Rwanda and Sierra Leone, realists would contend that the motivation behind why the UN was not as viable is to a great extent because of the way that Rwanda had little enthusiasm to the hegemonic powers at the time. Different wars in any case, for example, the Korean War, had solid support from

⁵⁹ Norley, R. M. Is the United Nations an effective institution?, 2013. <http://www.e-ir.info/2013/02/23/is-the-united-nations-an-effective-institution>.

⁶⁰ Rittberger Volker & Zangl Bernhard, International Organization: Polity, Politics and Policies. New York, Palgrave Macmillan, 2006, p. 54.

nations, for example, the US, UK and different countries in Europe, since it was to their greatest advantage to do as such. For Korea's situation, the UN was successful in restoring security.

This to a great extent negates Kant, who guarantees that "universal associations can compel chiefs by decidedly advancing peace". From the confirmation exhibited we can deduct that hegemonic states have better impacts than those of the UN, thus it is not really amazing that the UN succeeded in restoring security when it was in the general enthusiasm of the UN I polar state at the time (the US), as opposed to the greatest of states sitting in the General Assembly. In any case, liberals guarantee that after the Cold War it turned out to be more difficult for states and negotiators to acknowledge that what happened inside states was of no worry to untouchables.⁶² Subsequently, the UN turned out to be more required in the intervention between countries, which allowed it higher appreciation from part states. By the mid-1990s the UN had ended up included in keeping up worldwide security by opposing animosity between states. Progressives including Kofi Annan contended that the 'security predicament', which is based on the reason that "one nation enhances its security to the detriment of different states" had been turned away.⁶³ In spite of the fact that the later has been brilliant as far as the UN serving as a stage for peace and tradeoff between states.

Notwithstanding the UN's average accomplishment with respect to security, the foundation has significantly more to rejoice concerning peacekeeping and wellbeing endeavors. The UN's peacekeeping operations which incorporate the UN Transition Assistance bunch in Namibia, UN Observer Group in Central America and also the UN Iraq-Iran Military Observer Group are a couple of case examples of the peacekeeping missions running from 1948 up to 2012, huge numbers of which are still dynamic. In like manner, the World Health Organization is a branch of the UN which spreads wellbeing and improvement in regions of great destitution and strife.⁶⁴ These "divisions" fortify Kant's radical hypothesis that global foundations are successful instruments in understanding security and peace. In any case, realists, for example, George Gibbs, an American ethnologist declare the perspective that the motivation of the WHO meddles a lot with the enactments of sovereign states on the other hand, with regards to leftists,

⁶² Baylis, John & Smith, Steve & Owens, Patricia, *The Globalization of World Politics: An introduction to international relations* 5th Edition. New York, Oxford University Press, 2011, p. 17.

⁶³ Dunne, Tim & Kurki, Milja & Smith, Steve, *International Relations Theories: Discipline and Diversity* 2nd Edition. New York, Oxford University Press. 2010, p. 33.

⁶⁴ *The Kantian Project in International Relations*. "The earliest theory of globalization", 2003, p. 6.

commentators and supporters alike commend the destruction of smallpox; in this the WHO has had a major effect on the planet. Concerning peace-keeping, in spite of the fact that realists can make the point that "the system of worldwide associations is spread unevenly over the globe" leftists have the high ground while protecting UN achievement rates in regions of common clash; "Namibia (1989-90), El Salvador (1991-95) and Cambodia (1991-93) are more than once referred to as examples of overcoming adversity". Furthermore, the immediacy of peacekeeping strengths required in the democratization forms. As Kant elucidates in his works, one of the targets of worldwide associations, for example, the UN is to democratize single gathering nations through this procedure, permitting nations to advantage in regions, for example, security and human rights and avoids further conflict. It is unarguable to counter the case that the UN, through associations including the WHO, UNTAG, ONUCA and UNIIMOG have given general medicinal services and peacekeeping endeavors successfully'.⁶⁵

3.2 The Security Council as an International Humanitarian Law enforcer

The Security Council has been disparaged for being discriminating and opportunistic in nature. Not all conflicts have been solved under the council. While others receive greater importance other are ignored and not attended to. This is because the different divisions present in the council have limited the drive to solve every matter at hand. Furthermore, a lack of political stance in the Security Council has caused this tragedy.

The Security Council has tried to implement particular *jus in Bello* requirements and tools but not all. It has failed to address the violations created by aggressive parties (for example Iraq and Afghanistan) scenario. The Security Council has failed to apply the appropriate measures in different settings. Where milder measures are required with adequate evidence visible the Security Council has been deemed to exercise coercive measures.⁶⁶

The council can therefore be seen as a governmental organ, in theory the council acts for the interest all the concerned parties however, critics of the council state that the council has been operating in the interest of the members. There have been no measures to eliminate this and no

⁶⁵ Shraga, Daphna. "UN peacekeeping operations: applicability of international humanitarian law and responsibility for operations-related damage." *The American journal of international law* 94.2, 2000, p. 406-412.

⁶⁶ Meron, Theodor. *Human rights and humanitarian norms as customary law*. Oxford: Clarendon Press, 1989. p. 17.

considerable action has been taken to reduce the violations of IHL which could cease the existence of peace.

This discriminating and unscrupulous approach of the Security Council with respect to, inter alia, the implementation of IHL could in the end affect its lawfulness: Despite the nonexistence of security which could be liable to react to every violation of the current order or to respond to the breach of peace reign, it is important that it indicates a certain level of rationality, evenness and efficacy.⁶⁷

In particular scenarios the Security Council, far from safeguarding compliance with IHL, has actually inhibited its implementation. In 2003, the Council embraced Resolution 1497, permitting the establishment of an international force in Liberia so as to promote peace in the state. In paragraph 7, there is specific laws for contributing countries which do not fall under the ICC Statute.

The above cases raise the question whether the Security Council can set aside IHL when the maintenance of international peace and security in its narrow sense so requires. The preferable answer seems negative.

Some academics have contended, however, that the contemplation of IHL by human rights organizations can be challenging. Human rights organizations frequently have limited knowledge about IHL and can make decisions conflicting with humanitarian law specialists. If human rights bodies to remain in charge of situations relating to armed conflict, therefore it is necessary to include more specialist personnel in the IHL.

3.3 The contributions of the United Nations bodies to the development and implementation of the IHL

The contribution of the United Nations in the advancement and the usage of IHL can be isolated in three unique periods; these are 1945 to 1968, 1968 to 1990 and since 1990.

⁶⁷ Kuziemko, Ilyana, and Eric Werker. "How much is a seat on the Security Council worth? Foreign aid and bribery at the United Nations." *Journal of political economy* 114.5, 2006, p. 905-930.

A) 1945 to 1968

In the middle of this period, the United Nations demonstrated little enthusiasm for the law of Armed Conflict (AC), since it trusted that there was no requirement for it. Therefore, in 1949, the International Law Commission struck the codification of the law of war from its motivation. This choice was made to abstain from giving some uncertainty a role as to the capacity of the United Nations to keep up universal peace and security. Certainly, promptly after World War II, the United Nations' constrained enthusiasm for IHL was centered on reaffirming the standards perceived in the Charter of the International Military Tribunal of Nuremberg and setting up the 1948 Genocide Convention.

Then again, in 1949, the ICJ made its choice in the renowned Corfu Channel Case. All things considered, the ICJ found that Albanian powers will undoubtedly caution the British warships about the problem present in the Albanian waters which was caused by the minefield. As per the Court, this commitment was not in view of Hague Convention VIII of 1907, which was not appropriate in time of peace, but rather on certain general and all around perceived standards including basic thoughts of humanity, considerably more demanding in peace than in war. This announcement echoes the purported Martens clause which was initially incorporated into the Preamble of the 1899 Hague Convention on fighting. Under this condition, without particular guidelines of IHL citizens and belligerents stay under the assurance and realm of the standards of IL, as they result from the utilizations built up between enlightened countries, from the laws of humankind, and the necessities of public opinion.

Along these lines, while political structures of the United Nations played down the significance of IHL, the ICJ reiterated its request in a circumstance which, understandably, was not identified with an AC.

