

CHANGING NATURE OF ARMED CONFLICT: APPLICATION OF HRL AND IHL

MUDANÇA NA NATUREZA DO CONFLITO ARMADO: APLICAÇÃO DO HRL E DIH¹

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Abstract: Modern conflict often does not appear to fit nicely into the strict traditional legal concepts of what constitutes international or non-international armed conflict.² The statement above represents the changing nature of the conflicts. The traditional sense of conflict between two or more state actors has merged into conflict zones, prolonged violence, war for regional autonomy, war for self-determination, proxy war between two international states and more prominently cross-border terrorism. Due to these situations the role of police forces increases substantially in protection of HRLs and implementation of IHL. For the purpose of implementation of IHL, the paramilitary forces as well as the police forces can be considered as armed force if they engage in hostilities or fulfil the definition³ of armed forces. Further, According to Andrew Clapham,⁴ under international law, the rebels having some effective control are bound by certain international rights and obligations. The objective of the paper is to highlight existing legal standard and suggest further course in regard to the role of Police Forces and Insurgents in Enforcement of International Humanitarian Law and Human Rights in Conflict Situations.

Keywords: International Humanitarian Law. Human Rights Law. Armed Conflicts. Armed Forces.

Resumo: “O conflito moderno muitas vezes não parece se encaixar bem nos conceitos jurídicos tradicionais rígidos do que constitui um conflito armado internacional ou não internacional.” A declaração acima representa a natureza mutável dos conflitos. O sentido tradicional de conflito entre dois ou mais atores estatais fundiu-se em zonas de conflito, violência prolongada, guerra pela

¹ Artigo recebido em 02/08/2022 e aprovado para publicação pelo Conselho Editorial em 10/10/2022.

² Watkin, k. (2007). 21st Century Conflict and International Humanitarian Law: Status Quo or Change? In M. Schmitt & J. Pejic (Eds.), *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (pp. 265–296). Martinus Nijhoff Publishers.

³ International Committee of Red Cross. (2005). Rule 4. IHL Database :Customary IHL. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4 :

“In essence, this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command. As a result, a combatant is any person who, under responsible command, engages in hostile acts in an armed conflict on behalf of a party to the conflict.”

⁴ Clapham, A. (2006, September). Human rights obligations of non-state actors in conflict situations. *International Review of Red Cross*, 88(863), 491-523:

“This view was also endorsed by International Law Commission but limited to an insurrectional movement forming a new government.”

autonomia regional, guerra pela autodeterminação, guerra por procuração entre dois estados internacionais e terrorismo transfronteiriço mais proeminente. Devido a essas situações, o papel das forças policiais aumenta substancialmente na proteção dos DDHs e na implementação do DIH. Para fins de implementação do DIH, as forças paramilitares, bem como as forças policiais, podem ser consideradas forças armadas se estiverem envolvidas em hostilidades ou se cumprirem a definição de forças armadas. Além disso, de acordo com Andrew Clapham, sob a lei internacional, os rebeldes que têm algum controle efetivo estão vinculados a certos direitos e obrigações internacionais. O objetivo do artigo é destacar a norma legal existente e sugerir novos rumos no que diz respeito ao papel das Forças Policiais e Insurgentes na Aplicação do Direito Internacional Humanitário e dos Direitos Humanos em Situações de Conflito.

Palavras-chave: Direito Internacional Humanitário. Direito dos Direitos Humanos. Conflitos Armados. Forças Armadas.

1. Introduction

States in their day to day administration face various problems. One such aspect is use of force in conflict situations. Many a time state officials have to use force for peacekeeping, to maintain law and order or to restore law and order at first place itself. Usually these situations are not intense enough for application of norms of international Humanitarian Law. Such use of force can be administered by police forces or military forces and largely governed by Human Rights law and domestic laws. Human Rights Laws (HRLs) and International Humanitarian Law (IHL) both serves “a protective purpose but has different functional aspects and have evolved differently”.⁵ Human Rights law’s primary purpose is protection of liberty of individual from state and other parties and promotes “better standards of life in larger freedom”,⁶ Whereas IHL, “intends to solve humanitarian problems arising due to armed conflicts”⁷ by limiting methods and means of warfare.⁸ The most relevant right as regards the use of force in law enforcement operations

⁵ Schmid, E. (2015). *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*. Cambridge University Press.

