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International Humanitarian Law (IHL) and the Conduct of Non International Armed Conflict (NIAC)

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Introduction- International humanitarian law, hereinafter called IHL, is defined as the branch of international law which limits the use of violence in armed conflict by:

- a. Sparing those who do not or no longer directly participate in hostilities;
- b. Restricting it to the amount necessary to achieve the aim of the conflict, which-independently of the causes fought for - can only be to weaken the military potential of the enemy.

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International Humanitarian Law (IHL) and the Conduct of Non International Armed Conflict (NIAC)

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I. INTRODUCTION

a) Definition

International humanitarian law, hereinafter called IHL, is defined as the branch of international law which limits the use of violence in armed conflict by:

- a. Sparing those who do not¹ or no longer² directly³ participate in hostilities;
- b. Restricting it to the amount necessary to achieve the aim of the conflict, which-independently of the causes fought for⁴ - can only be to weaken the military potential of the enemy⁵.

From this definition, the following deductions could be made, namely:

- That in armed conflict, distinction must be made between civilians and combatants.
- That it is prohibited to attack those who are *hors de combat*.
- That it is prohibited to inflict unnecessary suffering
- That there is need to observe the principle of necessity and proportionality in armed conflicts.

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¹ For example, civilians

² For example, those who have surrendered (i.e, the International armed conflict, prisoners of war) or can no longer participate (such as the wounded, and sick)

³ It the international Humanitarian Law wants to protect anyone, it cannot consider mainly any casual contribution to the war effort as participation but only the contribution implementing the final element in the casualty chain, i.e. the application of military violence.

⁴ The state fighting in self defence has only to weaken the military potentials of the aggressor sufficiently to preserve his independence; the aggressor has only to weaken the military potentials of the defender sufficiently to impose its political will; the governmental forces involved in a non-international armed conflict has only to overcome the armed rebellion and dissident fighters have only to overcome the control of the government of the country (or part of it) they want to control.

⁵ In order to "win the war" it is not necessary to kill enemy soldiers, it is sufficient to capture them or make them otherwise surrender, it is not necessary to destroy civilian infrastructure but only objects contributing to military resistance.

Parties to a conflict shall at all times distinguish between the civilian population and the combatants in order to spare the civilian population and civilian object. Neither the civilian population nor civilian persons including civilian objects shall be the object of attack⁶. Attack shall be directed solely against military objectives⁷.

b) The Laws Regulating Armed Conflict

The laws regulating armed conflict are found both in the treaty laws and customary international humanitarian law i.e. the Four Geneva Convention of 1949, the Additional Protocols of 1977 and Customary International Humanitarian Law. The first Geneva Convention is on the amelioration of the condition of the wounded and sick of the armed forces on the field. This originated from the 1864 Geneva Convention which was revised in 1906 and further reviewed in 1929. The First Geneva Convention of 1949 merely adopted its text with some additional provisions⁸.

The Second Geneva Convention deals with the amelioration of the condition of the wounded, sick and shipwreck members at sea. This Convention adopted the Hague Convention of 1899 which was revised in 1907⁹.

The Third Geneva Convention relative to the treatment of prisoners of war which deals extensively with the plight of those taken captive in war is also an adoption of the 1929 Geneva Convention on the same subject matter¹⁰.

The Fourth Geneva Convention, is an entirely new text to the earlier ones that had existed before 1949, and it is on the protection of civilian persons in time of war.

International humanitarian law treaty is said to be "one law behind reality", for its promulgation is usually influenced by events. For instance, the First World War witnessed the use of methods of warfare that were, when not completely new, at least, deployed on

⁶ Article 48 additional protocol 1 and article 13 additional protocol II see also rule 1 CIHL

⁷ Article 52 (2) additional protocol 1 and rule 7 CIHL

⁸ First Geneva Convention of August 12, 1949.