B) 1968 to 1990

The condition changed in the wake of a conference on HRs which happened in 1968 in Tehran, under the support of the United Nations. Resolution XXIII80, which was incorporated by the Conference, the General Assembly of the United Nations to welcome the Secretary General to study steps to secure the better utilization of existing international humanitarian conventions and tenets in all AC.

The Resolution likewise required an enquiry into the requirement for extra humanitarian international conventions or for conceivable update of existing Conventions to guarantee the better assurance of citizens, detainees and soldiers in all conflicts and the disallowance and impediment of the utilization of specific strategies and methods for fighting. According to resolution XXIII 2444 (XXIII) (1968) entitled respect for Human Rights in Armed Conflicts, accordingly, it is through the advancement and assurance of human rights, for which the United Nations is mindful under the Charter, that the Organization came to be required in IHL.

In the 1960s, the United Nations association in IHL was centered on wars of national freedom. Undoubtedly, recently free States, communist States and in addition some western States upheld these wars for the sake of the privilege of self-determination of people. As per the United Nations, wars of national freedom were to be considered as IAC and detained warriors ought to be given detained war status and treatment. This position is reflected when all is said in done Assembly resolutions embraced somewhere around 1968 and 1973. It likewise advanced into Articles 1 (4) and 44 of Protocol I.

Besides, under article 44 (3) of Protocol I, a guerrilla warrior is thought to be a legitimate soldier, qualified for war captive status and treatment if caught by the adversary given that he surrenders by showing his hands up in the air:

- a) Throughout each military appointment.
- b) When he can be seen by the enemy whilst his involved in armed placement prior to the initiation of an attack where he is to partake. However, if the soldier does not adhere to the rules set out above he or she is not considered as a legal combatant. Therefore, when captured he will not be regarded with the detainee status.

These provisions are significant. They are however more free than those set out in the Geneva Convention 3, which states that that soldiers are to be given the detainee status when captured by the adversary. Besides the advancement in IHL, the provisions in Article 4 are debatable. They give reasons why some nations are not part of Protocol 1. However, it can be noticed that the available provisions stipulated in Protocol 1 pertaining to civilian's mirror the principles of the need to safeguard civilians in AC. However, not like the provisions of Article 1 they do mirror the stance of the global public in its entirety.

During the 1970s the UN was more attentive to the behavior of conflicts. At that time the UN developed more strategies that would reduce the limitations of the effects of AC. It can be noted that the conference that was supposed to discuss on the issue failed to address and implement some of the provisions. The final result ended with only a few provisions being adopted like the one available in Article 36 under Protocol 1.

Endeavors by the United Nations to manage the behavior of threats additionally prompted the selection of the 1976 United Nations Convention on the Prohibition of Military or any Other Use of Environmental Modification Techniques. Under its Article 1, the Convention disallows the utilization of military or other antagonistic environment alteration procedures which have severe impacts. Its standards were reiterated by the Review Conference which was held as per article 8 of the Convention.

Amid the same period, the ICJ reiterated and validated a few standards of IHL in the Nicaragua Case (1986).⁶⁸ All things considered, the ICJ reaffirmed the basic character of Article 3 regularly to the four Geneva Conventions which was depicted by the Court as a small measure of worldwide principles pertinent to all conflicts, including universal conflicts.

C) Since 1990

Ever since the end of the Cold war, the Security Council has expanded its part in the execution of IHL, regularly acting under section VII of the United Nations Charter. In this manner, the Security Council has likewise assumed a part in the advancement of IHL. With regards to the usage of IHL, the Security Council has received various resolutions reaffirming the commitment of the gatherings to a AC to conform to IHL when all is said and done and with the Geneva Conventions specifically for incidence in Resolutions 764, 771, 780 (1992); 808, 815 (1993). Everything identified with the contentions in the previous Yugoslavia.

Besides, in a few cases, the Security Council has recognized infringement of IHL and requested their prompt suspension. Such was the situation in Resolution 674 (1990) in which the Security Council denounced the taking of Third-State nationals as prisoners, their abuse and in addition that of Kuwaiti nationals. There are several resolutions identifying with the contentions in the

⁶⁸ Cassese, Antonio. "On the current trends towards criminal prosecution and punishment of breaches of international humanitarian law." *European Journal of International Law* 9.1, 1998, p. 2-17.

previous Yugoslavia, the Security Council censured the act of ethnic purifying (Resolutions 787 (1992), 820 (1993), 836 (1993) and cautioned the guilty parties of their individual obligation.

In addition, now and again, the Security Council took solid measures to guarantee the usage of IHL. Along these lines, the Security Council approved part States to take military approvals against Iraq to a limited extent to react to infringement of IHL (Resolution 678 (1990)). In the same vein, the Security Council received assents against the Federal Republic of Yugoslavia (Serbia and Montenegro). Moreover, amid the armed conflict in Bosnia, the Security Council built up safe territories to guarantee the insurance of citizens and permitted UNPROFOR and in addition other outside powers to utilize power to safeguard those regions.

Added to the foundation of the Special Court for Sierra Leone (Resolution 1315, 2000). It likewise alluded the circumstance in Darfur to the ICC (Resolution 1593, 2005), which was built up by a discretionary meeting arranged by the United Nations.

As it turns out to be more required in the execution of IHL, the Security Council additionally assumes a dynamic part in its advancement. Along these lines, the Security Council has more than once called for individual criminal obligation regarding infringement of IHL, incorporating into non-global furnished clashes. In this manner, the Security Council has added to expand the idea of individual criminal obligation regarding infringement of IHL to this class of conflicts⁸⁸. This is reflected in the Statute of the ICTR⁸⁹ and specifically in its Article 4. To be sure, under this article, the Tribunal has purview over infringement of Article 3 regular to the four Geneva Conventions and of Additional Protocol II which manage non-worldwide equipped clashes. Thus, the Statute of the Special Court for Sierra Leone affirms that genuine infringement of Article 3 and of Protocol II offer ascent to individual criminal responsibility⁹⁰. At long last, Articles 6, 7 and parts of Article 8 of the Statute of the International Criminal Court apply to non-universal furnished conflicts.⁶⁹

On the other hand, the Security Council has likewise moved far from The Hague Rules on military occupation and amplified the power of the forces involving Iraq⁷⁰. As per The Hague Rules of 1907, the privileges of possessing forces are entirely restricted. Along these lines, under

⁶⁹ Sassol Henkin, Louis. "Kosovo and the Law of" Humanitarian Intervention". The American Journal of International Law 93.4, 1999, p. 824-828.

⁷⁰ Reinisch, August. "Developing human rights and humanitarian law accountability of the Security Council for the imposition of economic sanctions." The American Journal of International Law 95.4, 2001, p.851-872.

Article 43, the laws in power in the involved nation must be regarded. Under article 55, the involving gathering is only a head and structure of the common assets of the possessed regions. In any case, Security Council Resolution 1483 (2003), embraced under Chapter VII of the United Nations Charter, gives that the offer of Iraqi oil and the utilization of continues by forces possessing Iraq are permitted to subsidize long haul financial remaking undertakings to advantage that nation.

3.4 The Effectiveness of the Measures

The huge sums of documents and reports delivered by states under the regimes, Resolution 1373 is the source of data for the analysis of the effectiveness of implementing measures taken by the countries.

An endeavor to give a general perspective of the present condition of execution of the SC's hostile to dread measures may well miss the mark concerning its exactness. In any case, it might have the benefit of attracting thoughtfulness regarding those hazy areas which hide the genuine difficulties of usage. In the event that the essential columns and particular characteristics of household legitimate frameworks shift an incredible arrangement starting with one then onto the next, the obstacles to be overcome keeping in mind the end goal to successfully execute international guidelines are, as a rule, not very different. Information of the differing methods of joining and lawful translation prove to be useful in unraveling the frequently secretive reports put together by national powers, the main role of which is by all accounts to exhibit no matter what their great remaining in the global battle against terrorism. This records for the general absence of feedback of the measures forced by the SC and for the occasionally cumbersome endeavors made to make the condition of residential execution give off an impression of being a much smoother and unproblematic reality than it really is.⁷¹

⁷¹ Voeten, Erik. "The political origins of the UN Security Council's ability to legitimize the use of force." *International Organization* 59.03, 2005, p. 527-557.

