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EVOLVING ROLES OF THE UNITED NATIONS AGENCIES ON THE IMPLEMENTATION MECHANISMS OF THE RULES OF INTERNATIONAL HUMANITARIAN LAW

Uche Nnawulezi^{*} Kelechi Onyegbule^{**} & Charis Godson Ukanwa^{***}

Abstract

The dire need to expand the frontiers of the enforcement mechanism of the rules of international humanitarian law through the Agencies of the United Nations has for ages been of a global concern. Driven primarily by efforts to enforced and promote the rules of international humanitarian law, there is need to develop measures capable of promoting the rules of international humanitarian law through the agencies of the United Nations (UN). The objective of this paper is to analyse and establish that expanding the frontiers of the enforcement mechanism of the rules of international humanitarian law through the agencies of the UN bordering on individual or state responsibility will further strengthen the low level of enforcement of these rules. However, this paper noted that there is a significant enforcement gap both at the regional and international levels. Further, this paper argues that in order to guarantee a high level of enforcement of these rules both at the regional and global levels, a more integral approach on the role of non-governmental organizations is capable of addressing the enforcement gap of the rules of international humanitarian law. This paper adopts a diagnostic approach based on a review of literatures, which is achieved by synthesis of ideas. This paper concludes with recommendations among others that in order to boost the purpose for which the rules of international humanitarian law were made the level of enforcement of these rules should be expanded to fill the enforcement gaps at the domestic, regional and international levels.

Keywords: International humanitarian law, rules of international humanitarian law, implementation of international humanitarian law, United Nations agencies

1. Introduction

This paper arose out of the compelling need to re-examine the principles of international humanitarian law and the institutional discourse relating to the practicability of promoting the principles of international humanitarian law through the agencies of the United Nations (UN). Different approaches have

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been adopted in effecting the realization and for effective implementation and respect of the principles of international humanitarian law amongst nations.

Despite the various attempts and approaches in the implementation of international humanitarian law, it may therefore be understood from the perspectives of traditional layer consisting of the law regulating co-existence and cooperation between the members of the international society, that is the States, and the law of the community of several human beings. Although, it must be emphasized that international humanitarian law emerged as part of the traditional layer, that is, as law regulating belligerent inter-State relations, but it has today becomes nearly irrelevant unless understood within the second layer, namely as a law protecting war victims against States and others who may wage war. Thus, in line with the relevance of the principles of international humanitarian law, it must be emphasized that UN agencies have played a significant role in ensuring that these fundamental principles are respected and as well promoted. In light of the above, it should be noted that some provisions of UN charter, particularly with reference to articles 2(4)¹ provides that:

All members shall restrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purpose of the UN.

In a similar vein, article 2 (7)² further provides thus

Nothing contained in the present Charter shall authorized the UN to intervene in matters which are essentially within the domestic jurisdictions of any State or shall require the members to submit such matters to settlement under the present Charter, but this principle prejudice the application of enforcement measures under chapter vii of the Charter.

It might sometimes be argued that for states and international organizations to enforce the compliance of the rules of international humanitarian law, the apprehension created by the above provisions has made it a bit challenging. In addition, there is a serious argument that since the UN does not have international police, neutral states during armed conflicts between belligerent parties that would ordinarily interfered to broker peace with all means and methods are of course prevented from doing so because of the above provisions in section 2(4) of the UN Charter.³ This paper focuses on some of the practical or most effective means and methods of enforcing international humanitarian law principles in modern time.

¹ United Nations Charter (adopted 24 October, 1945 by the United Nations General Assembly Resolution 1991A and B(XVIII) and entered into force 31 August 1965), art 2(4) <<https://www.refworld.org/docid/3ae6b3930.html>> accessed 7 April 2022.

²Ibid art 2(7).

³ Ibid art 2(4).

In any case, it must be emphasized that since states have defied the principles of article 2(4) and 51 of the UN Charter⁴ to make wars and other form of forcible measures a fact of their international relations, all the laws of warfare finds application for ‘a war is still war in the eyes of international law even though it has automatically arisen from acts of force which were not intended to be act of war.’⁵

In other words, the fact that States do not impute the character of war in their acts of force does not preclude the application of the laws of war. It is the writer’s belief that this is for the common rationale of humanizing wars or forcible measures, through the balancing of military necessity with concerns for humanity.⁶ In addition, this paper noted that article 3 Common to all the Four Geneva Conventions⁷ and article 1 of the Additional Protocols to the Four Geneva Conventions⁸ states that the provisions of the Conventions shall apply in all situations. In the light of the above, this paper thus seeks to examine the promotion of the principles of international humanitarian law through the agencies of the UN from a holistic perspective and attempts a critical, realistic and contextual assessment of the socio-legal and cultural assessment of the role of these agencies to the realization of the promotion and respect of the principles of international humanitarian law with a view to identifying the commonalities and divergences in ensuring full compliance with these principles and law they could constitute a coherent framework for adequate protection of both combatants and non-combatants in an armed conflicts or internal disturbances.

2. UN Agencies and their Contributions to the Promotion and Respect of the Rules of International Humanitarian Law

Recent challenges and developments have made the writer to examine several arguments arising from the contributions of the various UN agencies in the respect and promotion of the principles of international humanitarian law around the globe since it is true that both the states and individuals are under obligation to comply with international humanitarian law in such that non-compliance can, in some cases, render the individuals liable under penal law, as many national and international courts have recognized.⁹ In this sense, it is important to highlight that the under listed agencies of the UN are primarily

⁴ Arts 2(4) and 51.

⁵ L Oppenheim in H Lauterpacht *International Law, A Treatise: Disputes, War and Neutrality* 11 (7th edn; London Longmans, 1952) 299.

