



NEAR EAST UNIVERSITY  
GRADUATE SCHOOL OF SOCIAL SCIENCES  
INTERNATIONAL LAW PROGRAM

**THE PLACE OF HUMANITARIAN LAW IN GLOBAL  
WAR ON TERRORISM**

SAAD MOHAMMED TAHA

MASTER THESIS

NICOSIA  
2018

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THESIS SUPERVISOR  
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2018

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## **DEDICATION**

This dissertation is firstly dedicated to almighty Allah and secondly to my late brother (Badir Muhamed Taha).

## **ACKNOWLEDGMENTS**

It is my ultimate pleasure and much enthusiasm to express my profound gratitude to my supervisor (Assist. Prof. Dr.Tutku Tugyan) for his sufficient assistance, which made it possible for to complete this dissertation. It would not be possible without his great knowledge.

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## **ABSTRACT**

# **THE PLACE OF HUMANITARIAN LAW IN GLOBAL WAR ON TERRORISM**

Global war on terrorism started officially in 2001 after the terrorist attacks in United States. As a reaction to these attacks, the US government declared war against every terrorist organization as well as any actor supporting terrorist groups. The unstructured ways at which this war has been fought since 9/11 has resulted to many civilians becoming victims of war. International humanitarian law basically regulates the conduct of war in order to secure the living conditions of civilians as well as wounded soldiers or if any conflicting party surrender from hostilities. The ways at which global war on terrorism have been fought are violations of stated regulations under IHL. Every counter-terrorism measure that results to civilian casualties and violation of human rights is considered to be similar to terrorism. This dissertation reveals the manners of fighting against terrorism and various ways at which it has violated the rules of international humanitarian law. The fight against terrorism that violates human rights of the people and IHL can never be successful. This dissertation argues for the need to adequately ensure the protection of IHL and human rights during global war on terrorism.

### **Keywords:**

**International Humanitarian law**

**Counter-terrorism, Global war, Terrorism**

## ÖZ

### TERÖRİZMİYE KÜRESEL SAVAŞTA İNSANİ YARDIMCI YERİ

Terörizmle ilgili küresel savaş, 2001 yılında Amerika Birleşik Devletleri'ndeki terörist saldırılardan sonra resmen başladı. Bu saldırılara tepki olarak, ABD hükümeti terörist örgütleri destekleyen her aktörün yanı sıra her terör örgütüne karşı savaş ilan etti. Bu savaşın 11 Eylül'den bu yana gerçekleştirildiği yapılandırılmamış yollar, birçok sivil savaş kurbanı haline getirdi. Uluslararası insancıl hukuk, temelde sivillerin ve yaralı askerlerin yaşam koşullarını güvence altına almak için ya da çatışan tarafların düşmanlıktan teslim olmalarını sağlamak için savaşın yürütülmesini düzenler. Terörizmle ilgili küresel savaşın nasıl yapıldığı, IHL kapsamında belirtilen düzenlemelerin ihlal edilmesidir. Sivil kayıplara ve insan haklarının ihlaline neden olan her terörle mücadele tedbiri terörizmle benzerlik göstermektedir. Bu tez, terörizmle mücadelenin ve uluslararası insancıl hukuk kurallarını ihlal ettiği çeşitli biçimlerde ortaya çıkan tavırları ortaya koymaktadır. İnsanların ve IHL'nin insan haklarını ihlal eden terörizmle mücadele asla başarılı olamaz. Bu tez, teröre karşı küresel savaş sırasında İHL'nin ve insan haklarının korunmasını yeterli şekilde sağlama gereğini savunuyor.

#### **Anahtar kelimeler:**

**Uluslararası İnsancıl Hukuk  
Terörle mücadele, Küresel savaş, Terörizm**



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## ABBREVIATIONS

|             |  |
|-------------|--|
| ANZUS.....  | Australia, New Zealand, United States Security Treaty            |
| CoE.....    | Council of Europe  |
| ECHR.....   | European Convention on Human Rights                              |
| FTAT.....   | Foreign Terrorist Asset Tracking Center                          |
| GWOT.....   | Global War on Terrorism  |
| ICCPR.....  | International Covenant on Civil and Political Rights             |
| ICESCR..... | International Covenant on Economic, Social and Cultural Rights   |
| ICJ.....    | International Court of Justice                                   |
| ICRC.....   | International Committee of the Red Cross                         |
| ICTY.....   | International Criminal Tribunal for the former Yugoslavia        |
| IHL.....    | International Humanitarian law                                   |
| IHR.....    | International Human Rights                                       |
| OAS.....    | Organization of American States                                  |
| OHCHR.....  | Office of the United Nations High Commissioner for Human Rights. |
| NATO.....   | North Atlantic Treaty Organization                               |
| NGOs.....   | Non-governmental organizations                                   |
| UDHR.....   | Universal Declaration of Human Rights                            |
| UN.....     | United Nations   |
| UNGA.....   | United Nations General Assembly                                  |
| UNHCR.....  | United Nations High Commissioner for Refugees                    |
| UNODC.....  | United Nations Office on Drugs and Crime                         |
| UNSC.....   | United Nation Security Council                                   |
| WMD.....    | Weapons of Mass Destruction                                      |

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Introduction

The disastrous implications of terrorism over humanity are globally felt. The United Nations family has also experienced tragic human loss from different violent terrorist attacks. For example, the terrorist attack on the 19<sup>th</sup> of August, 2003 in UN offices in Baghdad resulted to the death of Sergio Vieira de Mello who was then the UN Special Representative of the Secretary-General including twenty one people and accounted for around 150 injured people. Terrorism has a direct negative impact over human rights, violation of the enjoyment of the right to life, liberty and physical integrity of victims. In addition, terrorism can cause havoc not only at individual level but also at state level, resulting to destabilization of government, destruction of peace and security, undermine civil society and weaken social and economic development. The basic aim of human right is security and protection of individual and it is a fundamental obligation of government to ensure it. In this respect, states are obligated to secure human rights protection of their citizens by engaging in a positive measure to protect them against the threat of terrorism. But quite disheartening that in the recent years, the adopted approach of states to combat terrorism have become threatening to human rights and the rule of law.<sup>1</sup>

Historically, humanitarian actors had no interest in matters concerning the rights and wrongs of war but only concerned with the way at which war is fought in order to provide necessary protection for civilians and others who are not directly involved in the attack. On the other hand, global war on terrorism (or GWOT) is another version of war whereby there are battles for fighting, there are winners and losers, people are injured and killed, and there is displacement of people. This new version of war that basically started after 9/11 attacks has required the need to change the obligations of humanitarian actors in both

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<sup>1</sup>OHCHR Fact Sheet. "Human Rights, Terrorism and Counter-terrorism." Office of the United Nations High Commissioner for Human Rights United Nations Office at Geneva Commissioner for Human Rights, (2008), p.1

the main arena of the conflict (from Afghanistan to Iraq to Chechnya and Colombia) and other periphery parts. It should be noted as well that the war on terrorism is not only about potential armed conflicts, but has also become a framework that will define and enforce the international and national policy as well as humanitarian aid policy.<sup>2</sup>

According to ICRC (2004) International humanitarian law is defined as a set of rules seeking for humanitarian reasons, with the aim of reducing the disastrous implications of armed conflict. This set of rules is designed to ensure the protection of individuals that are not involved in armed conflict or those that are no longer involved in the war. It also places restrictions on the means and methods of warfare. International humanitarian law is also regarded to as law of war or the law of armed conflict. It is also define to be part of international law, which constitutes the body of rules regulating relations between States and it is applicable only in armed conflicts. Internal tensions, violence or disturbances are not primarily under the scope of international humanitarian law. Differentiation is made between international and non-international armed conflict under the scope of international humanitarian law, which explains that states are the main actors in international armed conflicts while non-international armed conflict takes place within the territory of a single State whereby either regular armed forces or fighting groups of armed dissidents, or armed groups fighting each other.<sup>3</sup>

Humanitarian crises usually result to disastrous human suffering, threats and violations of international human rights and humanitarian law. This means that pre-existing protection may result to a crisis or aggravate the level of its impact on affected populations. This has made the International law to form a robust framework for protecting the human rights of the people who happen to be victims of by armed conflicts, situations of violence and insecurity, including natural and man-made disasters. International law has assigned states with responsibilities of guarantee protection of human rights and facilitates humanitarian assistance. For the sake of specified objectives of international law to ensure the protection and well being of every individual, it has given special attention to some particular group of people such as women, children, the civilian population and internally displaced

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<sup>2</sup>Joanna Macrae and Adele Harmer . “Humanitarian action and the ‘global war on terror’: a review of trends and issues.” HPG Report 14, (2003) p.1

<sup>3</sup> ICRC , “What is International Humanitarian Law?” Advisory Service on International Humanitarian Law, (2004) p.1-2.

persons.<sup>4</sup>Fighting against terrorism under global war on terrorism has been criticized for leading to violations of human rights because of the manner at which global war on terrorism has failed to respect humanitarian law during its operation. Every effort to fight terrorism that does not respect the protection of human rights is not different from terrorism itself. It is a universal argument that changes have taken place in the world after the terrific events of 9/11 but the astonishing part of this change is not just about the effect of terrorism on human rights but the ways at which global actors, the United States declared and engaged in combating war on terrorism. This war has made GWOT to be fought against freedom as it has been defined and people with the mindset of destroying humanity against people who seek to defend it.

The global war on terrorism officially started after September 11 attacks after the declaration made by the President Bush that the United States was at war. Shortly after these attacks, he made a speech that this war will never come to an end until every terrorist group in the world is found, stopped and defeated.<sup>5</sup> The use of force as stated by the United States president was not cleared to the understanding of many international law experts as well as people in charge of the international legal regulation, which basically meant that the United States would engage in direct an armed conflict with any country where terrorist is found. In another word, it was not basically the “war on drugs” or “war on poverty” but this has become the third World War.”<sup>6</sup> The Bush administration made it known to the public in general in 2001 that United States was in actual war. The measures adopted in combating Terrorism states that every suspect of terrorism will face trials before military tribunals; they will also face with military detention without considering however they are taken or arrested.<sup>7</sup>

After a week, the seriousness of considering the entire global environment as an arena for fighting this war by the United States came to the knowledge of the world. It was recorded

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<sup>4</sup>OHCHR and UNHCR. The Protection of Human Rights in Humanitarian Crises A Joint Background Paper by OHCHR and UNHCR. (2013), Available at [http://www.globalprotectioncluster.org/nce/Paper\\_EN.pdf](http://www.globalprotectioncluster.org/nce/Paper_EN.pdf), p.1

<sup>5</sup> Ivo H. Daalder and James M. Lindsay. “The Bush Revolution: The Remaking of America’s Foreign Policy.” The Brookings Institution, (2003), p.5

<sup>6</sup> Allen S. Weiner. “Hamdan, Terror and War.” center for international security and cooperation, (2007) p.1015.

<sup>7</sup>Robert G Patman. “Globalization, the New US Exceptionalism and the War on Terror.” Third World Quarterly, Vol. 27, No. 6, (2006) p.4

that in November 3, 2002, a Hellfire missile was launched against a vehicle in Yemen by the agents of the CIA, which resulted to the death of six men. And it should be noted that Yemen as at this period has no experience of armed conflict on its territory. Then National Security Adviser Condoleeza Rice stated that “We are in a new kind of war and it is obvious that this new kind of war can be fought on different battlefields.”<sup>8</sup> It was stated by the Deputy General Counsel of the Department of Defense for International Affairs that in combating terrorism, the U.S has been active everywhere in targeting Al Qaeda suspects and kill them without warning or a chance for trial. This shows that the Administration after 9/11 engaged in the wartime privileges of killing without warning, detention without trial.<sup>9</sup>

In addition, the declaration made by the U.S government stated that the country will engage in war for the sake of defending the national security interest with the aim of combating against terrorist operatives. In order to achieve these politico-military objectives, the administration engaged in the use of different measures ranging from military, diplomatic, financial, investigative, home land security and humanitarian actions. This war justifies that every conduct of humanitarian action should be subjected under this politico-military objective by whether it is carried out by military forces or civilian agencies. As a matter of fact, Colin Powell has argued that non-governmental organizations have been acting as actors of United States combat team against terrorism. The motive for this assertion is found in the historical doctrine of military tradition of winning the hearts and minds of civilians with conduct of psychological operations such as provisions of assistance to civilians in war areas.<sup>10</sup>

Furthermore, this explains the reason behind Bush administrative decisions to provide food aid for people in Northern Sudan, assistance program in North Koreans during Kim Jong-II and Afghans during Taliban regime.<sup>11</sup> GWOT has also caused some damages to general

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<sup>8</sup> Mary Ellen O'Connell. “Ending the Excessive Use of Force at Home and Abroad.” NDL Scholarship Journal Articles, (2017), p.96.

