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International Humanitarian Law in the 21st Century: Challenges and Opportunities in Regulating the Conduct of Forces in Armed Conflict

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ABSTRACT

International Humanitarian Law (IHL) faces unprecedented challenges in modern armed conflicts which test its efficacy in protecting civilians and promoting humanitarian principles. This research examines the complexities of IHL in contemporary warfare and explores the intricate relationships between traditional frameworks and emerging realities. It critically analyzes the intersections of IHL with international human rights law and the impact of the rise of non-state actors. Through a comprehensive examination of treaties, and state practice, this study identifies opportunities for strengthening IHL and enhancing accountability for violations. It proposes innovative solutions to address these challenges, ensuring the protection of civilians and the promotion of humanitarian principles in modern armed conflicts.

***Keywords**: International Humanitarian Law, Armed Conflict, Civilian Protection, Humanitarian Principles.*

I. INTRODUCTION

International Humanitarian Law (IHL), or the law of armed conflict, is the law that regulates the conduct of armed conflicts (jus in bello). It comprises "the Geneva Conventions and the Hague Conventions, as well as subsequent treaties case law, and customary international law"[2]. It defines the conduct and responsibilities of belligerent nations, neutral nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning civilians.

crimes. Serious violations of international humanitarian law are called war International humanitarian law, regulates the conduct of forces when engaged in war or armed conflict. It is distinct from jus ad bellum which regulates the conduct of engaging in war or armed conflict and includes crimes against peace and of war or aggression.

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[2] ICRC What is International Humanitarian Law?

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Together the jus in bello and jus ad bellum comprises the two strands of laws of war governing all aspects of international armed conflict.

The law is mandatory for nations bound by the appropriate treaties. There are also other customary unwritten rules of war, many of which were explained at the Nuremberg War Tnals. By extension, they also define both the permissive rights of these powers as well as prohibitions on their conduct when dealing with irregular forces of non-signatories, International Humanitarian law operates on a strict division between rules applicable in international armed conflict and those relevant to armed conflicts not of an international nature. This dichotomy is widely criticized'[3],

II. THE LAW OF GENEVA AND THE LAW OF THE HAGUE

Modern International Humanitarian Law is made up of two historical streams. The law of The Hague referred to in the past as the laws of war proper and the law of Geneva or humanitarian law'[4] The two streams take their names from a number of international conferences which drew up treaties relating to war and conflict in particular the Hague Conventions of 1899 and 1907, and the Geneva Conventions, the first which was drawn up in 1863. Both are branches of jus in bello, international law regarding acceptable practices while engaged in war and armed conflict[5]. The law of The Hague, or the Laws of

War proper, "determines the rights and duties of belligerents in the conduct of operations and limits the choice of means in doing harm[6]. In particular, it concerns itself with the definition of combatants, establishes rules relating to the means and methods of warfare, and examines the issue of military objectives"[7].

(A) Laws of War

Systematic attempts to limit to savagery of warfare only began to develop in the 19th century. Such concerns were able to build on the changing view of warfare by states influenced by the Age of Enlightenment. The purpose of warfare was to overcome the enemy state and this was obtainable by disabling the enemy combatants.

[3] Stewart, James (30). "Towards a Single Definition of Armed Conflict in International Humanitarian Law"
[4] Pictet Jean (1975), Humanitarian Law and the Protection of war victims, Leyden: Slythoff: ISBN 90-286-0305-0, PP. 16-17)
[5] The program for Humanitarian policy and Conflict Research at Harward University "Brief Primer on IHL," Accessed at IHL, Ihl research,
[6] Pictet, Jean (198)0 Development and Principles of International Law, Dordrecht: Martinus Nighoff. ISBN 90-247-3199-2, P.2.
[7] Kalshoven, Frits and Lelsbeth Zegreld (March 2001) constraints on the waging of war: An Introduction to international humanitarian law. Geneva: ICRC. P. 40

Thus "the distinction between combatants and civilians, the requirement that wounded and captured enemy combatants must be treated humanly, and that quarter must be given, some of the pillars of modern humanitarian' law, all follows from this principle'[8].

