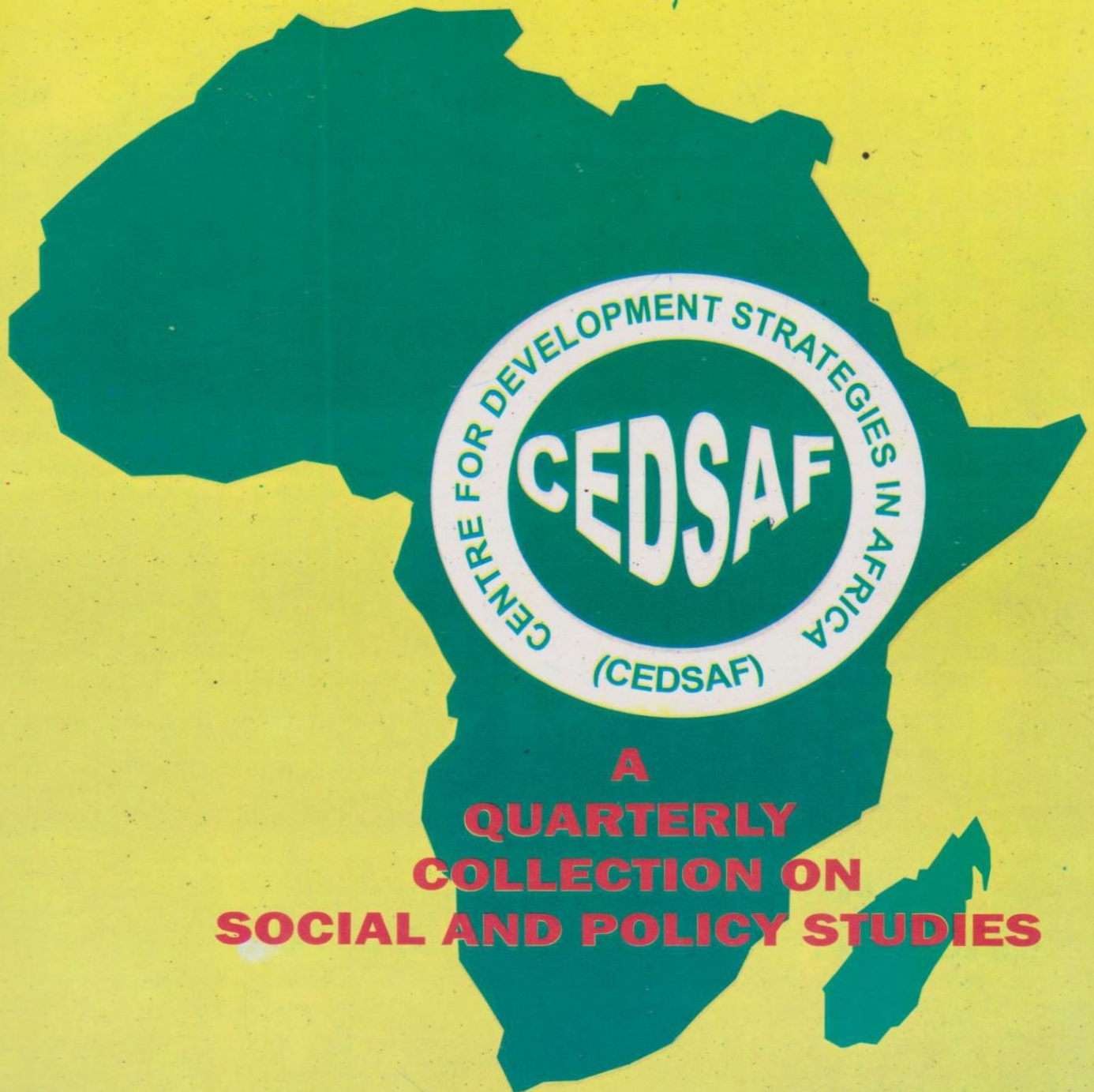


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THE ROME STATUTE, THE GENEVA CONVENTIONS AND THE ADDITIONAL PROTOCOLS: THEIR IMPORTANCE ON THE MEANS, METHODS, AND PROTECTIVE MEASURES IN ARMED CONFLICTS.