⁶ C Jochnick and R Normand, ‘The Legitimation of Violence: A Critical History of the Laws of War’ (1994) 35 *Harvard international Law Journal* 52.

⁷ Art 3 Common to all the Geneva Conventions 1945.

⁸ Art 1 of the Additional Protocols to the Four Geneva Conventions 1977.

⁹ See Inter-Parliamentary Union Declaration Adopted without a vote by the 90th Inter-Parliamentary Conference (Canberra 18 September 1993).

concerned in ensuring respect for humanity in time of war and as well guarantee that humanity will be upheld in circumstances that threaten it.

2.1 UN Security Council

Basically, the UN took a decision on the implementation of international humanitarian law since 1967. However, it should be noted that Security Council (SC) activities in this regard is quite extensive and is increasing. Notably, the first express mentioned by the SC of the Geneva Conventions was not couched in strong terms. More importantly, by the Resolution 237, relating to the Middle East, the SC recommended to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war contained in the Geneva Conventions of 12 August 1949¹⁰. Also, the SC has taken a very large number of actions with respect to the implementation of international humanitarian law which are seen from the Call and Demands for respect of international humanitarian law,¹¹ and the determination that certain Acts constitutes violations of international humanitarian law.¹² Interestingly, the importance of the pronouncement by the SC on certain acts constituting violations of international humanitarian law lies in the public pressure and however, creates responsibility on the States.¹³

That being the case, it must be emphasized that in two resolutions underway, the SC unanimously condemned breaches of humanitarian law and stated that the authors of such breaches or those who had ordered their commission would be held “individually responsible” for them.¹⁴ Be that as it may, questions are sometimes raised as to whether expanding the role of the SC in the area of enforcement of the rules of international humanitarian law ever be a progressive development in the enforcement of the rules of international humanitarian law, due to suggestions that SC’s auxiliary role to the enforcement of the rules of international humanitarian law may at times be incompatible with its independence.

Drawing from the central role assigned to the SC by the UN Charter which is made manifest in the prohibition of the use of force in article 2(4)¹⁵ and the conferral of ‘primary responsibility for the maintenance of international peace and security’ on the Council in article 24(1) of the Charter,¹⁶ this paper argues

¹⁰ See Security Council Resolution 237 UNSCOR 1361st Meeting 13 (14 June 1967).

¹¹ See Security Council Resolution 307 3 UNSCOR 1621st Meeting (21 December 1971).

¹² See Security Council Resolution 452 UNSCOR 2159th Meeting 3 (20 July 1979).

¹³ Ibid.

¹⁴ *International Criminal Tribunal of Former Yugoslavia (ICT) the Prosecutor v Dusko Tadic (Jurisdiction)* IT -94-1-AR72 (1995) para 133.

¹⁵ United Nations Charter 1945 art 2 (4).

¹⁶ Ibid art 24 (1).

that the importance accorded to the Council by the San Francisco conference in 1945 was nevertheless, tampered by political realism or is more than just normative aspirations. More so, in order to provide an effective response, article 40 of the Charter¹⁷ provides that, before making recommendation or deciding upon measures provided for in article 39, SC may 'call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.' Also, article 41 of the Charter¹⁸ empowers it to decide what measures not involving the use of armed force are to be employed to give effect to its decisions.

It goes without saying that article 42 of the Charter¹⁹ allows the SC to take such actions as may be necessary to maintain or restore international peace and security. However, prior to 1990, action under Chapter VII of the UN Charter²⁰ was as inconsistent as it was infrequent. Furthermore, it is much more realistic and common place in practice to maintain that in recent times, the intents of the SC in the enforcement of the rules of international humanitarian law is to promote a peaceful resolution of the conflict without pronouncing upon the question of its international or internal nature as reflected by the Report of the Secretary General of 3 May 1993 and by the statements of SC members regarding their interpretation of the statute. This argument ignores, however that as often as the SC has invoked the grace breaches provisions, it has also referred generally to 'other violations of international humanitarian law,' an expression which covers the law applicable in international armed conflicts as well.²¹

Against this backdrop, and judging from the enforcement of the rules of international humanitarian law by the SC, it is understandable from the above provisions that in the absence of agreements under article 43 of the charter, 9 the command and control of the secretary general should prevent. It is important to note that the UN peace keeping force in the Congo was authorized to use force to end the civil war between 1961 and 1964, but remained under the command and control of this Secretary – General. It has been argued that this constituted an enforcement action under chapter VII of the Charter,²² but this is a minority position. The rationale behind the use of force according to the Secretary – General was essential an internal security measure taken by the SC at the invitation of the Congolese government, perhaps implicitly under article 40.²³

¹⁷ Ibid art 40.

¹⁸ Ibid art 41.

¹⁹ Ibid art 42.

²⁰ Ibid Cap VII.

²¹ *Prosecutor v Tadic*, IT-94-1-AR72, Appeal Chamber, 2 October, 1999, paras 74-75.

²² Art 43 of the United Nations Charter 1945.

²³ F Seyersted, 'United Nations Forces: Some Legal Problems' (1961) 37 *British Year Book of International Law* 351, 446.

With regard to the procedure that came to characterized United Nations' involvement in peace and security during the cold war, however, was peacekeeping which its operations were traditionally non-threatening and impartial, governed by the principles of consent and minimum force. It may be argued that the legality of peacekeeping operations on the basis that chapter VII must be read as providing the only legitimate basis for the decision to use military is very difficult to accept. It should be noted that with the above characteristics, peacekeeping operations have expanded in number and scope as well as enforcement actions of the rules of international humanitarian law. It is submitted that the most basic transformation in the use of SC powers is that, it now appear to be broadly accepted that a civil war or internal strife may constitute a threat to international peace and security within the meaning of article 39.