<sup>9</sup> Mary Ellen O'Connell. “Ending the Excessive Use of Force at Home and Abroad.” NDL Scholarship Journal Articles, (2017), p.2-3

<sup>10</sup>Joanna Macrae and Adele Harmer . “Humanitarian action and the ‘global war on terror’: a review of trends and issues.” HPG Report 14, (2003), p.2

<sup>11</sup> Nicolas de Torrente. “The War on Terror's Challenges to Humanitarian Action.” Available at <https://www.msf.fr/sites/www.msf.fr/files/pdf>, (2002), p.3

principle of multilateralism and United Nations, which has reflected not only in the unilateral decision of U.S attacks against Iraq without the decision of UN security Council but also in the manner at which UN was treated by the Occupying Power. As matter of fact, even working via bilateral relationships and established coalition, United States has managed to overcome existing constraints on international decision-making. And by using its created coalition to promote its national foreign policy agendas.<sup>12</sup>

The different challenges of humanitarian actors after the emergence of GWOT at the aftermath of 9/11 have been highlighted in terms of finding themselves within a geopolitical framework that would incorporate them culturally, politically and financially. The problem of integrating humanitarian action in the context of international politics explains the fact that the values of humanitarian organizations ranging from cultural, to religious and political are indications of the type of community they belong. The methods of integrating humanitarian policy under the policy of international security, the complexity in the nature of culture, the multinational features of terrorism and counter-terrorist measures are defining factors of implementing humanitarian action. These factors epitomize the difficult of identifying the humanitarian agenda, and positioning it as a distinct sphere of international behaviour. From the perspective of western humanitarian organizations, this is found in 'bilateralization' of humanitarian aid, which explains how donor governments get more involved in the decision making process of humanitarian action that was historical part of the case . As put forward by Abby Stoddard on the need for the sensitivity of humanitarian agencies to be effective in order to enable shifts in public opinion in western countries, most especially in United States where there is possibility of ambivalent mood concerning private investment in international welfare.<sup>13</sup>

It should be noted that there is a level of interconnectedness between international humanitarian law and international human rights law. The influence of international human rights law over IHL has become noticeable since 1945 and many times, the coverage of the both fields of law overlaps. Human rights law basically focuses on the relationship between states and individuals subject to their states. Some parts of IHL are applicable to

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<sup>12</sup>Macrae and Harmer, (2003 p. 2)

<sup>13</sup> ICRC. "Humanitarian debate: Law, policy, action: The future of humanitarian action." International Review of the Red Cross, Volume 93 Number 884, (2011), p.5



conflicts among states and none of its part is able to claim authority over armed forces of the other states or their population. Also some parts of IHL regulate the internal conflicts within a state and able to provide rules that can be applied to emergency situation.

IHL also put restrictions on the behaviors of states on the territory of another state most likely under a regime of belligerent occupation and treatment of captured hostilities. The humanitarian concern of IHL shares some basic foundational features with international human rights law. The principle of human dignity constitutes the fundamental commitment of human rights law, which explains that there are intrinsic values of every human that cannot be alienated or forfeited, which also define how they should be treated. This principle is reflecting in the objectives of IHL stating that even at the periods of war, conflicting parties do not have limitless methods and means of warfare.<sup>14</sup>

The concept of reciprocity occupies a larger space in IHL than in human rights law. This is the negotiation that takes place between states within the scope of International Humanitarian Law concerning international armed conflicts explaining the acceptance of the fact that the armed forces of each state can be attackers for both conflicting parties and objects of attack, and their citizens and territory may suffer the effects of war. Interests of states are not the same, their military capabilities, level of resources and their ideological positions that determine their negotiations are not the same as well. Reciprocity is built under the framework of IHL norms. It can also be defined as portions of elaborate code governing prisoners of war. There are different conditions of reciprocity designed under IHL that are applicable to basically internal armed conflicts within a single state that is a government and an insurgent force. The negotiation of the treaties has always been agreements between states and not as agreements between states and insurgents. The human right treaty is similar to this condition whereby states make promises to respect some rights of its citizens.<sup>15</sup>

This motive behind writing this dissertation is to shed light to the need for the protection of international humanitarian law during states' counter-terrorism military operations also

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<sup>14</sup>Gerald L. Neuman. "Humanitarian Law and Counterterrorist Force." Available at <http://ejil.org/pdfs/14/2/415.pdf>, (2003), p.283-290.

<sup>15</sup>Ibid (14), p.286.

known war on terrorism. It has been argued by many scholars that the US led war on terror possesses significant challenges on independent humanitarian action and the principles that underpin it. According to Nicolas T (2002) that this war seeks to subordinate humanitarianism to its broader purpose, which means that it undermines the ability of humanitarian actors to impartially perform their assigned duties. The anti-terrorism campaign could easily violate the fundamental restraints under international humanitarian law restraints on the conduct of warfare, which as a result could violate the protection and assistance that civilians are entitled to enjoy.<sup>16</sup>

## **1.2 Aims of the Thesis**

1. It aims to examine the relationship between humanitarian law and global war on terrorism
2. It aims to review the significance of ensuring the protection of humanitarian law during counter terrorism state 'operations
3. It aims to examine the relationships between the international human rights law and IHL on the need for protection of civilians during armed conflicts.

## **1.3 Research Questions**

1. What is the significance of ensuring the protection of humanitarian law during counter-terrorism operations?
2. How have civilians become victims of both terrorist attacks and counter-terrorism operations?
3. What can be done to respect humanitarian law during global war on terrorism?

## **1.4 Research Methodology**

The research method shall be qualitative method of data analysis whereby there will not be need for the use of statistical analysis. Secondary method of data collection shall be used where by the needed information shall be obtained from online journals, articles, arcade, library, books, and news sources.

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<sup>16</sup> Nicolas de Torrente. "The War on Terror's Challenges to Humanitarian Action." Available at <https://www.msf.fr/sites/www.msf.fr/files/pdf>, (2002), p.2

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

This study helps to review the role of states in securing the protection of human rights of their citizens and IHL under the regulations of international human rights law and IHL. And it reviews whether states have been honest with this obligation. It helps to review the level of importance of securing the protections of civilians during armed conflicts and most in particular during counter-terrorism military operations as stated under the rules of international humanitarian law. It explains the new version of war in the globe today and the various challenges it has posed on humanitarian actions. Readers of this dissertation would be enlightened on this issue. It also explains how counter-terrorism military operations under global war on terrorism have violated human rights of the civilians and as well violates international humanitarian law.

In conclusion, this chapter explains the general introduction of this dissertation whereby brief history about how Global war on terrorism was officially declared after the attack of 9/11 and the various roles of humanitarian actors to ensure the compliance of states with international humanitarian law in fighting this war has been explained. This chapter also stated the aims and objectives of this dissertation, research methodology and the significance of the thesis.

## CHAPTER TWO

### LEGAL LITERATURE REVIEW

#### 2.1 Definition of Terrorism

In discussing the place of humanitarian law in the Global War on terrorism, there is a need to make some conceptual clarifications such as the definition of Terrorism, Global War on Terrorism, humanitarian law and its applicability. It is an established fact that there is no universally acceptable definition of the term 'terrorism' though there are different global conventions dealing with different terrorist actions such as hijacking of aircrafts and taking of hostages but there has not been a specific meaning attached to the term terrorism, which has made it a contested concept. Attempts shall be made to define it according to different scholars and conventions.

UN Security Council Resolution 1566 (2004) defines terrorism in the following ways;

*" criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act ."*<sup>17</sup>

Terrorism was defined by the United States. national security strategy as *"premeditated, politically motivated violence against innocents."* The definition that has put a question on clarifying the position of innocent individuals. This definition also questions the United States firebombing of Japanese cities in 1945, which resulted to the death of many innocent citizens who had no relationship with Japanese' military actions. According to the Defense Department, terrorism was officially defined as the

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<sup>17</sup> UN Security Council Resolution 1566 (2004)

*“calculated use of unlawful violence to inculcate fear; intended to coerce or intimidate governments or societies in pursuit of goals that are generally political, religious, or ideological.” And a similar definition was given by the U.S. National Strategy for Combating Terrorism explaining terrorism to be “premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents ”.*<sup>18</sup>

The universal applicability of the word terrorism basically covers every violent attacks against civilian, or states perpetrated by a state, individual and non-state actors both during the conflict and peace-term. As put forward by a popular historian Walter Lanqueur that there are many definitions of terrorism and the meeting points of all these definitions is the conceptualization of terrorism as a violence perpetrated by a group for political reasons, which are basically channeled against the state, and sometimes directed against ethnic group, religion, class, race and political movement.<sup>19</sup> There is no successful specification of terrorism as explained by this historian due to the fact that there are different versions of terrorism. Rosalyn Higgins concludes that there is no legal significance that can be given to the term terrorism. It has just been a suitable of naming some activities carried out by individuals, states and non-states actors that are not universally acceptable as a result of whether the method used is not legal or the protected targets. It just of a method employed by the community to condemn some conducts.<sup>20</sup>

## **2.2 Global War on Terrorism**

In reacting to the terrorist attacks against the United States, which is universally known as 9//11, the United States government officially declared a war against terrorism known as global war on terrorism (GWOT). The most frustrating part of this war remains the ambiguous nature and parameters of this war whereby the identified threats to be targeted are emanating from the multiplicity nature of the enemies such as failed states, proliferators of weapons of mass destruction (WMD), terrorist organizations and

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<sup>18</sup> Jeffrey Record. “Bounding the Global War on Terrorism.” Strategic Studies Institute, (2003), p.6

<sup>19</sup> Omar Lizardo. “Defining and Theorizing Terrorism: A global Actor-Centered Approach.” Journal of World-Systems Research, Volume XIV, Number 2, (2008), p.93

<sup>20</sup>Gerald L. Neuman. “Humanitarian Law and Counterterrorist Force.” Available at <http://ejil.org/pdfs/14/2/415.pdf>, (2003), p.288.

terrorism.<sup>21</sup> The national strategy for Combating Terrorism was published in 2003 by the Bush administration. The definition of terrorism by the American Heritage Dictionary stated that it is an unlawful or illegal use of force or violence by an individual or group of individual against the states or citizens' properties with the aim of intimidating the society for political or ideological ends. Base on this definition, it reflects that terrorism is a tool used as a mean to an ends, which can be explained that fighting against a tool is just for a short-term advantage. As a matter of fact, an attempt to destroy the tool employed by the enemies cannot provide a long-term solution to the root causes of the problem.<sup>22</sup>

The various threats that constitute the security challenges posed by terrorism were addressed in the 2006 National Strategy for Combating Terrorism by making specification to two macro-strategic goals. The first goal is considered to be near-term, which is an intention to annihilate the large network of al-Qaeda terrorism. As a matter of fact, the United States and its allies have done a lot of works in killing, capturing and decreasing the al-Qaeda networks. But it is quite unfortunate that al-Qaeda group is synonymous with the method of the Hydra menace of Greek whereby the destruction of one al-Qaeda network will be replaced with two more networks. The United States long-term second goal is the decision to redefine the global communities in a way that will be unpleasant and impossible for violent extremists to flourish including those actors supporting them. And the U.S strategy to accomplish this goal is to ensure the establishment of democratic system of government in Islamic states. This will be pleasing to the majority of moderate Muslims who do not support the different violations and harms committed by violent extremists and seek a better system for safety and well being of their families. This has raised many questions in the literature such as questioning the legitimacy of United States to build democracy in Islamic states and the private interest of United States in these states?<sup>23</sup>

In addition, in response to the terrorist attacks of 9/11, President Bush and Secretary of State Colin Powell did a great work in building a collective coalition to combat terrorism, which has grown stronger. President Bush met with political leaders of over 51 different

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<sup>21</sup> Jeffrey Record. "Bounding the Global War on Terrorism." Strategic Studies Institute, (2003),, p.1

<sup>22</sup>Laurence Andrew Dobrot. "The Global War on Terrorism: A Religious War?" Available at <https://ssi.armywarcollege.edu/pdffiles/PUB822.pdf>, Accessed 20 August, 2017, (2007), p.1

<sup>23</sup>Laurence Andrew Dobrot (2007, p.2).

countries in order to team together in fighting against terrorism. Over 136 countries received different ranges of military assistance; NATO, OAS and ANZUS immediately reformed their treaties for the sake of supporting U.S; over 142 countries gave order to freeze many suspected terrorists assets; 89 countries officially allowed the United States military aircraft to have over-flight authority; the United States military aircraft was granted landing rights by 76 countries; 23 countries also accepted to be host countries for United States military forces when engaging in offensive military operations; Many embassies have been opened in Kabul by the U.S and many other countries; Three new organizations known as the Foreign Terrorist Asset Tracking Center (FTAT), Operation Green Quest and the Terrorist Financing Task Force were formed by the United States and the United Nations Security Council passed resolution 1373 requesting every nation-state to ensure that they have no relationship with terrorist funds. All these actions and many more actions were immediately taken in order to engage in War on Terrorism.<sup>24</sup>

### **2.3 International Humanitarian Law**

According to ICRC (2004) International Humanitarian Law is defined as set of rules seeking for humanitarian reasons with the aim of limiting the consequences of armed of conflicts. It is basically designed for the protection of people who are not participating in armed conflicts or who have withdrawn from the hostilities and also aims to restrict the methods of fighting. It is also known as the law of armed conflict or law of war. ICRC explains further that one of the parts of international law is international humanitarian law, which is a set of regulations guiding the existing relationships between states. In another word, this law is basically applicable to armed conflicts.<sup>25</sup> As put forward by Bouvier A.A (2012) international law is body of international regulations formed by treaty with the main aim of resolving humanitarian challenges emanating from international armed conflict and non-international armed conflicts. These regulations provide protection for people and property that could be affected by violent attacks by placing restriction on the parties to the

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<sup>24</sup>George W. Bush 2001, p.5-7

<sup>25</sup> ICRC. "What is International Humanitarian Law?" Advisory Service on International Humanitarian Law, (2004), p.1

conflict on choosing the right methods or means of warfare. It is basically preferable for the military sector to consider IHL as law of war or law of armed conflicts.<sup>26</sup>

To explain the origin of international humanitarian law, ICRC (2004,) stated that this law originated from the rules of ancient civilizations and warfare. The 19th century marked the Universal codification of international humanitarian law and since this period, nation-states have reached agreements on different practical rules base on the effects of modern warfare and these rules have been the basic influencing factors between humanitarian concerns and the military requirements of States. The majority aspects of international humanitarian law is found in the four Geneva Conventions of 1949 and almost all the countries in the world have accepted the binding of these conventions.<sup>27</sup>“These conventions were supplemented and developed by two additional agreements, which are Additional Protocols of 1977 relating to the protection of victims of armed conflicts. It should be noted as well that there are other international agreements ensuring the right use of ammunitions and methods during armed conflicts in order to protect the people and properties.

