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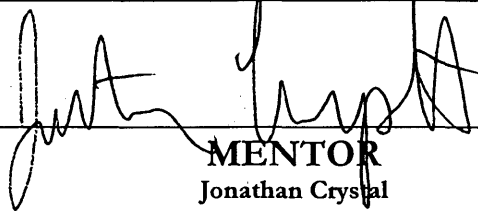
In Africa in the 90s

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INTERNATIONAL HUMANITARIAN LAW AND ACTION IN AFRICA IN THE 90S

BY

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## ***I INTRODUCTION***

Humanity is faced with greater threats in this present day than it did in the past. The unfortunate reality exposes that armed conflicts still exist and are in fact occurring more than it did in the past claiming numerous amounts of victims (the civilian population), particularly innocent ones that should remain immune under the law. In order to achieve better protection for these victims, there is a need for a better understanding of international humanitarian law amongst the parties involved; those who should apply it (combatants, public officials) and most especially in situations where the structures of the population are completely destroyed and disintegrated. States, international organizations, and humanitarian agencies, particularly the International Committee of the Red Cross: (ICRC) possess the duty of training those who have to apply the law.

International humanitarian law is an important issue that is discussed when talking about conflict situations due to the fact that the world is being faced with a new order of atrocities (widespread human suffering); the international humanitarian law was put in place to ensure the protection of human dignity. And it would be meaningless if it does not help in alleviating the untold suffering caused by armed conflicts. The law thereby provides the practical means of dealing with humanitarian issues arising from conflict situations, to restrict and control the methods and means of warfare employed in such cases.

In discussing this topic, I have divided it into four parts:

- ❖ Where I discussed the general issues pertaining to international humanitarian law (definition, origin, sources, rules, development and implementation of the law).
- ❖ The main aspect of international humanitarian law that is relevant for Africa, here I discussed some specific cases of some countries (Rwanda, Somalia, Nigeria, Sudan and

Ethiopia) that the law and action has been respected and disrespected and also looking at its protection of the most vulnerable population. I also went on to analyze two out of the above mentioned countries perceptions of international humanitarian law, highlighting on special aspects like: the protection of civilians, prisoners of war and international institutions. I also discussed how Africans react and promote the humanitarian principles; shedding a bit of light on the obstacles to the development of international humanitarian law in Africa.

- ❖ The role of the ICRC in ensuring the respect and acting as a guardian of international humanitarian law; where I discussed what the international community represented by the ICRC, UNHCR and other humanitarian agencies are doing to ensure the respect for international humanitarian law.
- ❖ The future of international humanitarian law, where I discussed what the future seems to hold for the law in general and in the African context.

This paper is discussed in the time era of the 20<sup>th</sup> century (end of 1900s-1990s) because this period witnessed a massive outburst of conflict, particularly in Africa; which is seen to have been and still is much bombarded with several cases of never-ending eruption of violence.

Some of the key questions that were addressed were:

- ❖ What is international humanitarian law all about?
- ❖ In what situation is humanitarian law applicable?
- ❖ What are the obstacles to the development of humanitarian law?
- ❖ To what extent do principles of international humanitarian law regulate the conduct of parties in an armed conflict?



- ❖ What is the role of the international community in ensuring the respect of the humanitarian law?
- ❖ Have conflicts in Africa demonstrated any respect of international humanitarian law? If yes, to what extent?
- ❖ Are the African states doing anything in helping to promote international humanitarian law? Is the law fully developed in the African context?
- ❖ What does the future seem to hold for international humanitarian law?

## I.I *Definition*

International humanitarian law is defined as what forms a major part of public international law, which consists of rules that seek to protect persons who are not taking part or no longer taking part in hostilities in times of conflict and it also seeks to restrict the methods and means of warfare employed. “Humanitarian law applies to those rules of international law, which aims to protect persons suffering from the evils of armed conflicts as well as objects not directly serving military purposes.”<sup>1</sup> The Law is derived from the basic principle that the individual is entitled to certain minimum rights in situations of armed conflict. S/he is entitled to protection, respect, care and humane treatment if wounded, captured or dead.

According to the ICRC, “International humanitarian law applicable in armed conflict is an international customary rule which is specially intended to resolve matters of humanitarian concern arising directly from armed conflicts, whether of an international or non-international nature. For humanitarian reasons, those rules restrict the right of the parties

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<sup>1</sup> Nahlik, Stanslaw. **Brief Outline of International Humanitarian Law**. Pg. 7.

to a conflict to use the method or means of warfare of their choice, and protects persons and property affected or liable to be affected by the conflict.”<sup>2</sup>

International humanitarian law, which is also known as the law of armed conflicts or law of war has two dimensions to it and they are:

- ❖ The Law of Geneva: humanitarian law is aimed at safeguarding military personnel’s that are no longer active in fighting, thereby limiting the actions of the fighter.
- ❖ The law of Hague (law of war): it establishes the rights and obligations of the fighters in the conduct of military operations. It sets out a code of conduct with regards to partaking in conflict, thereby limiting the means of harming the enemy.

## I.II *Origins*

Due to the massive scale in which the conflict occurred, we witnessed the need for an effective legal regulation that would demonstrate that those not directly involved in hostilities should be protected, as they appear to be the victims suffering the consequences.

All rules, precursors of the present day international humanitarian law are not restricted to any one race, religion or continent, but to be traceable to all cultures. Before the creation of humanitarian law, armed conflicts were regulated by a set of unwritten rules that were based on customs, followed by the drafting of bilateral treaties, which came into force gradually on different scales. There were also some regulations that were set forth by states for their troops; but the law was limited in time and space, in that it was valid only for specific conflicts and the rules varied, depending on the period, place and morals.

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<sup>2</sup> ICRC: *Answers to Your Questions*. Pg. 4.