⁶ United Nations. (1948). *Preamble. Universal Declaration of Human Rights*. Retrieved September 1, 2019, from <https://www.un.org/en/universal-declaration-human-rights/>.

⁷Sandoz, Y. (1987). *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions*. Martinus Nijhoff Publishers. In Schmid, E. (2015). *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*. Cambridge University Press.

⁸ International Committee of The Red Cross. (1868). *Treaties, States parties, and Commentaries - St Petersburg Declaration relating to Explosive Projectiles, 1868*. ICRC databases on international humanitarian law, (para1). Retrieved August 26, 2022, from <https://ihl-databases.icrc.org/ihl/full/declaration1868>. In Schmid, E.

is the right to life.⁹ This right cannot be derogated from.¹⁰ However under the principle of necessity, the right to life can be derogated.¹¹ There can be a situation that may be a case of high intensity insurgency; it is argued that in democratic societies, policing should be based on the principles of lawfulness, non-discrimination, necessity, proportionality, accountability, and humanity.¹²

2. Police Forces and Enforcement of HRLS and IHL

The role of Police can be of greater importance in protecting the norms of IHL as well providing Human Rights protection in potential conflict. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF)¹³ provides that “law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights”¹⁴ highlights the special role and responsibilities of police officers and other law enforcement officers in a conflict situations. This document has received global recognition and acceptance as a

(2015). In *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*. Cambridge University Press.

⁹United Nations. (1948). Article 3, *Universal Declaration of Human Rights*. Retrieved September 1, 2019, from <https://www.un.org/en/universal-declaration-human-rights/>. See Also, Art. 6. *International Covenant on Civil and Political Rights*; Art. 4. *American Convention on Human Rights*; Art. 2, *European Convention on Human Rights*; Art. 4, *African Charter on Human and Peoples’ Rights*; Art. 5, *Arab Charter on Human Rights*.

¹⁰ European Court of Human Rights, Council of Europe. (1949). Article 15, *European Convention on Human Rights*. Retrieved September 1, 2019, from https://www.echr.coe.int/documents/convention_eng.pdf :

The only exception is the European Convention on Human Rights, in which the right to life is considered as non-derogable “except in respect of deaths resulting from lawful acts of war” (Art. 15(2)). So far, this provision has had no real impact in practice since no European State has ever derogated from the right to life and the European Court of Human Rights has never resorted to this exception *proprio motu*.

¹¹ European Court of Human Rights, Council of Europe. (1949). Article 2. *European Convention on Human Rights*. Retrieved September 1, 2019, from https://www.echr.coe.int/documents/convention_eng.pdf :

The doctrine may change according to local/domestic jurisdiction and remains a subject to that jurisdiction only. A notable point would be that of European Convention on Human Rights, that provides exhaustive situations whereas deprivation of life by use of lethal force is permitted.

¹² Crawshaw, R. (2018). *Police and Human Rights: Fundamental Questions*. In G. Fickenscher & R. Alleweldt (Eds.), *The Police and International Human Rights Law* (pp. 7-20). Springer International Publishing.

¹³ OHCHR. (1990). *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. United Nations. Retrieved June 3, 2019, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>.

¹⁴ OHCHR. (1990).

positive guideline.¹⁵ According to Anja Bienert,¹⁶ three layers of responsibilities can be distinguished:¹⁷

1. Commanding and superior officers can themselves be involved in situations in which force and firearm are used and in such situations are responsible for their own actions and omission, for the order they have given or failed to give, as well as for the planning and preparations of policing operations.

2. They are responsible for defining an operational framework that ensure that law enforcement officials resort to the use of force and firearms in lawful and human rights compliant manner. This includes notably human-rights-compliant policies, operational procedures and instructions, as well as the provision of appropriate equipment and training.

3. They are supposed to effectively supervise and control their subordinates and to ensure that law officials are held accountable if they have resorted to unlawful use of force and firearm.

