Chapter–IV

Implementation of International Humanitarian Law through Instrumentalities

Prelude

The purpose of any legal provision is to change the human conduct and every law is in the form of order. Generally law orders person(s) to act in a determined way and not to act which is prohibited. This principle is as much as true about International Humanitarian Law as of others law. Every law provides some rights to its subjects and some liabilities and obligations. There is main difference between domestic law and International Humanitarian Law on the stage of Implementation. States have all possible machineries to implement its own laws like administrative law through police force etc. but for implementation of International Humanitarian Law; there is a lack of such machineries. International Community consists of States and International Organizations like United Nations Organizations (UNO) and these Organizations are responsible to implement the International Law.

International Humanitarian Law is not only based on ideals but also on practical substance. The purpose of International Humanitarian Law is not to make war impossible but to determine some limits for it. This law does not take into account not only humanitarian purpose but military requirements also.

Every party has admitted the liability to respect International Humanitarian Law in every circumstance under Article 1 of Fourth Geneva Conventions¹ In the same way it is

¹ Article 1 common to the four Geneva Conventions says that “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.

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mentioned in the Article 80 of Additional Protocol I that state parties will take all the possible steps to fulfill their liabilities without any delay under Additional Protocols and Geneva Conventions\(^2\) and well said in the said Article that state parties will issue necessary instructions to implement provisions of Conventions and Protocols. As above said the State Parties must take all possible measures for the implementation of their obligations under the fourth Geneva Conventions and the Additional Protocol-I during peacetime, the possible preventive steps must be applied like adoption of the treaties in national laws and concerning text must be disseminated through training and other measures. Training must be conducted for those all authorities who have concerned with the Geneva Conventions and the Additional Protocols to fulfill their duties.

The State Parties must also make laws to prevent of and punish to those who misuse the protective emblems and distinctive signs. The State Parties must respect the provisions of Conventions and Protocols during the armed conflicts and must ensure that violators of International Humanitarian Law are brought to justice. Issues concerning to implementation of International Humanitarian Law are the most practical aspect. States(s) which are not party to the agreement of International Humanitarian Law is bound to follow its rules.

It is supreme liability of all High contracting parties that they must take all possible steps to implement the provisions of Humanitarian law. All High Contracting parties must follow the provisions of International Humanitarian Law and punishable provisions in situation of violation this law. Signature on International conventions does not mean that

\(^2\) Article 80 provides that “1. The High Contracting Parties and the Parties to the conflict shall without take all necessary measures for the execution of their obligations under the Conventions and this Protocol.”
provisions of said convention are applicable automatically in the region of National Law. For the implementation of these conventions within a Nation, ratification and enactment of laws are required.

Until National law provides validity to the provisions of International Conventions, implementation is impossible. Thus, for the effective implementation of Geneva conventions and its Additional Protocols within a Nation, National law must be enacted. Prohibited acts must be into national penal law or disciplinary regulations applicable to the armed forces. Penalties for breaches of these laws must be laid down. Furthermore, Prosecuting officers and courts must be constituted.

In this Chapter, more focus is on the implementation of IHL in Non- international armed conflicts. The study discusses three ways of implementation of IHL in internal armed conflicts: (1) Executive (ICRC & other NGOs); (2) Judicial (ICC);(3)Quasi-Judicial (Tribunals established by Security Council).

4.1. Contribution of International Bodies in Non-International Armed Conflicts:

J. Pictet observed “IHL is a branch of International Law which is intended to alleviate human pain and suffering resulting from armed conflicts. D. Schindler said that “The expression humanitarian law was developed after World War II to focus attention on the protection of war victims (i.e. wounded and sick members of armed forces on land; wounded, sick, shipwrecked members of armed forces at sea; prisoners of war and civilians) and to establish a connection between the law of war, as it was then known, and

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human rights law” which was then in its infancy. Indeed, both branches overlap in some respects. Both are informed by the same values since both are intended to protect human dignity.”

Thus, according to article 1 (2) of Protocol II additional to the Geneva Conventions of 1949, IHL does not apply “to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts” . “These situations are not governed by IHL, but they are governed by human rights law. This being said, in practice, it may sometimes be difficult to distinguish a situation of internal violence from an armed conflict, as demonstrated in the Abella case.”

Four Geneva Conventions, 1949 are main source of IHL which primarily deals with international armed conflicts. However, they also include a common article 3 which deals with internal armed conflicts. Two additional Protocols adopted in 1977 are supplemental to the Geneva Conventions. Protocol I for international armed conflicts and Protocol II for non- international armed conflict. “More recently, a third additional protocol was adopted, which recognizes an additional distinctive emblem in the shape of a red crystal on a white background.”

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4 See D. Schindler, “The International Committee of the Red Cross and Human Rights” (1979) 715 International Review of the Red Cross 3.


7 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an
Almost all States ratified virtually to the Geneva Conventions so that most of their provisions, involving article 3, are part of customary law. “The situation is somewhat different with respect to the additional Protocols. So far, Protocol I was ratified by 166 States, and Protocol II was ratified by 162 States. However, according to a study completed by the International Committee of the Red Cross (ICRC) in 2005”, a large number of the rules included in both additional protocols are supposed to apply to all States as part of customary international law. In turn, “Protocol III has, to this point in time, been ratified by 7 States.

Apart from the Geneva Conventions and their additional Protocols, we can find other regulations of IHL in various international instruments which conduct with specialized topics such as “the Convention on Genocide (1948)\(^8\), the Ottawa Convention on land mines (1997)\(^9\), or the 1998 Rome Statute of the International Criminal Court”\(^10\). There are some rules which are found under United Nations Security Council Resolutions concerning with armed conflicts\(^11\), and also find in “judgments and advisory opinions rendered by international judicial bodies”\(^12\). All these constitutes the structure of IHL,

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11. *Infra.*

12. *Infra.*
however, they are from different backgrounds. Some of them are “nongovernmental organizations (NGOs) like the ICRC”. Other bodies are from the United Nations family.

4.1.1 The Contribution of Non-Governmental International Bodies to Implementation of IHL in Non-International Armed Conflicts.

The non-governmental international bodies are mainly involved in the implementation of IHL as ICRC & other NGOs.

(i) Role of the International Committee of the Red Cross (ICRC):

By chance the ICRC came into existence “a business trip took Henry Dunant to Castiglione delle Stiviere, a few kilometers from where one of the bloodiest battles of the 19th century had just ended. A decisive episode in the struggle for Italy’s and unity, the battle of Solferino was also the scene of the greatest slaughter that Europe had seen since Waterloo; the toll of just one day of fighting was some six thousand dead and almost forty thousand wounded. The medical services of the Franco Serdinian armies were completely overwhelmed". Helped by their comrades and leaning on their rifle butts, the less seriously wounded managed to reach the township of Castiglione, where there would soon be more recumbent figures than able-bodied men. Dunant was not a doctor, and his business was urgent, but he was too compassionate to close his heart to the distress he was witnessing. Day after day, he visited the wounded in the Chiesa Maggiore and attempted to provide them with whatever comfort he could”.

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13 Francois Bugnion, The Role of the Red Cross in the Development of IHL, the ICRC and the Development of HL, Chicago Journal of International Law, Summer 2004, University of Chicago, p.1

14 J. Henry Dunant, A Memory of Solferino (ICRC 1986) (American Red Cross, Trans) Original French
Coming back to Geneva, “Dunant recorded what he had seen in a small book that was to mark an epoch: A Memory of Solferino. After a description of the battle and the neglected state in which he had formed the Solferino causalities, Dunant concluded with two proposals: the creation in the various countries of Europe, of relief societies for wounded soldiers, which would mobilize private charity resources; and the adoption of a treaty giving protection on the battlefield to the wounded and to anyone who he endeavored to come to their assistance.”

Considerable efforts were made by ICRC to develop IHL and to ensure that it is admitted by all States in fact, in this field, its activity is accepted both by “the Statutes of the International Red Cross and Red Crescent Movement and by those of the ICRC itself”.

The ICRC, a Swiss society is regulated by the Swiss Civil Code and its own Statutes. Governing body of ICRC is constituted exclusively of “Swiss citizen who guarantees its neutral character. Neutrality is one of the fundamental principles the ICRC operates under”.

In spite of its domesticity, the ICRC has, through practice, acquired an international legal personality of a functional nature. As a result, it can enter into some treaties, such as headquarters agreements, have diplomatic relations with States, extend its diplomatic protection to its delegates, etc. Moreover, since 1990, it has the status of an

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15 Dunant, A Memory of Solferino, pp. 115-126.

16 The other principles are: humanity, impartiality, independence, voluntary service, unity, universality.

observer at the United Nations which allows the ICRC to contribute to the work of the Organization relating to IHL.

It was well received in Geneva as well as in the rest of Europe. Indeed, the times were right: in 19th century Europe, fed by liberal ideas, public opinion was more sensitive to human suffering than it ever was before. As a result, in 1863 an International Permanent Committee for the Relief of Wounded Soldiers was established by five citizens of Geneva, including H. Dunant. The purpose of this Committee of Geneva was to promote Dunant’s program throughout Europe.