In the creation of humanitarian law, Henry Dunant, who formulated the idea in his book: *A memory of Solferino* and Francis Lieber made essential contributions. The intellectual framework was therefore laid in the 19<sup>th</sup> century, where Dunant proposed two practical measures:

- ❖ Calling for immediate action, an international agreement on the neutralization of medical personnel in the field, which led to the adoption of the Geneva Convention of 1864.
- ❖ The creation of a permanent organization for practical assistance to the wounded in war times, leading to the establishment of the Red Cross.

A committee was therefore composed in 1863 of five members, who are today known as the founding fathers of the ICRC; they conducted the 1864 Diplomatic Conference, attended by 16 states that adopted the Geneva Convention for the amelioration of the condition of the wounded armies in the field. This convention laid the foundation for the international humanitarian law as it was characterized by:

- ❖ Written rules of universal scope, protecting victims of conflicts.
- ❖ It was open to all states (multilateral in nature).
- ❖ It considered rendering care without discrimination to the wounded and sick military personnel's.
- ❖ It commanded respect for medical personnel, transport or equipment carrying the ICRC emblem on.

### **I.III Sources**

The source of International Humanitarian Law is based on Treaties, Customary Law and the Fundamental Principles of International Humanitarian Law

Treaties:

International humanitarian law has long been laid down in bilateral treaties:

- The Hague Convention
- Four Geneva Conventions
- Two Additional Protocols

Customary Law:

Consideration has been given in the field of international humanitarian law to treaties as a source of customary international humanitarian law in particular to the general Multilateral Codification Convention and the procedure for their elaboration and acceptance.

Fundamental Principles of International Humanitarian Law:

The fundamental principles of international humanitarian law recognized by civilized nations may first be understood as those principles of domestic law that are common to all legal orders. Such principles (good faith and proportionality) have become customary law and have been codified, however apply in armed conflict and can be useful in supplementing and implementing international humanitarian law. Some of these principles are:

- Principle of distinction (between civilian and combatants)
- Necessity
- Prohibition of causing unnecessary suffering (not based on a separate source of international law but on treaties, customs or general principles of law).

The representatives of states invited by the Swiss confederation adopted four new conventions for the protection of the victims of war in 1949 in Geneva. These conventions therefore replaced the 1929 conventions and to some extent the Hague convention No. IV.

The first three conventions deals with:

- ❖ Protection of the wounded and sick
- ❖ The shipwrecked
- ❖ The prisoners of war
- ❖ And the fourth goes further to contain the protection of civilian persons in times of war; due to the lessons learnt from the failures of the second world war as crimes were mostly committed against the civilian population and their occupied territories.

The 1949 treaties brought about an important development, which is the extension of the protection under humanitarian law to the victims of civil wars as well. Since civil war conflicts were often of similar magnitude of international conflicts. The Geneva Convention stands as the most universal of international treaties with 175 states bound by it.

Due to the new development emerging in the international scene, (the issues of human rights and conflicts), two additional protocols to the Geneva Conventions have been adopted at the Diplomatic Conference on the 'Reformation and Development of International Humanitarian Law Applicable in Armed Conflicts', on the 8<sup>th</sup> of June 1977. They are therefore aimed at strengthening the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts.

In view of this, the protection of war victims is not limited to treaties or written texts but mostly on the agreement between states, which stands as the most common source of international laws and obligations and have in no way replaced unwritten law, customary law that contains vital principles and rules.

#### ***I.IV The Development of Humanitarian Law***

The first step in the historical process of humanitarian law was the very brief 1864 Convention, which has witnessed several major advances in the field of humanitarian law:

“1906 - (new) Geneva Convention for the Amelioration of the Condition of the

Wounded and Sick in Armies in the Field;

1907 - The (tenth) Hague Convention for the Adaptation to Maritime Warfare of the

Principles of the Geneva Convention;

1929 - Two Geneva Conventions: one covering the same ground (and with the

Same name) as the Convention of 1864 and 1906; the other relative to the treatment of Prisoners of War;

1949 – Four Geneva Conventions relative to the protection of victims of war: the First

And Third Conventions are revised versions of the Conventions of 1929; the Second is a revision of the Tenth Hague Convention of 1907; the Fourth breaks fresh ground and deals with the protection of civilian persons in time of war;

1977 – Two Protocols additional to the Geneva Conventions of 1949, the first relative to

The protection of victims of international armed conflicts, the second of non-international armed conflicts.”<sup>3</sup>

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<sup>3</sup> Nahlik Stainislaw. A Brief Outline of International Humanitarian Law. Extract from the International Review of the Red Cross. July- August 1984.

## **I.V *Essential Rules of International Humanitarian Law***

The fundamental rules of humanitarian law that are applicable in armed conflicts are as follows:

1. Persons hors de combat (no longer) and those who do not take direct part in hostilities are entitled to respect for their lives and physical and mental integrity. Persons under this category must be protected and treated in a humane way in all circumstances without any unfavorable distinction.
2. It is forbidden to wound or kill an enemy who surrenders or who can no longer take part in fighting.
3. The wounded and sick should be collected and looked after by the party to the conflict, which has them in its power. Medical personnel, establishments, transport and equipment's must also be protected as long as it is under the Red Cross emblem (Red Cross and Red Crescent on a white background). This is the sign protecting the above-mentioned persons and objects and must be respected.
4. Captured combatants and civilians who find themselves under the authority of an adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence and reprisals. They are entitled to communication with their families and to receive aid.
5. Everyone is entitled to benefit from fundamental judicial guarantees and no one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, or to cruel degrading corporal punishment or any other treatment.