3.5 Humanitarian policy and the United Nations

3.5.1 General Assembly

On previous occasions, the United Nations General Assembly was not concerned with issues identified with IHL. There was however, the aforementioned historic point appropriation in 1968 of resolution 2444 (XXIII), under the title “Respect for human rights in equipped clashes.”⁷² The resolution set out three fundamental standards which, in the General Assembly's perspective, must guide any future codification of IHL the constrained right of belligerents to pick strategies and method for battle, the restriction of assaults on the citizen and the rule of qualification amongst soldiers and non-combatants Resolution 2444 (XXIII)) likewise denote the beginning stage for the procedure of drawing up the two 1977 Protocols.

In the middle of the same session of 1968, the General Assembly embraced another resolution of extraordinary import for helpful approach, this time with respect to a particular circumstance to which the Geneva Conventions application: the conflict in the Middle East.

Resolution 2443 is the first in a long time of resolutions on the Arab domains controlled by Israel. It gives us a chance to take a gander at one more, which is of unique pertinence to the act of universal helpful law. With Resolution 45/69 of 6 December 1990, with Article 1, the States gathering to the four 1949 Geneva Conventions and to their 1977 Protocols have, obviously, as of now attempted to regard and to guarantee regard in all circumstances for the bargains by which they are bound. The ICRC had over and over engaged States to practice their impact on the gatherings to the Middle East clash. It thusly energetically respected the stride taken by the General Assembly to help States to remember their lingering obligation to work for consistence with compassionate standards by gatherings to an outfitted clash. To put it plainly, the ICRC considered the General Assemblies engage all States gathering to the Geneva Conventions to bear their aggregate obligation as an imperative commitment to helpful strategy⁷³.

There is another occasion that merits further remark. Following up on a French proposition, the General Assembly embraced three consequent resolutions under the heading “Humanitarian law

⁷² ICRC, *The Relation between the Human Right Regime and the Law of Armed Conflict*, Geneva Convention, 1971.

⁷³ Bothe, Michael, Karl Josef Partsch, and Waldemar A. Solf, eds. *New rules for victims of armed conflicts: commentary on the two 1977 protocols additional to the Geneva Conventions of 1949*. Martinus Nijhoff Publishers, 1982, p. 88.

to casualties of normal fiascos and comparable crisis circumstances. In this setting “comparable crisis circumstances “likewise covers non-global armed conflicts, to which humanitarian law is material. The result of the verbal confrontation was fairly frustrating as it did little to determine the pressure between the idea of boundless power, from one perspective, and the interests of war casualties needing helpful help on the other.

At last, subsequent to 1977 the General Assembly has routinely spoke to States to wind up gathering to humanitarian arrangements which they have not yet formally acknowledged, specifically to the latest codification, the two Additional Protocols of 1977.⁷⁴ The biennial exchange in the Sixth Committee of the condition of approval of the Additional Protocols, trailed by the reception of a determination by the Committee and the General Assembly, has dependably been an appreciated chance to help governments to remember conceivable unfinished business. The ICRC has bolstered these activities and frequently taken the floor amid the verbal confrontation in the Sixth Committee to portray the condition of sanction of the 1977 Protocols and the prospects for acknowledgment by different States. This is another case of smooth collaboration between the association in New York and the International Committee.

3.6 The Legitimacy of the Applying Measures

The subject of the reliability of the SC’s anti-terror methods in relation to the international law, and more specifically the HL has been a subject of debate all over the world. The SC is viewed as having limits under the international law.⁷⁵ Minimum focus has been directed if states really adhere to the SC resolutions. The topic has become captivating prior to the implementation of resolution 1456 in 2003. Under this resolution, the states must adhere to the methods or strategies employed by the SC at national and international level, taken to reduce terrorism that may affect human rights, refugee and humanitarian law.⁷⁶ This statement, poses a challenge to states whether their truly adhere to the international law despite the commands by the UNSC are constant parse to the international law. Therefore, states must check if their enforcement of the law does not contradict the international law.

⁷⁴ Kalshoven, Frits, and Liesbeth Zegveld. *Constraints on the waging of war: an introduction to international humanitarian law*. Cambridge University Press, 2011, p .42.

⁷⁵ Szasz, Paul C. "The security council starts legislating." *The American Journal of International Law* 96.4, 2002, p. 901-905.

⁷⁶ UNSC Resolution. 1456 (2003).

Somehow some may say that implementing these laws may not go in hand with the human rights laws as stated in many reports, national and at regional level. The paragraphs below provide example of how the measures established by states on how they affect rights. An important note to realize is that, the right stated will depend on the customary nature and if the states party contemplates it.

- **The Right to Fair Trial**

A fair trial is considered important, as agreed upon by the HRC, the requirements of a fair trial should not be derogated by countries in an emergency case despite the right to a fair trial not stated in the non-derivable rights list in article 4. A fair trial applies to both the criminal charges and civil proceedings.

The SC procedures for involving a person in a black list and implementing sanctions could be revised under the European convention particularly with respect to criminal charges.⁷⁷

Despite the fact that the pertinent SC's measures don't allude to any criminal accusation in the event that one takes the last to mean the official notice to have perpetrated a criminal offense the ECtHR has held that a criminal allegation may in some occurrences take the type of different measures which convey the ramifications of such a charge and which similarly generously influence the circumstance of the suspect'. Assuming this were the situation, standards, for example, the assumption of purity would be relevant. By forcing sanctions against people shy of any legal procedures in which charges have been examined and a decision rendered by a fair tribunal the very pith of the privilege to be assumed pure is imperiled. Moreover, the nature of the SC as a tribunal and additionally its impartiality could be effortlessly tested.

In spite of the existence of quasi-judicial powers, the council is still political in nature and basis its verdicts on a political point of view and benefits from an unrestrained discretion. The method which triggers a person to be listed on the black list, denied a fair hearing and imposed of sanctions cannot be stated as a fair trial under the relevant human rights law. Such a brazen defilement of the code of equality of rights. The right of a person to be heard and justify themselves is recognized by the ECHR.

⁷⁷ Weiss, Thomas G. "The illusion of UN Security Council reform. *Washington Quarterly* 26.4, 2003, p. 147-161.

- **Nullum Crimean**

Another form of obstacle for the enforcement of the SC anti-terror methods was what was known as the Nullum crime or null paen sine lege principle. Several sources have proved that this principle including the standards as a non- derogable law of the human rights legislation, makes its enthralling in the current situation. The principle demands that inter alia, the crime under which sanctions are being imposed be clearly defined by the law.

It is fascinating to note that the ECHR has as of late held that it is not evident that a resolution of the Security Council is adequate in itself to make a "global offense" that is prosecutable.⁷⁸ Along similar lines the Swiss government tribunal has kept up that the standard of null crime keeps the approving by neighborhood courts of conduct, the criminal character of which is given to simply in general law, unless the essential overall law acquisition is particularly.

- **The Right to a Remedy**

In spite of the late endeavors to improve the method for incorporation in and expulsion from the Consolidated Liston legal cure exists inside the UN to test one's nearness in the rundown. States have themselves voiced worry about the shamefulness of the procedure. Among the various worries that may emerge in this admiration, it suffices to specify that the need to turn to the intermediation of a state with the end goal of speaking to one's case before the SC makes the cure by definition 'not specifically accessible' to the individual concerned⁷⁹. Moreover, the viability of the cure can suitably be raised doubt about when it is managed by an element which appreciates a free discretion. It is of specific note that the ECHR has held that Article 13 of the ECHR 'requires that where an individual sees himself as to have been preferential by a measure professedly in rupture of the Convention, he ought to have a cure before a national power all together both to have his case chosen and, if fitting, to acquire change'. It is hard to perceive how expresses that have a commitment to ensure a successful cure under appropriate arrangement law could be considered to act reliably with their worldwide commitments if they somehow happened to execute mechanically and without further ensures SC against fear measures.

⁷⁸ Zollmann v. United Kingdom, ECHR Reports of Judgments and Decisions 2003-XII.

⁷⁹ Sarooshi, Dan. The United Nations and the development of collective security: The delegation by the UN Security Council of its Chapter VII Powers. Oxford University Press, 1999, p. 11.