(B) The Law of Geneva

The massacre of civilians in the midst of armed conflict has a long and dark history. Selected example include: Moses spearing for the God of Israelites, ordering the killing of all the Midianite women and male children[9], the massacres of the Kalingas by Ashoka in India, the massacre of some 100,000 Hindus by the Muslim troops of Timur or the crusader massacres of Jews and Muslims in the siege of Jerusalem (1099) to name a few examples drawn from a long list in history.

Fritz Munch sums up historical military practice before 1800: "The essential points seem to be these" In battle and in towns taken by force, combatants and non-combatants were killed and property was destroyed or looted'[10].

In the 17th Century, the Dutch Hurist Hugo Grotius wrote "Wars, for the attainment of their objects, it cannot be denied, must employ force and terror as their most proper agents[11]

The purpose of this paper therefore is to look critically into the Rule of Protecting Powers in the implementation of International Humanitarian Law, also an overview of the various mechanisms to improve the situation of people affected by armed conflict.

Some are anchored in international humanitarian law, but numerous actors are increasingly contributing to its implementation outside the original framework established for that purpose. Human rights monitoring bodies, the diverse organs and agencies of the United Nations and regional organizations, and governmental and non- governmental organizations are seeking to address situations of armed conflict. However, humanitarian action unattached to any political agenda and combining protection and assistance is often the only remedy for the plight of the victims of armed conflicts.

At the last International Conference of the Red Cross and Red Crescent, the ICRC reminded the assembled delegates that the main cause of suffering during armed conflicts and of violations of IHL remains the failure to implement existing norms whether owing to an absence of

[8] Christopher Greenwood In: Fleck, Dieter, ed (2008). The Handbook of Humanitarian Law In Armed Conflicts, Oxford University Press, USA. ISBN 0-19-923250-4, P. 20.
[9] Numbers 31:17-18
[10] Frit Munch, History of the Laws of War, in r. Bernhardt (ed), encyclopedia of public International Law Volume IV (2000), Pp. 1386-8
[11] Grotuis, Book 3, Chapter 1:VI

political will or for another reason - rather than a lack of rules or their inadequacy"[12]. In the heat of battle when the wagers of war and their victims are

Prey to mistrust and hostility compliance with the rules unleashed and hatred and the desire for revenge give rise to all manner of depredations, sweeping aside calls to preserve a modicum of humanity even in the most extreme situations. jet to make just such a call is the very purposes of international humanitarian laws.

This paper deals with the way international humanitarian law is implemented and war victims are protected and assisted[13]. The first part describes the mechanisms provided for under international humanitarian law itself and briefly analyses their importance in

practice. Particular emphasis is placed on the work of the ICRC and the implementation of international *humanitarian* law in non-international armed conflicts.

The growing tendency of human rights monitoring bodies to scrutinize situations of armed conflict is examined. An account is then given of the Institutions and agencies that work to help war victims obtain due respect for their rights and person, independently of the framework provided for under international humanitarian law, through the UN system, regional organizations, intergovernmental organizations and NGO's. The various mechanisms and approaches vary considerably. In order to protect and assist war victims effectively, the International efforts should build on the comparative and vantages of the different mechanisms and actors.

III. THE OBLIGATION OF PARTIES TO A CONFLICT TO RESPECT AND ENSURE RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

The 1949 Geneva Conventions and 1977 Additional Protocol 1 thereto stipulate that the parties to an international armed conflict must undertake to respect and to ensure respect for those treaties. Each party is therefore obliged to do what is necessary to ensure that all authorities and persons under its control comply with the rules of International humanitarian law. The enforcement can include a wide variety of measures, both preventive and repressive, to ensure observance of that law.

While this paper focus on the legal measures, other non-legal steps to create an environment

[12] International Humanitarian law and the challenges of contemporary armed conflicts Document prepared by the International Committee of the Red Cross for the 30th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 26-30 November 2007, International review of the Red Cross Vol. 89, No.867, September 2007, P. 721.

[13] In 2003, the ICRC organized a series of regional expent seminars on the theme of improving compliance with International humanitarian law IHL.

conducive to compliance with minimal rules, even during the worst situations, are absolutely essential to give a law a chance to be respected. On a more practical level, the parties to an armed conflict must issue orders and instructions to ensure that these rules are obeyed and supervise their implementation"[14]. Military commanders in particular have a great responsible in this regard[15]. However, each and every soldier and individual involved in the conflict must observe the rules of humanitarian law.