To discuss the applicability of international humanitarian law, ICRC (2004) explains that it is only applicable during the periods of armed conflicts. Under the scope of international humanitarian law, the international armed conflict is differentiated from the non-international armed conflict. International armed conflicts are defined to involve the minimum of two nation-states, which are parties to the body of rules stated under the four Geneva Conventions and Additional Protocol I and many other rules as stated before. And non-international armed conflicts require just the territorial jurisdiction of a single state with the involvement of armed groups fighting with each other. There are limited rules applicable to internal conflicts, which are mainly stated in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II. However, the scope of international humanitarian law covers the protection of individual or actors that are not involved or are no longer part of the hostilities and to restrict the means and methods of warfare as stated before. Bouvier A.A (2012) argues that emphasis has to be laid on the fact that the rules and principles of IHL are not mere social customs or moral precepts,

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<sup>26</sup>Antoine A. Bouvier. “International Humanitarian Law and the Law of Armed Conflict.” Peace Operations Training Institute, (2012), p. 20

<sup>27</sup> ICRC. “ What is International Humanitarian Law?” Advisory Service on International Humanitarian Law, (2004, p.4



they are for real legal rules and the legal nature of these rules are established in the existence of a detailed regime of obligations and rights placed upon conflicting parties to an armed conflict. The treaty of IHL has a binding character over those states that have agreed officially to be part of it.<sup>28</sup>

To make distinctions between *Jus ad Bellum* and *Jus in Bello*, it was explained by Bugnion F (2004) that *Jus ad bellum* has to do with the principle of engaging in an armed conflict with a precise reason or cause such as self-defense. On the contrary, *jus in bello* is explained to be principle of engaging in an armed conflicts justly, putting into consideration the standards of proportionality and distinctions between civilians and military fighters, which is mainly the applicability of IHL.<sup>29</sup> Historically, the emergence of IHL came during the period at which realist theory prevailed over international relations. This was a period that marked the officialization of the use of force in international relations, when there was no restriction on state on method of fighting war and as a matter of fact, states were granted the official right to wage war, which is an idea behind *jus ad bellum*. As a result, it was less problematic for international law to set up regulations for regulating the behaviors of states during armed conflicts, which is the main idea behind *jus in bello* that means body of law regulating the conduct of war. But in the present modern era, there is now a prohibition on the use of force between nation-states base on the peremptory rule of international law, which means that *jus ad bellum* is now replaced with a *jus contra bellum*.<sup>30</sup> But it should be noted that there are exceptional cases given to this prohibition such as in cases of self-defense, the enforcement of people's right to self-determination granted by United Nation Security Council. As stated in the Art. 2 (4) of the UN Charter: “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations..*”<sup>31</sup>

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<sup>28</sup>Antoine A. Bouvier. “International Humanitarian Law and the Law of Armed Conflict.” Peace Operations Training Institute, (2012), p. 20

<sup>29</sup> Francois Bugnion. “Jus Ad Bellum and Non-International Armed Conflict.” Yearbook of International Humanitarian Law, T. M. C. Asser Press, vol. VI, (2004), p.5

<sup>30</sup>Ibid (28), p.22.

<sup>31</sup>The Art. 2 (4) of the UN Charter

It is found out that though IHL and many other international conventions prohibited armed conflict, there are still countless cases of armed conflicts. This has increased the need for international law to address this situation and not only with the use of force or combating the situation but to regulate it in order to ensure the protection of humanity in this reality. For humanitarian and practical policy, there is a need for IHL to be impartially applicable to belligerents that both legal and illegal. At the detriment of this fact, IHL could lose its respect in a practical sense to all belligerents, however differentiation between those belligerents that function under the jus ad bellum and those that have violated the jus contra bellum is always controversial to make.

From humanitarian perspective, there should be same level of protection rendering to victims from both sides of the conflict and they cannot always be held responsible for the different violations of the jus ad bellum that are done by their parties. In this respect, the proper recognition and respect should be given to international humanitarian law independently of any argument raised to justify jus ad bellum and it must be differentiated and separated from jus ad bellum. As a matter of fact, there is no argument of just war concerning the jus ad bellum that can underrate the need for its compliance to IHL than those engaging in an unjust war. The preamble of Additional Protocol I of 1977 stated the official differentiation between jus ad bellum and jus in bello, which implies that IHL is applicable in any armed conflict regardless.<sup>32</sup>

## **2.4 Evolution of International Humanitarian Law**

It is ideal to trace the historical development of international humanitarian law in brief considering the aims of writing this dissertation. IHL has some eventful history that will be examined. It came to binding over nation-states at mid-nineteenth century when states came to agreement concerning these international rules in order to avoid unnecessary suffering experienced during war.<sup>33</sup> Since this period, the dynamic nature of armed conflicts and modern proliferation of nuclear weapons have resulted to the need for many reformations to be done on the scope of humanitarian law via negotiations. It should be

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<sup>32</sup> Jasmine Moussa. "Can jus ad bellum override jus in bello? Reaffirming the separation of the two bodies of law." Volume 90 Number 872, (2008) p.964.

<sup>33</sup> UNODC: Frequently Asked Questions on International Law Aspects of Countering Terrorism, United Nations Office on Drugs and Crime, p.65

noted as well that the evolution of international law concerning the protections of victims of war and conduct of war has a strong influence over the development of the official protection of human rights at the aftermath of World War II. The emergence of the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966), which have been different significant international instruments within the scope of human rights are the main contributing emphasis on the significance of ensuring human rights protection of the people whether during the peace or wartime.<sup>34</sup>

It is considered ideal enough that some human rights are restricted and might be deprived during armed conflicts as stated in the Article 4 of the International Covenant on Civil and Political Rights allows, which granted states the temporal rights to derogate from some human rights protection in the period of public emergency that could threatens the life of the nation. In similarity with this, Article 15 of the European Convention on human rights also stated some regulations to support this rule. However, the need for ensuring the protection of human rights during armed conflicts has gained official recognition internationally. Article 3 of the four Geneva Conventions on humanitarian law of 1949 stated that during wartime, people who are under the protection of the convention should “in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria”.<sup>35</sup>

During the 43rd session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1991), it was stated that the report on education by the Secretary-General concerning human rights position during wartime will be presented. Resolution 1989/24 on "Human rights in times of armed conflict" was later adopted by the sub-commission, explains the situations of failure to respect international humanitarian law and human rights law during armed conflicts. On its 46th session, the Commission on Human Rights adopted resolution No. 1990/60, which gave official recognition to the significant duties of International Committee of the Red Cross in performing the role of international humanitarian law requesting states to pay special attention in ensuring that member states

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<sup>34</sup>Fact Sheet No.13. “International Humanitarian Law and Human Rights.” Available at <http://www.ohchr.org/Documents/factSheet13en.pdf>. Accessed 06-12-2017, (1991), p.1

<sup>35</sup> Article 3 of the four Geneva Conventions on Humanitarian Law of 1949

security forces, other armed forces, and of all law enforcement agencies carrying out the role of enforcing IHR and international human rights law applicable in armed conflicts are well educated law.<sup>36</sup>

In addition, the significant role of some three basic conventions contributing to the development of international humanitarian law must be mentioned; law of Geneva is the first one and it is typified by the international Conventions and Protocols that was formed within the jurisdiction of the aegis of the International Committee of the Red Cross (ICRC) aiming at protecting the victims of war. The second one is “law of The Hague” which emanated from the outcomes of the Peace Conferences in the capital of the Netherlands in 1899 and 1907, basically dealing with acceptable means and methods of war. And the last one is the contribution of the United Nations in ensuring the protection of human rights of the people during wartime.<sup>37</sup>

## **2.5 International Humanitarian Law and International Human Rights Law**

The first basic fact about IHL is that it is applicable only to armed conflicts. While human rights law is applicable in both peace and war as stated for example in Common Article 2 of the 1949 Geneva Conventions. As a supportive argument, the European Union Guidelines on promoting compliance with international humanitarian law stated the application of IHL is during the armed conflict only. On the contrary, human rights law is applicable to everybody under the jurisdiction of the state both during the period of peace and war. On a similar perspective, the two bodies of rules may be applicable to specific situations. In addition, the UN Report concerning the condition of detainees in Guantánamo Bay laid emphasis on the significance of applying the two set of rules most in particular the applicability of human rights during armed conflict.<sup>38</sup>

The International Court of Justice’ jurisprudence has constituted the point of connection between the two bodies of laws. In the cases of the Construction of the Wall in the Occupied Palestinian Territory and DRC vs Uganda, the Court laid emphasis on the applicability of human rights treaties during wartime. They are both applicable alongside

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<sup>36</sup> Fact Sheet No.13 (1991, p.2)

<sup>37</sup>Frits Kalshoven & Liesbeth Zegveld. “Constraints on the Waging of War: An Introduction to International Humanitarian Law.” ICRC paper, (2001), p.111

<sup>38</sup> Alexander Orakhelashvili. European Journal of International Law, Volume 19, Issue 1, (2008), p.2

with humanitarian law. The experience of the parallel applicability of both body of law is most particularly found in the legal regime of belligerent occupation. As stated in the Article 42 of 1907 Hague Regulations, if there is an effective control over the territory then it is under occupation. The violation of humanitarian law and human rights law provisions by the acts of occupying power is rendered null and void.<sup>39</sup>

In the case of Palestine Wall, the application of humanitarian law in constructing the Wall constituted its starting point with an emphasis on the fact that the territory of Palestinian is under the occupation of hostility. In this respect, the decision of the Court was based on the fact that the construction of the Wall resulted to annihilation of properties, which is a violation of Articles 46 and 52 of the 1907 Hague Regulations and Article 53 of the IV Geneva Convention and the Court argues that these destructions did not come from military force. It was observed by the Court that constructing the wall would hinder individual rights to work, education, health and proper standard of living as stated within the scope of ICESCR. Concerning the aspects of civil and political rights, it was observed by the Court that construction of the Wall is a deprivation of important rights on the side of Palestinians such as right to choose the preferable place of their residence, violation of freedoms of movement as stated under the jurisdiction of Article 12(1) ICCPR. The parallel application of both body of law on the similar perspective is also found in the Congo-Uganda case, whereby the Congo raised the claim of serious and disastrous violations of human rights and IHL against the lives and property of the Congolese population done by Ugandan forces that have occupied some parts of Congo. As a result, it was observed by the Court that Uganda was held responsible for many human rights and IHL violations. This shows that the applicability of these two different bodies of rules is not only found in the same situation but also in the same conduct.<sup>40</sup>

Based on the decision of the ICTY, the complementary nature of both human rights law and humanitarian law became apparent and they can be used to examine the scope and contents of each other. Based on the high rate of their similarities in terms of values, goals and terminology, the use of human rights law to assist the content of customary international

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<sup>39</sup>Alexander Orakhelashvili. "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?" *European Journal of International Law*, Vol. 19 no. 1 (2008), p.162-163

<sup>40</sup>*Ibid* (39), p.163

law in the field of humanitarian law is always a welcoming and appreciative idea. And to a certain extent, it is possible to say that international humanitarian law has merged with human rights law.

As a matter of fact, the possibility of transposing developed issues in the field of human rights law to international humanitarian law was stated in the Tribunal if those issues consider the specificities of IHL. In the aspect of applying humanitarian law, it stated by the ICTY that during the armed conflict, the applicability of IHL is beyond the cessation of hostilities and similar situations could be found in the UN Security Council concerning the occupied territories of Israel, which includes Jerusalem and the Golan Heights. It should be noted that the application of humanitarian law is not limited to situations suitable to the cessation of hostilities. It can also be applied to the e prosecution of international crimes, or to the duties and rights of the occupying power.<sup>41</sup>

The state of war where the rules of Humanitarian law are applicable is considered by human rights treaties as conditions that justify the deviation from treaty obligations. It is stated that the states parties can deviate from under assigned obligations under some relevant treaties base on the situation at hand so long they are justifiable under international law as stated officially under Article 4 ICCPR and Article 15 ECHR' proclamation of public emergency that threatens the life of the nation. Also, the European Court of Human Rights is responsible to evaluation the states' derogation whether it is in alignment with the provisions under international humanitarian law. Under humanitarian law, the stated requirement such as the differentiation between necessity and proportionality, civilian and military targets constitutes the basic conditions at which the impossibility of derogation from human rights treaties can be used to justify the freedom action of states. As a matter of fact, though there is a possibility for emergency derogations from human rights law, they cannot come from humanitarian law because IHL is also applicable to those emergency situations leading to derogation from human rights law. In this respect, humanitarian law can be seen as a balance between military needs and considerations of humanitarian.<sup>42</sup>

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<sup>41</sup>Ibid (39) p.167

<sup>42</sup>Ibid (41) p.168.