2.1.1 United Nations Peace Keeping Force

Generally, it should be noted that the idea of the UN Peace Keeping Operations or Forces was developed by the UN whereby the presence of national or multi-national troops in an area of hostility can reduce tension and pave way for negotiations that would bring about sustainable peace and re-unity. This positive obligation under the UN, of course, imposes obligations on State parties to international humanitarian law treaties to ensure respect and compliance with the rules thereof. More so, it must be emphasized that the main reason for the emergence of Peace Keeping Operations or Forces as developed by the UN is to ensure that through this national or multi-national troops, hostilities can be reduced thereby paving way for negotiations that would bring about sustainable peace and re-unity. From an operational point of view, and in literal terms, this paper argues that since not all States are parties to the international humanitarian law treaties, how then can the rules of international humanitarian law be universally applied and respected and/or be legally bound on such State who have not ratified the treaty? However, as the respect and compliance with the rules of international humanitarian law becomes more complex given the above scenario, the challenges of understanding the phenomenon of peace keeping operations under international law becomes more daunting.

Admittedly, it must be emphasized that peacekeeping operations are not only geared toward assisting the host nations to rebuild and provide security, and public order, but also to help them restating essential service and also tackle the root causes of the conflict thereby achieving an enduring peace and unity. On the other hand, while the relevance of peacekeeping operations cannot be overemphasized, one might argue that peacekeeping has been looked at as an instrument of choice in international conflict management after the cold war. In a similar vein, this paper also noted that the application of international humanitarian law to UN Forces or Peace Support Operations as they are often

conservatively styled has drawn considerable contentions over the years.²⁴ The thrust of this argument is that, as an organization, the UN and many Regional International Organizations and peace support organizations are not signatories or part of the High contracting parties to the existing conventions, even though the UN itself, by the authority given to it to create and employ armed forces has the correlative authority to make treaties to protect such forces.²⁵

In this respect, it should be pointed out that if peacekeeping troops protect civilians and disarm combatants, they will promote greater respect for international humanitarian law. However, this is exemplified when peacekeeping forces facilitate the provision of humanitarian assistance to non-combatants in the form of food, shelter, health care, and sanitation. But conversely, it should be fairly uncontroversial to state that given the increasing pace of peacekeeping operations in ensuring maximum compliance of the rules of international humanitarian law, the idea espoused in this paper is situated within the context of different understanding of the concept of peacekeeping operations. Interestingly, it is widely accepted that peacekeeping forces have also been implicated in sexual exploitation and sexual violence against war-affected populations, including the abuse of women, who were living in refugee and displaced persons camps and under the care of those very peacekeepers.²⁶

Put differently, it should be borne in mind that, the changing character of peacekeepers as international policemen in war times, considering the volatility and complexity of their job, a wide range of appropriate and powerful mandate is given to them to enable them handle and responsively approach parties that oppose or obstruct peace. This is the assumption underlying the fact that this is where international humanitarian law applicability comes to play. This dominant view suggests in an attempt to sustain or address the issue and for the purposes of setting out fundamental principles and rules of international humanitarian law that apply to forces conducting operations under the UN Command and Control, the UN Secretary General released a bulletin.²⁷

Thus, section 1 of the bulletin provides that:

The fundamental principles of international humanitarian law set out in the bulletin are applied to the United Nations Forces when in situations of armed conflicts, they are actively engaged therein as combatants to the extent and for the duration of their engagement.

²⁵ DF Bowelt, *The Law of International Institutions* (London Institute of World Affairs London: Stevens & Sons, 1964) 224.

²⁶ United Nations Security Council Adopted Resolution 1188 (2009).

²⁷ United Nations Document St/SGB/1999/13 of 6 August, 1999.

2.1.2 International Court of Justice (ICJ)

Again, opinions on this issue will differ, but even if it does not justify any reason given by the UN Charter, the obvious reason remains that according to article 93 of the Charter²⁸ all members of the UN are automatically parties to the court, even non-members of the UN may also become parties to the court's statute under articles 93 (2) of the charter.²⁹

Pursuant to the above provisions of the charter, it must be acknowledge that in keeping with the burning desire in ensuring that the rules of international humanitarian law are respected and promoted accordingly by state parties and individuals, it should be noted that ICJ has had occasion to deal with questions of humanitarian law in two highly notable cases concerning military and paramilitary activities in and against Nicaragua, the Corfu Channel case and the Adversary Opinion on Reservation to the crime of Genocide in Bosnia, Yugoslavia and Herzegovina in International Court of Justice Report.³⁰

In light of the above development, it is important to underline that the International Court of Justice through its decisions and advisory opinions has contributed in the enforcement and promotion of the rules of international humanitarian law as well as international law. The important aspect of this section is to further highlight the fact that prior to the emergence of the International Criminal Court (ICC), ICJ entertained matter bothering on offences of genocide and crimes against humanity as demonstrated in the past where there were several cases of violation of international humanitarian law.

2.1.3 International Criminal Court (ICC)

Absolutely, ICC is a permanent tribunal established by the international community to prosecute individuals for genocide, crimes against humanity, war crimes and the crimes of aggression. It is important to highlight that international criminal court is a new mechanism for the enforcement of international humanitarian law.³¹ A key concern is that, this court was established on the 17 July 1998 in Rome with the primary purpose of arresting and trying all persons involved in violating the rules of international humanitarian law. In that sense, it is a properly constituted court of competent jurisdiction.