To that end, the Committee of Geneva organized two conferences: The first conference was held in Geneva in 1863. It led to the adoption of 10 resolutions which set up the foundations of national societies for the relief of wounded soldiers. They were to become national societies of the Red Cross in 1872. The resolutions of 1863 also provided that the Committee of Geneva would temporarily serve as a link between the national societies. However, this role proved to be so important during the Franco-Prussian war of 1870 that eventually, the Committee of Geneva ended up acting as a permanent connection between national societies. It became the ICRC in 1880. The second conference organized by the Committee of Geneva took place in 1864 under the auspices of the Swiss government. It led to the adoption of the first Geneva Convention (Convention for the Amelioration of the Condition of the Wounded in Armies in the Field).

This Convention included ten articles formulated around four basic principles which are still relevant today: - army medical personnel are not combatants; if captured by the

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19. Ibid., at 27-28
enemy, they must not be held prisoners; - all wounded and sick soldiers must be cared for without any adverse distinction; - civilians who tend to wounded soldiers must be respected; - field hospitals and ambulances are neutral. They are identified by a red cross on a white background, an inverse version of the Swiss federal flag. At the time, this emblem was adopted in recognition of the role played by Switzerland in his adoption of this first Geneva Convention. The Convention, which was ratified by twelve States, is a landmark. For one thing, it is the first multilateral treaty concluded in time of peace to govern future armed conflicts between the contracting parties. For another thing, it marks the beginning of IHL. Indeed, the Geneva Convention of 1864 was revised in 1906, 1929 and 1949 when it became Geneva Convention I\(^20\). Moreover, the provisions of the Geneva Convention of 1864 were extended to the wounded, sick and shipwrecked at sea by Hague Convention III of 1899.

Subsequently, the provisions of that Hague Convention were revised in 1907 (Hague Convention X). In 1949, both Hague Conventions were replaced by Geneva Convention II\(^21\). In the meantime, other Hague Conventions adopted in 1899 (HCII) and in 1907 (HCIV)\(^22\) identified the groups of combatants who are entitled, when captured, to prisoner of war status and defined how they should be treated during their captivity. The relevant provisions of these Conventions were supplemented by a Geneva Convention of 1929,

\(^{20}\) See Roberts/Guelff, *op.cit.*, note 3, at 195.

\(^{21}\) *Ibid.*, at 221.

and complemented in 1949 by Geneva Convention III\textsuperscript{23}. In 1949, a fourth Geneva Convention was adopted to deal with the protection of civilians\textsuperscript{24}.

The National Societies of countries in conflict observed “as to close to the authorities asked the ICRC to send its own relief workers, believing that humanitarian work in times of conflict needed to offer guarantees of neutrality and independence acceptable to all parties, which only the ICRC could do. The ICRC therefore had to build up operational activities very quickly within a framework of neutrality and independence, working on both sides of the battlefield. Formal recognition of this function came later, when the Geneva Conventions explicitly recognized the purely humanitarian and impartial nature of the ICRC’s activities and gave the organization a special role in ensuring the faithful application of international humanitarian law”.

The nature of ICRC is neutral, impartial, and independent organization “whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavors to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence\textsuperscript{25}. To be able to carry out its mission effectively,
the ICRC needs to have the trust of all states, parties\textsuperscript{26} and people involved in a conflict or other situation of violence”.\textsuperscript{27}

Under the Geneva Conventions, ICRC has some of its implementing authority: for instance, “under article 126 of Geneva Convention III, ICRC delegates can visit prisoners of war wherever they are being held and interview them without witnesses. Under article 143 of Geneva Convention IV, ICRC delegates enjoy the same power with respect to civilian internees.” According to common article 3 of the four Geneva Conventions, the ICRC has a authority to take humanitarian initiative that permits the Committee to “offer its services to the parties to non-international armed conflicts”. If its offer is admitted, the ICRC can play a number of humanitarian activities on the ground of humanity and can protect lives of victims.

For example, ICRC can provide the basic things to the civilian population like water, food, medical assistance, medicine, etc. Moreover, “the right of initiative enjoyed by the ICRC was extended to international armed conflicts when, in the Nicaragua Case” \textsuperscript{28}, the decision of ICJ makes it clear that “Article 3 applies to all categories of armed conflicts”.

(ii) \textbf{Fundamentals Principles of the International Red Cross and Red Crescent Movement:}

In the 20th ICRC conference (Vienna 1965) under the heading “proclamation of the fundamental principles of the Red Cross”, the text was adopted. In this Convention, seven fundamental principles were framed. These may be described as follows:

\textsuperscript{26} Available at www.ICRC.org visited on 20/04/ 2014.
\textsuperscript{27} Art 53 of the statute of the movement.
1. Humanity:

The purpose of ICRC is to protect innocent people on humanity ground. “the International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battle field, endeavors in its international and national capacity to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being.” It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.”

As per Resolution 6 passed in 1997 “Founded on the respect of the human being, this is the highest principle inseparable linked with the idea of peace, the principles that sums up our Movement’s ideal and on which all the other principles are based. To see and share the suffering of others, prevent and alleviate it in the face of violence is life-giving work. It is the first step on the road to preventing and eliminating war. Humanity is an essential factor of true peace between men and nations: “Per humanitatem ad pacem” Through humanity to peace.”

2. Impartiality:

According to the Preamble of the Rome Statute 1998 “it makes no discrimination as to nationality, race, religious beliefs, class or political opinions...It endeavors to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.”

29 Available at http://www.redcross.org/about-us/who-we-are/mission-and-values accessed on 21/05/2014.


31 Preamble of the Rome Statute 1998
This positive principle of helping others without discrimination reminds us that no distinction should be applied to people in distress. It is the opposite of the feelings of superiority, or acts of discrimination which are at the origin of so many conflicts.

3. Neutrality:

As per Vienna Convention 1965 “In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.”

Geoffrey stated that “for the Red Cross and Red Crescent Movement, Neutrality is a means and not an end…Neutrality does not imply indifference to suffering nor acceptance of war…It is an indispensable condition for effective humanitarian action dependent on the confidence of all” 32.

4. Independence:

“The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able to all times to act in accordance with the principles of the Movement. The Independence of the Red Cross and Red Crescent Societies from public powers is essential for their humanitarian activities in the respect of the Fundamental Principles.”

It allows that spirit of peace which is characteristic of our Movement to reign in the hearts of the men and women comprising it 33.

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5. Voluntary Service:

“It is a voluntary relief movement not prompted in any manner by desire for gain…To bring relief to one’s fellow man, voluntarily and unselfishly, be speaks the generous spirit of service and the fellowship that opens the door to reconciliation.”34

6. Unity:

In view of this principle “there can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory. The Red Cross and Red Crescent Movement unite all people within each country’s borders and so is a factor of internal peace.”35

7. Universality:

Andre Durant viewed that “the International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide. Our Movement’s universality stems from the attachment of each of its members to common values. One of its characteristics being the duty to help one another, it makes for the propagation in all countries of these values, thereby promoting friendship and peace among men.”36

ICRC in internal armed conflicts:—

Although it must be in mind on the humanity ground that war is war there is no difference for victims if they are dying in lack of fundamental treatment yet ICRC offers its service in armed conflicts whether International armed conflicts or Non-International

34  Ibid 11.
35  And also see Andre Durant, The International Committee of the Red Cross, Geneva, 10, 1999,p.54
36  Ibid.
armed conflicts. The difference matters as how the situation is defined will actuate what law is applicable.

We can discuss the situations where ICRC offers its services. As per Kathleen Lawand, the outgoing head of the ICRC unit “A non-international (or "internal") armed conflict refers to a situation of violence involving protracted armed confrontations between government forces and one or more organized armed groups, or between such groups themselves, arising on the territory of a State.”

(i) Somalia, 1991–1992:

The situation was not less complicated for an ICRC humanitarian presence in Somalia. David P. Forsythe wrote in his book:37 “a patchwork of former British and Italian territories that had never known much stability since its independence in the summer of 1960. Caught up in the Cold-War, with first the Soviets and then the Americans propping up a shaky central government, and damaged by a long war with Ethiopia, Somalia degenerated into chronic clan fighting as the Cold-War wound down… From early 1991 there was no effective central government as strongman Siad Barre fled the country…The ICRC, already present in the country to deal with prisoner matters, was doing what it could to aid the civilian population, despite the killing of one of its Belgian staff members in late 1991. In the winter of 1991 to 1992 the scale of clan fighting, with attendant civilian distress, attracted international attention… This was in part because the ICRC, with some reluctance about the ethics involved, paid for journalists to come see the misery at first hand. (In the course of five weeks between August and September . . .

37 David P. Forsythe “THE HUMAN ITARIANS” The International Committee of the Red Cross”; Cambridge University Press 2005; p 115.
730 journalists were brought from Nairobi into Somalia and transported back to Kenya, briefed and otherwise taken care of by the ICRC.