There are situations whereby humanitarian law is considered important because it is seen as not much barrier as human rights law, for example, the fight against terrorism that is justified under international humanitarian law. This reflected in the e Israeli Supreme Court' judgment on the unlawful assassination of targeted suspected terrorists. The main two claims observed by the Court concerning its judgment has to do with the relating law that is applicable to targeted assassinations; and the question of how to define the type of combatants qualified for the attack. Based on the first point, the starting point was noted by the Supreme Court to be between the Israel and many other terrorist groups functioning in Samaria, Gaza Strip and Judea, which are the main areas where there are constant armed conflicts. The application of humanitarian law is not really understandable in this situation because based on the Article 2 of 1949 Geneva Conventions and Additional Protocol I of 1977, there is no legal armed conflict. According to these conventions, there must be a conflict between two or more states and in this respect; the perception of terrorism in these areas is not legally qualified for the application of humanitarian law. This means that while there are doubts on the application of humanitarian law in these situations, human rights law is legally applicable in terms of different human rights abuses committed.

It can be concluded in this sense that each body of law can be applicable during armed conflict; each of them can set standards for assessing the relevant conduct of states; the both body of laws can govern the same subjects; and whatever the power of national and international decision making bodies, they have to officially consider the impact of both human rights law and humanitarian law on their outcomes in order to comply with international law.<sup>43</sup>

According to American Red Cross (2011) both international humanitarian law and human rights law are complementary in nature. The two body of law aim for the protection of human dignity though they are doing this not under the same circumstances and in different ways. Human rights law is applicable to every situation and it covers every individual subject under the jurisdiction of a state. It aims at ensuring individual protection from the arbitrariness of state's behaviour, which means human rights law is also applicable during the period of armed conflicts. There are exceptional conditions for

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<sup>43</sup>Ibid (39) p.5

derogation from human rights such as the period of public emergency that are threatening to the life of nation as stated under many human rights treaties such as the European Convention, the international Covenant on Civil and Political Rights and the American Convention on Human Rights. In this respect, there are some rights that can be temporarily suspended for the sake of national security within a particular period of time such as (freedom of movement, liberty and security, freedom of association, etc.<sup>44</sup>

But there are cores that can never be suspended regardless of whatever happens. On the other hand, IHL is specially designed for the times of armed conflicts that aim to ensure the protection of victims of war such as civilians, wounded and sick, prisoners, displaced, etc and also for regulating the conduct of war. This means that because it is applicable to certain situation, there is no chance for derogations. The main targets of international humanitarian law is to ensure the protection of life, health and human dignity of civilians as well as fighters of war that are no longer part of the war, those that are sick and wounded, and also to regulate the methods and means of conflicting parties in fighting war. The basic aim is to reduce the implications of war and by doing this, IHL has also serve to protect some core values of human rights during the period of armed conflicts such as barring of slavery, torture and inhumane treatment. If these protections are examined collectively, it can be said that both body of laws (human rights and humanitarian law) are set to ensure the protection of some basic rights.<sup>45</sup>

In conclusion, this chapter basically focuses on the conceptual clarifications about the research topic. Definition of terrorism, global on terrorism, international humanitarian law, and international human rights law and basically the inter-relationship between the two bodies of law are explained. This is done in order to establish the significance of complying with international humanitarian law during global war on terrorism and how failure to comply with this law would likely result to human right casualties.

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<sup>44</sup>American Red Cross. "Survey on International Humanitarian Law." Research conducted by ORC International, (2011), p.1-2

<sup>45</sup> Ibid (44), p.2



## **CHAPTER THREE**

### **HUMAN RIGHTS, IHL AND COUNTER-TERRORISM**

#### **3.1 Human rights and Counter-terrorism**

In order to ascertain the need to ensure the protection of international humanitarian law during global war on terrorism, it is important to examine the human rights situation during counter-terrorism. It should firstly be noted that there is no difference between the disastrous effects of terrorism on human rights and effects of counter-terrorism on human rights if adequate measure is not taken in carrying out these operations. Due to the impacts of terrorism on human rights, it is both the right and duty of states to ensure that effective measure is taken in combating terrorism and these effective counter-terrorism measures are complementary with the protection of human rights. As stated in the chapter I, section E of the United Nation Security Council after the events of 9/11 that there is a need for Counter-Terrorism Committee that would oversee the implementation of counter-terrorism measures in order to strengthen a uniform approach in responding to the threat of terrorism and legal framework for international cooperation in the aspects of reducing the rate of financing terrorist activities, decreasing its risk to obtaining modern weapons, formation of monitoring body and improvement on information concerning cross-border.<sup>46</sup>

Regional organizations such as the Council of Europe, the African Union, League of Arab States, the European Union, the Organization for Security and Co-operation in Europe, the Organization of American States, and the South Asian Association for Regional Cooperation and other organizations and the Organization of the Islamic Conference have been efficient in developing regional approaches to fight against terrorism. Since the adoption of Security Council resolution 1373 (2001), there has been formation of counter-terrorism legislation and security, which mostly have created the space for human rights

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<sup>46</sup> chapter I, section E of the United Nation Security Council

protection. And many countries have violated civil liberties and fundamental human rights in the course of discharging their assigned duties of fighting against terrorism via quick reformation of their legislative and practical measures. But there are most important human rights that must be protected by states in combating against terrorism; these rights will be discussed later.<sup>47</sup>

There is high rate of commitment found on the side of international community engaging in different measures via the adoption of the United Nations Global Counter-Terrorism Strategy by the General Assembly in its resolution 60/288 to ensure that human rights are adequately protected as well as the rule of law to be foundational basis of fighting against terrorism. Different measures have been adopted by member states in addressing the conducive conditions for the functionality of terrorism along with the inclusion of the absence of rule of law and human rights violation. They have also been committed to adopt measures ensuring that any counter terrorism measure taken must comply with their stated obligations within the scope of international law and specifically human rights law, international humanitarian law and refugee law. The report submitted by the High-level Panel on Threats, Challenges and Change in 2004 claimed that international terrorist organizations are able to recruit high number of people as a result of high rate of poverty, foreign occupation and lack of democracy and human rights. In 2005, the General Assembly adopted The World Summit Outcome buttressing on the need to respect human rights during global war on terrorism or counter-terrorism with the conclusion that any attempt to combat against terrorism by international cooperation must comply with stated rules of international law with the inclusion of the United Nations and relevant international conventions and protocols.<sup>48</sup>

Additionally, the United Nations General Assembly and Human Rights Commission have explained emphatically that any measure taken by states to fight against terrorism must comply with regulations stated under international human rights law, refugee law and international humanitarian law. In doing the same thing, the UN security Council started with the set out declaration in resolution 1456 (2003), stated that “States must ensure that any measure taken to combat terrorism comply with all their obligations under

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<sup>47</sup>Hellquist E (2014), p.8-9

<sup>48</sup> Security Council Report (1999), p.10.

international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.” This rule was re-confirmed in Security Council resolution 1624 (2005). In the report submitted in 2006, it was stated that “Uniting against terrorism: recommendations for a global counter-terrorism strategy” (A/60/825), where by human rights was described by the United Nations Secretary-General as the basic significant factor in implementing every phase of counter-terrorism strategy with emphasis laid on the ideal measures taken in counter-terrorism to be complementary with protection of human rights and not contradictory with each other. As stated by Universal and regional treaty-based bodies in supporting this assertion that the legitimacy and lawfulness of counter-terrorism measures is dependent on its compliance with international human rights and humanitarian law.<sup>49</sup>

According to the United Nations Global Counter-Terrorism Strategy, the relationship between human rights and security was reaffirm with the main priority given to the respect of human rights and rule of law as the main factor of national and international counter-terrorism efforts. The designed strategy has mandated the commitment of the member states to ensure the protection of rule of law and human rights as foundational tools of combating terrorism. In order to improve its level of effectiveness, the development of national counter-terrorism strategies seeking for the prevention of terrorist acts and addressing the various conducive conditions for spreading terrorism should be included as well as efforts to lawfully extradite perpetrators of such acts, to enhance effective involvement of leadership of civil society and to pay ultimate attention to the rights of people with the experience of human rights violations. It should be noted that, the protection and promotion of human rights is not only essential but states have to ensure the compliance of international human rights obligations during counter-terrorism military operations.<sup>50</sup>

The Security Council is assigned with the primary duties under the Charter of the United Nations to maintain international peace and security with the inclusion of different measures taken in addressing terrorism as a threat to international security and peace. As a

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<sup>49</sup>Adil Duyan. “Analyzing Different Dimensions and New Threats in Defense Against Terrorism.” Center of Excellence-Defense against Terrorism. (2012), p.330

<sup>50</sup>Christian Tomuschat. “Human Rights and International Humanitarian Law.” The European Journal of International Law Vol. 21 no. 1, (2010), p.17-18

result, there are many counter-terrorism actions that have been taken by the Security Council most vividly in forms of placing sanctions against the excess of states that have relationship with any terrorist act as well as the formation of committees assigned with the duties of monitoring the progressive implementation of the sanctions placed. There was adoption of resolution 1373 (2001) in year 2001, which put states under the obligation of engaging in different measures in preventing the activities of terrorism and criminalize every form of terrorist action as well as seeking their attention if needed to engage in collaborative measures by promoting cooperation among states in order to combat against terrorism such as signing up to international counter-terrorism instruments. United Nations member states are obliged to always inform the Counter-Terrorism Committee on their progress in combating terrorism. This means that in ensuring the compliance of counter-terrorism measures to international human rights law, refugee law and humanitarian law in several of its resolutions, the Security Council has called the attention of every member state.<sup>51</sup>

Additionally, under the legal framework of human rights, the general obligations assigned to states are extremely required by the universal treaties on counter-terrorism to comply with the various aspects of human rights law. But it is quite unfortunate that despite all the available provisions stated in different conventions concerning the significance of ensuring the protection of international human rights, refugee rights and international humanitarian law during the war on terrorism, it seems beyond reasonable doubt that the model of this war poses a serious threat to international human rights because there is little or less regards given to human rights both in practice and in theory. The legitimate targets are military fighters and non-combatants becoming the victims of the war either by accident or mistake are always regarded to as collateral damage instead of considering as victims of the attacks. There are many situations resulting to the death of mistaken identity or sentenced without given a legal trial due to the fact that the condition of this war neglects due process. There are limited rate of human rights granted during armed conflicts under

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<sup>51</sup>Arnold, R. and Quenivet. "International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law." MArtinusNijhoff Publishers (2008), p.56

the international humanitarian law though these rights cannot be compared with the rate of available rights to be enjoyed during peace time.<sup>52</sup>

A basic example of human rights violation is tolerance of torture. Since the attacks of 9/11, the Washington Post reports has declared the commitment of United States to capture countless of terrorist suspects in different countries and take them to where they can be interrogated under serious torture. It should be noted that it is not only United States that have demonstrated its strong interest in using torture to obtain information from the suspects, the Swedish government snatched a suspected Islamic extremist at where he was granted political asylum and he was transferred to Egypt where he was torture to the extent that he could not walk properly according to the report of Amnesty International.<sup>53</sup> Also, none of the adopted international transportation is lawful and as a matter of fact, it is a violation of international treaty obligations under the Convention against Torture. The main fact to be considered in this respect is that war on terrorism is not like any other war whereby the enemies are not state or government. There is no room for negotiation, no chance for ceasefire and non of the enemies is allowed to surrender as it is found in the traditional conception of war. In this kind of war, there is no chance for capitulation, which means the only target of this war is to find all enemies and eliminate them.<sup>54</sup>

According to Hoffman P (2004) the fulfillment of universal human rights is considered as the best way of ensuring freedom and security that are stronger enough to combat terrorism. The framework of human rights is never a hindrance to counter-terrorism. As a matter of fact, in the history, whenever human rights are sacrifice for the sake of security, the result is always violation of both.<sup>55</sup> Usually, marginalized groups and minorities are always experiencing human rights violations. Many times the violations of human rights for the sake national security come in form of arbitrary arrest and imprisonment, mass murder or genocide, the suppression of speech or religion, which has resulted to the death of millions of lives. Undermining international human rights law and institutions will never

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<sup>52</sup>Alexander Orakhelashvili. "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?" *European Journal of International Law*, Vol. 19 no. 1, (2008), p.164

<sup>53</sup> John Radsan. "A More Regular Process for Irregular Rendition." *Seton Hall Law School*, (2006), p.42

<sup>54</sup>Ibid (52), p.165.

<sup>55</sup> Mhlanga G (2008), p.60

facilitate peace in any society.<sup>56</sup> As a matter of fact, the failure of state to adhere to norms of fundamental human rights will likely result to the success of terrorist groups whereby discontented and disenfranchised citizens will be easy to convince to join terrorist groups when they are recruiting their members. Human rights violations for the sake of combating terrorism will undermine every responding effort d to the threats of terrorism making society less secure in both short and long run.<sup>57</sup>

Furthermore, failure to adhere to the universal human rights norms and humanitarian law will not only diminish the societal values but also hinder the possibility of international cooperation and public support to intervene in helping a state to develop an effective antiterrorism approach. No matter the ability of a nation, it cannot singlehandedly curtail the threat of terrorism, which means every government at some point will need international cooperation in order to be strong and active in preventing acts of terrorism. And without complying with the stated standards of international human rights in its counter-terrorism measures, it will be difficult if not impossible to enjoy such international, national, and local assistance. However, the adopted methods of fighting against terrorism so far has put human rights at risk such as method used in detaining and interrogating suspects of terrorism are violation of international human rights and humanitarian norms in the name of security. All around the world, the event of 9/11 has been a justifying tool for governments to suppress human rights in their counter-terrorism measures. It should be noted that there is wide of range of discretion using by governments to identify terrorist threats all around the world, which is officially recognize within the jurisdiction of human rights and humanitarian law.<sup>58</sup>

Within the framework of international human rights, the first conception on war on terrorism is the question of whether this war is actually a war and if it is, what kind of war can it be called? One of the main features of war on terrorism is its un-acceptance that there is any body of law that is applicable to method of fighting the war. Another argument under human rights is the assertion that there is no place in the world where human rights

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<sup>56</sup> Hurst Hannum. "Reinvigorating Human Rights for the Twenty-First Century." *Human Rights Law Review*, Volume 16, Issue 3, (2016), p.411

<sup>57</sup> Paul Hoffman. "Human Rights and Terrorism." *Human Rights Quarterly*, Vol 26, (2004), p.934.