²⁸ United Nations Charter 1945, Art 93.

²⁹ Ibid, art 93(2).

³⁰ International Court of Justice Report, Advisory Opinion Concerning Reservation to the Convention on the Preservation and Punishment of the Crime of Genocide, ICJ May 1951 <<https://www.refworld.org/cases, ICJ, 4023a7644.html>> accessed 5 April 2022.

³¹ See Rome Statute of International Criminal Court 1998, art 126 UN DOC PCNICC/1999/INF/3.

Generally, aside from being a court of competent jurisdiction, there are other emerging challenges ranging from the tension inscribed in the statute between the particular interests of states and the normative interest of the international community as a whole in repressing crimes under international law which of course, lies at the heart of the international criminal system. It could be argued that how successfully the drafters of the statute struck the balance between these two competing impulses will ultimately determine the effectiveness and legitimacy of the Court. In other words, this paper noted that, in a technical sense, it is worth emphasizing that this tension of dichotomy is itself the product of the fact that the statute is a treaty, and not some other form of instrument.

Furthermore, it must be borne in mind that the Preamble and article 1 of the Rome statute³² declare that ICC is to be 'Complementarity' to national Jurisdictions. It is in the context of complying with the provisions of article 1 of the Rome statute that the notion of 'Complementarity' was overwhelmingly agreed upon at every stage of the negotiations from the international law commission draft to the Rome Statute, thus ensuring that ICC would not supersede national courts, which are to retain primary responsibility for investigation and prosecuting international crimes.³³ However, it would be argued that notwithstanding the agreement in principle to complementarity, the question of whether national authorities or the ICC should decide the admissibility of a case before the court and of the criteria to be applied, remained contentious. The same can be said that the authority to decide the admissibility of cases before ICC often times are carefully circumscribed to make them acceptable to states. Thus, it can be seen therefore, that the resulting balance has made the complementarity regime 'one of the cornerstones on which the future international criminal court will be built',³⁴.

Another crucial point to note in this paper is that international law prescribes certain rules of behaviour for states, and it is up to every state to decide on practical measures or penal or administrative legislation to ensure that individuals whose conduct is attributable to it, or under some primary rules, and or even all individuals under its jurisdiction comply with those rules. Indeed, only human beings can violate or respect rules. Aside from this substantive requirement, it should be pointed out that international humanitarian law obliges states to suppress all its violations that amount to war crimes which of course, are criminalized by international humanitarian law. However, this concept of war crimes includes, but not limited to the violations listed and defined in the

³² Ibid Art 1.

³³ JT Holmes, 'The Principle of Complementarity' in RS Lee (ed) *The International Criminal Courts: Issues Negotiation* (1999) 41, 73.

³⁴ JL Bleich, 'Complementarity' in MC Bassiouni, *International Criminal Law Conventions and their Penal Provisions* (Irvington-on-Hudson, NY Transnational, 1997) 231.

conventions and protocol 1 as grave breaches³⁵ More so, it must be emphasized that international criminal court represents a delicate balancing act in the enforcement and promotion of the rules of international humanitarian law. However, this perspective is particularly significant for the understanding that the Rome statute of the international criminal court has also criminalized widespread and severe damage to the natural environment,³⁶ the recruitment of child soldiers³⁷ and all violation of common article 3 of the Four Geneva Conventions of 12 August 1949, particularly in armed conflicts not of an international character.³⁸

In the context of the above development, and on the account of the seriousness that the international criminal court attaches to the enforcement of international humanitarian law in non-international conflicts or civil wars that the first “Rome statute, which came up in Kampala, Uganda proposed inclusion of the use of certain weapons as war crimes in the context of an armed conflicts not of an international character. The reason behind this is to achieve military objective without causing a superfluous or unnecessary suffering or damage to the civilian or his objects.³⁹ Essentially, it must be understood that another unique aspect of the international criminal court as far as the violation and promotion of international humanitarian law is concerned, lies in the Rome statute’s extension of acts of criminality in warfare to gender crimes, comprising rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence, including trafficking in women and children.⁴⁰ For purposes of clarity of the above section, it may however be safe to hold that these gender crimes are now characterized as crimes against humanity which makes the international criminal court the most far-reaching institution of international criminal justice addressing gender and sexual violence.⁴¹

It goes without saying that one of the most formidable aspects of the international criminal court’s problems is its contamination by political sentiments and as a result, lack of wide spread global acceptance. Thus, given these realities and all efforts to rid the international criminal justice of the political smear, this taint is still very much visible, now prompting a situation in

³⁵ Geneva Convention 1-IV 1949, Articles 50/51/130/147 of Geneva Convention 1949, arts 11(4), 85 and 86 of Additional Protocol 1 of 1977.

³⁶ Art 8(2) (b) (iv) of the Rome Statute of the International Criminal Court 1998.

³⁷ Ibid, art 8(2) (b) (xxvi).

³⁸ Ibid, Art 8(2) (c).

³⁹ C Greenwood, ‘Historical Development and Legal Basis, in the Handbook of Humanitarian Law In Armed Conflict’ 1995, 30-31.

⁴⁰ Arts (1) (c) and 7 (2) (c) of Rome Statute of ICC (1998).

⁴¹ Ibid.

which some of the culprits of the international humanitarian law violations are not brought to justice,⁴² especially those perpetrated by the superpowers.