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ABSTRACT

This article examines THE ROME STATUTE, THE GENEVA CONVENTIONS AND THE ADDITIONAL PROTOCOLS: THEIR IMPORTANCE ON THE MEANS, METHODS, AND PROTECTIVE MEASURES IN ARMED CONFLICTS as a panacea to resolve the numerous conflicts and war in the African continent and concludes amongst others that the ICC should be very efficient since many states are unwilling to fulfill their duty to exercise their jurisdiction on war criminals; though states have the primary duty to play in the prosecution of war criminals, the ICC was set up to step in for the criminal courts when they are unwilling or genuinely unable to do so; measures must also be taken to ensure respect for international humanitarian law; states have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur; they must enact laws to punish the violations of the Statute of the ICC, the Geneva Conventions and Additional Protocols; with the development of new weapons and thus the significant expansion of armies' range of action through inventions, it is imperative to acknowledge that civilians were indeed part of war and subject to the same dangers as military personnel, and so, armed conflict should be avoided as much as possible.

INTRODUCTION

International humanitarian law (IHL) is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer participating in the hostilities and restricts the means and methods of warfare. Thus, it aims to limit the suffering caused by war by forcing parties engaged in a conflict to:

- a. Engage in limited methods and means of warfare;
- b. Differentiate between civilian population and combatants, and work to spare civilian population and property;
- c. Abstain from harming or killing an adversary who surrenders or who can no longer take part in the fighting;
- d. Abstain from physically or mentally torturing or performing cruel punishments on adversaries.

Summarily, IHL covers two areas: the protection of those who are not, or no longer, taking part in fighting (such as civilians and medical and religious military personnel). It

also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war. It also places restrictions on the means of warfare – in particular weapons and the methods of warfare, such as military tactics. The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). The four Geneva Conventions of 1949 and the 2 Additional Protocols actually contain a major part of IHL.

The Restrictions Of IHL On Means And Methods Of Warfare:

The terms “means and methods of warfare” designate the tools of war and the ways in which they are used. IHL prohibits all means and methods of warfare which: fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; cause superfluous injury or unnecessary suffering; cause severe or long-term damage to the environment. Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines. As already stated, major part of international humanitarian law is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements i.e. the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.

International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I. Non-international armed conflicts are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. A more limited range of rules apply to internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II.

The Rome Statute of the International Criminal Court

This statute is also referred to as the International Criminal Court Statute or the Rome Statute. It is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. As of October 2009, 110 states are party to the statute, and a further 38 states have signed but not ratified the treaty. Among other things, the Statute establishes the court's functions, jurisdiction and structure

The Statute has been described as a major step forward for substantive international law. This is with reasons as unlike the minimalist provisions of statutes of the earlier international courts, such as the Nuremberg Tribunal and the International Tribunal for former Yugoslavia and Rwanda, the Rome Statute provide detailed definitions of the core international crimes, the possible modes of participation in those crimes, and the permissible grounds for excluding criminal responsibility. The Statute thus represents the international community's most ambitious attempt to create a special and general part of international law. The preamble of the Statute emphasizes that in this century alone, millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, and such grave crimes threaten the peace, security and well-being of the world. It further affirms that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

Thus there is the need for the prevention of such crimes. Appreciating that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, and reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, the Statute emphasizes that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict in the internal affairs of any State. It is further highlighted that for the sake of present and future generations, is the establishing of an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole. The preamble ends by stating that the International Criminal Court shall be complementary to national criminal jurisdictions, and will ensure the enforcement of international justice,

Jurisdiction Of The International Criminal Court

The ICC has subject matter jurisdiction over four crimes: genocide, crimes against humanity, war crimes, and aggression. Indeed the Rome Statute has occasionally termed these crimes as being the most serious crimes that concern the international community. Furthermore, the Court has personal jurisdiction over nationals of State Party who are accused of committing crimes within the subject matter jurisdiction of the Court, regardless of where those crimes were committed. The Court can also prosecute nationals of non-party states in two situations: where the non-party state accepts the jurisdiction of the Court on *ad hoc* basis ; and where the Security Council refers a situation to the Court under Chapter VII of the UN Charter

The same principles apply to the Court's territorial jurisdiction .The Court has jurisdiction over any crime that is committed in the territory of a state party regardless of the nationality of the perpetrator[s]. It also has territorial jurisdiction over crimes committed in the territory of a non state party that either accepts the Court's jurisdiction on an *ad hoc* basis or is the subject of a Security Council referral under Chapter VII of the UN Charter. It is clearly stated that the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: the crime of genocide; crimes against humanity; war crimes; and the crime of aggression.