6. Neither the parties to a conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is prohibited to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.
7. The parties to a conflict must at all time distinguish between the civilian population and combatants in order to spare the civilian population and property. Neither the civilian population nor individual civilians shall be the objects of attack. Attacks may be made solely against military objectives.<sup>4</sup>

#### ***I.VI Measures Available to States for fulfilling their Obligations to ensure Respect for International Humanitarian Law***

Implementation of the obligations contained in Article 1, common to the Geneva Conventions of 1949. In order to ensure the respect for international humanitarian law, measures taken to implement them have been mentioned in the Geneva Conventions and Additional Protocols but there is no clear indication of how they should go about ensuring the respect for international humanitarian law. So as to make progress in the implementation of humanitarian law, especially in the context of Common Article 1, it is therefore necessary to go further in looking at the framework that is provided by international humanitarian law itself so as to consider other options like: humanitarian diplomacy that mainly involves states and the United Nations; thereby placing the responsibility outlined in Article 1, both individual and collective with states and thus necessarily involving politics. For example: providing legal advisers to assist in developing or adapting national legislation and penal codes for effective implementation of international humanitarian law as part of any kind of



military cooperation; holding regional and international seminars with the participation of states in order to debate the specific problems associated with respect for international humanitarian law; and helping to set up and update regional databanks on the various aspects related to national measures and their implementation that would be accessible to any state needing information.

The permissible measures available to third parties, that is, states that are not party to an international or non-international armed conflict, to ensure respect for international law in the event of the violation of the law could be classified into four broad categories:

1. Measures to exert diplomatic pressure:

- ❖ Vigorous and continuous protests lodged by as many parties as possible with the ambassadors representing the state in question in their respective countries and conversely, by the representatives of those parties accredited to the government of the afore-mentioned state.
- ❖ Public denunciation by one or more parties and or by a particularly influential regional organization of the violation of international humanitarian law.
- ❖ Diplomatic pressure on the violator through intermediaries.
- ❖ Referral to the international fact-finding commission (Article 90, Additional Protocol I) by a state with regard to another state, both of which have accepted the competence of the commission.

2. Coercive measures that could be taken by states:

This applies only to states that are legally permissible in international law and does not take into consideration, armed intervention undertaken unilaterally as opposed to

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<sup>4</sup> Drafted by a group of legal experts from the ICRC and the federation and published in the IRRC, 1978. Pg. 248-249. Jean Pictet. The principles of International Humanitarian Law, Geneva. 1967.

collectively. It is widely recognized that states adopt such measures so as to exert pressure on other states in retaliation for an act that was committed by the state in question. Such measures could be categorized into two sections:

- ❖ Retortion: which refers to unfriendly acts that are damaging but intrinsically lawful, carried out in response to a previous act that might also be unfriendly but lawful or internationally unlawful. For example: expulsions of diplomats and the reduction or supervision of public aid to state.
- ❖ Reprisals: these are 'acts which are by their very nature unlawful but are exceptionally justified in the light of a prior unlawful act committed by the state at which they are directed.'<sup>5</sup>

The purpose of using coercive measures is not to punish or seek compensation but to oblige the state in question to stop performing the act of violations and mostly to deter it from repeating the same offence in future. For example: Ban on investments or restrictions on arms trade.

### 3. Steps that could be taken in cooperation with international organizations:

- ❖ Another measure of enforcing the respect for international law is that of the cooperation with international organizations, especially those that are active in the humanitarian, human rights field. Such as the European and Inter American Human Rights Commission of the United Nations, which stands as effective political support instruments of the world, these measures could be either by the Security Council or the General Assembly of the United Nations.

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<sup>5</sup> Palwankar, Umesh. **Measures Available to States for Fulfilling their Obligations to Ensure Respect for International for International Humanitarian Law.**

Obligation to ensure respect that is conferred on states (Contribution to Humanitarian Efforts):

- ❖ This could be in form of supporting organizations involved in humanitarian assistance by providing financial or material support to the organizations such as UNHCR, ICRC or of actual action, by providing their logistic and medical infrastructures such as hospitals, personnel's, airports, telecommunications networks and so on, to facilitate such assistance.

## ***II MAIN ASPECTS OF INTERNATIONAL HUAMITARIAN LAW THAT IS RELEVANT FOR AFRICA***

Africa is being characterized by a series of conflicts (civil conflicts) with dire consequences on their civilian population, thereby leaving the countries in shambles with no economic activity, destroyed towns and villages, and rendering people homeless. The violence in Africa brought about the need to reduce human suffering, injustice, violence and torture. And it is on such basis that a consideration was made about the preservation of certain standards (humanitarian law and human rights law) seeking to defend humanity against arbitrary treatment and cruelty.

After the colonialization in Africa, the historical pattern was destroyed and all economic, legal and human ties with the empires that preceded it was broken. Africans did not look at international law as a product of their own tradition but of those of their colonial powers. Although the traditional concept that human life was sacred began fading as respect for human dignity meant respect for the white man. Their colonial powers sort of encouraged inter-tribal fighting for causes alien to the African people themselves, which destroyed their

solidarity. For example: the French colonialist gave the Moors weapons and encouraged them to cross the Senegal river to attack the tribes and slaughter those who resisted so that they could obtain slaves.

The British and Germans fought those that resisted their domination. African countries (with a few exception-Egypt and Ethiopia) did not take part in the drawing up of the rules of the law of war but they showed sign of concern for the development of humanitarian law for the first time doing the procedure leading to the reaffirmation and development of international humanitarian law applicable in armed conflicts at the international human rights conference in Teheran in May, 1968 and they were fully able to express their concern at the Geneva Diplomatic Conferences between 1974-77. They therefore suggested that civil wars, wars of liberation be recognized as international armed conflicts, which was of vital concern for them and they supported the simplified draft of Protocol II.

One could say that African states did participate actively in the drafting of the new humanitarian law as they approved it and several states have ratified the new instruments (1977 Additional Protocols to the Geneva Conventions). In other words, international humanitarian law is very well known to Africans, and due to the emergence of breaches of humanitarian rules in times of conflicts, they are in favor of applying the fundamental principles of international humanitarian law.