- **The Right to Property**

Unavoidably, the setting of advantages suggests an infringement on the privilege to property owned by people. States' executing measures would need to consider this perspective against the foundation of local established law procurements and pertinent settlement law commitments which might be occupants on the state. For the most part, all significant lawful instruments accommodate exemptions to the satisfaction in the privilege to property which in all likelihood could oblige the security worries on which the SC's resolutions are grounded. The way that Resolution 1452 accommodates an administration of special cases to the solidifying of advantages on helpful grounds may further debilitate the conflict that such confinements to one side to property are without anyone else's input as opposed to human rights. Be that as it may, late prosecution concerning the privilege to property as revered in Protocol I to the ECHR reveals insight into how against fear measures encroaching on restrictive rights can be maintained. In the Bosphorus case,⁸⁰ the ECHR held that an assumption of consistence with the ECHR by contracting parties exists when the last conform to lawful commitments emerging out of their EU enrollment. This assumption must be refuted by demonstrating that the security of Convention rights in a given case are 'obviously inadequate. The identical assurance test, utilized by the ECHR to evaluate the human rights security framework under EU law and to trigger the assumption of consistency, bears similarly on substantive and procedural aspects. On the contrary, it can be contended that if the counter dread measures are not actualized by the EU, but rather by the state specifically, it is hard to present a defense for the UN ensuring 'break even with insurance' to European Convention rights. In such a case the assumption of consistency, especially in light of the absence of any powerful cure inside the UN framework, could be effectively countered and prompt a finding that the contracting gathering is in break of Protocol I.⁸¹

⁸⁰ Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland, ECHR (2005), Judgment of 30 June 2005.

⁸¹ Tomuschat, Christian. "Case T-306/01, Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council and Commission; Case T-315/01, Yassin Abdullah Kadi v. Council and Commission." *Common Market Law Review* 43.2, 2006, p. 537-551.

Impossible to miss in reality is the treatment of the issue by the European Court of First Instance (CFI) in the instances of Kadi and Yusuf.⁸² The CFI held that a self-assertive hardship of property could be viewed 'as opposed to *jus cogens*' and differentiated the interim character of solidifying measures to reallocation. In a roundabout way, one feels qualified for surmise that measures of a confiscatory nature, for example, seizure without remuneration could qualify as subjective hardships of property and in this manner may be in opposition to *jus convenes*. Other than fulfilling outside speculators at the possibility of having the capacity to summon a *jus cogens* infringement in the event of nationalization or seizure without remuneration, the CFI apparently disregarded the condition that its finding would probably render invalid and void those parts of SC Determination 1483 that accommodates the appropriation and exchange to the Advancement Reserve for Iraq of the money related resources and financial assets expelled from Iraq.⁸³

3.7 Human Rights Commission

The United Nations has built up a body with a particular command to work in the unlimited field of securing human rights by setting up the Human Rights Commission. The Commission and its Sub commission have regularly alluded to universal helpful law, in spite of the fact that their terms of reference are limited solely to human rights law. Be that as it may, as the extent of appropriateness of human rights law and of global helpful law cover, specifically in regards to circumstances of viciousness inside the region of a solitary State, human rights bodies may feel constrained to analyze such circumstances from the perspective of humanitarian law also. The Commission has done as such in various circumstances, for example, Afghanistan, Iraq and Lebanon.⁸⁴ In spite of the fact that for this situation global humanitarian law unmistakably overshadows human rights contemplations. There is, in any case, most likely verbal confrontations in the Human Rights Commission, which likewise touch upon worldwide

⁸² Gattini, Andrea. "Joined Cases C-402/05 P & 415/05 P, Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council and Commission, judgment of the Grand Chamber of 3 September 2008, nyr." *Common Market Law Review* 46.1, 2009, p. 213-239.

⁸³ Prosecutor v. Dusko Tadic aka 'Dule', IT-94-1, ICTY, Decision of the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995.

⁸⁴ Gasser H. P, *The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations' involvement in the implementation of international humanitarian law*, 1995.p. 18.

humanitarian law, may reinforce attention to that collection of law and along these lines advance it. The ICRC nearly takes after the work of the UN Human Rights Commission, while keeping up full autonomy from that body. Specifically, the ICRC trades no secret data with the Commission.

The Human Rights Commission in some cases names a unique reporter, requesting that he inspect the human rights circumstance in a particular nation or district and to answer to the Commission on his discoveries. This is a type of certainty finding. Extraordinary reporters have been named for some nations to which global compassionate law connected or still applies, for example, Afghanistan, El Salvador, possessed Kuwait and Rwanda.⁸⁵ The sensational move made by the uncommon reporter for the previous Yugoslavia, Tadeusz Mazowiecki, when he surrendered from his post in challenge over the UN's claimed inaction on his suggestions concerning the protected zones, has not yet been forgotten.⁸⁶

Discoveries of these reporters additionally include consistence with the IHL, where relevant. This is dependably the case in nations influenced by inhumanity that achieves the limit of Article 3 based on the four Geneva Conventions. However, the report arranged by Walter Kälin, the uncommon reporter on the human rights controlled Kuwait is especially interesting. Kälin looks at the circumstance involved Kuwait⁸⁷ from the point of view of both human rights law and international law. In his perspective, such aggregate application is equipped for reinforcing the insurance of the person by universal law. Obviously that the ICRC does not coordinate with uncommon reporters named by the UN Human Rights Commission or by different bodies. complete freedom from each other is vital for the accomplishment of our particular missions and there must be most likely about that autonomy.

⁸⁵ Report by the special rapporteur W. Kalin,

⁸⁶ Periodic report as Special Rapporteur: " Situation of human rights in the territory of the former Yugoslavia ", of 22 August 1995, E/CN.4/1996.

⁸⁷ "Situation of human rights in occupied Kuwait " , Report of 16 January 1992, E/CN.4/1992/26, reprinted in W. Kälin.

3.8 The contribution of non-state international institutions to the development and implementation of the IHL

There are basically three non-governmental institutions that aid in the development and implementation of the IHL. These are the International Red Cross and Red Crescent Movement, the ICRC and the International Institute of Humanitarian Law. First a closer look at.

3.8.1 International Red Cross and Red Crescent Movement.

3.8.1.1 Legal status

The ICRC is a Swiss society run by the Swiss Civil Code and additionally by its own particular Statutes. Its representing body is made up only of Swiss resident who ensures its impartial character. Lack of bias is one of the crucial standards the ICRC works under. Despite its domestication, the ICRC has, through practice, gained a worldwide lawful identity of a utilitarian nature. Therefore, it can go into a few treaties, for example, central command contracts or agreements, have political relations with States, extend its peacemaking security to its agents, and so on. In addition, since 1990, it has the status of an onlooker at the United Nations which permits the ICRC to add to the work of the organization identified with IHL. It is important to know that the ICRC is the foundation of the International Red Cross and Red Crescent Movement, which likewise assumes a part in the improvement of IHL.

3.8.1.2 ICRC and the development of the IHL

Historical backdrop of the ICRC is firmly connected to that of IHL. In any case, the cutting edge inceptions of its principles can be followed back to the conflict of Solferino and to one person: Henry Dunant. The war of Solferino occurred in 1859, in northern Italy between Austro-Hungarian armed forces on one side and the Franco-Sardinian Alliance on the other. The fight kept going for 15 hours. The setbacks were overwhelming: somewhere in the range of 40,000 dead, injured or missing. Most injured were left without help for need of sufficient medicines. It is now that Henry Dunant came into the scene. Henry Dunant was a Swiss specialist who was making a trip back to Geneva through northern Italy when he passed through Solferino soon after the fight was over. Dunant, who was stunned by the distress of the injured warriors, and decided to stop his journey back to in order to offer his help to the injured soldiers. For many days, with the assistance of ladies from a neighboring town, he tended to the injured with no discrimination

on the type of uniform they wore. Later on, back in Geneva, Dunant composed a short book entitled 'A Memory of Solferino in which he gives a clear record of his involvement in Solferino.'⁸⁸

Therefore, in 1863 an International Committee for the Relief of Wounded Soldiers was set up by five nationals of Geneva, including Dunant. The reason for this Committee of Geneva was to promote Dunant's project all through Europe. To that end, the Committee of Geneva sorted out two meetings. The primary meeting was held in Geneva in 1863. It prompted the reception of 10 resolutions which set up the establishments of national social orders for the help of injured soldiers. They were to wind up national social orders of the Red Cross in 1872. The resolutions of 1863 additionally stated that the Committee of Geneva would incidentally serve as a connection between the national social orders. Notwithstanding, this part ended up being so vital amid the Franco-Prussian war of 1870 that in the end, the Committee of Geneva wound up going about as an association between national social missions. It turned into the ICRC in 1880.