The particular feature[16]of international humanitarian law governing non-international conflicts is that it is addressed not only to the states party to those treaties, but more broadly to the 'parties to the conflict in the words of common Article3[17], or according to Additional Protocol 11, to dissident armed forces or other organized armed groups but, without conferring any legal status on them[18]. Common Article 3 even governs situations[19] in which state structures have totally collapsed[20], for a conflict of this type can take place without the state itself being involved. Each party to the conflict must respect and ensure respect for international humanization law by its armed forces and by other persons or groups acting de fact on its instructions or under its control. As in international conflicts, the rules on non-international conflicts are intimately destined for all persons taking part in the hosilities[21] and oblige them to conduct themselves in a particular manner

IV. NATIONAL IMPLEMENTATION MEASURES

To ensure that International Humanitarian law is applied in situation of armed conflicts, the entire range of implementation mechanisms provided for in the law itself must be used to the full, including in peacetime.

National measures to implement humanitarian law arise from the pledge given by state parties to humanitarian law treaties"[22] to report those treaties and ensure that they are respected. This

[14] Article 80, Additional protocol 1 (API)
[15] See Jamir, Allan Willamson, 'some considerations in command responsibility and criminal liability, International Review of the Red Cross Vol. 90, No. 270, June 2008 PP. 303-317.
[16] But also difficulties of legal interpretation. See for example Jean Pulet, The 1949 Geneva Conventions commentary, Geneva, ICRC, 1952-1959. Vol. 1, P. 37.
[17] for the different types of armed conflicts, See Sylvain Vite, "Typology of armed conflicts in Intentional Humanitarian law: Legal concepts and actual situations' International review of the Red Cross, Vol. 91, No. 873, March, 2009, Pp. 69-94).
[18] Common Article 3, Para 4.
[19] Neither Protocol 11 nor human rights law car. provide legal responses to these situations as they both presuppose that a state is operational.
[20] In English speaking countries, the term 'failed state' is frequently used. See the results of the first periodical meeting of the States Parties to the Geneva Conventions on International Humanitarian Law, Geneva 19-23.
[21] See the "Interpretive Guidance on the Nation of Direct Participation in Hostilities under International Humanitarian law: International Review of the Red Cross, Vol. 90, No. 872, Dec. 2008. PP. 991 –
[22] In Particular the four Geneva Conventions of 12 August 1949 (Geneva Convention for the Humanitarian of the condition o the Wounded and Sick in Armed Forces in the field.

duty is made explicit in a series of provisions that oblige states to take particular implementation measures. Moreover, like all international treaties, the humanitarian law treaties can for a number of measures to be incorporated in national legislation, if this is not already the case.

The general obligation to take 'measures for execution' is laid down in Article 80 of Protocol which sates that the parties shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol'. Among the numerous measures set out in the Geneva Conventions and the Protocols and additional thereto, two types of national measures are particularly important, namely the adoption by Sates of national laws to ensure that the treaties are applied[23], and measures relating to dissemination and training.

National Implementing legislation is necessary for treaty provisions that are not self-executing and therefore require a legislative act for them to become applicable. Apart from the general obligation to ensure that the treatles are applied through primary and secondary lelgislations[24], the four Conventions and Protocol 1 Provide for states to adopt any necessary legislative measures to determine appropriate penal sanctions for grave breaches of International Humanitarian Law[25]

Legislation is needed to be able to prevent or punish misuse of the emblem and distinctive signs at anytime[26]. However, various attempts to strengthen the treaty-based obligations to prevent violations of international humanitarian law have failed. For example, a proposal to introduce an obligation for states to report to an International commission on the way national measures are applied was rejected[27]

To put the law into effect and give effective protection to people affected by armed conflict, widespread knowledge of the law and training of those who will have to apply it are indispensable. Dissemination activities must be stepped up in wartime, but must already be in place in times of peace. States undertook, as an initial obligation, to disseminate the texts of the treaties in peacetime and In wartime, and to include study of these in military and if possible Civilian Instruction porgrammes, so as to ensure that the armed forces and the entire population are familiar with their content[28]