In another vein, it is also crucially important to note that the jurisdiction of the court rests on the assumption that it compliments national criminal jurisdictions.⁴³ This means that the court is not allowed to exercise its jurisdiction over a case if a state has exercised its domestic criminal jurisdiction over the same case. Thus, the rule of complementarity in the ICC differs from the cases in International Criminal Tribunal of Former Yugoslavia (ICTY) and International Criminal Tribunal of Rwanda (ICTR) whose jurisdictions take precedence over the national criminal jurisdictions of the relevant states.⁴⁴

2.1.4 *International Financial Institutions*

Basically, it is obvious and well settled that apart from the respective role played by the above mentioned agencies of the UN in the development and promotion of the rules of international humanitarian law through their involvement in resolving crisis between the parties to an armed conflict which has been repeatedly mentioned in all the agencies of the UN, it can therefore be said that other international organizations like the international financial institutions are increasingly involved in conflict situations and countries which the violations of international humanitarian law are widely spread and devastating to civilian population and the Country's economic prospects. In this sense, its establishment is rooted in the Bretton Woods Conference⁴⁵, alongside the creation of the International Monetary Fund. It must be stressed that it was envisaged as one of the three pillars of the international economic system focusing on the outset on the financing of post-war reconstruction and development.

It is submitted here that international Financial Institutions assistance can take a number of forms through aid, loans; and or other measures to encourage or facilitate the promotion of international humanitarian law during armed conflict between parties to the conflict. According to World Bank Report,⁴⁶ there are now over 150 agencies involved in development assistant including South-South exchanges of financial resources. However, it has been widely noted that although the articles of Agreement of the major International Financial Institutions prevents them from involvement into political affairs of

⁴² KC Moghalu, *Global Justice: The Politics of War Crimes Trials* (California, Stanford University Press 2008) 4.

⁴³ Art 17 of the Statute of the International Criminal Court.

⁴⁴ Art 9 para 2 of the Statute of the ICTY and Art 8, para 2 of the Statute of the ICTR.

⁴⁵ United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, United States of America, 1944.

⁴⁶ World Bank: 'New World, New World Bank Group: Post Crisis Direction,' 2010, para 6 (DC 2010-0003).

member states,⁴⁷ but this paper noted that sometimes the UN may jettison this provision. To an extent, it could be argued that the influence of the International Financial Institution like the World Bank and International Monetary Fund led to the promotion of international humanitarian law during the apartheid regime of South Africa wherein, the World Bank and International Monetary Fund were prevailed upon to stop dealing with the apartheid regimes.

Indeed, the World Bank Group plays an important role in development assistance such that it is generally described as the 'Premier development Institution' in International economic relations. Against this background, this paper however, asked whether international financial institutions are appropriate agents for the promotion, adherence to and enforcement of international humanitarian law? Are they capable to do so? These questions are extremely importance to the issue of promoting the rules or international humanitarian law.

Given the significant constraints on the structural and political concerns which has posed obstacles to the development of a role and function international financial institutions with respect to international humanitarian law, it may be argued that the role and function of the international financial institutions in the international community enable then to make some contributions to the implementation and enforcement on international humanitarian law and that factoring humanitarian law violations into their decision making processes which can actually be essential to the effective implementation of their own mandates of greater concern is that international financial institutions involvement in international humanitarian law can also support efforts by the UN and the international community in preventing and limiting violations of international humanitarian law and as well enforce the law against those suspected of committing atrocities. It must be emphasized that the World Bank and the international monetary fund are specialized agencies of the UN and function as independent international organizations not bound by most United Nations decisions, but are bound by United Nations SC resolutions.⁴⁸

Acknowledging the above provisions of the UN charter, this charter however, imposes strict obligation on the international financial institutional financial institutions which their activities should be tailored towards the provisions of chapter vii resolutions in order to ensure that they do not contravene the binding decisions and actions of the UN. This threshold is understood to imply that any effort aims at promoting a role for the international financial institutions in international humanitarian law must be capable of addressing the accountability and political questions raised by the international financial institutions governance structures and the legal questions raised by the

⁴⁷ S 10 World Bank Articles of Agreement (adopted 20 July 1956).

⁴⁸ See Cap vii of the United Nations Charter (1945).

limited mandates of the international financial institutional financial institutions as special economic organizations.

It is wide agreed that international financial institutions in the implementation and enforcement of international humanitarian law should not always withdraw or reduce funding, but rather should consider the impact of international humanitarian law violations as a factor in making policy and decisions.⁴⁹

2.1.5. International Tribunals

The establishment of the International Tribunals as a measure under Chapter vii of the UN charter⁵⁰ cannot be overemphasized. The SC acting under chapter vii of the UN charter, has established two International Criminal Tribunals. Thus, these tribunals are ‘*ad hoc*’ which have the responsibilities of punishing war crimes committed in relation to two specific contexts; the former Yugoslavia and Rwanda. It is worth mentioning the fact that since international humanitarian law seeks to protect the victims of armed conflict and to limit the means and methods of warfare, serious violations of this law constitutes war crimes.

While there are serious questions on the establishment of the International Tribunals, it should be noted that the Appeals Chamber in *Prosecutor v Tadic*⁵¹ stated that:

Article 39 leaves the choice of means and their evaluation to the Security Council, which enjoys wide discretionary powers in this regards, and it have been otherwise, as such as a choice involved political evaluation of highly complex and dynamic situations.

Beyond this work, it is becoming increasingly clear that the work of both Tribunals has shown that international investigation and international prosecution of persons responsible for serious violation of international humanitarian law are possible and realizable. Crucially important in this regard is that these developments have given new vigour to the principles of universal jurisdiction, and have encouraged at least some prosecutions by various states of persons responsible for gross violations of the rules of international humanitarian law. It should be noted that the contribution of the Hague Tribunal was to advance the concept of the applicability of the Hague law to non-international conflicts. In addition, the Hague Tribunal has also given a very expansive, yet credible, reading to international customary law.⁵²

⁴⁹ LR Blank, ‘The Role of International Financial Institutions in International Humanitarian Law,’ *Peace Works*, 42-2002.