Non-international armed conflicts (civil wars) were considered as purely internal matters for states in which international law's provision cannot be applied; this view was therefore modified with the adoption of Article 3 common to the 1949, Geneva Conventions and this was the first time that the society of states agreed on a set of minimal guarantees that

ought to be respected during non-international armed conflicts. This is when states consider conflicts as their domestic affairs that should be governed by their national law, where the belief is held by the state that citizens would wage war against their own government.

By adopting this Article 3, the issues covered were:

- a) Civilians: this stresses the fact that members of the armed forces that are no longer taking part in hostilities and those who are 'hors de combat', due to sickness, wounds or capture must all be treated humanely, without distinction based on race, color, religion, sex, faith etc. The following acts were therefore prohibited:
  - ❖ "Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
  - ❖ Taking of hostages;
  - ❖ Outrages upon personal dignity, in particular humiliating and degrading treatment.
  - ❖ The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."<sup>6</sup>
- b) The wounded and sick must be collected and cared for.
- c) That an impartial body like the ICRC may offer its humanitarian services by providing food, medical supplies and shelter and also helping to trace missing persons and enlightening the armed forces and general public of the principles of humanitarian law.

Additional Protocol II does not apply to internal disturbances such as riots and others, as they are not considered as 'armed conflicts' to which international rules should apply.

## Issues:

One issue of international humanitarian law that is relevant for Africa is that of:

- *The protection of Refugees.*

This is achieved by offering relief in form of material, shelter and medical assistance by the ICRC and UNHCR and also to displaced persons and other civilian victims of civil wars. Some countries like Southern Sudan restricted the entry of the ICRC and other international aid agencies to provide assistance to victims of armed conflict due to held belief that the supplies to civilian populations may turn out to be war materials of use to the armed forces of the Sudanese central government, where the government insisted on inspecting the supplies and exercise a certain degree of control over them, which are both contrary to the principles of operation on international humanitarian agencies. For example: In Ethiopia, “Governments Relief and Rehabilitation Commission banned all non-Ethiopian aid agencies with the exception of UNICEF from operating in Eritrea and other parts of the north.”<sup>7</sup> The reason given for this was that the central government could not guarantee the safety of the humanitarian workers against rebel attacks so they thought that it was better to keep them away.

Another is:

- *The protection of the most vulnerable victims (women and children)*

The African continent was plagued by dozens of complex armed conflicts and sporadic violence with civilians, especially women and children, being the main targets of the ongoing wars with the utilization of children as soldiers and the brutalization of women commonplace.

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<sup>6</sup> Kewley, Gretchen. **Humanitarian Law in Armed Conflict**. Pg. 45

International humanitarian law has accorded women a general protection that is equal to that of men under the 12 August 1949 Geneva Conventions and its two Additional Protocols of 8 June 1977, as the recognition of the need to provide women with special protection according to their specific needs became more evident. The first conventional reference to women is in Article 3 of the Conventions relative to the treatment of Prisoners of War, requiring that 'women shall be treated with all consideration due to their sex.' Other rules are:

- Mandating separate quarters and sanitary conveniences for women prisoners of war and internees.
- Protection against sexual assault.
- Protection of Pregnant women (expectant mothers) and maternity cases.

Under the law of non-international armed conflicts, women who take part in hostilities do not have Prisoner of War status in the hands of their enemy but are entitled to the fundamental guarantees afforded by Article 4 of Additional Protocol II relative to the protection of victims of non-international armed conflicts. Protocol II also provides special treatment for women who are arrested, detained or interned.

In all, the Geneva Conventions and Additional Protocols stipulate that women must be respected and protected against rape; enforced prostitution or any form of indecent assault but this is not what we witness in reality. In order to strengthen the protection of women, this part of law must be emphasized, disseminated and enforced during armed conflict situations.

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<sup>7</sup> Baloro, John. **International Humanitarian Law and Situations of Internal Armed Conflicts in Africa.** Vol.4, no2. Pg. 453.

- *Issue III*

In order to determine the regime of international humanitarian law application to situations of armed conflict in Africa; one must group the conflicts into recognizable categories:

- a) International Armed conflicts: (this is between two or more states), was put into place since the adoption of the two additional protocol of 1977 at the Diplomatic Conference on Reaffirmation and development of International Humanitarian Law Applicable in Armed Conflicts. While the conception of an international armed conflict was no longer held.
- b) Non-international armed conflicts: these are referred to as conflicts existing within an established government of a state (within a states territory). Article 1 (1) of Additional Protocol II to the Geneva Conventions, defined it as follows:

“This Protocol, which develops and supplements Article 3 Common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article I of the Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces of other organized groups. which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.”<sup>8</sup>

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<sup>8</sup> Article I (1), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).



In order to assess the specific humanitarian norms, rules and principles governing African armed conflicts, it would be necessary to categorize such conflicts according to recognized states of international humanitarian law. The kind of rule governing the conflict is thus based on its characteristics. For example: if a conflict is characterized as an internal one, the scope of humanitarian protection will therefore be restricted to aspects of the Geneva Conventions (Article 3) and Additional Protocol II.

The question therefore remains whether the conflict can be classified as non-international armed conflicts within the meaning of international humanitarian law, as it could not be recognized as wars of national liberation governed by the principles of international humanitarian law dealing with international armed conflicts; and Article 3 to the Four Geneva Conventions fails to define clearly an objective criteria for assessing such conflicts.

## II.I *Similarities and Differences Between African Humanitarian Principles and International Humanitarian Law.*

- ❖ The African concept of international humanitarian law versus the actual principles of Geneva Conventions: the first three aspects of the Geneva Conventions that non-combatant should not be exposed to military operations. But the African tradition specified that certain categories of persons did not take part in conflict (women, old people and uncircumcised boys).
- ❖ The second aspect of principles forbids the violations of places of a religious, cultural or artistic character. Such places have always been a subject of great respect.