[23] The Geneva Conventions (Article 48, GTI, Article 49, GC 11, Article 128 GC 111, Article 145, GC IV and Articles 84 of AP.
[24] Article 48, GCI, Article 49, GC 11, Article 128, GC III. Article 145, GC. IV. AP 1 Sets out the same obligation in Article 84.
[25] Defined in Article 50, GC I, Article 51, GC II, Article 130, GC III, Article 147, GC IV, and Article II (4) and 85, API
[26] Article 53-54, GC I, Article 43-45, GCII
[27] At the meeting of the International Group of Experts See "follow-up tot the International Conference for 1, September 1995)
[28] Article 47, GC 1, Article 48, GC II, Article 127 GC III, Article 144 GC IV (the wording is almost Identical in

International humanitarian law is largely made up of obligations with which armed and fighting forces must comply, and must therefore form an integral part of their regular instruction and practical training. Yet despite their importance, the rules of war often features only marginally in the military instruction programmes of most states.

V. PROTECTING POWERS

A protecting Power is a neutral state mandated by a belligerent state to protect its interests and those of its nationals vis-à-vis an enemy state[29]

Its role is two fold; it can conduct relief and protection operations in aid of victims, and can at the same time supervise the belligerents' compliance with their legal undertakings. The protecting powers' tasks are huge and varied in view of the needs of person protected for instance by the Thirds or Fourth Geneva Convention.

Since the Second World War, this system has very rarely been set in motion[30]and the chances of its being used successfully in future are slim, given the politically delicate role a state would have to play to discharge its responsibilities as a protecting power[31]

Article 5 of Protocol 1, which assigns the ICRC a new role allows it to tender its good offices to the parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the Conflict consent[32]

However, the ICRC has acted more as a substitute[33], for it has in effect assumed the great majority of the humanitarian tasks assigned to Protecting Powers. It has done so without prejudicing its other expressly recognizes activities, but restricting itself to humanitarian activities in accordance with its mission.

(A) Reparations

In an International armed Conflict, the warning parties can be held responsible for breaches of international humanitarian law. An obligation to pay compensation for violations of international humanitarian law is laid down in Article 91 of Protocol 1, and even as early as Article 3 of the 1907 Hague convention[34]. According to the general international law of state

the four Conventions).

[29] Articles 8 and 10, GC I-III, Articles 9 and 11, GCIV

[30] Francois Bugmon, The International Committee of the red Cross and the Protection ICRC/Macmillan, Geneva 2003, PP. 860-901.

[31] For a more detailed discussion of these obstacles, See note 23 above, PP. 34.

[32] Article 5(3) API

[33] Articles 10, GCI-III Articles 11, GC IV and Article 5(4), AP I

[34] See the Statement by the Permanent Court of International Justice (PCJJ) that any breach of an engagement(of International law) Involves an obligation to make reparation (PCIJ).

responsibility, compensation is to be understood more broadly as reparations[35] and encompasses a range of measures including non-monetary means of restitution (re-establishment of the situation before the wrongful act was committed), satisfaction (acknowledgement or apology) and/or rehabilitation (including medical or psychological claim, or legal and social rehabilitation), and guarantees of non-repetition[36].Even in situations where large numbers of people have been victims of violations[37], those who have suffered direct or indirect personal harm as a result thereof are entitled to reparation[38]

However, purely monetary compensation could easily constitute an excessive burden in view of the limited resources available, the significant war damage and the enormous task of reconstruction after a conflict and require both an individual and a collective assessment, taking the scope and extent of any damage into account[39].

Rulings on reparations in individual cases can take account of the collection dimension of certain violations[40] and can lead to wider settlements for large communities. It is however, disputed whether an individual right to reparations is recognized or not by international humanitarian law. Despite 'an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparations directly from the responsible state[41], it does not yet form part of customary law Preclusion by a peace settlement, governing immunity or the non-self executing nature of the right to reparations under international law mostly rule out successfully individual claims.

Victims can thus only approach their own government, which may submit their complaints to the party or parties that committed the violation - a procedure that depends on relations between states which have often both committed violations.