⁵⁰ See Cap vii of the United Nations Charter.

⁵¹ IT – 94-1-AR72 Appeals Chamber decision, 2 October 1995, para 39.

⁵² See The Appeals Chamber in *Prosecutor v Tadic*, IT-94-1-AR72 (1995) para 39.

More so, in examining the import of article 3 of the Geneva Conventions⁵³ the Appeal chamber held that:

Article 3 functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the Jurisdictions of the International Tribunal.

This construction of articles 3 is also corroborated by the object and purpose of the provision. In terms of the legal acceptability of these systems, the SC when establishing the international tribunal did so to put a stop to all serious violations of international humanitarian law occurring in the former Yugoslavia and in Rwanda. Thus, Article 3 is intended to realize that undertaking by endowing the international tribunal with the power to prosecute all 'serious violations' of international humanitarian law.

From the foregoing, it could also point to fact that the Nuremberg Tribunal emphasized the relationship between the treaty-based and customary rules of international humanitarian law prohibiting certain forms of individual conduct and its institution as a court with a mandate to apply that positive legal order. Another important aspect is that the 1949 Geneva Conventions for the protection of the victims of armed conflicts define a series of acts as grave breaches of their rules and stipulate that the state parties are under the obligation to search for peace persons alleged to have committed them or to have ordered them to be committed, and to bring them before their own courts or, in they prefer, to hand them over for trial to another state provided that the state have made out a *prima facie* case against theme.⁵⁴

With these considerations in mind, the statutes of the ICTY⁵⁵ and the ICTR⁵⁶ and the Rome Statute of ICC⁵⁷ also collaborate on the assumption of individual criminal responsibility. Basically, this type of responsibility has been accepted generally in the absence of any controversy. It has become part of international law which originally only regulated relations between states and under which only states could be held accountable for the commission of an internationally unlawful act, even though the responsibility may be civil in appearance.⁵⁸

On the other hand, it is important to understand that criminal responsibility rest on national persons who commit an act specifically defined as a crime by international law. It is important to understand that international Tribunals in the enforcement of the rules of international humanitarian law have expanded the

⁵³ Art 3 of the Geneva Convention 1949.

⁵⁴ Art 49 GC I, art 50 GC II, art 129 GC III, art 146 GC IV of 1949.

⁵⁵ International Criminal Tribunal for the former Yugoslavia (ICTY) 1993.

⁵⁶ International Criminal Tribunal for Rwanda 1994.

⁵⁷ Art 25 Rome Statute of International Criminal Court.

⁵⁸ See The United Nations General Assembly Resolution A/56/83 on the Responsibility of States for Internationally Wrongful Act.

notion of over crimes. Indeed, since the material jurisdiction attributed to the ICTY by the SC borders on rules that, at some point of its establishment formed part of both international custom and treaty-based law, however, in this context, ICTY's decisions will explain better on the institution of the Nuremberg Tribunal on whether the notion of war crime has been expanded or not.

Notwithstanding, these important advances in terms of the expanded notion of war crimes, the fact remains that this notion applies not only to grave breaches of the rules of international humanitarian law committed in the context of a war as such, but also to acts perpetrated in connection with an armed conflict, be it international or internal.

3. Levels of Enforcement of the Rules of International Humanitarian Law

It is obvious from the preceding sections that international humanitarian law is a set of rules designed to protect persons who are not, or longer, participating in hostilities and to limit the methods and means of waging war. That is to say that, it also sets out mechanisms designed to ensure compliance with the rules of this branch of law. However, in order to meet these obligations, this paper will henceforth examine the level of enforcement of these rules at different levels.

3.1 National Level of Enforcement of International Humanitarian Law Rules

In view of the challenges frequently encountered in the enforcement of the rules international humanitarian law at the national level consideration should be given to the nature and extent of the responsibility for violations of the rules. Thus, such responsibility may raise numerous legal questions, including whether the perpetrators bear individual responsibility for the violations they commit and the guilty of serious violations must be prosecuted and punished. However, it is a common knowledge that the four Geneva conventions of 1949 (G CI-IV)⁵⁹, their Additional Protocol of 1977 (API)⁶⁰ and other treaties set forth the state parties explicit obligations regarding penal repression of serious violations of the rules they contain.

Firstly, in line with the provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977, this must be borne in mind when considering the nature of responsibility and analysis must be put in its proper context. An understanding that the state party to the Geneva Conventions and Additional Protocols of 1977 must prevent and halt any acts contravening these instruments no matter whether they are committed in an international or non-international armed conflicts is necessary to ensure that the measures that state must take to this end may vary in nature and may include penal sanctions if necessary. However, it is important to bear a number of considerations in mind. In the situations under review, it must be emphasized that at the National level of

⁵⁹ See the Four Geneva Conventions of 1949 (9C I-IV).

⁶⁰ Additional Protocol 1 (API) of 1977.

enforcement of the rules, the national government have further obligations relating to certain flagrant violations of international humanitarian law as well as the grave breaches. However, these precise acts are listed in the Geneva Conventions and Additional Protocol I,⁶¹ as wilful killing, torture and inhuman treatment, will fully causing great sufferings or serious injury to body or health, and certain violations of the basic rules for the conduct of hostilities.⁶²

Secondly, on repressing grave breaches of the Geneva Conventions and Additional Protocol I. in this context, it must be pointed out that the law is not of itself the answer, nor the only element to consider; policy and operational considerations are equally important. However, the Geneva Conventions and Additional Protocol I stipulate that “grave breaches” must be punished even at all levels. It is for these reasons that the states parties must search for persons accused of having committed or having ordered the commission of grave breaches, regardless of the nationality of the perpetrator or the locus of the crime, in accordance with the principle of universal jurisdiction. These perpetrators must be brought to their own court, or be handed over for trial in another state which has made out a *prima facie* case.⁶³ Also, it should be noted that additional protocol I⁶⁴ covers state party and grave breaches resulting from a failure to act when under a duty to do so.