- ❖ It forbids the use of weapons capable of causing excessive suffering: this is “comparable to the ban encountered in the inter-lake region of Africa on the use of certain weapons regarded as too dangerous and of a nature likely to cause needless suffering.”<sup>9</sup>

The provision about the principle of neutrality that humanitarian assistance never constitutes interference in a conflict. This could be compared to the function of arbiters, who aims at finding grounds for mediating between the parties fighting. And in respect to this, they are allowed to move freely between camps benefit total immunity during their mission.

In other words, there is no dispute about the fact that profound humanitarian spirit is very much alive in the hearts of African peoples. It is just that their approach to problems is in a more limited and restrictive manner than the Geneva Conventions, mostly because of the context of what and period in which they are dealing with.

## ***II.II Specific Cases Where International Humanitarian Law has been Respected or Disrespected***

The 1990s have so far seen no diminution in the number of conflicts in Africa, and more forecasts predict a further increase. Since Africa is mostly characterized by internal (non-international) armed conflicts, it could be said that the international community may not be allowed to interfere and international remaining silent; thereby not making the widely accepted international humanitarian law completely applicable in such conflicts. This is why the Articles of the Geneva Conventions of the 1949 Diplomatic Conference were seen to have constituted a revolutionary achievement. But the concept of humanitarian law for international conflicts was strengthened by the development, even after the adoption of

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<sup>9</sup> Diallo, Yolande. *African Traditions and Humanitarian Law: An Inquiry*. Pg. 16.

protocol II in 1977, the humanitarian constraints in civil wars still remained modest compared with the law applicable in conflicts between states and it remained the only criteria that could be used in considering the intensity of the violence and the need for protection of its victims.

In practice, there is occasional disagreement on the applicability of international humanitarian law in internal conflicts. And Article 2 of the Geneva Conventions states that 'the present convention shall apply in all cases of declared war or any other armed conflict.' International humanitarian law is applicable when two or more states are fighting with or without a declaration of war.

In view of this, some of the specific cases that international humanitarian law has been respected or disrespected to some extent are:

**Nigeria:**

It offered the opportunity to test the scope and effectiveness of the conventions in Nigerian civil war. Killings amongst soldiers in corps were outside the scope of the conventions. But the intensity and outbreak of hostilities in 1967, fell perfectly, setting for testing the scope and adequacy of the Conventions. There was an operational code of conduct that was directed to all officers and men of the armed forces of the Federal Republic of Nigeria on the conduct of military operations, which were in conformity with humanitarian law. Article 3, Protocol II, set the framework for the code of conduct during warfare or its means. The Commander-in-Chief stated this code before engaging in fighting with the rebels headed by Lt. Col. Ojukwu to form a separate state by the Biafran war of 1967. It stated that:

“You should treat them fairly and decently in accordance with these instructions. You must all bear in mind at all times that other nations in Africa and the rest of the world

are looking at us to see how well we can perform this task which the nation demands of us. You must also remember that you are not fighting a war with a foreign enemy. Nor are you fighting a religious war or Jihad. You are only subduing the rebellion of Lt. Col. Odumegwu-Ojukwu and his clique. You must not do anything that will endanger the future unity of the country. We are in honor bound to observe the rules of the Geneva Conventions in whatever action you will be taking against the rebels... you must remember that some of the soldiers Lt. Col. Ojukwu has now forced to oppose you were once your old comrade at arms and would like to remain so. You must therefore treat them with respect and dignity except any one who is hostile to you.”<sup>10</sup>

Despite this code, there were complaints, accusations and counter-accusations of breaches of the Conventions on both sides that did not conform to humanitarian standards. We should not overlook the fact that their overall compliance with humanitarian law was generally satisfactory, as one would have expected more (grave breaches) in any armed conflict of such. However, it is obvious that with the amount of internally displaced people due to this conflict, we can conclude that there is the absence of a clear-cut government humanitarian policy.

## **Rwanda**

It experienced the gravest and repeated violations of international humanitarian law and classified, as the Genocide of the 20<sup>th</sup> century as it consisted of acts committed with intent to destroy.

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<sup>10</sup> Bouvier, A 7 Sassoli, M. How Does Law Protect in War? Pg. 793-794.

The case of this country remains an obvious indication that the rules of international humanitarian law was not respected as the objective of violence here is to kill (civilians) and with the international community lacking the political will to intervene at an early stage. By the time the UN Security Council concluded that a genocide was taking place, it was too late as half a million people had died.

According to the provisions of the Genocide Convention, adopted in response to the acts perpetrated by the Third Reich during World War II that sought to name the crime: genocide, identify its characteristics and provide steps to prevent and punish it; the government was guilty on all counts of the Conventions Article 3 (genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and complicity in genocide).

The ICRC therefore provided the protection of the civilian population, helping to trace people's relatives, providing medical assistance and dissemination (where international humanitarian law was incorporated in the training program of the Rwandan forces).

### **Ethiopia**

This was about an incident in the disputed border area of Badre, between Eritrea and Ethiopia, in May 1998 that escalated into a full-blown war. It involved two regular armies confronting each other from well-entrenched positions and took high toll in military casualties (mostly civilians). The ICRC's objective in Eritrea was two folds: they had to ensure that humanitarian law was respected and that the protected populations were treated in accordance with its provisions (in conformity with the third and fourth Geneva Conventions). They paid regular visits to people detained and monitored trials in Addis Ababa in the

regional supreme court of government detainees accused of committing crimes during the previous regime.

### **Sudan**

The African News Service of March 2000, exposed testimonies collected over the year 1999 about aerial bombings, by the Medecins Sans Frontieres that tends to demonstrate that the Sudanese Air Force was deliberately targeting school and hospitals, causing indiscriminate deaths and injuries and contributing to a climate of terror among the civilian population. In this case, the human rights of the civilian population in Southern Sudan has been deliberately and regularly violated.