Kevin M. Cahill observing the situation wrote that: “this effort, along with publicity from other groups, finally produced coverage by the New York Times, the BBC, Le Monde, and other major western media centers. The office of the U.N. Secretary-General already concerned that the Balkan wars were getting more attention than African problems, attempted mediation, and the Security Council imposed an arms embargo and called for humanitarian assistance… The Council decreed that to interfere with that assistance was a war crime, but various Somali armed groups paid little attention to such legalistic statements emanating from New York. After all, this was a country in which “virtually no one with a weapon had heard of the Geneva Conventions”.

James Mayall viewed that:

“By early 1992, both governments and the few international agencies that stayed in Somalia were reporting a famine of massive dimensions, worse than the Ethiopian famine of 1984-85. The ICRC, with a few other NGOs, stayed on during the toughest times, as the U.N. relief agencies first bickered among themselves and then withdrew to neighboring Nairobi. The performance was so poor among most U.N. agencies that even an ICRC delegate was led to criticize them publicly. Further states that “the Organization of African Unity (OAU) was impotent. The new U.N. field mission (UNOSOM I), authorized by the Security Council, was ineffective both at delivering

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relief on a large scale, and at providing general security. By mid-summer of 1992, the ICRC reported that 95% of Somalis showed malnutrition, with 70% “enduring severe malnutrition”. During 1992 the ICRC made heroic efforts. Between February and June 1992 the ICRC brought in a total of 53,900 MT of food into Somalia through twenty different entry points, by sea, by air, and overland across the Kenya - Somalia border. Multiple delivery points at small locations circumvented the extortion network that was centered on Mogadishu.”

Thomas G. Weiss observed that “given the inability of the U.N. to bring stability to Somalia, either through mediation or through military deployment, the George H. G. Bush Administration, with Security Council approval, deployed almost 30,000 troops in late 1992 to guarantee the delivery of humanitarian relief primarily through the Red Cross network.”

It is stated in a book written by David P. Forsythe that “the U.S. military deployment in Somalia, called “Operation Restore Hope” in Washington and UNITAF in New York, while officially the backbone of a U.N. enforcement operation under Chapter VII of the U.N. Charter, had the quiet approval of the major clans in the country. The military force was therefore initially directed at providing a secure environment for humanitarian relief directed by the ICRC on the ground, and not at coercion against any major clan or clan leader. This main reason why ICRC cooperation was forthcoming, as an exceptional

40  Ibid.

matter, for relief under military protection.” No other relief agency was positioned to do it.”

Further he writes that “there was the U.S-directed large military force: there was the new UNOSOMII including a few Americans serving under Turkish command, and there was a smaller U.S. rapid reaction force directed by Admiral Howe of the U.S. Navy. Looting, which had disrupted possibly up to 80% of food relief in some areas, was now back down to perhaps 10%. Somewhat later the ICRC abandoned the “soup kitchens” for fear of perpetuating dependency.

Once the famine was under control, the organization did not want the feeding centers to lure Somalis away from their usual farming and other commercial ventures. Secondly, not only was there persistent fighting by various clans and sub-clans for political control of Mogadishu and other areas, but also the international presence was increasingly at odds with the Habar-Gedir sub-clan of the Hawiye clan, led by Mohammed Farah Aideed. It was this latter conflict, comprised of a whole series of incidents and clashes and rumors that led to the fateful events of October 1993.”

However, in 1994, there was pressure on ICRC to remove its expatriate delegates to Nairobi.

(ii) Rwanda- 1994:

Philippe Gaillard, head of the ICRC's delegation in Rwanda, 1993-1994, said in his speech that “in 1994, before, during and after the genocide during which around one

42 Supra Note 36; at p. 118
43 Ibid; p.119.
million people were killed, most of them civilians, I gave hundreds of interviews, reports, conferences to all kind of audiences, newspapers, TV, radios and the general public. And afterwards I think this was not only the right action to take but also the right therapy. At the end of 1994, I decided not to talk any more about the Rwandan genocide and declined all the invitations I was receiving about it. I just wanted to go back to silence and to invisibility as it suits an ICRC delegate and because of my rather shy and discreet personality. Almost 8 years have gone since the genocide was committed and by being here I am once again talking about it. Not because I am less shy today than 8 years ago, not because I need to be visible again - I wish I were never visible again - but because I still have some kind of debt, or better to say, some kind of duty towards all those who died in Rwanda in 1994 and who were given so little attention later on that some of us think that the Rwandan genocide can be considered as a case study.”

In 1994 in Rwanda, when militant Hutus attacks on Tutsis, the ICRC provided its assistance and shelter in-country. Around 50,000 Tutsi were helped by ICRC. Definitely, it attempts to make known to the world that was happening in Rwanda, however it didn’t use the term genocide.

Important outside actors who has ability to interfere as the U.S at this time ignored the term genocide. They want to escape from the legal obligation, “as a party to the 1948 Genocide Convention”, to take action to prevent the genocide. “Whether ICRC public use of the word genocide would have affected policy makers in the U.S”. is an question of interest. But as with other assistant organizations in Rwanda, the ICRC could not deliver

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the legal decision on the nature of the conflict and remained active in helping inside the
country.

Very strong protestation of intentional mass killings made by the ICRC but didn’t
use the word “G” while no harm was done to the most ICRC personnel, despite
“operating in strategically valuable locales, with the exception of some Rwandan female
nurses working in conjunction with the ICRC.”45 It was very ironical, given the history of
things, that “field operatives of Medicines Sans Frontières (MSF) had to be incorporated
into the ICRC delegation in Rwanda to survive. Far from being able to denounce human
rights or IHL violations while remaining operative in the field, MSF representatives had
to don the ICRC emblem and keep a relatively low profile in order to avoid being
attacked. MSF personnel agreed to the ICRC terms of engagement, namely, to exercise
public caution in order to be perceived as neutral.”46

When the minority Tutsis took control over the new established government, the
ICRC decided to pay to construct the prisons housing those who are accused of genocide.
Even a number of judges and lawyers were killed at that time.

ICRC helped those children who were separated from their families during conflict
and assisted to trace their relatives. It tries to reunite them and also submitted a report on
The ICRC It was engaged in initiatives to help build an environment conducive to the
promotion and implementation of IHL. It gave technical advice to the authorities to
encourage the ratification and implementation of IHL treaties, provided training for
officers, legal advisers and instructors in the “Rwanda Defence Forces”, and helped

45 Lise Boudreaux, ‘The Role of the International Committee of the Red Cross’, in Genocide in Rwanda:
A Collective Memory, John A. Berry and Carol Pott Berry, eds., (Howard University Press, 1999),

46 Ibid.
journalists and teachers bring IHL to the attention of the wider public, including young people.

As per Report of ICRC in 2008, “the ICRC remained committed to supporting the National Society in promoting the movement and its fundamental principles and in building its emergency response capacity. For example, it helped integrate the Safer Access approach into the National Society’s rapid response set-up and assisted it in developing a contingency plan to assist refugees fleeing fighting in the Democratic Republic of the Congo (DRC).” 47

(iii) Sudan- 2005

According to the International Religious Freedom Report, 2003 Sudan, “in Africa, very few countries are as large as Sudan estimated population of more than 35 million people…The Sudanese people gained their independence from British-Egyptian rule in 1956 and, since then, have endured a series of regime changes…The country is divided along religious lines and is ruled from the Islamic north where the capital, Khartoum, is located…The south is mainly Christian with some animists and other non-Muslims. Over the years, an Islamic-African-Arab culture has emerged in northern Sudan, where a multitude of tribes speaking a variety of languages have settled.” 48

Further another Report of International Religious Freedom Report 2003, Saudi Arabia States that “following the discovery of oil in the south during the early 1980s, the government of Colonel Gaafar Mohamed Al-Nimeiri implemented measures to tie the


oil-rich areas of the south closer to the north. For example, Nimieri cancelled the 1973 Addis Ababa Agreement, which provided the south with autonomy, and instituted Sharia rule despite the fact that the south was predominantly non-Muslim.”

These measures provoked a backlash in the south which ultimately led to internal conflict in 1983. “Since then, the Sudanese internal conflict has been the longest running conflict in Africa. More than two million people have been killed and nearly 4.5 million persons have been forcibly displaced from their homes. On January 9, 2005, a Comprehensive Peace Agreement (CPA) was reached between the Arab dominated central government in Khartoum and the Christian and animist rebel group in the south calling for an end to the internal conflict.”

In 1978, the ICRC started “to work in Sudan to help victims of conflict between Eritrea and Ethiopia and assisting victims of the conflict between government forces and Southern Sudan opposition groups in 1986. Since 2004, it has been responding to needs arising from the hostilities in Darfur.”

(iv) Afghanistan-2014

It is called longest war in United States history. The use of ground of Afghanistan as a battleground for planned attacks has long been used by other external powers. International humanitarian law bounds all parties to the military conflict in

49 Under Shari’a, conversion by a Muslim to another religion is considered apostasy and is punishable by death if the accused refuses to recant. For more on Shari’a law, see Bureau of Democracy, U.S. Dept of State, Saudi Arabia, International Religious Freedom Report 2003 1 (2003), available at http://www.state.gov/g/drl/rls/irf/2003/24461.htm

A two year peace process culminated on January 9, 2005 when First Vice-President Taha and Chairman John Garang of the Sudan People’s Liberation Movement/Army signed the CPA during an official ceremony, which incorporated all previously signed documents and cease-fire protocols.
Afghanistan—Afghan government forces, US and other coalition forces, and insurgent group.