<sup>58</sup> *Ibid* (57), p.935

should be absent because everybody has the right to enjoy these rights not as a result of their nationalities or race or identity but simply as a result of the fact that they are human beings.<sup>59</sup> Additionally, in contrast with the idea of Washington DC about war on terrorism, it should be noted that there is no space between international human rights and international humanitarian law that can be used by war on terrorism as freedom of limitations for combating this war. The primary duty of law is to constrain the power executives and make them subjects to law. The un-acceptance of rule of law to regulate the conduct of war on terrorism has resulted to violations of individual rights.<sup>60</sup> The decision of the United States in 2003 to react to questions raised by the UN Special Rapporteur on Extrajudicial, which led to killing of six men in Yemen through the use of missile shot is great example.<sup>61</sup>

With the definition of war on terrorism, it becomes visible that the United States and cooperating governments have successfully destroyed all human rights protection even in many situations that international humanitarian law is involved. There is no reason why this would in practical sense become a motivation for any government fighting against national liberation movements, dissidents or opposition individual and label them as terrorist in order to justify their military attacks against them. The geographical scope of fighting this war is boundary-less. Terrorism has been defined as any act that considers fighting against terrorism as a threat. The whole planet is the battle ground regardless of borders and sovereignty. Protection of human rights does not make any sense in combating terrorism.<sup>62</sup>

### **3.2 IHL and War on Terrorism (GWOT)**

As it has been explained many times in this dissertation, the regulation of how war is conducted is the main objective of international humanitarian law. It is a body of law that includes many treaties aimed at regulating the means and method of war, the construction

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<sup>59</sup> OHCHR Fact Sheet. "Human Rights, Terrorism and Counter-terrorism." Office of the United Nations High Commissioner for Human Rights, (2008), p.5.

<sup>60</sup> Marco Sassoli. "Transnational Armed Groups and International Humanitarian Law." Occasional Paper Series, (2006), p16.

<sup>61</sup> Andrea Bianchi. "Assessing the Effectiveness of the UN Security Council's Anti-terrorism Measures: The Quest for Legitimacy and Cohesion." *European Journal of International Law*, Volume 17, Issue 5, (2006), p.4

<sup>62</sup> *Ibid* (57), p.940

of enemies during wartime, the condition of civilians and those combatants that are no longer taking part in the war. The stated treaties under IHL are the four Geneva Conventions of 1949, and the two Additional Protocols of 1977 whereby the first Additional Protocol covers international armed conflicts and the second Additional Protocol addresses the non-international armed conflicts. The international armed conflicts take place with the involvement of at least two states or conflicts between state and armed groups such as terrorist groups situating in the territorial jurisdiction of another state. And the non-international armed conflict covers the conflict between states and armed groups such as terrorist groups or insurgency within the territorial jurisdiction of a single state. The unique nature of this law generally explains the fact that it is binding on both states and non-state actors with the inclusion of every individual participating in the hostilities as well as armed groups. This law is applicable every situation of armed conflict whether it is a formal conflict or informal, so far there are hostilities and military attacks involved.<sup>63</sup>

However, it should be noted that the legal use of ammunitions is not under the scope of IHL. Its responsibility lies in its regulation of the conduct of conflicting parties in armed conflict and the method at which each party attacks each other militarily. There is a connection between the regulations on the conduct of armed conflict and the use of military weapons. This is found in the method of applying the principles governing the dynamics of war whether by states or terrorist armed groups. In the aspect of war on terrorism, it should be noted that there will be constant shift between ‘international’ and ‘non-international’ armed conflict under the applicability of IHL base on the nature of each case and character of the conflict. Also, whatever should be the character of the armed conflicts; it cannot hinder the basic general application of the principles of international humanitarian law to all conflicting parties. For example, in the case of *Nicaragua v the United States*, it was argued by the ICJ that there are identical and similar features in the minimum rules applicable to both international and non-international armed conflicts under the scope of IHL. This similar interpretation was done by the ICTFY and Rwanda with the concluding remarks of the Court stating that it is possible to prosecute individual for war

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<sup>63</sup>Ibid (10), p.18



crimes even if it is committed in an internal conflict. Whereby the traditional perception of war crimes only belong to international armed conflicts.<sup>64</sup>

### **3.2.1 The Principle of Distinction and Proportionality**

In explaining the principle of distinction and proportionality, which are basic principles of international humanitarian law. The principle of distinction constitutes the fundamental bases of IHL. It is an obligations placed on the armed conflict to properly differentiate and separate civilians from the combatants and to ensure that combatants that are involved in the conflicts are the main targets for attacks. Base on the definition, combatants can be defined as people or group of individual that organized armed conflicts possessing the right to directly involve in the hostilities. While civilians are not combatants and they do not have any part to take in the armed conflicts. According to Article 13 of Protocol 2 stipulates explains that there shall be general protection for the civilian population and individual civilian against the perilous effects of military operations during armed conflicts. Both civilian population and individual civilian shall not be part of objects of military attack or threat of violence. Civilian shall enjoy this protection unless they decide to take part in the hostilities. It was also stated that civilians should abuse this protection likewise the combatants are not expected to do the same by pretending to be civilian during armed conflicts. Civilians will be persecuted if they are found participating in the hostilities or committing acts of terror with the aim of spreading terrorism among civilian population. International law also stated that the presence of combatants among the civilian population does not automatically define them as combatants and objects of attacks.<sup>65</sup>

In the global war on terrorism, it is difficult to differentiate between civilians and combatants. For example in Afghanistan, Taliban and al-Qaeda forces were not on uniform and also many combatants from the coalition forces were pretending as civilians, performing civil services to civilian population. Also in Iraq, many members of Iraq's armed forces disguised as civilians.<sup>66</sup> This kind of situation is never a hindrance to the application of international humanitarian law though they could create some practical

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<sup>64</sup>ICRC. "International Humanitarian Law and the challenges of contemporary armed conflicts." 31st International Conference of The Red Cross And Red Crescent, (2011), p.5-6

<sup>65</sup> Soft Protocol (1949) Protocol Additional to the Geneva Conventions of 12 August 1949

<sup>66</sup> Kenneth Watkin. Warriors without Rights? Combatants, Unprivileged Belligerents, and the Struggle Over Legitimacy. Occasional Paper Series, (2005), p.6.

challenges to apply the principle of identification. This has always been a challenge to IHL, the difficulties encounter in making distinction between the civilians and combatants. There is official recognition of combatants under IHL if they are armed openly during military engagement. The principle of distinction is applicable to civilians and military objects. Additional Protocol 1 explains military objectives to be different contributions of military acts. This principle is also applicable to indiscriminate attacks and attacks on military targets. The conditions of indiscriminate attacks encompasses those that are not directed for military objective; the use of weapons that cannot directly target military objective; attacks that result to many accidental and incidental loss of civilians.<sup>67</sup>

The second principle of IHL as stated above is known as principle of proportionality, which explains that there should be a solid military purpose in whole context of a conflict. This aspect is difficult to ascertain but ICRC has stated that the achievements of the conflict has to be equivalent or similar to the associated actions in order to ensure that the motive behind the military attacks are for military objectives. In this respect, conflicting parties are expected to terminate any attack that will result to incidental loss of civilians and their properties. This principle also extends to the means and method of conducting warfare. Conflicting parties are mandated to use methods and means that would not result to unnecessary injuries. Conflicting parties during their military operations are not expected to use civilians to shield military targets. They cannot use starvation as a method of combating war, displacement of civilians for the sake of war and destroying objects that are directly connected with the survival of civilians.<sup>68</sup>

### **3.2.2 The law of occupation**

In the global war on terrorism, If it is not a UN-led or UN-mandated administration, such as Iraq, the US-led coalition got the temporal responsibility of becoming an occupying power assigned with the duties and obligations under the regulation of IHL. According to section III of the Fourth Geneva Convention of 1949 stated the duties of occupying power along with the obligation of ensuring the protection of civilian population in the occupied territory. In failed state where autocratic government or leader is defeated, the occupying

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<sup>67</sup> Weiner Joseph. "Discrimination, Indiscriminate Attacks, and the Use of Nuclear Weapons." . Available at <http://lcnp.org/pubs/Weinerttacks.pdf> Accessed: 13-12-2017, (2011), p.18-19

<sup>68</sup>Ibid, (10), p.20

power is assigned with administrative responsibilities of ruling the territory and providing humanitarian needs for the people. Base on the stated regulations in Article 55 of the Fourth Geneva Convention states that it is the duty of occupying state to provide food and medical equipment to the host state and as a matter of fact, necessary food stuffs and medical supplies that are sufficient enough should be brought along by occupying power.<sup>69</sup>

The duties of agencies supplying aids can be explained in many ways; the occupying power must ensure the condition of food and supplies of medications to the inhabitants of occupied territory. And there is possibility for occupying power to confirm the sufficiency of these stuffs when they are not for the sake of preventing aid agencies in the host state. This means that the occupying power is acting in breach of Article 70. Also, the occupying power could entreat military necessity in order to escape the work of making verification on the level of supplies of the needed materials, which could also result to the exclusion of aid agencies in the host states. Another fact is that an occupying power can decide to make use of the foodstuffs and medical supplies for extreme situation whereby the requirements of civilian has been adequately taken care of. This require the need for additional obligation of occupying power to arrange the payment of fair price for all remnant goods, which may not be fitting the ethical standards of the international humanitarian agencies. And lastly, it is possible for an occupying power to be incapable of restoring peace and stability after the armed conflicts. And the situation after the conflict may get worse and hinder the work of aid agencies in the occupied territory.<sup>70</sup>

### **3.3 Three Scenarios of War on Terrorism**

There are different ways at which military forces have been in combating terrorism and while cannot not be considered as armed conflict under the scope of IHL, some are fitting the standards of armed conflicts as defined by IHL and requires the applicability of this body of law. Neuman G.L (2003) explained the scenarios at which global war on terrorism can be fought and the application of IHL principles. These are stated to be on the high seas, against host state and within a host state.

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<sup>69</sup>Benvenisti Eyal. "The Security Council and the Law on Occupation: Resolution 1483 on Iraq in Historical Perspective." Available at [www.tau.ac.il/law/members/benvenistiamos.doc](http://www.tau.ac.il/law/members/benvenistiamos.doc). Accessed: 13-12-2017, (2003), p.6

<sup>70</sup>Ibid (10), p.20-21

The author explains the first scenario to unrealistic in nature, which is a conflict between a state and external terrorist groups on the high seas, launching attacks against a state on the demand that the state's environmental policies should be adjusted. If such state reacted with the use of military force against the terrorist organization then this conflict cannot be classified under international armed conflict within the scope of the 1949 Geneva Conventions, the Statute of ICC and the Additional Protocols. This gives more chance for states to attack such threats without causing any harm to civilians or encroaching another state. The question of whether IHL should address this type of conflict was answered by the author stating that there are general principles of customary international law that has mandated the protection of humanity in this type of situation. It should be noted as well that terrorists are also human being and regardless of their crimes, they deserve to be treated with some level of human dignity. Some of the restrictions on how states could respond in this situation might come from human rights law and not IHL.<sup>71</sup>

The second scenario is described as terrorist actions against the host state, which was explained by the author that when a terrorist organization is situated in a state and start attack the territory of another state, which is a target state provoking an armed response from this state in order to curtail this attack. In this situation where terrorist groups are operating among civilian population, the need for the application of the IHL is to ensure the protection of civilians. The violations committed by the terrorist groups that result to counter-terrorism measures should not be committed by the states' counter-terrorism measure. The application of IHL in this situation is dependent on the decision of the host state concerning the armed conflict. If the target states invade the territory of the host state without its consent for the sake of combating terrorism, it can lead to international armed conflict between the two states. In this respect, the application of IHL will be done basically to protect the civilian population of the host state. Even if the host state consciously accommodates the terrorist group, IHL still applies to protect the civilians of the target state. The rules of human rights cannot ensure the protection of the civilians of host states against the military attacks of the target state. The fact also remains that application of IHL could provide protection for terrorist groups because some bombing

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<sup>71</sup>Gerald L. Neuman. "Humanitarian Law and Counterterrorist Force." Available at <http://ejil.org/pdfs/14/2/415.pdf>, Accessed on 15 October 2017, (2003) p.292.

strategies that would kill few terrorists at the detriment of many civilians will be disallowed under the principle of IHL.<sup>72</sup>

The third and final scenario is named to be terrorist attacks within the host state. This is a situation whereby the host state refuses to protect the situated terrorist groups in its territory and allow the target states to join its forces in curtailing the terrorist organization. If there is capacity for such terrorist groups to resist then the armed conflict will rise to the stated level under IHL, which could be considered as international armed conflicts due to the intervention of the target state' military forces. This is known as internationalized internal armed conflict, which little attention has been given to it under IHL principles. The rules of internal conflicts regulate the actions of private forces but with the involvement of foreign states supporting the host state then it becomes complex. There are provisions under human rights law concerning the actions of host state violating human rights of its civilian population. And also the goodwill of the host state government for its citizen should not be a hindrance in allowing the target state to join the state. The scope of such conflict should be properly addressed in the regulations of internal conflicts under international humanitarian law.<sup>73</sup>

In conclusion, this chapter explains the various regulations under international humanitarian law and human rights law on how GWOT should be conducted. As put forward by the United Nations General Assembly and Human Rights Commission that any measure taken by states to fight against terrorism must comply with regulations stated under international human rights law, refugee law and international humanitarian law. This is to establish a legal fact on how the conduct of GWOT has violated these regulations and resulted to the same crime committed by terrorist attacks, which is violation of human rights.