⁹ Second Geneva Convention of August 12, 1949

¹⁰ 3rd Geneva Convention of August 12, 1949

an unprecedented scale. These included poison gas, aerial bombardment and the capture of hundreds of prisoners of war. These were not contemplated by the earlier treaties. The Geneva Gas Protocol 1925 which prohibited the use of asphyxiating, poisonous and other gases and bacteriological method of warfare, and the 1929 Geneva Treaty on the protection of prisoners of war, were in response to those developments.¹¹

Furthermore, the Second World War which occurred between 1939 and 1945 saw civilians and military personnel killed in equal numbers, as against a ration of 1-10 in the First World War¹². In 1949, the international community responded to those tragic figures, and more particularly, to the terrible effects the war had on civilians by revising the conventions then in force and adopting a new instrument: the fourth Geneva Convention for the protection of civilians in armed conflict.¹³

The additional protocols of 1977 to the Four Geneva Conventions were responses to the effects in human terms of wars of national liberation, which the 1949 conventions did not cover. With the adoption of the additional protocol 1 of 1977 to the four Geneva Conventions conflicts arising from the struggle for national liberation is now classified as armed conflict of international character¹⁴.

The International Committee of the Red Cross (ICRC) in its research of ten years came out with a set of rules of customary international humanitarian law which were based on state practices in the nature of official declarations of states. Out of 161 rules of customary international humanitarian laws developed as a result of this research which are based on the provisions of Additional Protocol 1 to the Four Geneva Convention of 1949 which apply in international armed conflict, 136, if not 148, are now equally applicable in non-International armed conflict¹⁵. The implication of this is that most rules which hitherto apply to only international armed conflict now apply with equal force to non-international armed conflict. Both the Four Geneva Conventions and their Additional Protocols including the customary law on IHL are the laws governing or regulating armed conflicts.

c) *Classification of Armed Conflict*

International Humanitarian Law recognizes two types of armed conflict.¹⁶ Wars between two or more

states are classified as international armed conflicts and are regulated by the Four Geneva Conventions, the additional protocol 1 and customary International Humanitarian Law. A situation where people rise up against colonial domination in exercise of their right to self determination has since the adoption of additional protocol 1 of 1977 been considered as international armed conflict being a war of national liberation¹⁷.

Warlike clashes occurring within the territory of a state between the armed forces of the state and the armed group/s or between such groups are known as internal armed conflict and it is regulated or governed by the common article 3 to the Four Geneva Conventions, the additional protocol II and Customary International Humanitarian Law and this is the focus of this paper.

A close look at the laws of armed conflict applicable to either situation of conflict reveals that the Four Geneva Conventions and the additional protocol I dealing on international armed conflicts appear more expansive and all encompassing than the provisions of the law applicable to non international armed conflict i.e. the common article 3 to the Geneva Conventions and additional protocol II¹⁸. The question is, is this gap that existed before the adoption of Customary International Humanitarian Law necessary? owing to the fact that war, whether international or non-international ultimately ends up in colossal loss to human lives and destruction of civilian objects. This paper will highlight these obvious absurdities and show how it has been ameliorated since the adoption of Customary International Humanitarian Law.

d) *Non International Armed Conflict*

Non international armed conflict is defined as armed conflict which exists within the territory of a state. It mostly occurs between the government forces and local armed group/s usually called civil war.

Common article 3 to the Four Geneva Convention defines non international armed conflict as one that exist between state armed forces and non-state armed groups or between such groups themselves.

The International Criminal Tribunal for the former Yugoslavia (ICTY) has deem there to be a non-international armed conflict in the sense of common article 3:

“Whenever there is... protracted armed violence between governmental authorities and organized armed group within a state¹⁹”

The Additional Protocol II of 1977 defines non-international armed conflict as a conflict which occur

¹¹ International Humanitarian Law, answers to your questions, ICRC, October, 2002, 2nd edition December, 2004 p. 11

¹² Ibid p. 11

¹³ Ibid 11

¹⁴ Additional Protocol 1 of 1977 to the four Geneva Convention of 1949

¹⁵ ICRC Press release No. 005/1717 March, 2005 “Customary Law Study enhances Legal Protection of Person affected by armed conflict” available on www.ICRC.org.