Some particular IHL provisions applicable in Afghanistan have changed as the scenario of conflict in Afghanistan. The conflict between US-led military the Taliban government in October 2001 was considered an international armed conflict as conflict was between opposing states and therefore, the legal provisions of international armed conflict mentioned in the four Geneva Conventions of 1949, was applicable on Afghanistan and the United States.

According to the report of ICRC, published in 2014 “widespread conflict continues to devastate the lives of Afghans in many districts and villages. The threat of civilian casualties, internal displacement, and insufficient access to medical care, are only some of the challenges. All of them occur against a backdrop of a splintering of armed groups, night raids, air strikes, suicide bombing, and the laying of improvised explosive devices. The expansion of the conflict to previously quiet areas has increased people's difficulties and left whole communities trapped between the warring parties, the south, east, north, north-west and central regions are the worst affected. In this highly complex situation, in which humanitarian access to those in need remains challenging, the ICRC has had to adapt its approach in order to reach and assist the most vulnerable. It works increasingly through local partners, including the Afghan Red Crescent Society (ARCS) and is developing a dialogue with influential leaders of civil society to make its mandate and
action more broadly understood and accepted. Since 2009, it has increased the number of its offices around the country to ensure its presence in areas of most need.”

Delegates of ICRC make collection of information for violations of IHL and give confidential representations to the parties to the conflict to attempt to stop them occurring again. They call to mind to the authorities for their duties under IHL, especially in relation to the conduct during hostilities. They also remind their duty to protect civilians who are not, or no longer, taking part in hostilities. ICRC delegates makes visits to those people who are detained in Afghan by the Afghani authorities. ICRC offers its services to make atmosphere hygiene and healthy.

In that area where Security is poor, it remains very difficult to access health care in many areas. Medical support is provided by ICRC to the “government-run Sheberghan Hospital in the north and Mirwais Regional Hospital in the south”. Technical and financial cooperation is also made to “47 ARCS clinics and to community-based volunteers who provides health care to persons in conflict-affected zone. On request, it supplies medicines and other things to hospitals if mass casualties occur. Even in conflict zones, medical kits are sent for the treatment of emergency cases.

Assistance for families: There are distribution of food items and other necessary supplies by ICRC to those families which are displaced because of hostilities or natural disaster. “This includes emergency food distribution, 'food for work' projects, and support

for agriculture and livestock programmes…In close cooperation with the Red Crescent, the ICRC provides aid to displaced communities.”

(ii) **Role of International Red Crescent Society:**

Although purpose of both International Committee of Red Cross and the International Red Cross and Red Crescent Movement is to protect human beings in hostilities. “International Red Cross and Red Crescent Movement with approximately 97 million volunteers, members and staff worldwide which was founded to protect human life and health, to ensure respect for all human beings, and to prevent and alleviate human suffering.”

The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 and today it coordinates activities between the 188 National Red Cross and Red Crescent Societies within the Movement. On an international level, the Federation leads and organizes, in close cooperation with the National Societies, relief assistance missions responding to large-scale emergencies. The International Federation Secretariat is based in Geneva, Switzerland. In 1963, the Federation (then known as the League of Red Cross Societies) was awarded the Nobel Peace Prize jointly with the ICRC.”

There are various resolutions passed by International Red Cross and Red Crescent Movement for the protection of human beings and so many reports are submitted to Security Council. This organization Worked on the elimination of nuclear weapons: Four-

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year action plan resultantly in October 2015, a progress report on the implementation of Resolution 1 of the 2013 was submitted in which it was stated that:

“There have been many encouraging developments since the adoption of Resolution 1 of the 2013 Council of Delegates and the International Red Cross and Red Crescent Movement’s four-year action plan. Overall, the efforts of the Movement, civil society organizations and States to highlight the humanitarian consequences of nuclear weapons (including within what is often referred to as the “Humanitarian Initiative”) have been highly successful. This subject has, for the first time in decades, become a clear reference point in the discussions about nuclear weapons at the international level and, increasingly, in national contexts. However, it appears that nuclear weapons continue to be a central component of the security policies of nuclear-armed States and most are currently modernizing their arsenals. The failure of the States party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) to agree on any additional steps to advance nuclear disarmament at their May 2015 Review Conference highlights the precarious situation facing States and indeed humanity. The “catastrophic humanitarian consequences” of the use of nuclear weapons, whether by intent or accident, remains an ongoing threat and their elimination a humanitarian imperative.”55

On December 7 2015, in a Resolution passed by ‘Council of Delegates of the International Red Cross and Red Crescent Movement makes clear its vision alleging that:“in a complex, turbulent and politicized humanitarian landscape, the International Red Cross and Red Crescent Movement (Movement) is a unique global humanitarian

network that serves to prevent and alleviate human suffering wherever it may be found. It
is a torchbearer for a relevant, effective humanitarian response to the multifaceted needs
of people suffering the effects of armed conflicts, natural disasters and other crises. With
humanity, impartiality, neutrality and independence as the bedrock of its unity and
universal, the Movement consistently demonstrates the application of its Fundamental
Principles on the ground”. Harnessing the strength of “its relations with States and of its
vast community-based volunteer networks embodying the principle of voluntary service,
the Movement works optimally across its local, national, regional and international
levels….By promoting humanitarian values and demonstrating a relevant, effective and
coherent humanitarian response in these vital areas, the Movement is seen as a champion
of humanity, a universal beacon of hope in a divided world, united in the strength of its
principles and visionary in its approach. It consistently proves its worth – not least
through its transparency, accountability and efficiency – to all relevant stakeholders,
including States, donors, the public and, most importantly, the people it tries to help. By
delivering timely and effective results with and for people in need, it earns its reputation
as a unique, truly global humanitarian network.”

A report was submitted the ICRC after consultation with the States to the 31st
International Conference of the Red Cross and Red Crescent in November 2011. A draft
Resolution was also proposed with a view to get agreement of the members of the
Conference. In International Conference Resolution was adopted by consensus. Through

56 Resolution CD/15/R11 on “Vision for the International Red Cross and Red Crescent Movement”
Geneva, Switzerland 7 December 2015; Document prepared by the Standing Commission, with
contributions by the International Committee of the Red Cross and the International Federation of Red
Cross and Red Crescent Societies, and in consultation with National Societies
this Resolution two priority areas for future work were confirmed: “protection for persons deprived of Liberty and Mechanism for Monitoring Compliance with IHL.”

(iii) Role of International Humanitarian Law:

International Institute of Humanitarian Law which is non-profit humanitarian organization, an independent, founded in 1970. The headquarter of this Organization is in Villa Ormond, Sanremo, Italy. A liaison office of the Institute is established in Geneva, Switzerland. The main purpose of this institute is “to promote the development of international humanitarian law, human rights, refugee law, immigration law and related issues”. It is to be noted here that primary role of this institute is in achieving its mission “to deliver training in IHL and all related topics to participants coming from different regions of the world.”

We find that now the Institute has become very much reputed at international level as a “centre of excellence in the field of training, research, and the dissemination of all aspects of international humanitarian law.” The work of the Institute is in close alliance with those international organizations which have most significance and are dedicated to the humanitarian organizations like the ICRC, International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

Members of the Institute belong to different countries. The general policy of the Institute is established and guided by the General Assembly. The General Assembly elects the Council of the Institute which overlooks the management of the Institute and decides

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the schedule of activities. The President and Vice-Presidents are elected by the council, and makes appointment of the Secretary-General and Treasurer who constitutes the Executive Board.

According to the Report of Activity 2015:

“the Institute organized a plethora of activities reaching representatives from all corners of the earth, which enjoyed positive feedback and had a high impact on its stakeholders working in the humanitarian field. In 2015, fewer courses were run outside Sanremo and this influenced the overall number of participants. The Military Department of the Institute benefitted from the arrival in September of Major Ardan Folwaij, Legal Counselor and Instructor, seconded by the Armed Forces of The Netherlands. His presence, alongside Col. John Hardy (UK), Director, Col. Xavier Périllat-Piratoine (France), Deputy Director, and Major Brian Adams (USA), Training Officer, will help consolidate the work of the Military Department, also by providing valuable support as an additional instructor at the courses of the Institute. In 2015 the Military Department continued to run its well-tested and continually updated courses and seminars on international humanitarian law (IHL) while also working on the re-structuring of activities for 2016. Such activities were confirmed well in advance as opposed to past years.”

Institute organized a “Workshop on Non-International Armed Conflict” "this workshop, held from 26 to 28 May in Sanremo, united military and civilian experts in IHL and human rights from around the world…Participants discussed the complex and often unclear legal regime applicable to non-international armed conflict. The program
consisted of plenaries with presentations followed by discussions as well as small working groups.”

4.1.2 Contribution of International Criminal Court in Non-International Armed Conflict:

The Constitution of the International Criminal Court is under the substructure of the “Rule of Law” and Rome Statute of the International Criminal Court, 1998. Meaning of this is to ensure that doers of serious crimes must be held accountable within the Skelton of a global jurisdiction if justice does not access to them in their own country.