According to Article 8 of the ICC Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Willful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Willfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law. These includes such as intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities and objects which are not military objective , attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion; Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; Killing or wounding treacherously individuals belonging to the hostile nation or army; Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; Pillaging a town or place, even when taken by assault; Employing poison or poisoned weapons; Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; Committing outrages upon personal dignity, in particular humiliating and degrading treatment, Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Convention; Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities, placed *hors de combat* by sickness, wounds, detention or any other cause: Taking of hostages amongst other serious violations.

Aggression has been included as a crime within the Court's jurisdiction. But first, the States Parties must adopt an agreement setting out two things: a definition of aggression, which has so far proven difficult, and the conditions under which the Court could exercise its jurisdiction. Furthermore, such a provision must be consistent with the relevant provisions of the Charter of the United Nations. Several proposals have been considered. Some countries feel that, in line with the UN Charter and the mandate it gives to the Security Council, only the Council has the authority to find that an act of aggression has occurred. If this is agreed, then such a finding by the Council would be required before the Court itself could take any action. Other countries feel that such authority should not be limited to the Security Council. There are proposals under consideration that would give that role to the General Assembly or to the International Court of Justice, if an accusation of aggression were made and the Security Council did not act within a certain time.

The ICC Statute prohibits the use of such methods of warfare such as employing poison or poisoned weapons; Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; and otherwise employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute. It must be emphasized that the creation of two ad hoc tribunals i.e the International Criminal Tribunals of Yugoslavia and Rwanda was an important step in the punishing of war crimes and perpetrators and this was eventually followed with the establishment of other tribunals such as the Hybrid Tribunal of Sierra Leone, Cambodia and East Timor. Part 4 of the ICC Statute

concerns composition and administration of the Court while Part 5 concerns investigation and prosecution. Part 6 of the Statute concerns the trial. Part 7 of the ICC Statute concerns penalties for offences. Here, the Court may impose such penalties as imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. In addition to imprisonment, the Court may order a fine under the criteria provided for in the Rules of Procedure and Evidence; a forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Part 8 of the ICC Statute is on appeal and revision and it contains five paragraphs providing details for such situations while Part 9 of the Statute concerns international cooperation and judicial assistance. It sets out provisions on the general obligation of States parties to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction. Part 10 deals with enforcement and the role of States in enforcement of sentences of imprisonment, while Part 11 consists of an article which establishes the Assembly of States Parties, on which other States which have signed the Statute or the Final Act may take part as observers.

Challenges facing the International Criminal Court

The Court itself has no practical means to enforce its orders and decisions. The ICC has no police force of its own. It is therefore entirely dependent on the states to investigate cases and transfer suspects to the Court. The Prosecutor has very limited power to conduct investigations. For instance, he cannot compel witnesses or carry out exhumations. In the event of non-compliance, the ICC does not have the power to order state compliance itself, but has to turn to the Assembly of state parties or if the referral is from the Security Council, it can turn to the Council for assistance.

Furthermore, unlike the Statute of the International Criminal Tribunal of Yugoslavia (ICTY) the Rome Statute does not give the prosecutor the authority to conduct investigations independent of national authorities. It is also the case that by Article 1, the Court is established as a permanent institution with power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in the Statute, 'and shall be complementary to national criminal jurisdictions'. This general functional jurisdiction is universal in scope. The limitation of the Court's jurisdiction to 'the most serious crimes of international concern, as referred to in the Statute', is an immediate source of ambiguity and is subject to limited interpretation just to evade criminal responsibility. In this respect, the ICC is much weaker than the ICTY and International Criminal Tribunal for Rwanda (ICTR), both of which have concurrent jurisdiction with national courts and may choose to exercise primacy over them by requesting deferral to their competence. This is problematic because if a state wishes to cover up certain crimes, it would assert its jurisdiction or engage in a sham investigation.

Article 124 of the Statute permits states, at the time of ratification, to make a declaration that they do not accept the Court's jurisdiction over war crimes for a seven-year period. It is the opinion of the writer that such a declaration undermines the very purpose of the Court by giving states immunity from international justice over war crimes for seven years, as this provision effectively gives the soldiers a licence to kill without such indictments. As a result of the insistence of the US and France, the final text stipulates that the state may withhold information or prevent an individual from giving evidence if, in its view, it would prejudice its national security interests. The US proposal prevailed over the one from the UK, which would have allowed the Court to order a state to disclose

information, if it was acting in bad faith. Further, a very vague provision could allow states not to co-operate on the basis of inconsistency with their own "fundamental national law", such as constitutional provisions. Even while acknowledging it as a historic step forward for international justice, the writer therefore opines that the Statute still requires some amendments and additions as afore-analysed in order to ensure that the Court will be just, relevant and effective.