It is now generally accepted that in order to meet up with these obligation, they should be a national legislation design to implement the Geneva Conventions which the state must adopt the legislative measures needed to punish persons responsible for grave breaches through the enactment of laws that will prohibit any repression and will apply to everyone irrespective of his status who has committed or ordered the commission of such offences and ensure that these laws relate to acts committed in national territory and or elsewhere. Legal position, as a matter of practice, attention should be drawn to national legislation designed to implement the Geneva Conventions which this paper noted that some of which go so far as to make it possible for national courts to the persons responsible for violations of rules concerning internal armed conflicts. This holds true for the criminal code of the socialist Federal Republic of Yugoslavia, of 1999, as amended for the purpose of making the 1949 Geneva Conventions applicable at the national criminal level. In any event it must be stated that article 142 clearly provided for war crimes against the civilian populations⁶⁵, while article 143 expressly provided for war crimes, the

⁶¹ Geneva Conventions 1949(GC I) and Additional Protocols of 1977.

⁶² Geneva Convention GCI 1949 (GC I) art 39, 50, 129 and 146, Additional Protocol API 1977, art 85 para 1.

⁶³ Art 39 of Geneva Conventions (GC I) 1949, art 50 of the Geneva Conventions (GC II) 1949 art 129 Geneva IV, Art 146 GC IV and art 85 Additional Protocol 1 1977 para 1.

⁶⁴ Art 86 para 1 of Additional Protocol 1 1977.

⁶⁵ Art142, of the Geneva Convention 1949

wounded and the sick.⁶⁶ However, they above situations apply at the time of war, and armed conflict or occupation, this would seem to imply that they also apply to internal and conflict.

In view of the above, necessity could be invoked to justify this position. Without any ambiguity, Belgian law enacted in 1993 for the implementation of 1949 Geneva Conventions and the two Additional Protocols that Belgian court have jurisdiction to adjudicate breaches of Additional Protocol 2 to the Geneva Convention relating to the victim of non-international armed conflict. However, article 1 of this law⁶⁷ provide that the series of grave breaches of the four Geneva Convention and the two additional protocol listed in the same article 1, constitute international law crimes. Thus, to state the obvious, the legislator has a number of options for translating serious violations of international humanitarian law into National penal legislations and for making the criminal acts constituting them subject to domestic law.

3.1.1 International Levels of Enforcement of the Rules of International Humanitarian Law

The above overview of emerging challenges in the enforcement of the rules of international humanitarian law at all levels operation highlights that as enforcement become more complex and challenging, measures should be adopted by the UN in order to understand the complex manner in which the enforcement mechanism will be capable to address the level of violation of these rules at the international level. Perhaps the most important point to note is that the UN through its collaborative efforts with *ad hoc* international criminal tribunals and as well as the cooperation with the international criminal courts is capable of addressing these challenging.

Be that as it may, the UN set up international criminal tribunals to try crimes committed in the former Yugoslavia known as International Criminal Tribunals for the former Yugoslavia (ICTY) as well as in Rwanda International Criminal Tribunals for Rwanda (ICTR) respectively. In this context, these tribunals have primacy over national courts, which of any stages of the proceedings, they may formally request national courts to defer to their competence.⁶⁸ however, state are obliged to cooperate with these tribunals in the investigation and persecution of persons accused of committing serious violations of the rules of international humanitarian law that said, states must

⁶⁶ Ibid, art 143.

⁶⁷ Art of the Geneva Conventions 1949, International criminal tribune of former Yugoslavia (ICTY), *The Prosecutor v Dusko Tadic (Jurisdiction)* 1T-94-1-AR 72 Appeals Chamber, Decision (1995).

⁶⁸ Art 9(2) of the International Criminal Tribunal of former Yugoslavia (ICTY), 25 May 1993. *The Prosecutor v. Dusko Tadic(Jurisdiction)* IT-94-1-AR 72 Appeal Chambers, Decision (1995), Art 8 (2) of the International Criminal Tribunal of Rwanda (ICTR) 8 November 1994.

comply with the tribunal in arrears bothering on the identification and location of persons testimony and production of evidence, service of document the arrest and detention of persons, the surrender of the transfer of the accused to the tribunal in question. Thus the specific question that arises in the above context is whether states who are not parties to the treaty could be bound by this. The answer depends on the consent given by such state that may or may not be party to such treaty.

In a similar note, the enforcement of the rules of international humanitarian law could be done through a mutual cooperation with the International Criminal Court. In this case, international criminal court exercises its jurisdiction only when a state is unwilling or unable genuinely to carry out investigation or prosecution over alleged crime of violation.

This paper however, submits that the international criminal courts effectiveness is depended on the level of cooperation given to it by the state. In this sense, it must be acknowledged that states parties must cooperate fully with the international criminal court (ICC) in its investigation and prosecution of crime within its jurisdiction bothering on genocides, crime against humanity, war crimes, and the crime of aggression.⁶⁹ Also the international criminal court may as well invite any state not party to its statutes to provide assistance on the basis of an *ad hoc* arrangement an agreement or on any other appropriate basis.⁷⁰ More so, states parties must ensure that there are procedure available under their national laws for this form of mutual cooperation's to succeed.⁷¹ Thus, state cannot circumvent their obligations under the state by their own designation of the act.