Christopher observed in his book that “the efforts for the establishment of a permanent ICC within UN began half a century ago with a proposal made in 1947 by Henri Donnedieu De Vabres, a French Judge on the International Military Tribunal (IMT)”.

In fact, at international level, there was need a permanent body which can prosecute the criminals of violations of International Law. Toni Pfanner says that “although it was not widely known, the first serious proposal was made a century and a quarter ago by Gustave Moynier, one of the founders of the ICRC.”


62 According to Article 6 that "Persons charged with Genocide or any of the other acts enumerated in Article 3 shall be tried by a competent Tribunal of the State in the Territory of which the act was committed, or by such International Penal Tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its Jurisdiction.- Article 6, Convention on the Crime of Genocide.”

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Convention, provision for the establishment of an ICC is mentioned. While in practical no step was initiated up to 1989. In that year, “A.R. Robinson of Trinidad and Tobago first proposed the motion in the UN General Assembly “for the establishment of the ICC.” By resolution of December 1989, the General Assembly make a request to the International Law Commission (ILC) for addressing the issue of establishing an ICC. Subsequently, the UNGA resolutions, attempts made by the ILC, and the Preparatory Commission for ICC drafted statute of ICC. In Rome July 1998, the UN Diplomatic Conference of Plenipotentiaries was held where the Statute of the ICC was adopted. No doubt it is “a milestone in the history of IHL and makes a decisive contribution to its implementation.”

Formally this Statute came into force on 1 July 2002. The Court became functional on 11 March 2003. For a term of nine years, the eighteen judges were elected by the Genearal Assembly.

We should keep in mind that the “ICC is not a part of the U.N. system while an independent body, funded by the members of the Assembly of States i.e., states-parties to the Court's Statute.” A historical step was taken in the development of global respect for human rights and humanitarian law. It replaced an ad hoc system of justice and establishes a permanent system of international justice and accountability.

The ICC "could function both as a forum for the trial of war criminals as well as an institution capable of constructing a framework for the establishment of justice and the

international rule of law."\(^\text{64}\) There is requirement of international support for making the ICC more effective and successful.

Many revolutionary innovations have been brought by the Statute in the development of international criminal law. It includes a clear “definition of crimes, namely, genocide, crimes against humanity, and war crimes which are more specific than the existing international law. Various forms of criminal responsibilities were incorporated.” These include individual responsibility, superior responsibility, aiding and abetting etc. The court will consist of eighteen judges and a prosecutor representing the world principal legal systems.

(i) Jurisdiction of Court:

ICC has a permanent jurisdiction to more focus on prosecution and investigation for the serious crimes. The range of the Court not only to deliver legal justice but also “transitional justice” is preserved in the Statute. John Rawls has observed that “justice is the bond of society without which any association of human beings would struggle to subsist.”\(^\text{65}\)

In view of Article 5 (1) Rome Statute of the ICC, “the Court has jurisdiction over "most serious crimes of concern to the international community as a whole. The ICC can try individuals for committing crimes in violation of IHL and human rights law applicable in international and non-international armed conflicts such as, genocide,

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\(^{65}\) John Rawls, “A Theory of Justice (Harvard University Press, Reissued edition, US 2005) 3; ‘Justice is the first virtue of social institutions .... A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. ....Justice is not subject to political bargaining or to the calculus of social interests.’
crimes against humanity, war crimes, and the crime of aggression.” Further in view of Article 5 (2) “The ICC shall exercise jurisdiction over crime of aggression once it is defined, and a provision to this effect is adopted in the Statute”.

On this point Jonathan I. Charney wrote "However, the ICC has, not been granted jurisdiction on universality principle. It can exercise its jurisdiction based on the principle of nationality and territoriality."

In November, 2002, it was mentioned in report of the Preparatory Commission for the International Criminal Court that “the ICC Statute contains a provision to have elements of crimes prepared by the Preparatory Commission in June 2000 and adopted by the assembly of States parties.” In view of Article 9 (1) “it will assist the Court in the interpretation and application of Articles 6, 7 and 8 of the Statute.” Dormann Observed that “the elements of crimes could aid the court in the interpretation of the Statute, but are not binding upon the judges.”

Observing Article 124, it may alleged that “however, a party to the ICC Statute may declare, that it does not accept the provisions of Article 8 of the Statute for a period of seven years from the date it has entered into force with respect to the State concerned. Its

66 For detail see Article 5 (1) Rome Statute of the ICC,

67 See Article 5 (2) Rome Statute of the ICC,


70 See Article 9 (1) Rome Statute of the ICC.

nationals become immune even when alleged to have committed war crimes.”

Therefore, it is rather unwelcome, that “the Statute allowed State-parties to keep themselves out of the ICC jurisdiction in respect of war crimes for a period of seven years. It may be also noted that the Governments are free to grant amnesties for committing war crimes, and it may lead to the practice of impunity. In order for a case to be eligible to be tried by the ICC, the crime must have occurred in one of the ratifying States or committed by its national”. Therefore, “even if a crime is committed by national of a non-party State on the territory of the State-party to the Statute, the ICC can exercise jurisdiction.”

After Observing Article 15 (3), it is said “if the Prosecutor concludes that there is a reasonable base for the investigation, he shall submit the request to the pre-trial Chamber for its authorization to carry out the investigation.”

It is not clear how far the supervision of pre-trial Chamber would be effective, supervision. In view of Article 18, (4), “however, the decisions of the pre-trial Chamber are not final, and may subject to an interlocutory appeal before the Appeals Chamber.”

A situation for investigation may be referred by State party to the Prosecutor where one or more crimes occurred within the jurisdiction of the Court to determine the charge of individuals for that crimes which are committed in the territory of the State i.e. “if the crime was committed on board a vessel or aircraft, the State of registration of that vessel

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72 See Article 124, Rome Statute of the ICC.
73 See Article 12 (2) (a) Ibid.
74 See Article 15 (3) ibid.
75 Article 18, (4), Rome Statute of the ICC.
or aircraft," which has ratified the Statute,\textsuperscript{76} or “the crimes committed by an accused is the national of a State which has ratified the Statute.”\textsuperscript{77}

Apart from this, “a situation in which one or more of such crimes appears to have been committed is referred by the UN Security Council acting under Chapter VII of the UN Charter.”\textsuperscript{78} if in the eye of UN Security Council, a state is considered a threat to international peace and security, the Council has the authority to refers any situation to the jurisdiction of ICC, and it can be done irrespective of whether a State is signatory of the Statute or not. When under Chapter VII of the UN Charter, the UN Security Council refers any matter to the Prosecutor; there is no need of consent of the State concerned. “The contemplated referral and deferral powers conformed to the UN Security Council in the ICC Statute has therefore been subjected to criticism that some provisions of the Rome Statute are in violation of international law.”

In this direction Orentlicher wrote that “India and some other States argue that the Rome Statute enlarges the Security Council's powers beyond the authority contemplated in the UN Charter. The argument advanced by India and others with regard to the role of the Security Council is a legal claim.”\textsuperscript{79} But, in view of principle of territoriality and principle of individual criminal responsibility, establishment of jurisdiction of the ICC on the nationals of non-State-parties is legally allowed. Treaties can provide obligations for third States if “the parties to the treaty intend the provision to be the means of

\begin{itemize}
\item Article 14 (2), Rome Statute of the ICC.
\item Article 12 (2) (b) Rome Statute of the ICC.
\item Article 13, (b), Rome Statute of the ICC.
\end{itemize}
establishing the obligation and the third State expressly accepts that obligation in writing.”

According to Article 11(1) of Rome Statute of the ICC “the Court will not have retrospective jurisdiction (jurisdiction *ratione temporis*) i.e. the ICC will have the jurisdiction only in respect of the crimes committed after the Statute enters-into force.”

According to the Rome Statute, “no person shall be criminally responsible for the conduct prior to the Statute enters into force.”

If a State becomes a party to the Statute after it has entered into force, “the ICC may exercise its jurisdiction only in respect of the crimes committed after the Statute has entered into force for that State unless the State has made a declaration for this purpose under Article 12, paragraph 3.”

Lietzau viewed that “the proponents of ICC did not make any attempt to further the interests of justice at the expense of procedural fairness. All the delegations recognized the importance of procedural due process protection. There was no effort to undermine the fundamental rights of the accused.”

However, sometimes it may be difficult for the ICC when public hearing is required. The Statute provides that “the UN Security Council can defer an investigation or prosecution for a period of twelve months by adopting a resolution under chapter VII of

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81 Article 11 (1) Rome Statute of the ICC.

82 Article 24, Rome Statute of the ICC.

83 Article 11(2) Rome Statute of the ICC.

UN Charter. Such a request may be renewed by the Council.”\textsuperscript{85} In this study it is consider
that it is only a power to interfere in the proceedings of the ICC.