The Geneva Conventions and The Two Additional Protocols

The greater part of international humanitarian law is contained in the four Geneva Conventions of 1949 and the Additional Protocols 1 and 2. Although the four Geneva Conventions of 1949 are very comprehensive and they protect various categories of people they do not cover the full range of human sufferings caused by war. There are gaps in important areas, for instance, in the provisions relating to the behaviour of combatants and the protection of civilians from the effects of the hostilities. To remedy these shortcomings, two Protocols were adopted in 1977. They supplement, but do not replace, the Geneva Conventions of 1949. These Protocols are additional to the four Geneva Conventions of 1949. Additional Protocol I relates to the protection of victims of International Armed Conflicts and the Additional Protocol II relates to the protection of victims of Non-international Armed Conflicts. AP I imposes constraints on the method in which military operations may be conducted while AP II applies only to internal armed conflicts of a certain intensity in which dissident armed forces, under responsible command, exercise control over a part of the national territory. It sets forth the fundamental guarantees to which all persons not, or no longer, taking part in hostilities are entitled.

It is the case that despite the existence of the ICC Statute, the Four Geneva Conventions and their Additional Protocols still have much relevance as it concerns the issue of means and methods of warfare, together with ensuring protective measures in armed conflict. Indeed the areas of relevance are quite vast.

It is pertinent to mention that the all important reference in international treaties on the need to carry out legal reviews of new weapons, means and methods of warfare is found in Article 36 of Additional Protocol I of 1977. Herein, before the acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party. The aim of Article 36 is to prevent the use of weapons that would violate international law in all circumstances and to impose restrictions on the use of weapons that would violate international law in some circumstances, by determining their lawfulness before they are developed, acquired or otherwise incorporated into a State's arsenal.

The requirement that the legality of all new weapons, means and methods of warfare be systematically assessed is arguably one that applies to all States, regardless of whether or not they are party to Additional Protocol I. It flows logically from the truism that States are prohibited from using illegal weapons, means and methods of warfare or from using weapons, means and methods of

Warfare in an illegal manner. The faithful and responsible application of its international law obligations would require a State to ensure that the new weapons, means and methods of warfare it develops or acquires will not violate these obligations. Carrying out legal reviews of new weapons is of particular importance today in the light of the rapid development of new weapons technologies. Article 36 is complemented by Article 82 of Additional Protocol I, which requires that legal advisers be available at all times to advise military commanders on IHL and "on the appropriate instruction to be given to the armed

forces on this subject.” Both provisions establish a framework for ensuring that armed forces will be capable of conducting hostilities in strict accordance with IHL, through legal reviews of planned means and methods of warfare.

It is also pertinent to mention that the Martens Clause is repeated in the Geneva Conventions and the Additional Protocols and are by its content, is very instrumental in the prohibition of all means and methods of warfare which: fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; cause superfluous injury or unnecessary suffering; cause severe or long-term damage to the environment. It states thus:

Until a more complete code of the laws of war is issued ... in cases not included in the Regulations ... populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.”

The Martens Clause contains the premise to preserve -even in armed conflict - a certain minimum of human dignity. Acts not expressly forbidden are therefore still subject to a test of basic humanity. A weapon, means or method of warfare, which is not covered by existing rules of IHL will be considered contrary to the Martens clause if it is determined *per se* to contravene the principles of humanity or the dictates of public conscience.

Also the Additional Protocol II reinforces the fundamental guarantees for people who are not or are no longer participating in hostilities, and prohibits attacks against the civilian population, civilian persons, objects indispensable to the survival of the population, cultural objects and places of worship etc. Forced displacement of the civilian population is also covered, as well as protection of the wounded, sick and shipwrecked. Protection of medical and religious personnel is enshrined in the Protocol, as well as that of medical missions, units and transports. The rights of people deprived of their liberty are recognized as well as their judicial guarantees.