## ***II.III African Perceptions/Views on the Respect for International Humanitarian Law***

### **Somalia:**

The conflict occurred from traditional tensions among the Somali clans, with a large toll of causalities, leaving the country with no central government, army, legislature or judiciary. They continue to hold on to their traditional rules in dealing with civilians and combatants; they have not therefore abandoned their traditional rules of warfare. The issues considered are:

- ❖ On the protection of Civilians: the Somalians agree on the fact that civilians should not be drawn into war and are entitled to protection at all times. This goes to limit wartime behaviors.

- ❖ Prisoners of war: they support the protection of prisoners, but the feelings of revenge and violence are still very strong to an extent at which the minorities may be willing to break traditional rules.
- ❖ International Institutions: Somalians are unfamiliar with the international law of war but are familiar with humanitarian agencies that offer aid in time of need.

### Nigeria:

After the amalgamation of the Northern and Southern protectorates into a unified Nigeria by the British Colonial masters in 1914, since then, there has been doubt about their peaceful co-existence. This therefore became evident in the years following Nigerian independence, leading to the Biafran war; where the eastern part of the country organized a secessionist movement, leaving the country faced with a lot of casualties, some injured, others displaced and homeless. Their perceptions of issues concerning:

- ❖ The protection of civilians: They are in favor of protection of civilians during armed conflict and are also in support of attacks on civilians if they ‘voluntarily’ provide food and shelter to enemy combatants or transporting ammunition. They state that attacking the enemy in places with civilian populations is considered as “part of war.”<sup>11</sup> They believe that rules of war keep conflicts from getting worse (in support of the Geneva Conventions). They therefore look to international, (the international criminal court) rather than domestic policies to administer punishment.
- ❖ Prisoners of war: they are in support of fair and humane treatment of captured combatants and that they do not deserve to die.

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<sup>11</sup> **People on War Country Reports: Nigeria.** ICRC World wide Consultation on the Rules of War.

- ❖ International Institutions: the institutions are very well known, recognized and accepted. Their population is aware of the rules and impartiality and protection of these institutions.

#### ***II.IV Obstacles to the Development of International Humanitarian Law in Africa.***

There are historical, economical, social and political factors that could be held responsible for the obstacles to the development of humanitarian law in Africa.

- ❖ Historically: due to its emergence from an European origin, international humanitarian law fails to be firmly rooted in Africa; as there is a strong distrust in many European-inspired legal system (humanitarian law).
- ❖ Economically: there is more interest in economic issues as the continent is presently being faced with economic difficulties, thereby reducing the interest in promoting humanitarian principles as it is considered as “a distant concern of low priority.”<sup>12</sup>
- ❖ Socially: radical modification of human relations brought about by the colonial masters policy led to social problems, such as antagonism between ethnic groups, thereby leading to a political climate characterized by rivalries with tribal and internal conflicts; causing a high number of human casualties.

But in retrospect, many factors are in favor of active promotion of contemporary humanitarian principles and they are:

- ❖ Political and moral aspects: the unconditional commitment of African states to the international instruments of international humanitarian law and the fact that these states face numerous problems arousing humanitarian concern, justify the attribution of high

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<sup>12</sup> Mubiala, Mutoy. *African States and the Promotion of Humanitarian Principles*. Pg. 101.



priority to the development of humanitarian domains and states possess the moral obligations to implement the ICRC resolutions.

- ❖ The ICRC played an active role in the dissemination of international humanitarian law and ideal principles of the ICRC movement in the 25<sup>th</sup> ICRC Summit, where the African states requested “governments within their competence to continue the dissemination of the Geneva Conventions and other agreements containing rules of international humanitarian law applicable in international and non-international armed conflicts, not only within the armed forces but also within government circles, universities, schools and hospitals, the general public and mass media.”<sup>13</sup>

In view of this, the Organization for African Unity at its 44<sup>th</sup> ordinary session called for the cooperation of member states and their national societies to support efforts that would make the general public more aware about the activities of the ICRC movement.

## ***II.V Promotion of Humanitarian Principles by African States***

Africa is deeply imbued with humanism, shaped by customs and tradition. In history, the structure of the African society was organized into “hierarchical but not discriminatory communities.”<sup>14</sup> They had deeply religious societies that instilled belief in the hereafter, which attached great importance to human life, thereby enjoining it as a man’s duty to live in harmony with his community and to place “collective welfare above individual happiness.”<sup>15</sup>

The African humanitarian concepts came to rise due to its respect for:

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<sup>13</sup> Resolutions of the Twenty-Fifth ICRC, IRRC No. 255, Nov-Dec 1986. Pg. 345.

<sup>14</sup> Mubiala, Mutoy. *African States and the Promotion of Humanitarian Principles*. Pg. 94

<sup>15</sup> Mubiala, Mutoy. *African States and the Promotion of Humanitarian Principles*. Pg. 94

- ❖ Rights of an Individual: which stresses harmony between men. They enjoyed the basic human rights to life, work, freedom of expression, religion, movement and association, with a guaranteed legal, political, economic and social systems. In respect to this, one could say that humanitarian percepts were fully significant in traditional Africa, long before the times of wars.
- ❖ Protection of individuals in times of armed conflicts: rules governing the waging of war, surrender and end of hostilities, peace treaties, fate of prisoners and so on, varied from tribe to tribe but was converged in spirit. It focused on:
  - i. Persons.
  - ii. Conduct of war: rules that combatants had to adhere to. It was sort of a law of war that limited the injury that could be inflicted on another. It prohibited the use of both dangerous weapons and methods of warfare.
  - iii. Religious beliefs: advise fellow combatants to treat his prisoners with compassion. Do not judge; you are not in a position to afflict punishment on anyone.