¹⁶ Dietrich schindler, “The different types of armed conflict according to the Geneva Convention and protocols”, RCDAL, vol. 1979, pp. 117-163

¹⁷ Articles 1(4) & 96(3) of API

¹⁸ For instance, there are no provision for principle of proportionality, precautionary measures e.t.c in Law regulating non international armed conflict until the adoption of customary international humanitarian law

¹⁹ ICTY The prosecutor v. Dusko Tadic – on the defense motion 1995

within the territory of a high contracting party between the armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol²⁰.

There is a difference between the definitions of non-international armed conflict under the common article 3 and the Additional Protocol II whereas the common article 3 recognises it as a conflict between the government forces and the local armed group/s or between such groups themselves. The Additional Protocol II confines it to conflict between state armed forces and local armed group/s thereby excluding conflicts between such non state actors²¹.

It is important to note that the treaty laws allowed a distinction between armed conflict covered by the common article 3 and the Additional Protocol II to the convention since the Additional Protocol II came into force to supplement the provisions of common article 3.²²

The statute of the international criminal court (ICC), which in prescribing as war crimes serious violations of common articles 3 also refers to such conflicts as:

“That which takes place in the territory of a state when there is protracted armed conflict between governmental authorities and the organized armed groups or between such groups²³

A 2008 published ICRC opinion paper on the definition of armed conflict under IHL, defines non-international armed conflict as follows:

Protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed group or between such groups arising on the territory of a state (party to the Geneva Convention) the armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization

One thing is common in all these definitions, that is the requirement that the conflict must be such that exists within the territory of a given state, thus making it non international armed conflict which is commonly referred to as civil war.

e) Non International Armed Conflict and the Application of Common Article 3 to the Four Geneva Conventions

The common article 3 provides that in the case of armed conflict not of an international character

occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

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 person, 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 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 endeavour 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 article which is called a miniature convention imposes a minimum obligation on all the parties to the conflict irrespective of the course fought for or defended. This much was captured in the opening paragraph of the article which begins:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provision...

It affords a minimum protection to all those who are not or who are no longer taking active parts in hostilities i.e. civilians, member of armed forces of the party to conflict who have been captured, wounded or have surrendered. It provides for humane and non discriminatory treatment for all such persons, in particular by prohibiting acts of violence to life of person

²⁰ Article 1 Additional Protocol II

²¹ Provisions of common article 3 and Article 1 APII

²² Article 1 Additional Protocol II

²³ Article 8(2)(f) of the statute of the ICC

(specifically murder, mutilation, cruel treatment and torture), the taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment. It prohibits also the passing of sentences and the carrying out of executions without judgment being pronounced by a regularly constituted court providing all judicial guarantees recognized as indispensable. It also imposes an obligation on the parties to collect the wounded and sick and to care for them.

It has been affirmed by the International Court of Justice in 1986, that the provisions of common Article 3 reflect customary international law and represent a minimum standard from which the parties to any type of armed conflict must not depart.²⁴

As could be gleaned from this article, no provision was made with regard to the status of captured combatants as they were left at the mercy of detaining powers having been denied the prisoners of war status. The article by implication empowers the detaining power to prosecute, convict and sentence captured combatants that have falling into their hands provided that judicial guarantees recognized by civilized peoples are observed and followed. It should be noted that common article 3 does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature. It does not also affect the legal status of the parties to the conflict.

II. APPLICATION OF ADDITIONAL PROTOCOL II TO THE CONDUCT OF NON-INTERNATIONAL ARMED CONFLICT

The spate of civil wars that took place post 1949 exposed the limit of the provisions of common article 3 and its inability to effectively address issues bothering on international Humanitarian Law arising from such conflicts. Parties to these conflicts also did not help matters as they Lacuna inherent in the said common article 3 were not plugged through agreement for the application of other provisions of Convention as provided in the article.