The Committee of Geneva had a second meeting which occurred in 1864 under the support of the Swiss government. It prompted the appropriation of the primary Geneva (Convention for the Amelioration of the Condition of the Wounded in Armies in the Field). This Convention included ten articles figured around four fundamental standards which are still applicable today:

Armed force restorative facility are not warriors; if caught by the foe, they should to be held as detainees; all injured and dead soldiers must be administered to with no antagonistic qualification; citizens who tend to injured troopers must be regarded; clinics and ambulances are nonpartisan. They are distinguished by a red cross on a white background, and inversed variant of the Swiss government banner.

There was a Convention, which was confirmed by twelve States, is important. First and foremost, it is the principal multilateral settlement completed up in time of peace to administer future AC between the contesting parties. For something else, it denotes the start of IHL. To be sure, the Geneva Convention of 1864 was reconsidered in 1906, 1929 and 1949 when it got to be Geneva Convention.

⁸⁸ McCormack, Timothy. "From Solferino to Sarajevo: a continuing role for international humanitarian law." *Melb. UL Rev.* 21 1997, p. 621.

Additionally, the ICRC started the move to supplement the Geneva Conventions of 1949 with the two extra Protocols of 1977. Those were arranged on the premise of drafts arranged by the ICRC. Their procurements, and additionally those of the Geneva Conventions, are uncovered in the annotations arranged and distributed by the ICRC. Besides, the ICRC was instrumental in the appropriation of an extra unmistakable crest by means for Additional Protocol III. It should be specified that in a few occurrences the ICRC created, all alone activity, hones which later on were affirmed by ordinary guidelines: for example, the foundation in 1914 of the International Agency for Prisoners of War. The activity offered ascend to procurements found in the 1929 Geneva Convention on Prisoners of War (Craftsmanship, 79) and in Geneva Convention III of 1949 (workmanship. 123)⁸⁹.

3.8.1.3 ICRC and implementation of IHL

The I.C.R.C. is thought to be the guardian of the Geneva Conventions. The implied outcome of this portrayal is that the ICRC hosts the power to remind the gatherings to a AC of their commitments under the Geneva Conventions.

It has the ability to upbraid the warring groups if, over the span of their military operations, they infringe the Geneva Conventions, and may be advised to stop their operations. In compelling cases, the ICRC can even freely reprimand these infringement, if the accompanying conditions are met; the infringement are huge and recurrent; different endeavors have been tried; - it is thought to be wise to for the victims to openly rebuke the infringements, the infringement have been recognized.

Nonetheless, the ICRC does not have the ability to force different sorts of approvals to warring gatherings which don't agree to IHL. The ICRC determines some of its executing power specifically from the Geneva Conventions⁹⁰: for occurrence, under article 126 of Geneva Convention III, ICRC representatives can visit detainees of war wherever they are being held and

⁸⁹ Alexandra R. H. Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future, 12 ILSA J. int'l l. & comp. 2005, . 1. 125, 140-42.

⁹⁰ Fleck, Dieter. "International Accountability for Violations of the Ius in Bello: The Impact of the ICRC Study on Customary International Humanitarian Law." Journal of Conflict and Security Law 11.2006, p. 179-199.

talk with them without witnesses⁹¹. Under article 143 of Geneva Convention IV, ICRC representatives have the same power with respect to civilians.

Also, under Article 3 basic to the four Geneva Conventions, the ICRC appreciates a privilege of activity which permits the Committee to offer its administrations to the groups to non-universal conflicts. On the off chance that its offer is acknowledged, the ICRC can perform various humanitarian exercises, to help victims. For example, it can give the regular citizen populace sustenance, water, restorative help, drug, etc.

Besides, the privilege of the ICRC was reached out to IAC when, in the Nicaragua Case, the ICJ chose Article 3 which applies to all classes of AC. Besides, under the Statutes of the ICRC, and as per worldwide practice, the privilege of activity additionally stretches out to circumstances of inner viciousness. This being said, it must be accentuated that its privilege of activity simply permits the ICRC to offer its administrations to the warring gatherings. To catch up on its offer and perform exercises for war casualties, the ICRC needs the endorsement of the warring gatherings.

At long last, different rights and powers appreciated by the ICRC in connection to the execution of IHL are derived from its Statutes or were made on an observational premise through practice. Accordingly, the ICRC helps national social orders of the Red Cross and Red Crescent perform diverse undertakings, for example, train therapeutic staff to perform their obligations in time of war, advance the execution of IHL at the residential level, and spread standards of IHL, etc.

Besides, the ICRC has as of late tried to distinguish standard principles of IHL to supplement the assortment of arrangement guidelines. The reason behind this new advancement lies in the way that non international AC are not controlled in adequate point of interest by settlement law. Certainly, far less arrangement standards are relevant to non-global furnished clashes than to worldwide equipped clashes. Furthermore, by and by, numerous no international equipped clashes are just represented by Article 3 normal to the four Geneva Conventions. As noted some time recently, Article 3 only gives a fundamental system of least gauges. Then again, worldwide outfitted clashes are controlled in more detail by arrangement law. However, since the end of World War II, non-universal equipped clashes have turned out to be relatively more imperative

⁹¹ David P. Forsythe. *The Humanitarian: The International Committee of Red Cross*, Cambridge University, 2005, p 15.

than worldwide furnished conflicts. It is against this foundation that the ICRC embraced a study on standard global compassionate law.⁹²

3.8.2 The international institute of humanitarian law

The organization was established in 1970 as a humanitarian organization and not as a profit making entity. Its base camps are in San Remo, Italy. As indicated by its Statutes, the primary motivation behind the organization is to advance the spread and improvement of IHL and to work at all levels for its execution.⁹³

To these closures, the Institute has general and in addition specific courses on IHL, human rights law and outcast law, which are offered in various dialects. The more prominent courses are the military ones. Every year it likewise sorts out a cooperation on IHL for military institutes and meetings on current issues of IHL. In addition, before, it has arranged out different meetings and commissions identified with IHL. To wrap things up, it is in charge of the selection in 1994 of the San Remo Manual on armed conflicts at sea. As of now, the Institute is included in the advancement of a Manual on the law appropriate to non-international conflicts.

Other non-state institutions have additionally assumed a part in the improvement of IHL. In this manner, the Institute of International Law was in charge of the implementation of the 1880 Oxford Manual of Land War and the 1913 Oxford Manual of Naval War. Recently, the Institute received resolutions on the use of the law of armed conflict to United Nations powers. Thus, the International Law Association embraced in 1938 a draft tradition managing the assurance of regular people in time of war. Notwithstanding, these bodies do not have much expertise in the IHL.

3.8.3 The international Red Cross and Red Crescent movement

The International Red Cross and Red Crescent Movement is not a worldwide association. It is a system of humanitarian non state associations i.e. the ICRC, national social orders of the Red Cross and the Red Crescent, and additionally the Federation of national social orders which meet up at regular intervals when the Movement holds its worldwide meeting. The 1ST Conference of the Movement occurred in 1867 in Paris. From that point forward, the Conferences have

⁹² Brian D. T. Belligerents in Blue Helmets, 33 Stan. J. int'l l. . 1997, p. 96-97.

⁹³ Kalshoven, Frits, et al., eds. Implementation of International Humanitarian Law: Research Papers by Participants in the 1986 Session of the Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law. Vol. 1. Martinus Nijhoff Publishers, 1989.

effectively added to the making of IHL in a few ways. Consequently, the Conference held in 1948 affirmed the draft Geneva Conventions arranged by the ICRC, which were implemented one year later. So also, the draft conventions to the Geneva Conventions arranged by the ICRC were endorsed by the Conference held in Tehran in 1973.