Similarly the Basic Principle 26 mandates important guidelines regarding the command-responsibility paradigm. According to the Basic Principle 26 “Obedience to superior orders shall be no defense if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.” The principle is particularly important as in an instance law and order problem such as in counter-insurgency operations. Though the police officers or law enforcement officers have discretion to deal with the situations but when such order are manifestly unlawful, the enforcing officer may chose not to follow these orders. The Basic Principles 25¹⁸ holds greater value in these

¹⁵ Alston, P, et.al. (2006). *Report Of The Special Rapporteur On Extrajudicial, Summary Or Arbitrary Executions A/HRC/2/7*. UN Human Rights Council. Retrieved on July 6, 2019, from https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/2/7

¹⁶Dr Anja Bienert is senior police expert at the Police and Human Rights Programme of Amnesty International.

¹⁷Bienert, A. (2018). Command Responsibility and the Use of Force by the Police. In R. Alleweldt & G. Fickenscher (Eds.), *The Police and International Human Rights Law* (pp. 61-82). Springer International Publishing.

¹⁸ OHCHR. (1990, September 07). *Basic Principle 25, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. United Nations. Retrieved September 04, 2019, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>:

situations and exempts the law enforcement officials from any criminal or disciplinary sanctions. These principles must be given prominence as the course of actions taken or command of superior officer can have serious consequence on the protection of life and liberty in these law and order situations.

The police forces or law enforcement officers have a positive duty in regard to planning, preparation and precaution while carrying high-intensity counter-insurgency operations. The preparations and planning must undertake all the aspect of any operation and protection of civilian life shall be utmost priority. A landmark case regarding planning, preparations and precaution and the duties thereon is of *Ergi v. Turkey* (66/1997/850/1057).¹⁹ In this case, the European Court of Human Rights held that:

... the responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from agents of the State has killed a civilian. It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimizing, incidental loss of civilian life.

Thus, even though it has not been established beyond reasonable doubt that the bullet which killed Havva Ergi had been fired by the security forces, the Court must consider whether the security forces' operation had been planned and conducted in such a way as to avoid or minimize, to the greatest extent possible, any risk to the lives of the villagers, including from the fire-power of the PKK members caught in the ambush.

The view of ECHR also echoes in the Basic Principle 5(a) of (BPUFF) that provides a framework of Proportionality.²⁰ Similarly the principles of Necessity are found

“Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.”

¹⁹ (66/1997/850/1057)

²⁰ OHCHR. (1990, September 07). *Basic Principle 5(a), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. United Nations. Retrieved September 04, 2019, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>:

“The degree of force used and the potential harm it can cause must be strictly proportionate to the seriousness of the offence and the legitimate objective to be achieved.”

in Art. 3 of the UN Code of Conduct for Law Enforcement Officials 1979 (CCLEO).²¹ Though both the conventions are soft law but are widely acknowledged by UN and other international judicial, quasi-judicial bodies and other humanitarian organizations such as ICRC and Amnesty International, and can be more practical solutions of implementation of IHL in domestic jurisdictions.

3. The Insurgents and Enforcement of HRLS and IHL

The ambit and scope of how the insurgent/rebels are bound by norms of HRLs and IHL remains unclear in state practices as well as in international treaties. The major question can be, is an armed group/insurgent is capable of observing norms of HRLs? The applicability of IHL in these conflict situations is more puzzling question. Moreover the existence of Armed Non-State Actor (hereinafter ANSA) is not a question of fact but recognition. In IHL there are many treaties that govern or regulate the behaviour of ANSA such as Common Article 3 of the Geneva Convention, the 1997 Additional Protocol II, of the four GC of 1949.

Though the term ANSA is self-explanatory in itself, The UN Security Council has defined it broadly as “an individual or entity, not acting under the lawful authority of any State.”²² An ANSA shall be any actor other than the police forces/territorial army having a structured organization and displaying some military capabilities. Though this must be noted that a continuing conflict is not condition for the existing of ANSA and it can exist in situation like proxy war. The Security Council resolution also provides that all the state shall refrain itself from providing any sort of support to ANSA that attempts to develop and acquire weapon for terrorist purposes.

An important question regarding this is nature and status of the Armed Non-State Actor. In traditional international law, the Armed Group (insurgent) had rights only and

²¹OHCHR. (1979, December 17). *Article 3, Code of Conduct for Law Enforcement Officials*. United Nations. Retrieved August 26, 2022, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials> :

“Law enforcement officials may use force only when strictly necessary [...]” The use of force in law enforcement operations has to be an exceptional measure of last resort in order to pursue a legitimate aim. Only the lowest amount of force necessary may be applied. Whenever possible, there must be a differentiated use of force (e.g. verbal warning, show force, “less-than-lethal” force, lethal force).