In non-international armed conflicts, there is no treaty rule obligating states or non-state armed

[35] The duty to make 'reparations' for violations f IHI is explicitly referred to in the Second Protocol to the Hague Convention for the Protection of Cultural property (Article 38).
[36] See Article 30-37 of the raft Articles on State Responsibility, adopted by the International Law Commission at its 53rd Session and Submitted to the General Assembly as a part of the Commission's report covering the law of that Session (A/56/10).
[37] The Inter-American Court, for instance recognized as victims 702 displaced persons who had flea their homes because of the lack of protection of the state against massacres of armed groups
[38] see International Criminal Court (ICC), Persecutor, Thomas Lubanga Dyilo case No. ICC 01/04-01/06 CA 9 OA 10.
[39] See e.g. rule 97(1) of the rules of Procedure and Evidence of the International Criminola Court as well as rule 98 on the Trust Fund for Victims.
[40] See for instance the Inter-American Commission for Human Rights in case concerning indigenous communities. Principal Guidelines for a Comprehensive reparations Policy (Columbia).
[41] Jean-Manie Henckaerts and Louse Dowald-Beck Customary International Humanitarian Law. Vol. 1. Rules ICRC Cambridge University Press, Geneva Cambridge, 2005, P. 54).

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groups to make reparations for violations of international humanitarian law[42]. The possibility for an individual victim to apply claim reparations for a violation of international humanitarian law can nevertheless be inferred from Article 75 of the statute of the International Criminal Court[43]. More importantly, human rights treaties require states to provide a remedy for violations[44]. At a regional level, both the Inter- American, and the European Court of Human Rights have ordered reparations for victims of human rights violations that were simultaneously violations of international humanitarian law. They have done so in both international and non-international armed conflicts, e.g. in relation to Turkey, Cyprus, Columbia, Peru and Bosnia, Reparation has also been provided directly to individuals via different procedures in particular through mechanisms set up by the Security Council[45], inter state agreements[46], and unilateral acts such as national legislation[47], or in rese to requests submitted directly by individuals to national courts[48].

Nevertheless, broader international and/or national reparations schemes and especially those implemented via transitional justice mechanisms (Including truth and reconciliation commissions) can and should complement this rather selective legal regime. It is difficult to resolve claims on a case-by-case basis and the mere use of the term 'reparation' presupposes a violation of international law. This approach leaves out all the victims of armed conflicts who are not victims of violation and in particular all those affected by to lawful-collateral damage only a wider definition victims including all persons affected by a conflict could enable the victims interests to be met more satisfactorily and dealing with part conflicts require just individual reparations.

VI. IMPLEMENTATION IN NON-INTERNATIONAL ARMED CONFLICTS

A distinction is made in international humanitarian law between international and non-international armed conflicts. It is also are addressed to the 'parties' to non-international armed conflicts, i.e. states but also non-state groups. Neither Articles 3 Common to the four Geneva Conventions nor Additional Protocol II expressly provides for international implementation mechanisms. All attempts to create such mechanisms, let alone a real system of legal

[42] Para 6 Henckaerts and Doswald - Beck above note 35 P. 549.
[43] para.6 See also the Victims Trust Fund established pursuant to article 79.
[44] Article 25 ACHP (Art 7 (1) a.
[45] See the UN Commission established by S/KES/687 (1991) and 692 (1991), which reviews claims for compensation for direct loss and damage.
[46] See for example the Agreement on Refugees and Displaced Persons and refugees in Bosing.
[47] See in particular the different treaties concluded and laws passed by Germany to indemnify victims of the war and Halacaust.
[48] See the examples in Henckaerts and Donswalrd-Beck above note 33 PP. 542-549.

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supervision, were thwarted by the internal affairs reflex [49].

Besides the humanitarian rights of initiative enshrined in Article 3, only an obligation to discriminate the protocol remains in its Article 19.

Neither Protecting Powers nor enquiry or fact-finding procedures[50] are provided for in the law applicable to non-international armed conflicts. It is at best uncertain to which extent armed opposition groups incur responsibility and are under an obligation to make reparations.

The obligation to prosecute and try war criminals, which is also implicitly contained for non-state entities, is hard for them to implement, and the parties to such conflicts are moreover often unwilling to enforce criminal responsibility[51].

Before adoption of the state of the International Criminal Court, there was no specific mechanism in international humanitarian law to prosecute and try perpetrators of violations of the law or put an end to such violations. However, the general rule enshrined in Article 1 Common to the Geneva Conventions means that warring parties are bound to ensure respect for international humanitarian law[52] and to prevent and punish violations of it. Indeed according to the International Court of Justice[53], the obligation to ensure respect for the Conventions also applies to Common Articles 3 and hence to non-international conflicts. This obligation applies to third states too.