In addition, the Conferences have frequently included resolutions which give the ICRC the power to act. Along these lines, in 1912, the Conference held in Washington gave the ICRC the power to give detainees of war material and also with good mitigation. Additionally, the activity of the ICRC amid the Spanish Civil war was to a great extent in view of a determination embraced by the Conference in 1921 (Resolution XIV). Moreover, global Conferences of the movement enables the ICRC to perform certain undertakings. Accordingly, in 1995, the Conference requested that the ICRC embrace a study on standard IHL.⁹⁴

3.8.4 The IHL and the ICC

The IHL also in conjunction with the international law are fundamentally in charge of the direction of AC, and specifically the provision of safety for victims. Its roots can be found in all locales of the world. The behavior of war and what is or is not acceptable is covered, for instance, in the scripts of China, India and Thailand. Key works going back numerous hundreds of years suggest the humanitarian rules that fallen warriors ought not to be hurt, that regular folks ought not to be assaulted, and that specific sorts of weapons, for example, toxic substances, ought not to be utilized even in times of war.

All the more formally, those standards were communicated globally through agreement making from the nineteenth century onwards. The part of global customs namely, restricting worldwide guidelines that are to be ensured notwithstanding when there are no settlements, was likewise supported in the nineteenth century by an essential humanitarian, Fyodor Martens. The First and Second World Wars brought terrible infringement of IHL and gaps in its enactment⁹⁵.

This circumstance called for more complete scope through bargain making it all-inclusive kind, bringing about the four Geneva Conventions of 1949, which are the foundation of IHL today. The four Geneva Conventions are concerned predominantly with universal AC, in any case they

⁹⁴ MacLaren, Malcolm, and Felix Schwendimann. "Exercise in the Development of International Law: the New ICRC Study on Customary International Humanitarian Law, An." *German LJ* 6, 2005, p. 217.

⁹⁵ Naqvi, Yasmin. "Enforcement of Violations of IHL: The ICTY Statute-Crimes and Forms of Liability." *U. Tas. L. Rev.* 33, 2014, 1.

contain a key Article in managing non-global AC. This article is known as "Normal Article 3 keeping in mind concise, it stipulates key standards applying to all gatherings in non-worldwide AC. These incorporate the guideline of non-separation in connection to others conscious behavior towards victims, the denial of obtuse treatment of victims, and disallowance of prisoner taking. Helpful associations should likewise be offered access to casualties.

In 1977 two conventions supplemented the 1949 Geneva Conventions, with respect to casualties of global and non-worldwide war. Significantly, three key rules that were not plainly communicated in 1949 were unequivocally attested in 1977: war-related exercises must recognize military targets and regular people; regular folks must not be focused on; and, the utilization of weapons is not unlimited Weapons bringing on unnecessary harm or enduring must not be utilized.

The greatest challenge for IHL from the earliest starting point has been its implementation. Infringement of IHL causes huge problems, be it in times of war and or peace. Notwithstanding, until as of late accusation of the guilty parties as a rule relied on arraignment inside nations as opposed to at the universal level.

The new International Criminal Court (ICC) in this way fills an essential gap to the world at large that makes sure that when domestic courts fail to exercise rule of law on crime, it can take over and do the necessary job. The 1998 Rome Statute of the International Criminal Court set up this Court⁹⁶. The Rome Statute itself has huge ramifications for the development of IHL and its implementation. In spite of such challenges, the International Criminal Court has supported the IHL by giving it various things:

1. Assurance. The Court gives more prominent conviction to IHL since its Statute characterizes different ideas that were beforehand not clear. These incorporate key meanings of genocide, atrocities and wrongdoings against humankind. Article 7, for example, characterizes "wrongdoings against mankind" to mean any of the accompanying actions demonstrations when conferred as a major aspect of a far reaching or orderly assault coordinated against any non-military personnel populace. These include murder of civilians, enslaving people, human trafficking, imprisonment and implementing hard physical labor of the IHL, torture of

⁹⁶ Kiss. A. C. Lammers, Hague Yearbook of International Law, 1990, Brill Academy, p. 58.

nonmilitary people, rape and other form of sexual abuse on women and children and other harsh demonstrations of a comparable character deliberately bringing on incredible enduring, or genuine damage to body or to mental or physical wellbeing. These acts are forbidden by the ICC and the IHL punish those that do not adhere to the laws set.⁹⁷.

2. Specificity. The Statute counts cases of war wrongdoings and violations against mankind that give key subtle elements indicating what is and what is not secured in the relationship between the Court's Law and IHL. Article 8 of the Statute, for example, characterizes atrocities as covering both offenses included by arrangements (specifically, the 1949 Geneva Conventions) and traditions in both universal and non-worldwide AC. However, the 1977 Protocols are not said particularly, on the grounds that few nations have still not consented to them, different components from these Protocols are presently some portion of standard law and are secured by the Statute of the Court.

3. Consistency. In the past authorization and responsibility of IHL depended especially upon national and neighborhood activities, and this offered ascend to an awesome level of irregularity and unconventionality. The Court gives more prominent consistency the probability of more reliable law.

4. Complementarity. The national law is regarded keeping in mind the national setting has need in making a move against the guilty parties, where the national level neglects to act, the Court has power. This is the rule of complementarity.

5. All-inclusiveness. As the ICC tries to be a perpetual worldwide organization it has a general methodology against global violations. It welcomes cooperation from the worldwide groups, both administrative and non-legislative, attending to the infringement of IHL.

6. Represent ability. The debates prompting the formation of the Court allowed contribution from all states, and from both legislative and non-administrative corporations. Therefore, the Court appreciates a level of representatively in its formation and in lawmaking. Nonetheless, people and non-administrative associations can't bring cases specifically under the steady gaze of

⁹⁷ Muntarbhorn, V. Asian Human rights commission, international humanitarian law and the international criminal court. Article 2, 2003.

the Court. They have to work by means of the Court Prosecutor, who likewise requires an international perspective.

7. Victim sensibility. The council and its principles emphasize on the focus of victims in terms of gender sensitivity and good friendly victim interventions. A good example is the protection of victims' privacies. More often, they use media to make sure that the identity of victims is protected. International bodies value this credential.

8. Medicinal measures. The ICC does not only focus on the criminal sentences but they help assist the victims to recover. This brings about the collaboration between the civil law and criminal law in order to make the process easier. The ICC assists in formulating a fund that will help victims. In any case, the Court has three notable difficulties:

9. Exceptionality. It can be noted that some nations are having a challenge in staying within the IHL and the courts rules. This sort of exceptionality is intolerable; it weakens and reduces the mission of the IHL.

10. Security. The IHL and ICC continue to face challenges through terrorism. It is the duty of the ICC to makes sure that the law is strongly enforced concerning terrorism⁹⁸. This is why countries must be motivated to come together to form a worldwide accession in collaboration with the ICC especially with the increase in terrorism attacks that constitute massive war atrocities and wrongdoings against mankind.

11. Enforceability. This refers to the implementation of strategies at both local and national level. There will be need for the countries to audit their stocks so as to verify if they adhere to the ruling. While some nations have been unwilling to adopt this strategy, others have fully accepted the legislation. Moreover, the requirement for viable implementation and corporation amongst nations and the ICC so as to improve the pursuit of offenders and safeguard the interests of the victims.

⁹⁸ Swaak-Goldman, Olivia. "IHL violations committed by peace forces: Is there any role for the ICC?." Collegium: news from the College of Europe= nouvelles du Collège d'Europe 42, 2012, p. 144-150.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

It can be derived from the study that indeed the UNSC has played a significant role in the development and implementation of the IHL. However, this institution has not been the only body that has contributed to the implementation of the IHL. The UNSCs' involvement has evolved overtime and has ensured the adherence of the IHL by imposing sanctions to those that have committed atrocities, approving military action when ever needed, launching ad hoc universal illegal tribunals to accuse defilements of IHL, relinquish the ICC of infringements of IHL. The institution is more appropriate than the ICRC to make sure that the IHL is adhered to. This is because is refers to Chapter 7 of the UN charter in order to carry out the mandate, the UNSC bridges the gap between the *jus ad bellum* and the *jus in Bello*.

The SC is proficient in developing in increasing the horizon of old rules and also coming up with new ones. In this regards, the SC is the life blood of the IHL. On a different not the SC is considered as a political organ therefore its disadvantage is that there is no neutrality within the institution, whereas other bodies like the ICRC definitely enjoys this benefit. This leads to debates about the credibility of actions carried out by the SC.