It is possible that the drafters of the ICC Statute were thinking that, “since the UN
Charter placed on the Security Council the primary responsibility to maintain
international peace and security, it was the most appropriate body”. But it should be in
mind that “such a responsibility is only primary, but not exclusive.” Michael P writes that
“be that as it may, such a power would give the US and other UN Security Council
Permanent Members a collective veto over the ICC jurisdiction.”\textsuperscript{86} This power might
destroy the liberty of the ICC.

However the USA was not satisfied with this and demands further “special treatment
as exemption for the US nationals from ICC jurisdiction”. By this demand, the
impartiality and effectiveness of the Court were affected. On the other side, it is rather
comical that “a self-proclaimed champion of human rights does not want to respect the
rights of others. The US was once the strongest proponent of international justice. It led
the post World War II prosecutions at Nuremberg and Tokyo tribunals, and played a vital
role in the establishment of ad hoc Tribunals for Former Yugoslavia, and for Rwanda. It is
now reluctant to apply similar internationally recognized principles to its nationals. It
shows that the rule of law is only for others, but not for US nationals. Further, it should
be noted, "law must apply equally to everyone."\textsuperscript{87}

\textsuperscript{85} Article 16, Rome Statute of the ICC,

\textsuperscript{86} Michael P. Scharf, "The Politics behind the U.S. Opposition to the International Criminal Court", New

\textsuperscript{87} Benjamin B. Ferencz, "Misguided fears about an International Criminal Court", New Jersey Law
It may be remember that under Article 98 of the Rome Statute, "the Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."\(^{88}\)

In September 2002, there was UN General Assembly resolution which exempts the US military personals and the diplomats from ICC jurisdiction and on which the European Union was agree. It was that:

"States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity."\(^{89}\)

From above discussion it is found that such kind of agreements would diminish the newly established system of international justice. It will give detrimental affect on the jurisdiction of Court, and on the procedure of enforcement of human rights and humanitarian law would be affected.

Thus, we can say that “States concluding bilateral agreements with the US in respect of exemption guaranteed to its nationals from ICC jurisdiction appears to be in violation of their obligations to arrest and surrender the persons accused of crimes arising under Article 86 of the ICC Statute.” There was a threat from the US side that it will use the

\(^{88}\) Article 98, (2), Rome Statute of the ICC.

power of veto for the renewal of all UN peacekeeping missions if a permanent immunity (from ICC jurisdiction) is not granted by UN. Therefore it made a pressure on the UN Security Council for exemption of US forces from ICC jurisdiction.

Situation in Sudan/Darfur: In a report of International Commission of Inquiry, it is said that Commission of Inquiry was established by Security Council on 18 September, 2004 for investigation of violations of “international humanitarian and human rights laws to determine whether or not acts of genocide had occurred in Sudan/Darfur and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.”

The Conclusion of Commission’s report is that the “Government of Sudan and the Janjaweed militias operating in Darfur were responsible for serious violations of international humanitarian and human rights law such as ‘indiscriminate attacks, killing of civilians, torture, enforced disappearances, destruction of villages, rape; other forms of sexual violence, pillaging and forced displacement.” In the same report, it is mentioned that “the Commission found these acts conducted on a widespread and systematic basis, and could therefore constitute CAH, but concluded that the Government of Sudan had not ‘pursued a policy of genocide.’


91 See “Report of the International Commission of Inquiry on Darfur para 3”.

92 “The issue of genocide is addressed in para 489-522 of the Darfur Commission’s Report.” *ibid* para 4;
It was “recommended that the Security Council refer the Darfur situation to the ICC, given that Sudan is not a party to the Rome Statute otherwise, the Sudanese defendants could not be brought before the Court.”

By making “The UNSCR 1593” SC in 2005 referred “the situation in Darfur, dating back to 1 July 2002, to the ICC Prosecutor.” The “Resolution was adopted by a vote of our, none against, and four abstentions, the United States, China, Algeria, and Brazil.”

(ii) Principle of Complementarity:

The principle of complementarity means “the allocation of jurisdiction between the State domestic courts and ICC”. Jeffrey viewed that “it arises with regard to exercising jurisdiction for the prosecution of a person alleged to have committed an international crime. The person may simultaneously become a subject of jurisdiction of both the national courts and the ICC. That is to say, the question of complementarity arises only where domestic courts and the ICC have capacity and intend to prosecute the same person for the same crime.”

93 Report of “the International Commission of Inquiry on Darfur” para 5.
96 Under the United Nations Charter, “the Security Council is primarily responsibility for the maintenance of international peace and security. It has 15 Members of which 5 are permanent with ‘veto power’ each Member has one vote. Under the Charter, all Member States are obligated to comply with Council decisions; that the charter shall prevail in conflict of obligations by members.”
Oscar Solera observed that “States have realized that their national legal systems sometimes may be imperfect, and may need complementary mechanisms to render justice. Accordingly, the principle of complementarity which recognizes international criminal jurisdiction has been incorporated in the ICC Statute.”\(^99\) From above discussion it can found that meaning of this is not that the ICC could be as “a universal supreme court of appeals over the national jurisdictions.” In matter of the international crimes, the States have primary responsibility to fulfill their duty in the national jurisdictions. Yet, some States have fears that once the ICC comes into force, it would take over the national jurisdiction and infringe State sovereignty. But in fact ICC is the complementary to the national criminal jurisdiction.”\(^100\) Jurisdiction will be of the domestic courts to try the nationals if they are accused of crimes mentioned in Article 5 of the Statute.

Thus even in the matter of a State, which is a party to the Statute, national legal systems will prevail in the matters of investigation and prosecution on the crimes which are set out in it. Indeed, the very idea of principle of complementarity is to ensure respect for State sovereignty i.e., non-intervention in the internal affairs of States and therefore it “offers the first opportunity to States for exercising criminal jurisdiction over their nationals and the perpetrators found on their territories having committed crimes listed in the ICC Statute. It would enable the States to contribute positively for the effective functioning of international criminal justice system created by them. The ICC will step in only when States are genuinely unwilling or unable to dispense the justice.”\(^101\) In order to


\(^{100}\) Article I, Rome Statute of the ICC.

\(^{101}\) Article 17 (I)(a).
determine the unwillingness of a State, the Statute makes it clear that it must be established that the proceedings are conducted or the decision is made for the purpose of shielding the person from criminal responsibility for the crimes within the jurisdiction of the court, or there has been an unjustified delay in conducting the proceedings.”

The principle of complementarity underlines that “international prosecutions cannot be alone sufficient to secure justice.” It emphasizes “the crucial role of the national jurisdiction in promoting accountability. Therefore, the ICC cannot be deemed as a substitute for national prosecutions. It will come in to picture only when States fail to prosecute criminals.” In view of the principle of complementarity between the ICC and the national courts, “States must adopt national legislation for implementing the provisions of the Rome Statute.” It is fear in developing Countries that that there is very much probability that the developed countries will dominate the Court.

States which are not a party to the Statute, they are not duty bound to cooperate/support with the court. Yet, ad hoc assistance is the requirement of such States. To secure States’ cooperation is very much difficult. On the other side, in the situations which are referred to the ICC by the UNSC, the Statute’s non State-parties have an obligation to give their Cooperation. In case of enforcement of its decisions and investigation and, they are considered to completely cooperate with the Court. However: "Unfortunately for the ICC, international cooperation will vary according to the case and the nations involved. Geography, history, domestic politics, traditional alliances, and

102 Article 17 (2) (a).
103 Article 17 (2) (b).
conflicts of interests mean that the ICC will sometimes be powerless to investigate or to serve its indictments.”

When a State has ratified the Statute, it is legally obliged to make arrests and surrender the persons accused of crimes under the Statute even in the absence of an extradition treaty even if national law of that State prohibits extradition. It should be noted that the Rome Statute makes a distinction between the terms surrender and extradition. In the ICC Statute, the term “surrender means the delivering up of a person by a State to the Court, pursuant to this Statute” and the term "extradition" means the "delivering up of a person by one State to another as provided by treaty, convention or national legislation.”

According to a Web source “ICC is an institution to ensure that crimes against humanity and mass atrocities do not occur with impunity. While national governments often have capable systems to enforce laws, in occasions of mass atrocity national governments are often unequipped to deal with such grave issues. These incidences fall far outside the capacities of most legal systems or even the system itself becomes compromised. Historically, in cases like Nuremberg for example, the international community responded to mass atrocities to prosecute individuals accused of such crimes. The ICC is formed out of that legacy with the goal of ending impunity for mass atrocities and bringing justice to crimes that warrant international attention.” The ICC passed a


106 Article 102 (a) Rome Statute of the ICC.

107 Article 102 (b) Rome Statute of the ICC.

108 Available at http://invisiblechildren.com/blog/2012/04/05/origin-and-purpose-of-the-international-criminal-court accessed on 22/12/15.
milestone verdict and convicted ICC inductee, “Thomas Lubanga” on charges of using children in armed conflict. This benchmark for the court’s success was reached at the court’s ten-year mark and is a huge step forward in setting precedence for international law and the prosecution of future ICC inductees.”

According to ICCSt a fundamental requirement for a charge under Articles 82 (2) (A-F) of the Statute, is the existence of an armed conflict be it international or non-international in character. It follows then that if the Prosecutor fails to prove the existence of a relevant armed conflict it will be impossible to establish charges against the accused. Relying on jurisprudence from the PTC and the ‘ICTY’, an international armed conflict exists whenever there is resort to armed conflict between States.”