The Criminalization of violations of Common Article 3 as violations of the laws and customs of war[54] or as defined in the statue of the International Criminal Court, cannot obscure the fact that state practice, not to mention that of non-state entities, is still embryonic in terms of effective prosecution and punishment of violations of the laws and customs of war in internal conflicts.

The measures for implementing international humanitarian law therefore essentially rest with authorities at the national level.

[49] In Protocol 11, It is stated that nothing in the protocol shall be invited for the purpose of affecting the sovereignty of a state or the responsibility of the government, by all legitimate means.
[50] Immediately following its constitutive meeting in Bern on 12-13 March 1993, the International Fact Finding Commission expressed its readiness to conduct enquires, subject to the consent of all parties to the conflict, on violations of humanitarian law other than grave braches and other serious violations including those committed in Civil wars.
[51] See Jonathan Somer, 'Jungle Justice: passing Sentence on the equality of belligerents in non-international armed conflicts.
[52] The ICJ took the view in Military and Paramilitary Act, vities in and against Nicaragua.
[53] Ibld, P.114, Para 220
[54] ICTY Prosecutor V. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, above note 5, Para - 86.

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VII. SPECIAL AGREEMENTS AND UNILATERAL DECLARATIONS

The rules on internal conflicts as laid down in Common Article 3 and Protocol II can be supplemented by those that govern international armed conflicts. In terms of Common Article 3(2), parties to a conflict must endeavour to put all part of the other rules of the Conventions into effect by means of Special agreements. In order to interpret the rudimentary rules pertaining to non-international conflicts and make them easier to understand and apply, it is necessary to proceed by analogy with the more detailed (and more demanding) rules applicable to international conflicts. This is an appropriate cause to take, as the humanitarian and military challenges of both types of situation are often similar and there can be no real justification for differentiating between them[55].

Problems arising over the legal classification of a conflict can be overcome pragmatically by means of an agreement, since this will have no impact on the legal status on the contracting parties[56]. An agreement can be entered into on all or some of the provisions relating to International armed conflict. Such agreements mostly concern particular provisions (e.g. setting up of safety zones[57] simultaneous release of wounded prisoners, etc). There have also been broader references to humanitarian law treaties or parts of treaties, e.g. In the case of the conflict in the former Yugoslavia[58]

These special agreements are often the result of an ICRC initiative, and are often prepared by the ICRC and concluded under its auspices[59]

Special agreements between the parties to a non-international armed conflict (either between a state and an armed group or between armed groups) allow for an explicit commitment to comply with a broader range of rules of international humanitarian law.

An agreement may be constitutive if it goes beyond the treaty or customary provisions already applicable in the specific context (thereby creating new legal obligations) or it may be declaratory if it is simply a restatement of parties independently of the agreement[60]

As pointed out by the International Criminal Tribunal for the former Yugoslavia, the former category implicitly develops the customary law applicable to International armed conflicts[61],

[55] See Article 8(e) Borne Statue of the International Criminal Court.
[56] For example, the rules on conduct of hostilities.
[57] Common Article 3, Para, 4,
[58] See Yves Sandoz, 'The establishment of Safety, zones for Persons Displayed within their country of origin.
[59] In Uve To Sc case, the ICTY Trial Chamber did not examine the question of whether the provisions on grave breaches apply as a result of agreements concluded under the auspices of the ICRC.
[60] See the agreements published in the annexes to Michele Mercier, Crimes Sans Chatiment - L'action bare en ex Yugoslavie 1999-1993,
[61] ICTY, Prosecutor V. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction above note

States are often unwilling to enter into such agreements with armed groups, as they may be concluded about appearing to grant legitimacy to an armed group party to a conflict.

In practice, special agreements are more frequently attempted and successful concluded when the conflict is both seemingly intractable and more 'equal' in terms of the fighting between the state and armed groups (i.e. that the armed group is more state-like in terms of territorial control effective hierarchical chain-of-command, etc)[62]

Armed groups party to non-international armed conflicts may also make a uniteral declaration (or declaration of intention), in which they state their commitment to comply with international humanitarian law or specific rules thereof[63]. Some armed groups like the initiative to make such declarations through a public statement or press release.