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<sup>72</sup>Ibid (71), p.293

<sup>73</sup>Arnold, R. and Quenivet. "International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law." MartinusNijhoff Publishers, (2008), p.8

## **CHAPTER FOUR**

### **GLOBAL WAR ON TERRORISM AND IHL IN IRAQ**

#### **4.1 The 2003 Iraq War**

This war is also regarded to as the Third Gulf War started in 2003 when the alliance led by United States invaded Iraq under "Iraqi Freedom Operation" against the Baath Party of Saddam Hussein. This invasion resulted to the destabilization of the Iraqi army and the killing of Saddam Hussein. The United States became the occupying power in Iraq with the aim of forming a new system of government and then violence erupted against the U.S alliance forces between the insurgents, the new established Iraqi government and U.S military. According to the report of the Iraq Body Count, in 2011, this conflict has led to the death of around 103,013 and 112,571 Iraqi civilian populations, with the inclusion of around 250,000 Iraqi wounded civilians. Also base on the report of the National Priorities Project, it estimated around 800 billion US dollars cost of the war. Along with over 2millions Iraqis left the country as a result of this war. The U.S invasion of Iraq was the second U.S military operations after declaring a war in Afghanistan under the doctrine of "preventive war" designed by Bush administration, which has been described as the "new American empire" of United States of America by some authors.<sup>74</sup>

Stated Reasons for U.S Invasion Kaka Amin Z.T (2014) Invasion of Iraq was defined as a reaction to 9/11 so the first main reason for this war is fighting against terrorism. Iraq was accused a supportive state for al-Qaida terrorist organizations that have been held responsible for attack against the warship USS Cole, against many U.S. embassies in Africa, and attacks of 9/11. The second stated reason is the accusation against Iraqis leader engaging in the proliferation of weapons of mass destruction and the need to destroy these weapons. And the third reason was the need to destroy the regime of Saddam Hussein, eliminate him and establish democratic system of government in the country. These three stated reasons have been the claims of United States to justify its military operations in the

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<sup>74</sup>Youssef Bassil. "The 2003 Iraq War: Operations, Causes, and Consequences." IOSR Journal Of Humanities And Social Science (JHSS), Volume 4, Issue 5, (2011), p.29

country.<sup>75</sup> According to Lynch and Singh (2008, p.148) the invasion of Iraq in 2003 is one of the most controversial actions of United States military operations. And Duffield (2005) explains that there different stated reasons behind the decision of United States to military force to destroy Saddam Hussein's regime. The motivation of United States to carry out this operation has generated countless of different arguments by many scholars in the literature.<sup>76</sup>

It is without doubt that the decision to invade the country is multifaceted in nature ranging from political to economic, ideological, and strategic reasons. According to Feith (2008) that pronounced U.S reasons for invading the country includes; Iraq's WMD capability; Iraq's support for terrorism and the country is threat to its neighbors as well as its the tyranny nature of its leader. On the similar perspective, George W. Bush announced that the reasons why United States has decided to declare war against Iraq are cleared, which are to destroy their "weapons of mass destruction" to put an end to Saddam's support of terrorism and to bring freedom for the Iraqi people. Attempt shall be made to explain in these three main reasons in order to ascertain their credibility.<sup>77</sup>

**Weapons of Mass Destruction:** In assessing the reasons behind United States' invasion of Iraq, the first point of analysis is the strong belief of United States in Iraq's possession and development of WMD.<sup>78</sup> This reason that has been identified to be the main motive behind the invasion.<sup>79</sup> According to Enemark and Michaelsen, (2005) the evaluation of U.S on this point is base on the result of intelligence assessment that stated the Iraq's possession of WMD. And also Colin Powell who happened to be the U.S Secretary of State found some evidence to prove that there are WMDs under Iraq's possession along with the statement of U.S former Vice president,<sup>80</sup> Dick Cheney who affirmed that without any doubt, there surely WMDs under Saddam Hussein' possessions and it is certain that he will use them

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<sup>75</sup> Zana Tofiq Kaka Amin. "Why did the United States lead an invasion of Iraq in 2003?" *International Journal of Political Science and Development*, Vol. 2(11), (2014), p. 301-302

<sup>76</sup> John S. Duffield. "Oil and the Iraq war: How the United States could have expected to benefit, and might still" *Middle East Review of International Affairs*, 9:2, (2005), p. 109

<sup>77</sup> Douglas J. Feith. "War and Decision." New York: Harper Audio, (2008) p.304

<sup>78</sup> Brian C. Schmidt & Michael C. Williams. "The Bush doctrine and the Iraq War: neoconservatives versus realists", *Security Studies*, 17:2, (2008), p. 191-220.

<sup>79</sup> Daalder IH, Lindsay JM (2003). *America unbound: The Bush revolution in foreign policy*, Washington, D.C. Brookings Institution Press, p.156.

<sup>80</sup> Enemark C, Michaelsen C. "Just war doctrine and the invasion of Iraq", *Australian Journal of Politics & History*, 51:4, (2005), p. 545

against U.S and its allies. According to Wolfowitz (2003) cited by Halper and Clarke (2004) the U.S had to use the accusation of WMD against Iraq for bureaucratic reasons, due to the fact that it is the only reason people would easily accept.<sup>81</sup> The U.S government was of the belief that Iraqi regime would use chemical weapons against them considering the fact that Saddam has used this weapon against Kurdish people in Erbil before and against the Iranians during the Iraq-Iran War.<sup>82</sup>As put forward by Fisher (2003, p.391) Bush claimed that Saddam has used chemical weapons against his own people before so we would not allow him to use it against us. These are the arguments of neoconservatives and the Bush administration on the reasons to invade Iraq, which was strongly criticized by the neorealist scholars such as Mearsheimer and Walt.<sup>83</sup>

**Sponsoring Terrorism:** as stated before, another main point used by the Bush administration to justify U.S invasion of the Iraq is the terrorism threat posed by Saddam Hussein. From U.S perspective, invading Iraq is part of global war on terrorism. The attacks of 9/11 changed the U.S foreign policy and its national security agenda. And many U.S policy makers argued for the need to invade Iraq immediately after the attacks.<sup>84</sup> For example as stated by Lieberfeld, (2005) the then U.S secretary of State Donald Rumsfeld immediately called for U.S military attack against Saddam Hussein.<sup>85</sup>And Cramer and Thrall (2011) explained that 9/11 became a good excuse and gave better chance to U.S to implement its already planned actions. And as a reaction to the terrorist attacks of 9/11, the U.S declared military attacks against both Afghanistan and Iraq .<sup>86</sup> From U.S perspective, Saddam Hussein would be a huge success in supporting international terrorism, whereby Fisher (2003) stated Bush arguments that Saddam Hussein and Al-Qaeda are working together and his regime is supporting terrorism and there are Al-Qaeda terrorist group

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<sup>81</sup> Halper S, Clarke J. "America Alone: The Neoconservatives and the Global Order, Cambridge." Cambridge University Press, (2004) p.202.

<sup>82</sup>Miller (2008, p.45).

<sup>83</sup> Ibid (78), p.2

<sup>84</sup>Dumbrell J. "Bush's War: The Iraq Conflict and American Democracy" in A. Danchev and J. MacMillan (eds), Iraq War and Democratic Politics, Oxford: Routledge, (2005) p. 34.

<sup>85</sup>Daniel Lieberfeld. "Theories of conflict and the Iraq war" International Journal of Peace Studies, 10: 2, (2005), p.24

<sup>86</sup> Peter W. Galbraith. "The end of Iraq: How American incompetence created a war without end, London." Simon and Schuster, (2007), p.5



inhabiting in Iraq.<sup>87</sup> They believed that there are relationships between Iraqi regime and Osama Bin Laden. And as a result Bush suggested that *“We must strike because Iraq and Al Qaeda are connected, and Saddam has arsenals of weapons of mass destruction that he could make available to terrorist groups”*<sup>88</sup>

**To Give Freedom to Iraqi People:** Another point cited by the U.S government to justify its military operation in Iraq is the need to set Iraqi people free from autocratic leadership of Saddam. As stated by U.S policy makers that the intervention of U.S in the country should not be seen as invasion but rather as a process of liberty because the regime of Saddam is considered to be the worlds’ evil dictatorships. The U.S and its allied forces started what was called Operation Iraqi Freedom. The changing of government to a democratic style was a way of ensuring liberty in the country. According to Woodward (2004, p.88) the speech of President Bush was directly quoted; *“I believe the United States is the beacon for freedom in the world. And I believe we have a responsibility to promote freedom”* Base on Bush's perception, the military operations of U.S and its alliance are to disarm Iraq, to free its people and to defend the world from grave danger” One of the long-term policy of America is to promote democracy abroad as a way of ensuring peace in the world. And at the aftermath of 9/11, this policy gained a special significance in American foreign policy towards the Middle East. And since neoconservative ideology constituted the theoretical backbone of Bush administration, then promotion and spread of democracy abroad became a significant element.<sup>89</sup> And many foreign policy experts have argued that promotion and spread of liberal values and democratic institutions abroad are the main tools of augmenting U.S security and economics. According to Schmidt and Williams (2008) the U.S has articulated the need for liberation and promotion of democracy as the main motive behind removing dictator, Saddam Hussein.<sup>90</sup>

## 4.2 Application of IHL in Iraqi Conflicts

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<sup>87</sup> Fisher L. “Deciding on war against Iraq: Institutional failures” ,Political Science Quarterly, 118: 3, (2003) p399.

<sup>88</sup>Phillips (2004, p.311).

<sup>89</sup>Dalacoura Katerina.” US Democracy Promotion in the Arab Middle East Since 11 September 2001: A Critique.” International Affairs, (2005) p.974

<sup>90</sup> Ibid (78) p. 191-220.

In order to find out the type of humanitarian rules that are applicable to armed conflict in Iraq, there is a need to examine the nature of this conflict. This will help to ascertain the legal rules that can govern and determine the obligation of protecting the civilian population and victim of wars.<sup>91</sup> The US and UK-led coalition started air strikes in the country on the 20th of March 2003, which make it an international armed conflict between Iraqi state and coalition states. As it has been explained earlier, an international armed conflict is basically explained to be “any difference that comes up between two states resulting to the intervention of members of the armed forces.” According to International Criminal Tribunal for the former Yugoslavia (ICTY), it is defined as a situation resulting to armed force between States. Looking at the main rules of IHL, the most suitable rules applicable to this conflict is considered to be the four Geneva Conventions of 1949 but not Additional Protocol I, which both parties (U.S led coalition and Iraqi state) are not state parties. The reason for this explains that the Geneva Conventions focuses on how civilians can be protected from enemies and Additional Protocol I contains detailed rules on the conduct of hostilities.<sup>92</sup>

This means that the air strike actions marked the start of the armed conflicts and this will be done under the scope of customary international law. These rules include; “*the principle of distinction, the prohibition of direct attacks at civilians, the prohibition to attack cultural property, the obligation to take precautions in attacks, the prohibition of the use of human shields and the prohibition of indiscriminate attacks.*” Also the stated rules in the 1907 Hague Regulations, which are also part of the customary international law are applicable to international armed conflict in Iraq. However, in discussing control over Iraq, the deployment of allied ground forces to Iraq gained control over the territory, which later resulted to the formation of the Coalition Provisional Authority (CPA). Then the question of a military occupation came up as regards to when it will be applicable to the situation. It should be noted that despite the full development done concerning the law of occupation and its main sources are found in the 1907 Hague Regulations and in the Fourth Geneva Convention of 1949, as supplemented by the 1977 Additional Protocol I, it

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<sup>91</sup> Enemark C, Michaelsen C. “Just war doctrine and the invasion of Iraq”, Australian Journal of Politics & History, 51:4, (2005) p.200.