Furthermore Common Article 3 to the Four Geneva Conventions is now considered as international customary law and represents a minimum standard from which the belligerents should never depart. Violating these provisions therefore gives rise to individual responsibility. Even including the provisions of Protocol II, the rules on internal conflicts remain less complete than those dealing with international armed conflicts. It has proven difficult to strengthen the system of protection in non-international armed conflicts in the face of the principle of State sovereignty. The full text of Common Article 3 is quoted below because of its importance:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party (i.e. states, rebels, states helping, etc.) to the conflict shall be bound to apply as a minimum, the following provisions:

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

The Geneva Conventions and the Additional Protocols also emphasize that in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited; It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. It is prohibited to employ methods or means of warfare They also go ahead to prohibit the use of means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

It is also important to note that Article 37 of the Additional Protocol 1 prohibits of Perfidy. The following acts are examples of perfidy: (a) the feigning of an intent to negotiate under a flag of truce or of a surrender; (b) the feigning of an incapacitation by wounds or sickness; (c) the feigning of civilian, non-combatant status; and (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

The Geneva Conventions and the Additional Protocols also additionally provide for the safeguard of *hors de combat* and contain more extensive provisions for the protection of prisoners of war and Article 45. The Protection of persons who have taken part in hostilities but later fall into the hands of the adverse party is more extensively protected too in the Geneva Conventions and Additional Protocols The Geneva Conventions and the Additional Protocols have also greatly provided for the full protection of civilians and civilian objects in armed conflict. In fact, the general notion is that in the case of doubt whether a person is a civilian, that person shall be considered to be a civilian. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations, unless and for such time as they take a direct part in hostilities.

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, Article 53 of the Additional Protocol 1 provides for the protection of cultural objects and of places of worship while Art 54 provides for the Protection of objects

individual civilians shall enjoy general protection against dangers arising from military operations, unless and for such time as they take a direct part in hostilities.

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, Article 53 of the Additional Protocol 1 provides for the protection of cultural objects and of places of worship while Art 54 provides for the Protection of objects indispensable to the survival of the civilian population. Starvation of civilians as a method of warfare is prohibited. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

To further buttress the importance of the Geneva Conventions and the Additional Protocols as it concerns means and methods of warfare and protection, Article 76 of Additional Protocol 1 states the protection of women in particular against rape, forced prostitution and any other form of indecent assault. Article 77 of Additional Protocol 1, Article 4 (A) (4) of the Third Convention of the Geneva Convention provide extensively for the protection of children against any form of indecent assault and other vices where armed conflict occur, whether of international nature or not. Both the ICC Statute and the Geneva Conventions agree that children who have not attained the age of fifteen years should not take a direct part in hostilities and, in particular, warring parties shall refrain from recruiting them into their armed forces but if they take part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

Also, the Geneva Conventions afford special protection to medical property and personnel whose mission is to save lives and provide health care for civilians and combatants alike. Its rules and provisions obligate fighting parties to take all necessary measures to protect and respect medical missions at all circumstances. In war, health systems collapse and fail to cope in such situations as a result of, among other things, the overwhelming number of casualties, the destruction of civilian property, including hospitals and medical facilities and structures, or the disruption of supply lines and the security situation, which may keep health workers away from hospitals, clinics and other medical installations, and which often prevents those in need of health care from reaching health facilities. As a result of war situations where people are most vulnerable, they lay down the minimum protection and standards applicable to such situations and puts all sides in a conflict under the obligation to protect certain objects from damage, including hospitals and other medical facilities, ambulances, and equipment bearing the Red Cross or Red Crescent symbol that have removed wounded from the field; transport and facilities used by humanitarian and relief agencies; and objects indispensable to the survival of the civilian population, such as crops, livestock, and drinking water installations. On the Principle of Distinction of IHL, the Geneva Conventions and the Additional Protocols impose a duty on parties to a conflict to distinguish military objects from civilian objects. The law is that a military object remains a military object despite the fact that there are civilian persons on it and thus civilians around it may share the burden of being around it. However, in order to minimize the high casualty and damage that will result from this attack of military objects with civilians in them; the rule of Proportionality must apply. This rule states that any military action must be proportionate to the force of the other party and it should be such that does not cause incidental civilian

some respect for human dignity. Indeed, increasingly, the victims of war are civilians. However, there are important cases where international humanitarian law has made a difference in protecting civilians, prisoners, the sick and the wounded, and in restricting the use of barbaric weapons.