At other times the ICRC (or another humanitarian actor or organization) Initiates, negotiates and/or receives the declarations. There is a long history of general[64] or partial[65] declaration of intent. The primary function of a unilateral declaration is to provide armed groups. (or their proxies) with an opportunity to express their consent to be bound by the rules of humanitarian law, given that they cannot ratify or formally become party to humanitarian law treaties.

Express commitment through a unilateral declaration provides the hierarchy with an opportunity to take ownership of ensuring respect for the law by their troops or fighters. In addition, It can lead to better accountability and compliance by the armed group, through providing a clear basis for follow-up, as well as dissemination to its members, especially when the declaration explicitly mentions the armed group's responsibility to disseminate international humanitarian law and to punish breaches.

Similar functions can be fulfilled by the inclusion of humanitarian rules in armed groups' codes of conduct.

The most common argument against the promotion of unilateral declaration is that they are often made in an attempt to gain political legitimacy and there might be little chance of implementation of the commitments[66].

5, Para. 104-109.

[62] As noted in the commentary to Common Article 3 Pictet, above note 6, P.43

[63] Se Denise Platner' 'La portes Jurisdique des declarations de respect du droit International lunar@aire qui eminent de movements en little dans un conficit arme, revue belge de droit International, 1984-1985/1. PP. 298-320.

[64] See Denise Plattner, 'La portice Juridique des declarations de respect du droit international humanitaire qui eminent de mouvements en lutte dans un conflit arme': Revue belge de droit international, 1984-1985/1, PP. 290.320.

[65] See for instance: the response of general de Graulle of the Comite National Francais which was in effect the 'Free Frendy government between 1941 and 1943).

[66] However, it is important to recognize that States also are often politically motivated when ratifying treatiesor making other international commitments.

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However, practice suggest that even in the primary motivation appears to be political, one can nonetheless capitalize on the express commitment made by an armed group, using it strategically as an operational tool to promote and improve compliance with the law.

Declarations provide a point of entry, or essential 'first step', to establishing contact and beginning a dialogue. The negotiations can help to identify building understanding and improving the political will, capacity, and practice of compliance of the party.

VIII. PUNISHMENT FOR BREACHES

Several articles of the Geneva Conventions and Protocol 1[67] specify the breaches that are to be punished by the states party to those instruments. All other violations constitute conduct contrary to the Conventions and Protocol and should be dealt with by means of administrative, disciplinary and criminal measures that the contracting parties are required to take to punish the perpetrators.

Crave breaches are expressly listed; their distinguishing feature is that the parties to a conduct and the other contracting parties have an obligation to prosecute or extradite the perpetrator of such a breach, regardless of his nationality and the place of the breach, in accordance with the principle of universal criminal justice[68] Grave breaches are considered war crimes[69], Punishment of violations at national level immediately upon outbreak of a conflict and while it continues are particularly important if a negative spiral of serious and repeated violations of the law is to be avoided. A system of penalties must be an integral part of any coherent legal construct, from the point of view of deterrence and of coercive authority[70] As the system of universal criminal jurisdiction had largely been left In abeyance by states, there was previously no effective prosecution and punishment of these types of crimes. However, international mechanisms such as the ad hoc Criminal Tribunals for the former Yugoslavia and for Rwanda, set up by the UN Security Council[71] and in particular the International Criminal Court, have given an impetus to prosecutions at national level.

International criminal law and its application by the International courts and tribunals is playing an Increasingly important part in the Interpretation and enforcement of International humanitarian law and Individual criminal liability for war crimes, as well as crimes against

[67] Article 49-94, GC 1: Artide 50-53, GC 11: article 129-132, GC III, Article 145-149, GC IV and Article 8-89,AP.1.
[68] This principle Imposes on the states parties to the humanitarian law treaties an obligation to prosecute and punish grave breaches.
[69] Article 85, Para. 5 A.P.I
[70] See the sanctions Issue of the International review of the red Cross. Vol. 90, No. 870, June, 2008
[71] S/RES/827 (1993) resp. RES/955 (1994)

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humanity and genocide often committed during armed conflicts. The role of the International Criminal Court is complementary to that of national justice systems. It will investigate or prosecute only where the state is 'unwilling or unable genuinely to carry out the investigation or prosecution[72]

The credibility of the International Criminal Court and its ability to perform its role of punishing international crimes depend on the adherence of as many states as possible to it. The fact that a number of influential states and some state currently involved in armed conflicts have not ratified the Rome Statute indicates a double standard in the implementation of international criminal law. This undermines its credibility to some extent and tends to confirm that political consideration carry the day even where international crimes have been perpetrated. Moreover, the international legal apparatus which aims mainly to punish the perpetrators can often only act years after the end of a conflict and cannot replace non-Judicial means[73] although the creation of international courts and tribunals has strongly promoted recourse to that avenue for enforcing International humanitarian law.