<sup>92</sup>Dörmann K & Colassis L “International Humanitarian Law in the Iraq Conflict.” German Yearbook of International Law, (2004), p.3

has not been able to resolve some emanating issues constituting a legal dispute to a certain aspect of the law.<sup>93</sup>

Hassani Z.A (2008) explains the situation of occupation in Iraq that took place between the periods of April 9th 2003 to June 30 2004. Hague Convention (IV) of 1907 and the Fourth Geneva Convention of 1949 were both recommended by the author as the most suitable international laws that are applicable to regulate this period, which contained a detailed rules relating to occupation alongside other conventions such as the Geneva Conventions of 1949 and the customary international law of armed conflict can also be applied.<sup>94</sup> The legal rules granted the rights and obligations of occupation to be divided between occupying power and host state. It is stated under the law on how to maintain a balance between the occupying power and host state concerning duties of occupation in controlling the occupied territories. According to Dörmann K & Colassis L (2004) it is a usual experience in armed conflict whereby states that deployed armed forces to the territory of another states are always denying the formal application of the law of occupation. This also took place in Iraq whereby the US and UK was initially focusing on liberating Iraqi people instead of addressing occupation. This led to the question of what is military occupation of occupying power all about.<sup>95</sup>

As at 30 June 2004, the foreign occupation officially ended in the country and the Iraqi crisis failed to qualify as both international and internal conflict and it was no longer an armed conflict considering the definition of armed conflict by the Geneva Conventions. The Multinational Force in the country started acting as an occupying force with application of Geneva Conventions. This prompted a resistance groups to argue against legal occupation of the foreign force. This as a result requires the cross-examination of the type of rules under Geneva Conventions that is applicable to this situation. However, Multinational Force is said to be performing two different functions to the conflict. It was functioning as an ally of Iraqi government under the regulations of the Security Council Resolution 1546(2004). And secondly, the force was working as an occupation force with Iraqi forces under the Resolution 1483(2003). The second function requires the force to

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<sup>93</sup>Ibid (92), p.3-4

<sup>94</sup>Zouhair Al Hassani." International Humanitarian Law and Its Implementation in Iraq." International Review of the Red Cross, Volume 90 Number 869, (2008), p.52

<sup>95</sup>Ibid (92), p.5.

apply the four 1949 Geneva Conventions of 1949 in the country as an occupied state, which lasted for around one year after the close of general military operations. It should be noted that the Multinational Force was partially applying the Fourth Geneva Convention.<sup>96</sup>

The Article 6 (para. 1) of the Fourth Geneva Convention of 1949 is fully applicable to an international armed conflict or occupation. And Article 6 (para. 1) States that the convention will no longer be applicable after the end of military operations. *But (para. 3) states that concerning the Iraq, its application shall cease one year after the general end of military operations.*” Application of this Article to the Iraqi situation is difficult. Initially, the country was a subject to the regulation of the e Coalition Provisional Authority (CPA), which lasted between the years 2003 to 2004. After the close of the CPA's rule, then political authority was transferred to the Interim Government of Iraq, which resulted to the question concerning the legal reasons for presence of Multinational Force in the country. Under the scope of Resolution 1546(2004), there was a legal recognition of the presence of Multinational force by the Interim government of Iraq but when the government has no agreement with the heads of the Multinational Force military operations then Multinational Force holds the control over the Iraqi force as stated in the paragraph 11 of the resolution. As a matter of fact, this was an opposite to the agreements between the Iraqi and US governments stated in the two letters that were sent to the attention of the president of the UN Security Council on the 5th of June 2004 claiming that responsibility for security will be transferred to the Iraqi government, with the power to take control and authority over Iraqi forces.

### **4.3 Violations of IHL during War on Terrorism**

The popular argument of United States since 2001 is its universal declaration to engage in war on terrorism upon which the principles of international humanitarian law is applicable as well as model for criminal-law enforcement to fight against terrorism has played a supplementary duty. The legal justification of waging international war combating terrorism has received many critics from different scholars and countries most in particular those that are not part of the western world. The International Committee of the Red Cross (ICRC) has also considered this war not to be a legal war by considering the historical

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<sup>96</sup>Ibid (94), p.53

conceptualization of war to only take place between two or more states and not between states against non-state actor. Base on the arguments of many scholars and ICRC, there is a need to split GWOT'' into different parts such the invasion of Iraq and Afghanistan, and only in this specific cases that the IHL is applicable and not to every type of armed conflict. The fact that the scope of international humanitarian law is only applicable to armed conflicts and not war has given the United States an opportunity to state in its legal memoranda and its submission to Court that the country has been engaging in international armed conflict against al Qaeda terrorist organization.<sup>97</sup>

Base on the report of from different sources, around 37,000 people were detained by Iraqi government with the claims that they are suspects for committing insurgency. Around ten thousand out these people have been jailed in prisons under the control of Ministry of the Interior, there are 2,100 prisoners held in the prisons situated around Kurdistan region and 1,530 in the prisons under the control of the Ministry of Defense. From April 9 2003, the occupation of Iraq was under the management of Coalition forces that occupied the country who also had the control over detaining authority base on the Security Council Resolution 1483(2003). The Governing Council was formed in 13 July 2003 by the civilian governor in order to represent the Iraqi national authority. Since the interim Iraqi administration had no control over police powers until 30 June 2004, the detaining authority was officially under the occupying authority.<sup>98</sup>

Iraq was an occupied territory between April 2003 and the end of June 2004 and during these periods, there were two categories of people being deprived of their rights, which depend on the status granted within the scope of IHL. People deprived of liberty were either arrested as combatants responsible to have status of prisoner of war and obtain protection under the Third Geneva Convention or civilian population detained under the protection of the Fourth Geneva Convention. In defining prisoners of war, they are members of both regular and irregular government armed forces or militias fighting alongside the government forces but they are not official members of government forces. During this occupation period, resistance to the occupying power was the given excuse of those armed groups fighting against the coalition. This led to the question of whether these

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<sup>97</sup>Milanovic M (2007). p.375-376

<sup>98</sup>Ibid (94), p.53

groups could be considered as combatants, or if they could also benefit to be prisoners of war when captured or maybe they just engaged in the hostilities without being qualified to do so and cannot receive any protection from the Geneva Convention.<sup>99</sup>

However, one of the main rules of IHL is protection of civilian population during the armed conflict. It has been noted that the level of insecurity in Iraq as a result of U.S invasion affected many civilians most especially in Baghdad and the governorates of Anbar and Diyala where there were huge numbers of people forced to leave their homes as a result of the military operations carried out between the multinational forces/Iraqi forces and different attacks by insurgents group. There were cases of internally displaced persons who abandoned their residence due to the humanitarian catastrophes and lived in the territory of another state. According to the United Nations Assistance Mission for Iraq (UNAMI) report stated the deteriorating situation of displacement at the aftermath of the events of 2006, which was the bombing of the one of the holiest worship centres in Iraq known as al-Askari mosque,. This increased the intensity of violence in Baghdad, Basra and other regions.<sup>100</sup>

This led to refugee issues from the country. According to the Art. 1A (2) of the 1951 Convention Relating to the Status of Refugees, “refugees are people who abandoned their national country due to the fear of being in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion. The acceptance of refugee status has to do with the decision of the host countries.<sup>101</sup> And there are restrictions imposed on this by the host countries with the fear of infiltration by terrorists claiming to be asylum seekers. The reluctance of countries to accept refugees has been a challenge to Iraq and constituted a problem for Iraqi asylum seekers. A huge number of people from Iraq have arrived in Syria and Jordan, which are most accessible countries for them. They faced with high rate of unemployment and these countries have been facing with overpopulation issues.<sup>102</sup>

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<sup>99</sup>Colassis L (2004, p.24).

<sup>100</sup>Hassani Z.A (2008, p.65)

<sup>101</sup> Art. 1A (2) of the 1951 Convention Relating to the Status of Refugees

<sup>102</sup>(Hassani Z.A 2008, p.65)

#### 4.4 Violations on Humanitarian Actors

In another word, it was just like resistant groups in Iraq were basically Iraqi civilians and not the remaining armed forces from the ousted regime. They seemed to be members of the various armed groups disorganized and dissolved after the death of Saddam. But the fact remains that none of the armed forces claim to continue the fight for the sake of the ousted regime though it is normal that when the regime was destroyed some of the armed force members joined the resistant movements. It should be noted that members of “organized resistance movements” are expected to be liable to the status of the prisoner of war if they are part of the conflicting parties and qualify under the additional cumulative criteria set forth in Article 4 A para. 2 GC III. In addition, it seems that all the armed groups fighting against occupying powers shared goal of removing them.<sup>103</sup>

Since the overthrow of Saddam regime in 2003, the country has violently been torn apart into various sides. There were different groups fighting against each other such as local insurgents group in combat against the international troops and local authorities and also the interventions of the U.S counter-insurgency (COIN) along with the Turkish military resulted to many casualties over the population. Many reports have argued that the conflicts between the local police, insurgent groups and international military forces have deteriorated humanitarian situation in Iraq most in particular places like Basra and Baghdad. The head of Iraqi Red Crescent Society in Basra, Salih Hmoud explains that his teams have been unable to go out and help people in need of humanitarian aids due to constant shootings, explosions and roadside bombing in the city and as a result, they have not been able to supply government hospitals as well. Even U.S officials have called for the need to ensure a safety access for them to reach the people in need. The latest updates about humanitarian situation stated that all international NGOs working in the country are in a serious problem due to the fact that accessing vulnerable people in need of humanitarian aids is difficult and limited. The absence of security has resulted to a dangerous operating environment, which is a hindrance to effective delivery of

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<sup>103</sup>Colassis L (2004, p.25)

humanitarian help. High level of insecurity has restricted NGOs and international organizations to render help and this has been used by insurgent groups.<sup>104</sup>

In the phase of different humanitarian violations and how high rate of insecurity has affected the general success of humanitarian actors in the country, there are two incidents that have gotten the attention of humanitarian actors specially. The first incident was attacks on humanitarian actors when a truck bomb entered in to the U.N Headquarters in Baghdad. This resulted to the death of 22 people including Sergio Vieira who happened to be UN envoy.<sup>105</sup> This attack also entered the OCHA Humanitarian Information Center (HIC) for Iraq (UNOHCI) was situated close to the office of Sergio Vieira. This became the second major attack against humanitarian staff after such incident happened at the Jordanian Embassy in Baghdad , which resulted to the death of nineteen people. The led to the withdrawal of almost all UN staffs working in Iraq. Almost all the NGOs in the country stayed but responded by increasing their security mechanism. A similar event took place, which hit NGO-community resulted to the abduction of two Italian aid workers and two Iraqi co-workers in 2004. There were two Americans and British engineer who got kidnapped. This changed the perception of NGO community when they realized that they have also become targets of attacks by discharging their humanitarian duties. As a result of these incidents, many NGOs and UN agencies shut down their operations and offices in the country. From around 200 INGOs working in Iraq in 2003, reduced to 60 in 2006 as a result of these incidents.<sup>106</sup>

According to the report of NCCI, a network of around eighty INGOs and two hundred Iraqi NGOs, in severity of ongoing conflicts in the Iraq, NGOs are part of the reliable actors in delivering humanitarian aids to vulnerable Iraqis on a daily basis. But as a result of high risk in discharging their duties, whereby around 94 Aid workers have been killed, they have not been able to function effectively. Many reports of attacks against humanitarian workers have been kept on a low profile due to the fact that the policy of NGO tries as much as possible to keep their profile low in order not to prevent them from

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<sup>104</sup>Gronningen A.Z. "Humanitarian Action on the Battlefields of the Global War on terror." Available at <http://sites.tufts.edu/jha/files/2008/10/battlefields.pdf>, Accessed on 2 February, 2018, (2008) p.2

<sup>105</sup> Laurie R. Blank. "The Limits of Inviolability: The Parameters for Protection of United States." Occasional Paper Series, (p.4 ,(2017

<sup>106</sup> Ibid (104), p.3



becoming targets. Information Officer for the NCCI, Cedric Turlan has explained that Iraq is the scariest and deadliest place for any aid worker to work. Armed insurgents have been treating both local and international staff of humanitarian groups as western collaborators and to have bias interest with militias. He buttressed more on the main reason behind this security situation to be ignorance of Iraqis on who aid workers are and purpose of NGOs. They have been considered as spies and considering the fact that many combatants are dressing like civilians makes it difficult. The U.S counter-terrorist actions were considered as another issue that made it difficult for humanitarian workers to reach vulnerable people during the conflicts.<sup>107</sup>

In conclusion, 2003 Iraq War is used as a case study to examine the various ways at which GWOT could be conducted without complying with international humanitarian law and resulted to the violation of human rights. The different arguments of United States in invading Iraq under the umbrella of combating terrorism are criticized in this chapter and the human rights' implications of this invasion as well as its outcomes over the politics of Iraq are explained. Iraqi invasion is one of the relevant cases of how GWOT can be disastrous when it refuses to comply with international humanitarian law.

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<sup>107</sup>Briefing Paper. "Rising to the Humanitarian Challenge in Iraq." Oxfam International, (2007), p.15

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATION

#### 5.1 Conclusion and Recommendation

Considering the rate of different violations of human rights and international humanitarian law under the umbrella of "global war on terrorism" as explained in this dissertation using Iraq as a case study, it is basically calling for the urgent need to adequately monitor counter-terrorism operations. The importance of secrecy has been one of the main justifying points used by Western government as a requirement of security in "global war on terrorism." This is explained to be the need of keeping the operation in secret in order to prevent the terrorist enemy from obtaining important information about the operation. This policy of secrecy has been a hindrance to the dissemination of relevant information to the public, the media and human rights NGOs, which in another word a matter of the absence of transparency. For around two years after the official declaration of this war, the U.S has refused to respond to the reports of human rights organizations and also denied them from having access to U.S places of detentions. There is a need for sufficient information concerning counter-terrorism policy to be made available to the awareness of the public and politicians in order to monitor these operations and suggest relevant corrections.