²²UNODA. (2004.). *UN Security Council Resolution 1540 (2004)*. United Nations. Retrieved August 26, 2022, from <https://www.un.org/disarmament/wmd/sc1540/>.

the obligation comes as the archived the status of insurgency. This view is in conformity with the limits on the state power while engaging in the law and order problem in domestic jurisdiction. For the armed group (rebels) to be eligible for such recognition, they must fulfil some conditions. According to Antonio Casseses, these conditions are:²³

International law only establishes certain losses requirement for eligibility to become an international subject. In short (1) Rebels should prove that they have effective control over some part of the territory and (2) Civil Commotion should reach a certain degree of intensity and duration (it may not simply consist of riots or sporadic and short-lived acts of violence). It is for the states (both that against which the civil strife breaks out and other parties) to appraise – by granting or withholding, if only implicitly, recognition of insurgency – whether these requirements have been fulfilled.

But with such recognition the ANSA/Insurgent group is bound by certain rights and obligation that flows from the laws of armed conflicts. In respect to the question how important and necessary the recognition of armed group as insurgent/belligerent for applicability of Common Article 3 of the Geneva Convention, the observation of Trial chamber in the case of Prosecutor v. Fatmir Limaj Haradin Bala Isak Musliu(IT-03-66)²⁴ can be of much help. While discussing this question, the tribunal held that:²⁵

The drafting history of Common Article 3 provides further guidance. Several proposed drafts of what later became known as Common Article 3 sought to make its application dependent, inter alia, on conditions such as an explicit recognition of the insurgents by the de jure government, the admission of the dispute to the agenda of the Security Council or the General Assembly of the United Nations, the existence of the insurgent's State-like organization, and civil authority exercising de facto authority over persons in determinate territory. However, none of these conditions was included in the final version of Common Article 3, which was actually agreed by the States Parties at the Diplomatic Conference. This provides a clear indication that no such explicit requirements for the application of Common Article 3 were intended by the drafters of the Geneva Conventions.

This explanation given by the Chamber provides important incites as the necessary conditions for the applicability of Common Article 3 of the Geneva Convention. These conditions mentioned are ancillary to the determination of the conflict and not

²³ Cassese, A. (2004). *International Law* (2nd ed.). OUP Oxford.

²⁴ (IT-03-66).

²⁵(IT-03-66), Para 86.

primary. On this juncture, it is significant to note that the Article 10 of Responsibility of States for Internationally Wrongful Acts drafted by the International Law Commission (ILC) enumerates responsibilities in case of human rights violations on an insurrectional movement²⁶ and also provides limitations on conduct of ANSAs. Art. 10(1) reads as “The conduct of a Movement, insurrectional or other, which succeeds in establishing a new state in a part of a territory of a pre-existing State or in a territory under its administration shall be considered an act of a new state under international law.” This article though assigns the responsibilities for protections on insurrectional movement but only if this succeeds in establishing new state and largely remain silent in regard to prior conduct. Though this approach has its limitation but nonetheless the Armed Group cannot escape any liability in its conduct. When such “insurrectional group” is recognized by the state in whose territory such conflict is happening, the international law ensures that certain international rights and obligations are flows from such status though these rights and obligation largely depends on the nature of recognition.²⁷

In addition to this, the argument of Andrew Clapham that these armed group be recognized whether be consider rebels i.e. “unrecognized insurgents as addresses of international obligations under contemporary international humanitarian, especially the obligations contained in Common Article 3 to the four Geneva Conventions of 1949, in Additional Protocol II of 1977 to the Geneva Conventions and in Article 19 of the Hague Conventions on Cultural Property of 1954.”²⁸ This view taken by Andrew Clapham asserts absolute liabilities on conduct of Armed Non-State Actor and thus it also confers the equal liabilities on the other parties to the conflict situations mainly the armed force of state. However this assentation puts another question that what can be considered as armed forces of state? Is it limited to the regular and commissioned army of state or can it include the other forces such as police forces and paramilitary force of state that are engaged in enforcement of law and order?