(A) Enquiry Procedure

An enquiry procedure is provided for under the Geneva Conventions[74] but to date has never been used since its inception in 1929. Its dependence on the belligerents' consent is doubtless one of the reasons why this mechanism has not been put to the test.

IX. THE INTERNATIONAL FACT-FINDING COMMISSION

Article 90 of Additional Protocol I was an attempt to systematize the enquiry process by instituting an International Fact-Finding Commission. This Commission is competent to 'enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violations[75] thereof and to 'facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol'. In particular, the idea was that the activities of the Commission should help to prevent polemics and violence from escalating during a conflict. It is doubtful, though, whether it could achieve this in practice without an operational arm on the ground and the necessary rapid-response capacity.

The Commission is competent to find facts and not to decide on points of law or to judge[76].

[72] See Article 17, Rome Statute of the International Criminal Court of 7 July, 1998.
[73] Sea macro Sassoll, Humanitarian law and International Criminal law, in Antonio Cassese 9ed.), The Oxford Companion to International Criminal Justice.
[74] Article 53, GC 1: article 53, GC II: Article 132, GC III: Article 149, GC IV:
[75] Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field of 27 July 1929.
[76] . The expression 'grave breach' has a specific meaning and refers to the breaches listed as such in the four

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Under Article 90, paragraph 5, the Commission is required to submit a report to the parties concerned on its findings of fact, with such recommendations as it deems appropriate. This article further specifies in sub-paragraph (c) that the Commission shall not report its findings publicly, unless all the parties to the conflict have requested it to do so[77]. The fact that its conclusions must remain confidential is reminiscent of the ICRC's modus operandi, but confidentiality is not really an appreciate way for an international commission to work. In principle, the International Fact-Finding Commission can undertake an enquiry only if all the patties concerned have given their consent[78]

but there is nothing to prevent a third state from requesting an enquiry by the Commission into a grave branch or serious violation of humanitarian law committed by a party to conflict, provided that the party concerned has also recognized the Commission's competence.

This possibility arises out of the obligation to ensure respect for the law of armed conflict. Though established in 1991, the Commission has not yet been activated[79], nor is it likely to be unless it is enabled to undertake an enquiry on its own initiative or at the request of only one party to a conflict, or by virtue of a decision by another body (e.g. the UN Security Council). In practice, the enquiry commissions set up and foisted even on unwilling states by the UN Security Council are better placed to meet the international community's expectations.

X. CONCLUSION

There are envious tensions - and even frictions - between protection of war victims in the midst of fighting and judicial supervision, between consent and enforcement, between humanitarian action and denouncing violations, and between an impartial humanitarian approach and a political approach. Improving the situation of victims of armed conflicts means using an adequate combination of the various means, and building on their comparative advantages. This must happen first and foremost at the field level; while the global level should strive to support field initiatives. International humanitarian law and its mechanisms remain international law's modest response during periods of armed conflict. Today, international enforcement of the law is still exceptional in the absence of a central enforcement system. Willingness and ability to comply with the rules largely lie in the hands of, belligerents, and supervisory mechanisms are

Conventions and Protocol I.

[77] Sandoz et. al. Commentary on the Additional Protocols, above note 6.P1046, Para. 3620.

[78] The Commission's role can go beyond simple fact-finding, as it is authorized to lend its good offices to facilitate the restoration of an attitude of respect for the Conventions and Protocol.

[79] One may wonder what interest a party against which a violation is committed might have in requesting an enquiry from a Commission that has no power to punish and which does not make public its findings even if it discovers the most abominable massacres.

merely based on their consents and good faith. Humanitarian law is suited to supervision on the spot and endeavours to provide protection and assistance directly to the victims of armed conflicts. The goal is to reach all persons affected.

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