## ***II.VI International Humanitarian Law challenges in an African Perspective***

Due to these war experiences in the world scene, international humanitarian law is faced with numerous challenges in a world that is filled with massive eruptions of conflicts. These experiences and their aftermath brings about the demise of certain ideologies and the flourishing of others, the explosion of terrifying weapons, the collapse of existing systems, displacement of populations and the formation of new states. Some of these challenges are as follows:

- ❖ The importance of not losing sight of the main objective of international humanitarian law and action, which is constant (The protection of victims and potential victims of armed conflicts). Other things evolving around this objective may change, such as the victims and potential victims, the way that they are affected and the extent to which they are affected, problems of identification and access-delivery of aid may become difficult thereby requiring different strategies and tactics to achieve their goals. But the ultimate objective remains the same.
- ❖ Institutional challenges: where efforts will be made to improve legislation's governing certain issues as they come up. For example: the legislation governing internal conflicts has not yet been attained. The financing and maintenance of numerous non-governmental organizations that are active in the humanitarian sphere might prove wanting.
- ❖ Globalization: (economic reality) the ups and downs occurring in states affect and threaten economic and political stability of the state involved. Through the expansion of the media, new methods of producing and consuming and so on, have the effect of enhancing the globalization of cultural values, which is in turn a favorable development of humanitarian law and action, by helping to uphold the principles of universality. In cases where these processes cannot meet great expectation of equality and provide prosperity, the reactions can be expected to lead to violence and conflict.

All in all, the challenges to international humanitarian law, humanitarian organizations and the international community at large, is to respond efficiently and effectively to new, complex and urgent situations, even though they are faced with the dangers, threats, and expectations.

### ***III FUTURE OF INTERNATIONAL HUMANITARIAN LAW***

As we look into the future, it must be considered that the international order remains the same, that is there is no new international order capable of replacing the present one; the world is experiencing periods of transition and instability. Due to the emergence of new conflicts that do not seem to fit the models that we are already accustomed to and whose main feature is their unpredictability.

At the rate at which things are moving, it could be correct to say that these internal conflicts will be more than wars between states and will claim more victims than in the past. In other words, we will be deceiving ourselves if we are imagining that the future would be easier than the present and past; but we can remain optimistic.

The steps taken by the ICRC movement, to strengthen the respect for humanitarian law by ensuring the universality of the international humanitarian treaties (Geneva Convention and their additional protocols), which I think are steps in a positive direction. In order to ensure the respect of international humanitarian law, the parties are therefore required to be aware of it; where the states should be required to incorporate the teaching of the law into their programs and create awareness for their armed forces and civilian population.

The only hope for the respect of humanitarian law is if states carry out the obligations of ensuring a universal respect of the treaties that they are bound by it. In other words, this is the only way forward, as “these victims have placed their trust in us. Let us send the world a clear message about the need to restore the respect of humanitarian law. This is what it will

take to protect human dignity and fundamental human rights, for there can be no respect for human rights in time of war unless humanitarian law is also respected.”<sup>16</sup>

#### ***IV THE ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS AS A GUARDIAN OF INTERNATIONAL HUMANITARIAN LAW***

ICRC is the world’s largest humanitarian organization, providing assistance without discrimination as to race, nationality, religious beliefs, color or political opinions. It is known for its field operations in aiding victims of armed conflict and internal violence all over the world.

ICRC was founded in 1831 to examine the proposals made by Henry Dunant in his book on ‘The Battle of Solferino,’ where his reaction to what he saw represents the same way the ICRC is reacting to war today. He therefore applied the principle of humanity. Endeavoring to prevent and alleviate human suffering wherever it may be found. Which stands up until today as the essential principle of the entire Red Cross and Red Crescent movement. The roles of the ICRC in ensuring the respect for international humanitarian law are as follows:

- ❖ Promoter and guardian of international humanitarian law: the ICRC’s mandate it to encourage respect for humanitarian law and this is carried out in so many ways:
  - a) Protection and assistance work on behalf of victims of conflict, by visiting prisoners of war, restoration of family links, provision of relief and health activities and promoting knowledge of international humanitarian law.

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<sup>16</sup> Sommaruga, Cornelio. **International Humanitarian Law on The Threshold of the Millennium: Taking**

- b) Through prevention: by reminding states of the principles that they have undertaken and that they must take all the steps necessary to ensure the effective application and respect of the law through its Advisory Service on international humanitarian law; which provides technical assistance to help the authorities adopt national laws that will be applied within the states internal system.
- ❖ By taking action when international humanitarian law is violated:
  - a) On its own initiatives, the ICRC reports (confidentially) to the international community or competent authorities in the event of humanitarian law violations.
  - b) Encouragement: it encourages states to adopt national legislation's so that they can punish the perpetrators.
  - c) It also acts upon requests to verify violations only if it is guaranteed that their presence will allow easy access to carry out humanitarian duties and also that they will not be exploited for political ends.

The role of the ICRC in the promotion of international humanitarian law are summarized as follows:

- ❖ 'Monitoring': constant reappraisal of humanitarian rules to ensure that they are geared to the reality of conflict situation's, and preparing for their adaptation and development when necessary.
- ❖ They serve as a 'catalyst': stimulating, especially within groups of governmental and other experts, discussion of problems encountered and possible solutions, whether such solutions involve changes to the law or otherwise.

- ❖ The 'promotion' function: it involves advocacy in favor of the law and helping to disseminate and teach it, and urging states to adopt national measures necessary for its implementation.
- ❖ As a 'guardian angel': by defending international humanitarian law against legal developments that disregard its existence or might tend to weaken it.
- ❖ The 'direct action' function: by making a direct and practical contribution to the application of the law in situations of armed conflict.
- ❖ The 'watchdog' function: this involves raising the alarm, making the international community aware on unacceptable situations; first amongst the states and other parties directly concerned in an armed conflict and later amongst the international community as a whole, when there is a serious breach of the law.