The ICC Statute entered into force on 1st of July 2002. The ICC has jurisdiction over the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. It also controls the means and methods of warfare employed by parties in armed conflict. It also sets out protective measures on the protection of those who are not, or no longer, taking part in fighting and those who have ceased to take part in the fighting. On the other hand, the Geneva Conventions and the Additional Protocols also have such relevance in limiting the methods and means of warfare and protecting non combatants. However, given that IHL applies during times of violence, implementing it will always be a matter of great difficulty. That said, striving for effective compliance remains as urgent as ever.

It must however be emphasized that there is the need for the ICC to be very efficient since many states are unwilling to fulfill their duty to exercise their jurisdiction on war criminals. Though states have the primary duty to play in the prosecution of war criminals, the ICC was set up to step in for the criminal courts when they are unwilling or genuinely unable to do so. Measures must also be taken to ensure respect for international humanitarian law. States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur. In particular, they must enact laws to punish the violations of the Statute of the ICC, the Geneva Conventions and Additional Protocols. These indeed come with other incidental duties. Furthermore, with the development of new weapons and thus the significant expansion of armies' range of action through inventions, it is imperative to acknowledge that civilians were indeed part of war and subject to the same dangers as military personnel. Therefore, armed conflict should be avoided as much as possible.

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Article 12(2b) of the ICC Statute

Article 12(3d) of the ICC Statute

Article 12(3b) of the ICC Statute

Article 12(2)(a) of the ICC Statute

Article 12(3) of the ICC Statute

Article 13(b) of the ICC Statute

Article 6: "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.

Article 7: Crimes against humanity: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced

Article 5 of the ICC Statute contains these crimes within the jurisdiction of the Court. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

See generally Article 8(b) of the ICC Statute.

Article 5 of the ICC Statute

Culled from the Article The International Criminal Court available at <http://www.un.org/news/facts/iccfact.htm> accessed on 1/1/2010.

Article 123 of the ICC Statute.

It states that the organs of the Court are the Presidency; an Appeals Division, a Trial Division and a Pre-Trial Division; the Office of the Prosecutor; and the Registry.

It provides for such matters as the initiation of an investigation by the Prosecutor and also states that the Prosecutor may at any time reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

It states that "unless otherwise decided, the place of the trial shall be the seat of the Court". Also, the accused shall be present during the trial. The Trial Chamber shall ensure that a trial is "fair and expeditious" and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. It further states that "everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law", adding that the onus is on the Prosecutor to prove the guilt of the accused. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

This is evident with its inability to arrest President Al Bashir of Sudan who has since been indicted for war crimes by the Court. African states have almost collectively refused to arrest the man even when he visits their state territories.

Article 66 and Article 78 of the ICC Statute.

Rome Statute of the International Criminal Court - Debate & Vote available at www.un.org accessed on 4th December 2009.

The First Convention - wounded and sick members of the armed forces in the field;
The Second Convention - wounded, sick, and shipwrecked members of the armed forces at sea as well as ship wreck victims; The Third Convention - prisoners of the war;
The Fourth Convention - civilians in times of war.

AP I gives a reminder to the combatants that the right of the parties to a conflict to choose methods and means of warfare is not unlimited and that they are prohibited to employ weapons, projectiles and any other device that may cause superfluous injury or unnecessary suffering. AP I defines legitimate targets in case of military attacks. Furthermore, it prohibits indiscriminate attacks and attacks or reprisals against the civilian population and individual civilians. Additional Protocols I and II of 1977 are binding on a large number of States, but it is essential that they attain universal recognition, for only when all States have pledged compliance with their humanitarian rules, and are clearly aware of their mutual commitments,

AP I gives a reminder to the combatants that the right of the parties to a conflict to choose methods and means of warfare is not unlimited and that they are prohibited to employ weapons, projectiles and any other device that may cause superfluous injury or unnecessary suffering. AP I defines legitimate targets in case of military attacks. Furthermore, it prohibits indiscriminate attacks and attacks or reprisals against the civilian population and individual civilians. Additional Protocols I and II of 1977 are binding on a large number of States, but it is essential that they attain universal recognition, for only when all States have pledged compliance with their humanitarian rules, and are clearly aware of their mutual commitments, will it be possible to ensure equal protection for all the victims of all armed conflicts. Article 48 of Additional Protocol I provides that in order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives. Article 51(4) of AP I states that the indiscriminate attacks are prohibited. Among others, the following types of attacks are to be considered as indiscriminate: An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Weapons of all types - be they anti-personnel or anti-materiel, "lethal", "nonlethal" or "less lethal" - and weapons systems; The ways in which these weapons are to be used pursuant to military doctrine, tactics, rules of engagement, operating procedures and counter-measures; All weapons to be acquired, be they procured further to research and development on the basis of military specifications, or purchased "off-the shelf"; A weapon which the State is intending to acquire for the first time, without necessarily being "new" in a technical sense; A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977 International Committee of the Red Cross Geneva, 2006. Article 63, Article 62, Article 142, and Article 158 of the four Geneva Conventions respectively,