For instance provision of aid to wounded and sick combatants, the protection of medical facilities, the status of prisoners of war, the protection of civilian population, relief operations and so on were all lacking in the provision of common article 3. The application of all these provisions would have been made possible through agreement of parties in such conflict which was allowed by the article. These serious limitations in the provision of common article 3 triggered more agitations for the protection of victims of internal armed conflicts through the adoption of new laws to supplement and

strengthen it, and this was achieved through the effort of ICRC which gave birth to additional protocol II²⁵

The additional Protocol II did not repeal nor pretend to abrogate or supersede the provisions of common article 3, but rather came into force to supplement it. This much is captured in its article 1 which provides expressly that:

The protocol develops and supplements article 3 common to the four Geneva Convention of 12th August, 1949 without modifying its existing conditions of applications.

It goes on to say that the protocol:

Shall apply to all armed conflicts which are not covered by Article 1 of the protocol 1 Additional to the Geneva Conventions of 12th August 1949, and relating to the protection of Victims of International Armed Conflicts and which takes place in the territory of a High contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.

Its application is therefore predicated on the satisfaction of the following conditions in the exercise of military of operations by the armed group, i.e. de facto control of part of the national territory, being under a responsible commander, ability of the insurgents or armed groups to carry out a sustained and concerted military operations and to implement the protocol. Once these conditions are satisfied, the conflict is termed non-international armed conflict to which additional protocol II applies regardless of the reason for the recourse to use of armed force.

Like common article 3, Additional Protocol II provides for the humane and non-discriminatory treatment of all those who are not, or who are no longer, taking a direct part in hostilities²⁶. It expands the protection provided by common article 3, by including prohibitions on collective punishment²⁷, acts of terrorism²⁸, rape²⁹, enforced prostitution and indecent assault, slavery³⁰ and pillage³¹. It sets out specific

²⁵ For the Legislative history Protocol II, the following documents should be consulted: Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in armed conflicts, Geneva, 24 May – 12 June 1971, documents submitted by the International Committee of the Red Cross Vol. 5, Protection of victims of Non-International Armed Conflicts (Geneva, ICRC 1971), Conference of Red Cross Experts on the Reaffirmation of Development of International Law applicable in armed conflict.

²⁶ Article 4 (1) Additional protocol II

²⁷ Article 4(2) (b) APII

²⁸ Article 4(2) (d) APII

²⁹ Article 4(2) (e) APII

³⁰ Article 4(2) (f) APII

²⁴ Military and Para Military activities in and against Nicaragua, 1986 I.C.J Reports. P. 114, Para 218 & 219.

provisions and protections for certain categories of persons such as children³², persons deprived of liberty for reasons related to the conflict³³, persons prosecuted for criminal offences related to the conflict³⁴, persons who are wounded, sick and shipwrecked³⁵, medical and religious personnel³⁶, and the civilian population³⁷ (attacks on civilian populations, starvation³⁸ as a method of combat, and forced displacement³⁹ are all prohibited).

It is unfortunate, that the protocol also failed to make provisions for prisoner of war status to combatant who falls into enemy's hand. Like the common article 3, the protocol leaves the combatants who are in the hands of detaining power at their mercy. Thus, the detaining power is at the liberty to prosecute, convict and sentence this combatant under their penal legislation provided they are afforded judicial guarantees i.e. independence of the court, right of defence, individual responsibility, non-retroactivity of penalties, presumption of innocence, information on Judicial remedies⁴⁰ e.t.c. It also prohibited the pronouncement of death penalties on the person who were under the age of 18 years at the time of the offence and its execution on pregnant women or mother of young children⁴¹.