As a matter of fact, there is a growing inclination for the Security Council to possess the field with regards to the execution of IHL. This is reflected, for occasion, in the way that the Security Council likes to set up its own particular specially appointed commissions to examine infringement of IHL as opposed to fall back on the actuality discovering Commission gave by article 90 of Additional Protocol I. Consequently, despite the fact that the United Nations collaborates with the I.C.R.C. as for the advancement and the execution of IHL, it additionally rivals the Committee in these territories.

In summary, universal criminal tribunals assume a noteworthy part in the advancement and the execution of IHL, by implementing the standard of individual criminal obligation. Most importantly, obviously universal body, and specifically the ones contemplated above, have

characterized IHL the way things are today. They now confront new difficulties as the way of outfitted clashes continues advancing from the writing assemble, the ICRC has a customary part in the progression and execution of the IHL.

This audit of the United Nations 'contribution in progressing and executing IHL law puts forth no defense to be done. Regardless, paying little heed to this study, a sensible conclusion can be drawn: the UNSC system not simply points of view itself as IHL yet its diverse bodies have, frankly, ended up being exceptionally alterable, propelling the law itself and sustaining its execution. It makes the feeling that such element affiliation has ended up consistently. At its fiftieth remembrance the UN is more vivaciously involved with matters relating to IHL than it was at its twenty-fifth or its tenth recognition.

The diverse UN bodies have added to sympathetic course of action in different routes: verbalizations on the relevance of IHL to specific conflicts; - general offers, those not related to a specific encroachment of a deal obtainment had a tendency to warring social events asking for that they consent to their responsibilities under all-inclusive empathetic law;

- Mentions to IHL in Security Council resolutions on budgetary endorsements;
- Certainty finding in examples of certified encroachment of IHL;
- Explanations if there should arise an occurrence of specific infringement of overall supportive law;
- Speaks to third States for movement to pass on an antagonistic to respect its duties under IHL.

Sharpen shows the Organization's availability to make such move not simply in relationship with overall moreover non-overall outfitted clash.

The UNSC expanded energy for IHL is an acknowledged headway. In actuality, however mankind in its point and non-political in its substance, philanthropic law needs the sponsorship of political associations remembering the final objective to be totally recognized and consented to by States and diverse get-togethers to equipped clash. As the foremost and truly broad association, the UN is a unique overall stage for imparting the stresses of the losses besides sensitivity toward the setbacks of furnished clauses

4.2 Recommendations

The ICRC does not seem, by all accounts, to be exasperated by this creating energy regarding the UNSC in IHL matters. It truly welcomes it regardless of the fact that this new situation requires some kind of coordinated effort between the ICRC and the UNSC system. The ICRC's requesting for the spectator status at the UN General Assembly was an announcement of that determination to search for participation. Since getting that status in 1991, the President of the ICRC has routinely tended to the General Assembly on compassionate matters. Working relations have been developed between various UN bodies and the ICRC. The ICRC is clearly on record as calling and working for capable coordination of caring help to the setbacks of outfitted conflict. Complementarily and straightforwardness in the activities of the differing affiliations are the keys to achievement. The ICRC will, in any case, constantly request its flexibility, including its money related self-sufficiency. While solitary easing operations including the UN as often as possible go up against the ICRC with huge inconveniences, progress toward better shared appreciation has irrefutably been made.

The ICRC does not seem to confer the understanding that the UN's incorporation with overall philanthropic law ought to on a very basic level and as needs be expeditious unacceptable politicization of the supportive cause all things considered and of caring law specifically in spite of what may be normal, the International Committee seems to put staggering trust in the UN part of truly deciding essential clashes which is the honest to goodness explanation behind all such tragedies. Furthermore, the UN is especially qualified to persuade warring get-togethers to respect their merciful obligations. It along these lines showings as per Article I consistent to the four Geneva Conventions, with that obtainment's dedication for all States get-together to the Conventions to ensure consistence with philanthropic law. As the overwhelming political body in the present world solicitation, simply the UN can genuinely oblige States to bear on in a way which is unsurprising with the Charter, with all-inclusive law when all is said and done and IHL particularly.

When all has been said and done, the United Nations' contribution in philanthropic matters must not relentlessly chance the ICRC's opportunity or its ability to expect its merciful activities in full absence of predisposition and nonappearance of preference. However, one condition must be watched, and that can't avoid being that the United Nations, particularly the Security Council, the

Secretariat and the distinctive operational associations, must respect their fitting parts and leave the especially philanthropic activities.

It is crucial that all states in Asia should support and agree to the Statute of the International Criminal Court, with a surety to fruitful approval of its obtainments. In order for this to occur, both states and non-state bodies should collect. Sweeping based direction and utmost building ventures should be finished, to respond to the spirit of general humane law and the ICC. Aggregately, these exercises will bolster an overall society mindful of mankind.

REFERENCES

BOOKS

- 1) Alkotaivi. A., Public International Law, Al-Ani Press.1970.
- 2) Allam, W. A, International human rights conventions. Cairo: Arab Renaissance, 1999.
- 3) Al-Sarhan. A, Public International Law, Dar Al-Nahda, Al-Arabia, 1969.
- 4) Alwan, Y. M, Public International Law: Introduction and Sources. Dar Wael Publishing, 2003.
- 5) Amr Mohammed Saleh, The International Protection of Cultural Property in Times of Armed Conflict, Human Rights Publications Halabi, Cairo, 2000.
- 6) Antoine A. Bouvier, International Humanitarian Law and the Law of Armed Conflict, Second Edition, Peace Operations Training Institute, 2012.
- 7) Baylis, John & Smith, Steve & Owens, Patricia, The Globalization of World Politics: An introduction to international relations 5th Edition. New York, Oxford University Press, 2011.
- 8) Benedetto Conforti, the law and practice of the United Nations 177 (emphasis in the original). 2005.
- 9) Bothe, Michael, Karl Josef Partsch, and Waldemar A. Solf, eds. New rules for victims of armed conflicts: commentary on the two 1977 protocols additional to the Geneva Conventions of 1949. Martinus Nijhoff Publishers, 1982.
- 10) Cherif Bassiouni, International Criminal Court, A Former Source, 2011.
- 11) David P. Forsythe. The Humanitarian: The International Committee of Red Cross, Cambridge University, 2005.
- 12) Deep Akawi, International Humanitarian Law, State and Law Institute, the Academy of Sciences in Kiev,1995.
- 13) Dunne T. Kurki, M. and Smith, S, International Relations Theories: Discipline and Diversity 2nd edition. New York, Oxford University Press, 2010.
- 14) Gasser H. P, The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations' involvement in the implementation of international humanitarian law, 1995.

- 15) Geza Herezegh, *Development of International Humanitarian Law*, University of Virginia, 1984.
- 16) Jan Bkthey. *International Humanitarian Law, Its Development and Principles*, The Publisher Maahd Henry Donan, Geneva, 1984.
- 17) Kalshoven, Frits, and Liesbeth Zegveld. *Constraints on the waging of war: an introduction to international humanitarian law*. Cambridge University Press, 2011.
- 18) Kant. I, *Political Writings* in Reiss, H.S. (Edited) London, University of Cambridge Press, 1970.
- 19) *The Kantian Project in International Relations*. "The earliest theory of globalization", 2003.
- 20) Kiss. A. C. Lammers, *Hague Yearbook of International Law*, 1990, Brill Academy.
- 21) Lewis. M, and Crawford, E, *Drones and Distinction: How IHL encouraged the rise of drones*, 2014.
- 22) Mackintosh. M, *Increasing Respect for International Humanitarian Law in non-international armed conflicts*. International committee of the Red Cross, 2008.
- 23) MacLaren, Malcolm, and Felix Schwendimann. "Exercise in the Development of International Law: the New ICRC Study on Customary International Humanitarian Law, An." *German LJ* 6, 2005.
- 24) McCormack, Timothy. "From Solferino to Sarajevo: a continuing role for international humanitarian law." *Melb. UL Rev.* 21 1997.
- 25) Mercier, C. *On the humanitarian issues Crimes sans Châtiment, L'action Humanitaire en ex-Yougoslavie*, Bruxelles, 1994.
- 26) Meron, Theodor. *Human rights and humanitarian norms as customary law*. Oxford: Clarendon Press, 1989.
- 27) Omar Saad Allah, *The Development of International Humanitarian Law*, First Edition, Beirut, Dubai Media Incorporated West, 1997.
- 28) Rittberger Volker & Zangl Bernhard, *International Organization: Polity, Politics and Policies*. New York, Palgrave Macmillan, 2006.