It is suggested that “armed groups with the ability to undertake sustained operations, as revealed by their ability to train troops and participate in numerous battles will fall under a non-international armed conflict in character.” There can be some evidence of aid provided by some states, “applying the overall control tests, as adopted by the ICC and ICTY it might fall short of the threshold for direct intervention.”

109 The Prosecutor v Thomas Lubanga (ICC-01/04-01/06-8); The Prosecutor v Katanga and Ngudjolo, on the Appeal of Mr Germain Katanga against the oral decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, Judgment 25 September 2009 (ICC-01/04-01/07-1497).

110 Ibid.

111 ICC-01/04-01/06-2748-Red para 21

112 ICCSt (n 1); ICC-01/04-01/06 pare 504.

113 ICC-01/04-01/06-2748-Red paras 22 – 24.

114 Ibid Paras 38-43.
In view of above discussion, it is found that the direct interference by military force of State and the presence of multi-national forces are not enough to make an armed conflict of international character.

Since no exact definition of armed conflict in the Statute or in the Elements of Crimes (EOC) document is found, the introduction to the EOC expands that: “The elements for war crimes under Article 82 paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed conflicts.”

Geneva Conventions and their Additional Protocols I & II also don’t clearly defined armed conflict. This concept is defined by other international tribunals. ICTY defines it as: “An armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State’. IHL applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached or in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place.”

International armed conflicts belongs “to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.” The concept of ‘armed

115 ICC-01/04-01/06 para 531.

116 Prosecutor v Tadić, Case No IT-94-1-AR72, Appeals Chamber, decision on the defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (Tadić Interlocutory Appeal Decision).

117 GC I-IV, Article 2(1).
conflict’ totally replaced the traditional concept of “war.” As per the Commentary of the first Geneva Convention “the substitution of ‘armed conflict’ for ‘war’ is deliberate. One may argue almost endlessly about the legal definition of ‘war’.”

A State can always pretend, “when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self defence.” The ICTY confirmed in Tadic’ case that “an armed conflict exists whenever there is a resort to armed force between States” and other international bodies use this definition. These rules also apply “to cases of partial or total occupation of the territory of a high contracting party, even if the said occupation meets with no resistance.”

Under States responsibility in unlawful acts it is considered that: “a conflict between government and rebel forces within a country becomes of international character where rebel forces are de facto agents of a third State. Thus, the conduct is attributable to the third State.”

In Lubanga case, the Trial Chamber noticed that “Article 82 (2) (f) of the Statute only requires the existence of a ‘protracted’ conflict between ‘organised armed groups.’ It does not include the requirement in AP II that the armed groups need to ‘exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted


119 1 UNTS XVI Charter of the United Nations 24 October 1945 Article 51; ICC (n 36).

120 GC I-IV Article 2(2).

military operations”. It was therefore, unnecessary for the Prosecution to establish that the relevant armed groups exercised control over part of the territory of the State.”

Trial chamber took different views that “Article 82 (2) (f) does not incorporate the requirement of an organized armed groups ‘under responsible command’, as set out in Article 1(1) of AP II of the GC. ICC can prosecute Genocide “as a crime of ‘universal jurisdiction.”

Now it is settled “that the Crime of genocide can be committed against any individual, civilian or combatant whilst Crime against Humanity (CAH) may only be committed against any civilian population.” In Antonio Cases it is observed that: “Persecutions embrace actions that may not be prohibited by national legal systems. …such actions may take the form of acts other than murder, extermination, enslavement, or deportation’, “since no specific target group is necessary for persecutions to be established, therefore ‘civilians or members of the armed forces may be victims of this class of crimes.”

Article 88 ICCSt obliges State Parties to ensure that “there are procedures available under their national laws for cooperation with the ICC. Several States made pledges to

122 Pre-Trial Chamber II came to the same conclusion in ICC-01/05-01/08-424 para 236.
123 The approach adopted by Pre-Trial Chamber I, ICC-01/04-01/06-803-tEN, paras 232 - 233; Pre Trial Chamber II adopted a different interpretation, ICC-01/05-01/08-424, para 234.
adopt National legislation and other measures to enhance their ability to cooperate effectively with the ICC. The declaration on cooperation adopted by the RC also emphasized the importance of compliance with requests for cooperation from the Court.\textsuperscript{127}

Law is not settled on these issues in spite of the codification in the Statute. The ICC is a creation of “demonstration of the will of the international community to bring to justice those responsible for egregious crimes, prevent impunity of such atrocities and deliver justice to the Victims of such crimes. In attempts to achieve the set objectives, many accused and affected communities question the Court’s approach; claiming that all the Cases out of about 22 situations before the Court are located in same geographical continent and geographical jurisdiction is not part of the Court’s jurisdiction, could this be an evidence of the Court’s behavior in a particular way or a coincidence? Triggering mistrust for the Court, and portraying the Court as being politically motivated. However, the major problem with the ICC and its \textit{modus operandi} is rooted in the unending fault lines of international law, to be precise the tension between state sovereignty, international accountability and political affiliations.” There is need to codify the laws on this issue.


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In view of Article 147\(^\text{128}\) of the Fourth Geneva Convention" prohibited conducts such as willful killing, torture, inhuman treatment, hostage taking, extensive destruction and appropriation of property. Willful killing, torture or inhuman treatment, including... willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person.”(For detail see Article 147).

4.1.3 National Mechanisms:

For the protection and promotion of IHL, National institutions should be considered “to establish for the effective guarantee of fundamental freedoms for all”. Cooperation should be between the UN treaty bodies and national institutions. National institutions play a significant role in the perception of human rights at the national, regional and international levels. They advocate for the ratification of international human rights treaties and provide assistance and advise to member States in drafting legislation in compliance with international norms; monitor the implementation of international instruments at the national level; contribute to State compliance with reporting obligations to treaty monitoring bodies.

As per Commission on Human Rights Resolution 1996, it may be said:

“A great deal of activity in the area of national institutions is now taking place at the regional and sub-regional levels. Of particular note are the various initiatives, which have taken place during 1996 in the Asian-Pacific region, in Africa and in Central and

\(^{128}\) Article 147 of Geneva Convention “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”
Eastern Europe. Clearly, such cooperative endeavors have great potential to encourage the establishment of effective, independent institutions and the strengthening of existing ones, particularly through the exchange of information and experiences. Informal regional arrangements of national institutions, such as those, which have been set up in the African and Asian-Pacific regions, are also valuable and should be supported by member States and the UN.”

In Human Rights Watch World Report in 2003, it is alleged that “in Sierra Leone, the formation of an autonomous, quasi-judicial national human rights commission provided in the 1999 Lome Peace Agreement has not received much attention either at national or at international level.”

4.1.4 Contribution of ad hoc Tribunals:

Under UN Charter, Security Council has power to establish Tribunals to settle disputes. Agnieszka Szpak writes that “the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) was convened by the Security Council resolution no. 827 (1993) whereas the “International Criminal Tribunal for Rwanda (hereinafter: ICTR) by resolution no. 955 (1994) (UN SC res. 827 (1993), UN SC res. 955 (1994)…In accordance with the ICTY Statute of 25 May 1993, the Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991… Articles 2-5 enumerate offences falling under the Tribunal’s jurisdiction, namely grave breaches of the Geneva


Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity (Statute of the ICTY).”¹³¹

Statute of The ICTR of 8 November 1994 states that the Tribunal “shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring States between 1 January 1994 and 31 December 1994.”¹³²

Jurisdiction of ICTR covers these crimes like “crime include genocide, crimes against humanity and violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (the last category being war crimes committed in the non-international armed conflicts).” In the history of international Law, the ICTY and the ICTR both are definitely one of the most significant institutions, not only for its catalytic effect in generating trials for international crimes before both international and domestic courts but also for breathing new life into both international humanitarian and criminal law.”¹³³

Wilmshurst cautioned that “the role of the ICTY in eradicating the dichotomy between the law applicable to international armed conflicts and the one applicable to non-international armed conflicts…Having confirmed that many of the offences that were crimes in international armed conflict were of customary nature, and as such also crimes in non-international armed conflict, the Tribunal to a great extent solved the problem of

¹³¹ Agnieszka Szpak, Legacy of the ad hoc International Criminal Tribunals in Implementing International Humanitarian Law; E-ISSN 2039-2117 ISSN 2039-9340; Vol 4 No 9 October 2013.


determining in each case the nature of an armed conflict as the applicable customary international humanitarian law (fundamental rules) is the same for both types of an armed conflict.”

Here, it is noticeable statement of the Appeals Chamber in the Celebici case: “In light of the fact that the majority of the conflicts in the contemporary world are internal, to maintain a distinction between the two legal regimes [of armed conflicts international and non-international.. and their criminal consequences in respect of similarly egregious acts because of the difference in nature of the conflicts would ignore the very purpose of the Geneva Conventions, which is to protect the dignity of the human person” (“Prosecutor v. Z. Dela-liü, Z. Muciü, H. Deliü, E. Landzo, Appeals Chamber 2001”). In other words, we can say in light of an increasing number of internal armed conflicts and evolution of armed conflicts, it is very much confusing and “difficult to justify this distinction.”