The provisions of the additional protocol II appear restrictive in its application, as its application can only be invoked upon the satisfaction of all the conditions laid down in the article. Whereas a conflict could be regarded as having attained the threshold of non-international armed conflict under the common article 3 to Geneva Conventions by reason of the expansive nature of its provisions, such conflicts may not pass as one when assess against the back drop of the provisions of the additional protocol II and the conditions it set out to be satisfied. Interestingly both laws apply as the protocol is said to be supplementary to the provisions of common article 3 which it does not repeal nor abrogate.

a) *Application of Customary International Humanitarian Law to Non-International Armed Conflict*

The provisions of the laws regulating armed conflict of international character as contained in the four Geneva Convention in 1949 and additional protocol I appear more expansive than the laws in common

article 3 and the additional protocol II which govern non-international armed conflict. Consequently, lesser protections were afforded victims of internal armed conflict than those of international armed conflicts. This is regrettable, especially when it is considered that both wars result ultimately to the death and suffering of victims. For instance, whereas provisions were made for proportionality⁴² of attack and precautionary⁴³ measures under the laws regulating international armed conflict, such were clearly lacking in the provisions of common article 3 and the additional protocol II which regulate non-international armed conflict. This *lacuna* is now filled with the adoption of customary international humanitarian law which makes provision for the principle of proportionality in attack and the precautionary measures in attack and against the effect of attack respectively⁴⁴.

This rules applied to both international and non-international armed conflict therefore reliance could be placed on them to question the proportionality or otherwise of an attack in the conduct of non-international armed conflict or lack of precautionary measures exhibited by belligerents in such conflict which hitherto couldn't have been the case under the common article 3 and additional protocol II.

Prior to the adoption customary international law, the provisions of additional protocol II only applies where it has been rectified by practice to conflict, but with coming into force of these customary rules all the provisions of additional protocol II are now considered to part of customary international law binding on all parties to non international armed conflict. These rules include the prohibition of attacks on civilians⁴⁵, the obligation to respect and protect medical and religious personnel⁴⁶, medical units and transports⁴⁷, the prohibition of starvation⁴⁸, the prohibition of attacks on objects indispensable to the survival of the civilian population, the obligation to respect the fundamental guarantees of persons who are not taking a direct part⁴⁹, or who have ceased to take a direct part, in hostilities, the obligation to search for and respect and protect the wounded, sick and shipwrecked⁵⁰, the obligation to search for and collect the dead⁵¹, the obligation to protect persons deprived of their liberty⁵², the prohibition

³¹ Article 4(2) (g) APII

³² Article 4(3) (3) (a-e) APII

³³ Article 5(4) APII

³⁴ Article 6 APII

³⁵ Article 7 APII

³⁶ Article 9 APII

³⁷ Article 13 APII

³⁸ Article 14 APII

³⁹ Article 17 APII

⁴⁰ Article 6 additional protocol II

⁴¹ Article 6 (4) additional protocol II

⁴² See article 48 Apl

⁴³ Articles 57 & 58 APII

⁴⁴ Rule 14 and rule 15-21 CIHL.

⁴⁵ Rule 1 CIHL

⁴⁶ Rules 25 & 27 CIHL

⁴⁷ Rules 28 & 29 CIHL

⁴⁸ Rule 53 CIHL

⁴⁹ Rules 87 – 105 CIHL

⁵⁰ Rule 109 CIHL

⁵¹ Rule 112 CIHL

⁵² Rule 118 CIHL

of the forced movement of civilians⁵³, and specific protection for women and children⁵⁴.

This assertion is more strengthened by the decision in *Tadic's case* which established that the rules on the conduct of hostilities in international armed conflict have been widely accepted as being very similar to those applicable to internal armed conflict⁵⁵ having assumed a customary international law status. Also in *Blaskic's case*, the trial chambers stressed that customary international law prohibits unlawful attacks upon civilian and civilians properties whatever the nature of conflict⁵⁶, while it similarly held in *Strugar's case* that article 52 of additional protocol 1 referred to in connection with attacking civilian objects, is a reaffirmation and real formulation of a rule that has previously attained the status of customary international law⁵⁷.

b) *Jurisdiction to Punish for Violation of these Laws*

In guaranteeing the application of International Humanitarian Law to the conduct of non-international armed conflict, special tribunals and courts were set up to try violators of the provisions of these laws regulating such conflicts. This is done, notwithstanding that these breaches occurred in the territory of a given state which enjoys absolute sovereignty⁵⁸ and where its criminal law and procedures would have ordinarily applied.