- 29) Sarooshi, Dan. *The United Nations and the development of collective security: The delegation by the UN Security Council of its Chapter VII Powers*. Oxford University Press, 1999.
- 30) Sharif Atlam, *The International Criminal Court, The Constitutional and Legislative Adapters (Draft Model Law)*. International Committee of the red Cross, Cairo, 2005.
- 31) Suhail Hussein, *Encyclopedia Of International Organizations, the UN / Devices As The United Nations ,c 2 , First Edition , Jordan: Dar Al-Hamed Publishing, 2001.*
- 32) Sulinih Françoise Bouchet, *Dictionary of the International Armed Conflict*, Trs. Ahmad Masood (Beirut, Lebanon: Dar Flag of Millions) 2005.
- 33) Wieruszewski. R, *Application of International Humanitarian Law and Human Rights Law: Individual Complaints, in Implementation of International Humanitarian Law*, edited by F. Kalshoven and Y. Sandoz. London: Martinus Nijhoff Publishers, 1989.

ARTICLES

- 1) Bianchi. A, *Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion*. *European Journal of International Law*, 2006, 17 (5): p. 881-919.
- 2) Brian D. T. *Belligerents in Blue Helmets*, 33 *Stan. J. int'l l.* 1997, p. 96-97.
- 3) Cassese, Antonio. "On the current trends towards criminal prosecution and punishment of breaches of international humanitarian law." *European Journal of International Law* 9.1, 1998, p. 2-17.
- 4) Chapman, Peter F. "Ensuring Respect: vUnited Nations Compliance With International Humanitarian Law." *Human Rights Brief* 17, No. 1, 2009, p. 3-11
- 5) Fleck, Dieter. "International Accountability for Violations of the Ius in Bello: The Impact of the ICRC Study on Customary International Humanitarian Law." *Journal of Conflict and Security Law* 11.2006, p. 179-199.
- 6) Hans-Peter Gasser, *The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations' involvement in the implementation of international humanitarian law*, 19-10-1995.
- 7) Kalshoven, Frits, et al., eds. *Implementation of International Humanitarian Law: Research Papers by Participants in the 1986 Session of the Centre for Studies and*

Research in International Law and International Relations of the Hague Academy of International Law. Vol. 1. Martinus Nijhoff Publishers, 1989.

- 8) Kuziemko, Ilyana, and Eric Werker. "How much is a seat on the Security Council worth? Foreign aid and bribery at the United Nations." *Journal of political economy* 114.5, 2006, p. 905-930.
- 9) Naqvi, Yasmin. "Enforcement of Violations of IHL: The ICTY Statute-Crimes and Forms of Liability." *U. Tas. L. Rev.* 33, 2014, 1.
- 10) Reinisch, August. "Developing human rights and humanitarian law accountability of the Security Council for the imposition of economic sanctions." *The American Journal of International Law* 95.4, 2001, p.851-872.
- 11) Rona, Gabor. "Interesting Times for International Humanitarian Law: Challenges from the War on Terror." *Fletcher F. World Aff.* 27, 2003, 55.
- 12) Santiago, D. M, *Humanitarian Law in Armed Conflicts: Protocols I and II to the 1949 Geneva Conventions*, Law Journal, 1979, p. 188.
- 13) Sassol Henkin, Louis. "Kosovo and the Law of" Humanitarian Intervention"." *The American Journal of International Law* 93.4, 1999, p. 824-828.
- 14) Shraga, Daphna. "UN peacekeeping operations: applicability of international humanitarian law and responsibility for operations-related damage." *The American journal of international law* 94.2, 2000, p. 406-412.
- 15) Swaak-Goldman, Olivia. "IHL violations committed by peace forces: Is there any role for the ICC?." *Collegium: news from the College of Europe nouvelles du Collège d'Europe* 42, 2012, p. 144-150.
- 16) Szasz, Paul C. "The security council starts legislating." *The American Journal of International Law* 96.4, 2002, p. 901-905.
- 17) Van Schaack, B. "The Definition of Crimes against Humanity: Resolving the Incoherence". *Columbia Journal of Transnational Law*, 37, 1998: 787.
- 18) Voeten, Erik. "The political origins of the UN Security Council's ability to legitimize the use of force." *International Organization* 59.03, 2005, p. 527-557.
- 19) Weiss, Thomas G. "The illusion of UN Security Council reform." *Washington Quarterly* 26.4, 2003, p. 147-¹ Alexandra R. H. *Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future*, 12 *ILSA J. int'l l. & comp.* 2005, 1. 125, 140-42.

- 20) Wexler, L, International Humanitarian Law Transparency. Journal of Transnational Law & Policy, 23, 2013, p. 93-115.

REPORTS

- 1) Kolb, Robert. "The relationship between international humanitarian law and human rights law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions." International Review of the Red Cross 38. 324, 1998, p. 409-419.
- 2) Roscini, M. The United Nations Security Council and the Enforcement of International Humanitarian law 1996, ICJ Report, 2010, p. 341.
- 3) Report by the special rapporteur W. Kalin.
- 4) Periodic report as Special Rapporteur: " Situation of human rights in the territory of the former Yugoslavia ", of 22 August 1995, E/CN.4/1996.
- 5) Kälin, W. "Situation of human rights in occupied Kuwait " , Report of 16 January 1992, E/CN.4/1992/26, Reprint.

CONVENTIONS

- 1) ICRC, The Relation between the Human Right Regime and the Law of Armed Conflict, Geneva Convention, 1971.
- 2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 89, June 8th, 1977, 1125 U.N.T.S.

CASES

- 1) Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland, ECHR (2005), Judgment of 30 June 2005.
- 2) Gattini, Andrea. "Joined Cases C-402/05 P & 415/05 P, Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council and Commission, judgment of the Grand Chamber of 3 September 2008, nyr." Common Market Law Review 46.1, 2009, p. 213-239.
- 3) Muntarhorn, V. Asian Human rights commission, international humanitarian law and the international criminal court. Article 2, 2003.
- 4) Prosecutor v. Dusko Tadic aka 'Dule', IT-94-1, ICTY, Decision of the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995.

- 5) Prosecutor v. Tadić, Case no. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 29 (Oct. 2, 1995) [hereinafter Tadić].
- 6) Tomuschat, Christian. "Case T-306/01, Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council and Commission; Case T-315/01, Yassin Abdullah Kadi v. Council and Commission." *Common Market Law Review* 43.2, 2006, p. 537-551.
- 7) Zollmann v. United Kingdom, ECHR Reports of Judgments and Decisions 2003-XII.

OTHER

- 1) Brunner, C. The Situation of Internally Displaced Persons in Serbia and Montenegro, Issues Paper May 2005, [Online]. Available at: <http://www.icrc.org/eng/assets/files/other/icrcserbia-montenegro-idp-issues-05-2015-eng.pdf>.
- 2) <https://www.icrc.org>.
- 3) ICRC (2004). What is International Humanitarian Law? Advisory Service on International Humanitarian Law.
- 4) ICRC. Strengthening Compliance with International Humanitarian Law (IHL): The Work of the ICRC and the Swiss Government. (2015). Retrieved from <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm> on 12 April 2016.
- 5) ICRC. The Impact of Technology on the IHL, 2013. Accessed from <https://www.icrc.org/eng> on 12 April 2016.
- 6) International Review of the Red Cross (ICRC), the seventh year, 1987, No. 40, p. 46.
- 7) Norley, R. M. Is the United Nations an effective institution?, 2013. <http://www.e-ir.info/2013/02/23/is-the-united-nations-an-effective-institution>.
- 8) Security Councils 666th Meeting As Nature of New Threats Evolves, Security Council, Central to Keeping Peace, Must also Keep Pace, Secretary-General Says During Council Debate on New Challenges. 2011.
- 9) Smith, C. A. and Smith, H. M. Human Trafficking: The Unintended Effects of United Nations Intervention. *International Political Science Review*, 2010, XX(X), 1–21. Available at: <http://www.college/clark.edu>. Accessed 2 February 2016.

10) United Nations Security Council. Security Council 668th Meeting On Challenges Affecting International Peace and Security, 2011.