In a topic Guide written by Huma Haider, it is mentioned that “responsibility is incurred not only by acting, but also by failing to act where there is an obligation to act. This includes military leaders and their superiors who fail to take necessary and reasonable measures to prevent or suppress the commission of unlawful acts by subordinates, over whom they have effective control...This form of liability, termed ‘command responsibility’ has been established by the ICTY and ICTR. Court decisions are not simply declaratory of the law, but courts themselves are important actors in their


135 Prosecutor V Delalic, Mucic Delic and Landzo(Celebic Case), Case No IT-96-21Judgment of 16 November 1998.
development...The ICTY and ICTR interpreted their mandate as extending to non-international armed conflict, whereas the Geneva Conventions and Additional Protocols only specified the application of individual criminal responsibility in international armed conflict situations. This extended jurisdiction was subsequently incorporated into the Rome Statute of the International Criminal Court.\textsuperscript{136}

Further it is observed that “the ICC also specifies two categories of crimes over which they have jurisdiction. The first concerns grave breaches of the Geneva Conventions in international armed conflict and serious violations of Article 3 in the case of non-international armed conflict. The second concerns other serious violations of the laws and customs applicable in international and non-international armed conflicts. This includes ‘intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance as long as they are entitled to civilian protection under IHL (Rome Statute, Articles 2(b)(iii) and 2(e)(iii)).’” Although after twenty years, on 31 December 2015, ICTR was wrapped up. It gives the decision which is milestone in the history of IHL.

4.1.5 Contribution of the International Court of Justice:

The International Court of Justice (ICJ) is the most important judicial organ of the United Nations and applicability of this on all bodies of international law. Contribution of this Organ is in the implementation of IHL through “its jurisprudence and its advisory opinions”. For a settlement of a dispute between States for the applicability of Humanitarian Law, ICJ can be called upon. The ICJ’s decisions have very much influence on international community. It interpreted Humanitarian Law. Judgments and opinions of

\textsuperscript{136} A topic guide written by Huma Haider “Compliance with and Enforcement of IHL” January, 2013.
this Court are respected and effective. (See, for example: “the case of Nicaragua vs. the US, concerning the provision of aid to the Contras in Nicaragua in this guide’s section on Humanitarian Principles and Humanitarian Assistance; and the Legality of Nuclear Weapons and Construction of a Wall in the Occupied Palestinian Territories opinions in the section on Overlapping Areas of Law.” In the study, “the ICRC identifies 161 rules which are presented as part of customary international law. In many cases, these rules apply to both international and non-international armed conflicts. Some of the rules deal with the protection of victims, others deal with the conduct of hostilities, and others still deal with the implementation of IHL”.

Advisory opinion on “Legality of the Threat or Use of Nuclear Weapons under international law.”

On request of the UNGA, on December 20, 1994, the ICJ gave an advisory opinion on the issue: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" When ICJ determined the legality or illegality of the threat or external use of nuclear weapons, it was decided that the most directly relevant applicable law governing the Assembly's question consisted of “(1) the provisions of the UN Charter relating to the threat or use of force, (2) the principles and rules of international humanitarian law that form part of the law applicable in armed conflict and the law of neutrality, and (3) any relevant specific treaties on nuclear weapons.” The Court considered some definite unique features of nuclear weapons particularly their destructive capacity which can not only destroy present human world but also coming generations.
Pieter observed that “the Court first considered the provisions of the UN Charter relating to the threat or use of force. Although Article 2(4) (generally prohibiting the threat or use of force), Article 51 (recognizing every state's inherent right of individual or collective self-defense if an armed attack occurs) and Article 42 (authorizing the Security Council to take military enforcement measures) do not refer to specific weapons, the Court held that they apply to any use of force, regardless of the type of weapon employed…The Court noted that the UN Charter neither expressly prohibits, nor permits, the use of any specific weapon (including nuclear weapons) and that a weapon that is already unlawful per se by treaty or custom does not become lawful by reason of its being used for a legitimate purpose under the Charter. Whatever the means of force used in self-defense, the dual customary condition of necessity and proportionality and the law applicable in armed conflict applies, including such further considerations as the very nature of nuclear weapons and the profound risks associated with their use.”\textsuperscript{137}

Further the Court took into consideration the question “whether a signaled intention to use force if certain events occur qualifies as an unlawful "threat" under Article 2(4) of the UN Charter. According to the Court, the notions of "threat" or "use" of force under Article 2(4) work in tandem in that the illegal use of force in a given case will likewise make the threat to use such force unlawful. The Court pointed out that the mere possession of nuclear weapons would not constitute an unlawful "threat" to use force contrary to Article 2(4), unless the particular use of force envisaged would be directed

against the territorial integrity or political independence of a state or would be inconsistent with the purposes of the United Nations or, in the event that it were intended as a means of defense, such envisaged use of force would violate the principles of necessity and proportionality.”

By directing two questions, The ICJ considered the law applicable in situations of armed conflict:
(1) are there specific rules in international law regulating the legality or illegality of recourse to nuclear weapons *per se*, and (2) what are the implications of the principles and rules of humanitarian law applicable in armed conflict and the law of neutrality? The ICJ noted that international customary and treaty law do not contain any specific prescription authorizing the threat or use of nuclear weapons or any other weapon in general or in certain circumstances, in particular those of the exercise of legitimate self-defense. Nor, however, is there any principle or rule of international law that would make the legality of the threat or use of nuclear weapons or of any other weapons dependent on a specific authorization. State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but is rather formulated in terms of prohibition.”

The Court, on “the request to relate not to the effects of the use of nuclear weapons on health, but rather the legality of the use of such weapons in view of their health and environmental effects” held that “there was insufficient connection between the request and the functions of the WHO to support the Court's jurisdiction… the legality or

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138 *Ibid*

illegality of the use of nuclear weapons in no way determines the specific measures, regarding health or otherwise (studies, plans, procedures, etc.), which could be necessary in order to prevent or cure some of their effects."

Consequently, the Court pointed out “that none of the WHO's reports and resolutions was in the nature of a practice of the WHO concerning the legality of the threat or use of nuclear weapons.” And It held that “in general the WHO is not empowered to seek an opinion on the interpretation of its Constitution in relation to matters outside the scope of its functions.”¹⁴⁰

4.1.6 Contribution of International Humanitarian Fact-Finding Commission:

The International Humanitarian Fact-finding Commission (IHFFC) is one of international institutions. The notion to behind its constitution is to ascertain those facts which are controversial “where there are mutual allegations and denials of violations constitutes a useful, even necessary tool for re-establishing respect for international humanitarian law.”¹⁴¹

In pursuant to Article 90 of Protocol I, the Commission was established and officially came into force in 1991. It is a permanent international body. Its functions are to investigate the allegations of serious violations of International Humanitarian Law. Its competency is accepted by 72 States.

Commission’s experts investigate the allegations” when parties to a conflict are accused of violations of international humanitarian law, the. They offer their good services to further compliance with international humanitarian law…Unlike a court, the


Commission restricts itself to establishing the facts: it does not deliver a verdict. The Commission informs the relevant parties of the results of its investigation and makes recommendations for improving compliance with international humanitarian law and its application…The Commission is competent to investigate international armed conflicts but has also expressed its willingness to conduct enquiries into alleged violations of international law that arise in non-international conflicts.”\textsuperscript{142}

An enquiry can only conduct by the Commission only with the consent of the parties to conflicts concerned. “Recognition of the Commission’s competency may be either permanent (comprehensive declaration) or temporary (ad hoc consent). By making a comprehensive declaration, a state authorizes the Commission to enquire into any conflict that may arise between itself and another state that has made the same declaration...A party to an armed conflict that has not recognised the competence of the Commission may nevertheless do so on a temporary basis, limited to the specific conflict in which it is involved...In this case, the other party or parties to the conflict must also agree to the enquiry. Any declaration of recognition must be deposited with the Swiss Federal Council, which is the depositary of the Geneva Conventions.”\textsuperscript{143}

**Appraisal**

Under the UN framework, many international human rights conventions are for supervision, investigation and monitoring the enforcement of the rules and regulations of international legal instruments. Many mechanisms are utilized both convention-based and

\begin{footnote}
\textsuperscript{142} Available at \url{https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/humanitarian-fact-finding-commission.html} accessed on 02/03/2015

\textsuperscript{143} Ibid.
\end{footnote}
non-convention-based. However, even a reporting system is not provided by the Geneva Conventions of 1949 and the 1977 Additional Protocols. Yet, this is not possible to have a monitoring system in humanitarian law. The ad hoc war crimes tribunals have been established to the rapid implementation of “an international criminal law, culminating in the establishment of the permanent ICC”.

To establish ICC is a revolutionary step in the development of international justice and the implementation of international law as we can see that its establishment was the demand of the hour. Further, the visits by the special mechanisms of the UN in particular, the commission of human rights could also play a vital role in the promotion and protection of human rights.144