For instance, the international criminal tribunal for the former Yugoslavia (ICTY) was established by virtue of UN Security Council Resolution no. 827 to prosecute persons responsible for serious violation of international humanitarian law committed in the territory of former Yugoslavia since 1991⁵⁹.

Following unprecedented killings in the Rwandan Conflict, the UN Security Council through its resolution no. 955 established the international tribunal for Rwanda (ICTR) 1994 to try individual responsible for genocide and other serious violation of international humanitarian law during the 1994 civil war in Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states between 1st January, 1994 and 31st December 1994⁶⁰. It has concurrent though superior jurisdiction with the domestic court⁶¹

The special court for Sierra Leone was also established in 2002, unlike the ICTY and ICTR, it was not established by UN Security Council Resolution but was jointly set up by the UN and the government of Sierra Leone. It was an independent court that combined international law with domestic criminal legislation.

The Rome statute provides for full prosecution of persons accused of crime of genocide, war crimes, crime against humanity and crime of aggression⁶²

III. CONCLUSION

The scope of the laws regulating armed conflict of non-international character was until the adoption of customary international humanitarian law restrictive when compared with the laws applicable to international armed conflict. Fortunately enough, the current tendency in practice of international law with respect to armed conflict is to bridge this gap in application of International humanitarian law rules in both conflict situations.

This has greatly been demonstrated by the jurisprudence of international criminal tribunals⁶³. State practices and adoption of treaty rules have also helped moving the law of non-international armed conflict closer to the law of international armed conflict⁶⁴.

It is submitted that the application of different legal regime to these two conflict situations is most unnecessary and should be totally eliminated since in any these conflict situations the same unbridled violence and murderous weapons cause just as much injury and destruction to victims. War is war and fought with virtually the same weapons at both levels of the conflict.

The coming into effect of customary international humanitarian law rules after ten (10) years of great research by the ICRC has caused these differences to gradually disappear. For out of 161 rules of customary international humanitarian law, many of which are based on Additional Protocol 1 applicable as a treaty to international armed conflict, 148 now apply to non-international armed conflict. Therefore, where treaty rules differ on the application of International Humanitarian Law rules in these two different situations of armed conflict, the convergence could be justified by the application of customary international humanitarian law.

It is noted that the applicable law governing internal armed conflict excludes cases of riots or isolated, sporadic acts of violence. The implication of this, is that such situations are governed by domestic

⁵³ Rule 129 CIHL

⁵⁴ Rules 134 – 138 CIHL

⁵⁵ The prosecutor vs Dusko Tadic, IT-94-1-AR72, appeal chambers, decision of Oct. 1995

⁵⁶ ICTY, the prosecutor vs Tihomir Blaskic, It-95-14-T, Trial Chamber 1 Judgment of 3rd March, 2000, Para 162

⁵⁷ ICTY, the prosecutor vs Pavla Strugar, IT-012-42-T, trials chambers 2. Judgment of 31 Jan. 2005 para 223

⁵⁸ Article 27 United Nations Charter

⁵⁹ W. Schabas, the UN international criminal tribunal, the former Yugoslavia, Rwanda, and Sierra Leone (Cambridge, Cambridge University Press 2006) <http://www.cambridge.com/asia> assessed 15/06/2009

⁶⁰ See article 4, ICTR statute

⁶¹ Article 8 ICTR statute

⁶² See Rome statute of ICC 1998. Articles 5,6,7 and 8. The text of Rome statute circulated as document A/CONF. 183/ 9 of July, 1998 and corrected by process Verbaux of 10th November, 1998, 12th July, 1999, 30th November, 1999, 8th May, 2000, 17th January, 2001, and 16th January, 2002. The statute enter into force on 1st July 2002.

⁶³ See *Tadic's case* supra

⁶⁴ See generally the customary international humanitarian law rules

laws of the state and not covered by relevant International Humanitarian Laws governing internal armed conflict. It is recommended that those situations be governed and regulated by the International Humanitarian Laws rather than subjecting them to the municipal laws of the state which could be invoked to suppress same, thereby frustrating a genuine agitation which ordinarily would have been tolerated by the international legal order.



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