## *V CONCLUSION*

In a world that is characterized by an increasing concern about violations of international humanitarian law on a massive scale, there is the need for states to carry out their obligations in ensuring the respect for the law; where the basic principle of protecting the individual in peace or war situations pervades humanitarian law and human rights law. The Geneva Conventions of 1949 codified existing rules along with the additional protocols and bring them up to date.

There are set rules, regulations and measures available that can be used depending on the context of the issue, but it is up to the states to make an effort to ensure the effectiveness of international humanitarian law and take resolute action, in accordance with that law, against states bearing responsibility for violations of international humanitarian law with a

view to terminating such violations. It is therefore important to point out that states should have the interests of their populations at heart as opposed to personal ones. The need to regulate humanitarian aspects cannot be over-emphasized as we can expect to have more internal conflicts in future, but this should not affect our optimism.

Although post-independence era in Africa has been characterized by a series of armed conflicts between governments and rebel movements (civil wars), there is a common feature of them all, which is foreign involvement at different degrees. Some of these conflicts have neither been recognized as struggles for right self-determination nor classified as an international armed conflict in the context of national liberation wars. But due to their mixed character and level of intensity, international humanitarian law, which has been defined in the Geneva Conventions, covers them and Additional Protocol II for determining armed conflicts of an internal character.

In Africa, the knowledge of international humanitarian law is not a luxury or should not be, as the continent has a record of increasing numbers of refugees, prisoners of war, internally displaced people, the seriously sick and wounded persons, who are victims of the conflicts present there. In order to assist these people, by providing protection and helping to find solutions to their problems, requires knowledge of the basic principles contained in the international rules governing their situations. Awareness of such rules of international humanitarian law leads to better treatment and improved conditions for the unfortunate victims of political, military and tribal conflicts. It also helps in facilitating their return to living a normal life again.

The humanitarian situation in Africa should therefore be a matter of concern for Africans before it concerns the international community, we must try to find ways of dealing



with these humanitarian tragedies and not waiting for the West. States and parties must do their utmost best to uphold respect for the safety and dignity of the most vulnerable victims of war. Make efforts to promote knowledge of compliance with the obligations of international humanitarian law by as wide an audience as possible, using all available means. As knowledge enables us to acquire an understanding of the conflicts, it helps us analyze the causes and circumstances in the right manner and to take necessary steps towards a long-lasting solution: *Peace and Reconciliation*.

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## **VII APPENDIX**

### **Treaties**

Universal Declaration of Human Rights - PDF ([www.unhchr.ch](http://www.unhchr.ch))

Vienna Convention on the Law of Treaties - PDF  
(<http://archive.greenpeace.org/~intl/vien-tr.html>)

#### **The Hague**

Final Act Of the International Peace Conference. The Hague, 29 July 1899  
- PDF ([www.icrc.org](http://www.icrc.org))

Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899 - PDF ([www.icrc.org](http://www.icrc.org))

Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864. The Hague, 29 July 1899 - PDF ([www.icrc.org](http://www.icrc.org))

Final Act of the Second Peace Conference. The Hague, 18 October 1907 - PDF ([www.icrc.org](http://www.icrc.org))

Convention (III) relative to the Opening of Hostilities. The Hague, 18 October 1907 - PDF ([www.icrc.org](http://www.icrc.org))

#### **Geneva**

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949 - PDF ([www.icrc.org](http://www.icrc.org))

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949 - PDF ([www.icrc.org](http://www.icrc.org))

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 - PDF ([www.icrc.org](http://www.icrc.org))

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 - PDF ([www.icrc.org](http://www.icrc.org))

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 - PDF ([www.icrc.org](http://www.icrc.org))

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 - PDF ([www.icrc.org](http://www.icrc.org))

Annex I (to the Protocol I) : Regulations concerning identification (as amended on 30 November 1993) - PDF ([www.icrc.org](http://www.icrc.org))

Annex I (to the Protocol I) : Regulations concerning identification (as of 6 June 1977) - PDF ([www.icrc.org](http://www.icrc.org))

Annex II (to the Protocol I) - PDF ([www.icrc.org](http://www.icrc.org))

## ***VIII ABSTRACT***

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International Humanitarian Law and Action in Africa in the 90s

*Master of Arts Thesis supervised by Prof. Jonathan Crystal, Ph.D.*

International humanitarian law has been an element of limiting the effects of war on its citizens, aiming to reduce the suffering of war victims and setting a standard for the means of warfare in response to the apparent outbreak of conflicts throughout the world in recent years.

These so called conflicts have claimed millions of victims, people who are displaced, refugees, wounded, driven from their homes, schools, villages, towns, whose basic sources of food, shelter and water have been destroyed or heavily damaged; thus resulting in a major challenge for humanitarian workers and the international community as a whole.

We can be proud of the countless cases of success in the application of humanitarian law in war times and the individual devotion, courage and heroism of humanitarians in trying to limit the suffering caused by wars around the world. Also it is not enough for the international community to set the standards, but the states themselves need to become engaged in efforts of prevention and continuation of conflicts and in reconstruction, rehabilitation and reconciliation in a more effective and systematic way than they have been doing so far.

## ***IX VITA***

Temitayo Falilat Ayinla, daughter of Jemilat and Jubril Ayinla, was born on August 8, 1980 in Cross-River State, Nigeria. After graduating in 1997 from Queen's College High School in Lagos: Nigeria, she received a Bachelor of Arts degree in International Relations with an emphasis on Migration and Refugee studies from Webster University in Geneva. During her time at Webster, she was awarded an Undergraduate Student Leadership Award.

She then entered Fordham University in 2002, and earned a Master of Arts degree in Political Science in May 2003 and is presently seeking employment.