The recorded severe systematic deficits of human rights and international humanitarian law in Afghanistan and Iraq would have a long-lasting effect on the global war on terrorism most especially in Muslim majority states. And this as a result requires the urgent need to comply with international legal norms regulating the fight against international terrorism. It has been noted that there has been a significant change in humanitarian aid environment since the events of 9/11. The event that has resulted to the emergence of new battlefields of GWOT in which NGOs and other humanitarian actors have been facing with different challenges in this battlefield. The challenges facing humanitarian actors are not subject to insecure environment for them to work alone but also from different donors of humanitarian aids. In most cases, humanitarian actors have become victims of war as it has

been explained in this dissertation using the different attacks against humanitarian workers in Iraq as examples. The implications of combating terrorism has not only violated the international norm regulating armed conflict (IHL) but also violated human rights of civilian individuals who are not directly involved in the conflict as well as humanitarian actors who are helping the victims of war.

As it was explained earlier, “global war on terrorism” was coined by Bush administration as a legal name to combat against terrorism but legal framework of this war is questionable. It has been argued that this war represents a non-legal concept of war as stated in international law. This makes it difficult to suggest any recommendation concerning the application of military force in fighting this war since it cannot be seen as a war. It is such a conflict that should be managed by police, intelligence services, and the representatives of the law rather than states' instrument (Military forces). The implications of war on civilian population limit the possibility of accepting war and if war has to come, it should be in exceptional cases and must be strictly regulated by International humanitarian law and monitored by the public at large. It is now questionable whether the two military operations; "Operation Enduring Freedom" in Afghanistan and "Operation Iraqi Freedom" in Iraq could fall under these exceptional circumstances? And if they do; what about their level of compliance with IHL?

However, the main objective of the international humanitarian law; the application of this law during armed conflicts is to reduce the effect of war on civilian casualties as well as victims of war. Terrorism as a crime directly results to severe human rights violation and the manner at which counter-terrorism operations have taken place also resulted to the same crime due to violations of human rights law and IHL during its operations. And the main concern now is how to ensure greater respect for IHL during counter-terrorism (GWOT) knowing-fully well that there is no difference between terrorism and counter-terrorism if civilians are victims of both operations. The invasion of Iraq is an indication that even some basic rules of IHL that are clearly stated could be violated during Counter-terrorism like prohibition taking of hostages.

In addition, it should be noted that killing of enemies is not the main aim of war, it is just a mean used to achieve the main aim. The main aim of war is to force capitulation or

surrender. But under the fight against terrorism, there is no chance for capitulation which means the main aim of this war is to kill and to capture all terrorists. It is impossible to capture all terrorist or wipe out terrorism; there will always be anti-American extremists, new terrorists even if al-Qaeda is destroyed, which means this war will never end. This is the more reasons for respecting human rights violations and compliance of IHL during global war on terrorism. It is not possible to have a successful counter-terrorism measure without respecting the place of human rights of the people. This dissertation recommends that there should be a separate set of IHL rules basically designed for regulating conflict between states and terrorist organizations, ensuring the protection of human rights. Every actor combating international terrorism should have primary intentions that this fights to mean to prevent the civilians and punishment for international crime. The policy of United States in fighting against terrorism should not be the model for GWOT.

Conclusively, the first question asked in the research question concerning the significance of ensuring the protection of humanitarian law during counter-terrorism operations has been answered in the fourth chapter of this dissertation using the invasion of Iraq as a case study. The disastrous implications of this invasion over Iraqi citizens and political condition of the country epitomize the significance of states complying with International humanitarian law in fighting global war on terrorism. Concerning the second question stated in the research questions, it has been explained many times in this dissertation how both terrorism and counter-terrorism (GWOT) have resulted to severe human rights casualties for civilian population of host countries. And for the last question, the concluding part of this dissertation in the fifth chapter has explained more on the need to respect IHL in GWOT. States, United Nations and other international institutions, NGOs, regional organizations and Multinational companies should generally examine the outcomes of previous GWOT at the detriment of IHL in order to establish the mentality that this war is more damaging whenever IHL is violated.

## REFERENCES

### Journal Articles

American Red Cross (2011). Survey on International Humanitarian Law. Research conducted by ORC International, p.1-2

Amin Z.T.K (2014). Why did the United States lead an invasion of Iraq in 2003? International Journal of Political Science and Development, Vol. 2(11), p. 301-308

Bassil Y (2011). The 2003 Iraq War: Operations, Causes, and Consequences. IOSR Journal of Humanities and Social Science (JHSS), Volume 4, Issue 5, p.29-47.

Bianchi A (2006). Assessing the Effectiveness of the UN Security Council's Anti-terrorism Measures: The Quest for Legitimacy and Cohesion. European Journal of International Law, Volume 17, Issue 5, p.4

Blank L.R (The Limits of Inviolability: The Parameters for Protection of United States. Occasional Paper Series p.4

Bouvier A.A (2012). International Humanitarian Law and the Law of Armed Conflict. Peace Operations Training Institute, p. 20-22.

Bugnion F (2004). Jus Ad Bellum and Non-International Armed Conflict. Yearbook of International Humanitarian Law, T. M. C. Asser Press, vol. VI, p.5

Daalder I.H. Lindsay J.M. (2003). America Unbound: The Bush Revolution in Foreign Policy, Washington, D.C. Brookings Institution Press.

Dalacoura K (2005). US Democracy Promotion in the Arab Middle East Since 11 September 2001: A Critique. International Affairs, p.974

Duffield JS (2005). „Oil and the Iraq war: How the United States could have expected to benefit, and might still“, Middle East Review of International Affairs, 9:2, pp. 109-141.

Dumbrell J (2005). Bush's War: the Iraq Conflict and American Democracy" in A. Danchev and J. MacMillan (eds), *Iraq War and Democratic Politics*, Oxford: Routledge, pp. 33-44.

Duyan A (2012). *Analyzing Different Dimensions and New Threats in Defence Against Terrorism*. Center of Excellence-Defence against Terrorism.

Enemark C, Michaelsen C (2005), „Just war doctrine and the invasion of Iraq“, *Australian Journal of Politics & History*, 51:4, p. 545-563.

Feith DJ (2008). *War and Decision*, New York: Harper Audio.

Fisher L (2003). „Deciding on War against Iraq: Institutional Failures“, *Political Science Quarterly*, 118: 3, pp. 389-410.

Fischer Beth A (2012). *Military power and US foreign policy* in M., Cox and D. Stokes (eds), *US Foreign Policy*, Oxford: Oxford University Press, pp.130-143.

Galbraith P.W (2007). *The End of Iraq: How American Incompetence Created a War Without End*, London: Simon and Schuster.

Halper S, Clarke J (2004). *America Alone: the Neoconservatives and the Global Order*, Cambridge: Cambridge University Press.

Hannum H (2016). *Reinvigorating Human Rights for the Twenty-First Century*. *Human Rights Law Review*, Volume 16, Issue 3, p.411

Hassani Z.A (2008). *International humanitarian law and its Implementation in Iraq*. *International humanitarian law and its implementation in Iraq*, *International Review of the Red Cross*, Volume 90 Number 869 p.52-59.

Hellquist E (2014). *Regional Organizations and Sanctions Against Members Explaining the Different Trajectories of the African Union, the League of Arab States, and the Association of Southeast Asian Nations*. KFG Working Paper Series, p.8-9

Hinnebusch R (2012). The American Invasion of Iraq: Causes and Consequences. Institute of Middle East, Central Asia and Caucasus Studies, p.9-10.

Hoffman P (2004). Human Rights and Terrorism. Human Rights Quarterly, Vol 26, p.933-936.

Kalshoven F & Zegveld L (2001). Constraints on the Waging of War: An Introduction to International Humanitarian Law. International Review of the Red Cross, p.111

Koutroulis V (2012). The application of international humanitarian law and international human rights law in situation of prolonged occupation: only a matter of time? International Review of the Red Cross, Volume 94 Number 885, p.167

Lieberfeld D (2005). „Theories of conflict and the Iraq war“, International Journal of Peace Studies, 10: 2, p.1-21.

Luban D (2002). The War on Terrorism and the End of Human Rights. Georgetown University Law Center, p.10  
Fact Sheet No. 32 (2007). Human Rights, Terrorism and Counter-terrorism. Peace and Security, p.6-22.

Macrae J & Harmer A (2003). Humanitarian action and the ‘Global War on Terror’: A Review of Trends and Issues. HPG Report 14, p.2-25.

Milanovic M (2007). Lessons for human rights and humanitarian law in the war on terror: comparing Hamdan and the Israeli Targeted Killings case. International Review of Red Cross, Volume 89 Number 866, p.375-376

Moussa J (2008). Can jus ad bellum override jus in bello? Reaffirming the separation of the two bodies of law. International Review of the Red Cross, Volume 90 Number 872, p.964

O’Connell M.E (2005). When is a War Not a War? The Myth of the Global War on Terror. ILSA Journal of International & Comparative Law, Vol. 12, No. 2, p.2-3

Orakhelashvili A (2008). The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence. *European Journal of International Law*, Volume 19, Issue 1, p.2

O'Connell M.E (2017).Ending the Excessive Use of Force at Home and Abroad. *NDL Scholarship Journal Articles*, p.96.

Orakhelashvili A (2008). The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence? *European Journal of International Law*, Vol. 19 no. 1 p.164.

Patman R.G (2006). Globalization, the New US Exceptionalism and the War on Terror. *Third World Quarterly*, Vol. 27, No. 6, p.4

Pillay R (2010). Current Challenges Regarding Respect of Human Rights in the Fight Against terrorism. *Briefing Paper*, p.35.

Radsan A.J (2006). A More Regular Process for Irregular Rendition. *Seton Hall Law School*, p.42

Record J (2003). Bounding the Global War on Terrorism. *Strategic Studies Institute*, p.1-10.

Sassòli M (2006). Transnational Armed Groups and International Humanitarian Law. *Occasional Paper Series*, p16.

Schmidt BC, Williams MC (2008). The Bush doctrine and the Iraq War: neoconservatives versus realists", *Security Studies*, 17:2, pp. 191-220.

Tomuschat C (2010). Human Rights and International Humanitarian Law. *The European Journal of International Law* Vol. 21 no. 1, p.17-18

UNODC: Frequently Asked Questions on International Law Aspects of Countering Terrorism, *United Nations Office on Drugs and Crime*, p.65



Watkin K (2005). *Warriors Without Rights? Combatants, Unprivileged Belligerents, and the Struggle Over Legitimacy*. Occasional Paper Series, p.6

Weiner A.S (2007). *Hamdan, Terror and War*. center for international security and cooperation, p.1015.

Woodward B (2004). *Plan of attack*, New York: Simon and Schuster. Dalacoura K (2005). 'US democracy promotion in the Arab Middle East since 11 September 2001: a critique', *International affairs*, 81: 5, pp. 963-979.

### **Books**

Arnold R (2008). *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law*. Martinus Nijhoff Publishers

Dörmann K & Colassis L (2004). *International Humanitarian Law in the Iraq Conflict*. German Yearbook of International Law, p.3-15.

### **Online Journals**

Benvenisti E (2003). *The Security Council and The Law on Occupation: Resolution 1483 on Iraq in Historical Perspective*.

Available at [www.tau.ac.il/law/members/benvenistiamos.doc](http://www.tau.ac.il/law/members/benvenistiamos.doc). Accessed: 13-12-2017, p.6

Dobrot L.A (2007). *The Global War on Terrorism: A Religious War?* Available at <https://ssi.armywarcollege.edu/pdf/PUB822>. Accessed: 10-12-2017, p.1-8.

Gronningen A.Z (2008). *Humanitarian Action on the Battlefields of the Global War on terror*. Available at <http://sites.tufts.edu/jha/files/2008/10/battlefields.pdf>, Accessed: 13-12-2017, p.2-10.

Neuman G.L (2003). *Humanitarian Law and Counterterrorist Force*. Available at <http://ejil.org/pdfs/14/2/415.pdf>, Accessed: 13-12-2017, p.283-290.

Nicolas T (2002). *The War on Terror's Challenges to Humanitarian Action*. Available at <https://www.msf.fr/sites/www.msf.fr/files/pdf>, Accessed: 18-12-2017

Weiner J (2011). Discrimination, Indiscriminate Attacks, and the Use of Nuclear Weapons. Available at <http://lcnp.org/pubs/Weinerttacks.pdf> Accessed: 13-12-2017, p.18-19

### **Conventions**

CCPR (2011).International Covenant on Civil and Political Rights. Human Rights Committee, p.2OHCHR and UNHCR, (2013). The Protection of Human Rights in Humanitarian Crises A Joint Background Paper by OHCHR and UNHCR. Available at [http://www.globalprotectioncluster.org/nce/Paper\\_EN.pdf](http://www.globalprotectioncluster.org/nce/Paper_EN.pdf) Accessed: 15-12-2017

Fact Sheet No.13 (1991).International Humanitarian Law and Human Rights. Available at <http://www.ohchr.org/Documents/factSheet13en.pdf>. Accessed 06-12-2017

ICRC (2004) What is International Humanitarian Law? Advisory Service on International Humanitarian Law, p.1-2.

ICRC (2011).Humanitarian debate: Law, policy, action The future of humanitarian action. International Review of the Red Cross, Volume 93 Number 884, p.5

ICRC (2011).International Humanitarian Law and the challenges of contemporary armed conflicts. 31st International Conference of the Red Cross and Red Crescent, p.5-6

OHCHR Fact Sheet (2008) Human Rights, Terrorism and Counter-terrorism.Office of the United Nations High Commissioner for Human Rights, p.1-10.