Article 1(2) and Paragraph 4 of the Additional Protocol I n 2 respectively.

Article 1(2) of Additional Protocol I formulates as follows:

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, paragraph 87. See Article 6 of the Fourth Geneva Convention and Articles 27, 41 and 52 of Additional Protocol I

¹Michael J. Waibel (2009): *International Humanitarian Law - An Overview* available at www.afa.at/globalview.html accessed on 27th December 2009. **Example Article 2 of the four Geneva Conventions Article 35, Article 36 and the Basic rules I of the Additional Protocol I. In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. sArt 41 of the**

evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety

See Article 43 and 44 of the Additional Protocol I, Article 4 of the Third Geneva Convention and Article 13 of the First and Second Conventions. See Article 45 OF THE Additional Protocol I, Article 4 and 5 of the Third Convention, Also in Article 5 of the Fourth Convention,. However Art 46 and 47 of the Additional Protocol I excludes Spies and mercenaries from this protection. See example Articles 51, Art 50. 1.52, in Article 43 of this Protocol. And Article 4 (the Third Geneva Convention. Such attacks include (a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction

Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.³ In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used as:

(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(b) to use such objects in support of the military effort;

(c) to make such objects the object of reprisals.

The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: (a) as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.⁴ These objects shall not be made the object of reprisals. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Articles 24 and 25 IGC; 15 AP, (Article 8 AP I), " (Article 22 IIGC), (Article 22 AP I), (Article 29 IIGC). For example The four Geneva Conventions of 1949 and their First Additional Protocol of 1977 provide for the protection of medical units. Such units, whether military or civilian, include any establishment or other units that are set up for medical purposes (search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease.) Hospitals and other similar units (blood transfusion centers, preventive medicine centers and institutes, medical depots and the medical and pharmaceutical stores of such units) are also included as medical units. Medical units may be fixed or mobile, permanent or temporary (Article 19 IGC; Article 18 IVGC; Articles 8, 9, 12 AP I): Article 50 -52 of the Additional

purposes (search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease.) Hospitals and other similar units (blood transfusion centers, preventive medicine centers and institutes, medical depots and the medical and pharmaceutical stores of such units) are also included as medical units. Medical units may be fixed or mobile, permanent or temporary (Article 19 IGC; Article 18 IVGC; Articles 8, 9, 12 AP I): Article 50 -52 of the Additional Protocol I, Article 33 of the Third Geneva Convention,, Article 55 of the Fourth Geneva Convention amongst other provisions.

See generally Article 43 – 58 of t the Additional Protocol, Article 2 of the Fourth Geneva Convention and Common Article 3 of the four Geneva Conventions amongst other provisions. Furthermore even in the planning of military actions, and Strategies, the necessary warnings and requisite recommendations should be made to the civilian population that may be affected by such actions in order for them to be able to take the necessary steps to avert danger on their persons and their property. This was seen when Israeli army used helicopters and spread leaflets of warning to the Lebanese warning the civilian population of impending air strikes during the Israeli- Lebanon war concerning the Hezbollah faction of 2008. The Geneva Conventions and their Additional Protocols available at <http://www.redcross.ca/article.asp> accessed on 30th December 2009. This includes the Israeli- Palestinian wars where Israel is believed to have used Phosphorus bombs on both military and civilian settlements; The continuous war in Sudan, the present Afghanistan war which is recording high rate of civilian casualties etc. This can be seen in the enactment of other protective statute such as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ottawa, Canada, 1997. Knut Dormann, *Elements of War Crime under the Statute of the International Criminal Court* ; Sources and Commentary, 2002 , Cambridge University Press, P.1 culled from www.cambridge.com last visited on 20th of December, 2009.