Nonetheless, while it is true that in a specific situation and upon the request of a state party to the statue, the international criminal courts may provide assistance to the state in an investigation into or a trial in respect of conduct which constitutes a crime within the jurisdiction of the international criminal court or which constitutes serious crime under the national laws of the requesting state. In other words, the international criminal court may also grant a request for assistance from a state which is not party to the international criminal court statute.⁷² Against this background, it is important to recall that cooperation between state and with international jurisdiction is essential to the smooth running of the system as well as enforcement of the rules of international humanitarian laws at international level of operation of international criminal court 1998. Indeed, the need for mutual assistance is especially evident in the case of offences where these allegedly responsible must be brought to trial or extradited by state. According to article 88 of

⁶⁹ The Rome Statutes of International Criminal Court 1998, art 86.

⁷⁰ Ibid art 87 (5) (a).

⁷¹ Ibid art 88.

⁷² Ibid art 93 (10).

Additional Protocol 1, grave breaches of the Geneva Conventions or their Additional Protocols, and the specific obligations to cooperate in a matter of extradition, broadest possible mutual legal assistance among state parties in this regards, is necessary in a similar vein, it is particularly important to state that articles 18 and 19 of the second protocol to the Hague Convention of 1954,⁷³ for the protection of cultural property in the event of armed conflict also concerns extradition and judicial cooperation.

3.1.2 Regional Levels of Enforcement of the Rules of International Humanitarian Law

At this level of operation, this paper noted that regional human rights mechanism are however, increasingly examining violations of the rules of international humanitarian law. This would suggest that the European court of human rights is the centre piece of the European system of human rights protection under the 1950 European Conventions on Human Rights,⁷⁴ while in American, the Inter-American commission on human rights and the Inter-American Court of Human Rights⁷⁵ is in charge and of course, the African Commission on Human and People Rights is the supervisory body established under the 1981 African charter as a treaty establishing an African Human Rights Courts.⁷⁶

Generally speaking, the enforcement of the rules of international humanitarian law at the regional level takes places through different modes of non- judicial and judicial mechanisms which ensures that human rights are respected and promoted during armed conflicts, whether of international or none-international nature moreover, given the mutual relationship between inter-national humanitarian law and human rights law as well as the prevailing situations of armed conflicts around globe, it must be emphasized that regional institutions bothering on human rights have been able to address cases of breach of the rules of international humanitarian law. However, there is a strong argument that these regional human right courts are ill-equipped to handle mass atrocity crime which the paper is of the view that their case laws are important for the enforcement of the rules of international humanitarian law, especially when it has to do with state responsibility in an armed conflicts.

4. Conclusion

It is hoped that this paper will contribute to clarifying an essential aspect of international humanitarian law, and especially, that it will help to determine more precisely the level of commitment of the agencies of United Nations in ensuring that international Humanitarian law is respected and promoted. It argues that, several international bodies are involved in the development and

⁷³ Hague Convention 1954, art 18 and 19.

⁷⁴ European Convention on Human Rights 1950.

⁷⁵ Inter- American Commission on Human Rights 1959.

⁷⁶ African Charter on Human and People's Rights 1981.

promotion of international humanitarian law, but not all have the same capacity. In this sense, it can be justifiably concluded that the UN agencies involvement in the development and promotion of international humanitarian law is more recent, but has the capacity of ensuring respect to the rules of international humanitarian law if it so wish. However, the SC has primary responsibility under the UN Charter for the maintenance of international peace and security. It is for the SC to determine when and where a United Nations Peace Operation should be deployed. Fundamentally however, it is submitted that the on-going Russia's invasion of Ukraine has really exposed many grave weaknesses in the international order. One prominent flaw that needs to be addressed is the UN SC and its role in overseeing the multilateral system. The veto power of the SC's five permanent members constitutes a major stumbling block to global peace.

As broadly examined in this paper, it is further submitted that both Chapter VI and VII of the UN Charter entrusted the responsibility of preventing threats to peace, suppression of acts of aggression, and peaceful settlement of international disputes to the SC. But however, it must be emphasized that the absolute veto power granted by article 27 to each of the Council's permanent members (the P5, comprising China, France, Russia, United Kingdom, and the United States) has from the beginning been a key obstacle to the body's fulfilment of its mission. This is because the P5 have almost always been divided into rival geographical blocs, with a member of one bloc mostly Russia or the United States exercising its veto on many crucial decisions. It is right to say that in the current Ukraine conflict, Russia's SC veto means that the United States and its allies can impose sanctions only through a coalition of the willing. Furthermore, while it is accepted that the SC can impose sanctions on those States that violates international humanitarian law, it is imperative to suggest that these can be achieved through the authorization of military operations on them which of course, led to the establishment of *ad hoc* international criminal tribunals to prosecute violations of international humanitarian law. Finally, this paper argues that the fact that the SC prefers to establish its own *ad hoc* commissions to investigate violations of International humanitarian law rather than resort to the finding Commission provided in Article 90 of the Additional Protocol 1 which clearly shows that it has regards to international humanitarian law.

Ultimately, while it is clear that the United Nations are major role players in ensuring respect and promotion of the rules of international humanitarian law, it must be emphasized that they are faced with numerous challenges as the nature of armed conflicts and contemporary weapons of warfare evolves. That being said, armed conflicts, indiscriminate violence and acts of terror has continued to threaten the safety and security of innocent people and undermine efforts to bring about lasting peace and stability around the globe.