Beside the applicability of CA 3 of GC, the applicability of Additional protocol II to Geneva Conventions is beyond doubt and the view expressed by the Soviet Union

²⁶International Law Commission. (2001). *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries - 2001*. United Nations - Office of Legal Affairs. Retrieved August 26, 2022, from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf .

²⁷ Riedel, E. H. (2002). Recognition of Insurgency. In R. Bernhardt & P. Macalister-Smith (Eds.), *Encyclopedia of Public International Law* (Vol. IV, pp. 54-6). North-Holland.

²⁸ Clapham, A. (2006, September). Human rights obligations of non-state actors in conflict situations. *International Review of Red Cross*, 88(863), 491-523. <https://doi.org/10.1017/S1816383106000658>

representative²⁹ i.e. ‘the protocol would be binding on both the contracting state and insurgent’ leaves no doubt. It is also necessary to restate the reasons provided in 1949:³⁰

The commitment made by a state not only applies to the government but to any established authorities and private individual within the national territory of that state and certain obligations are there for imposed on them. The extent of right and duties of private individual is there for the same as that of the right and duties of the state.

Nonetheless concerning the question of abiding by the HRLs the view expressed by the Special Rapporteurs appointed by Israel and Lebanon:³¹

Although Hezbollah, a non-state actor, cannot become a party to these human rights treaties, it remains to the demand of the international community, first expressed in the Universal Declaration of human Rights that every organ of the society respects and promote human rights. The security council has long called upon various groups which member state do not recognize as having the capacity to do so to formally assume international obligation to respect human rights. It’s especially appropriate and feasible to call for an armed group to respect human rights norms when it “exercises significant control over territory and population and has identifiable political structure.

This view expressed by two sovereign nations has particular importance when it comes to a terrorist group. As argued earlier the situation of terrorism is different from ordinary Law and order/public order problem and this became more prominent in light of national liberation movements/regional autonomy movements. Many of the regional autonomy movements are consider as organised terrorist activity such as LTEE in Sri Lanka for Tamil rights or CPN(M) in Nepal for constitutional rights. These groups have political ambition as their core idea of struggle³² and are capable to enforce human rights in their conduct. The situation is more delicate than it seems and the world community at large have since a long time ago understood the significance and trouble in formulating

²⁹ Cassese, A. (1981). The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts. *The International and Comparative Law Quarterly*, 30(2), 416-439. <http://www.jstor.org/stable/759535>.

³⁰ Yves, S, et.al., (eds.). (1987). *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*.

³¹Special Rapporteurs by Israel and Lebanon. Retrieved on July 6, 2019, from <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Lebanon%20A%20HRC%203%202.pdf>.

³²The argument can be break down that the ideological inclinations of these organizations are to make radical change in administration. The author in any way does not advocate the methodology adopted for achieving their goals.

fitting methodologies to go up against these political armed groups.³³ The Article 10 of Responsibility of States for Internationally Wrongful Acts drafted by the International Law Commission (ILC) enumerates responsibilities in regard to human rights violations on an insurrectional movement³⁴ and also provides limitations on conduct of ANSAs. Article 10(1) read as “The conduct of a Movement, insurrectional or other, which succeeds in establishing a new state in a part of a territory of a pre-existing State or in a territory under its administration shall be considered an act of a new state under international law.” This article though assigns the responsibilities for protections on insurrectional movement but only if this succeeds in establishing new state and largely remain silent in regard to prior conduct.

In Resolution 9/17 of September 18, 2008 on the situation of Human Rights in the Sudan, the HRC observed that³⁵

... calls on all parties to respect their obligations under international human rights law and international humanitarian law, in particular with regard to the protection of civilians, and to end all attacks on civilians, with a special focus on vulnerable groups, including women, children and internally displaced persons, as well as human rights defenders and humanitarian workers.

ICJ’s view in Legality of the Threat or Use of Nuclear Weapons regarding the non-derivation from the cardinal principal of IHL thus these becomes guiding principle when regional/terrestrial forces are engaged in a conflict to combat terrorism.³⁶ Also the ICJ affirmed “the applicability of human rights law, notably the ICCPR, during armed

³³ International Council for Human Rights Policy. (2000). *Ends & Means: Human Rights Approaches to Armed Group*. ICHRP. Retrieved on August 26, 2022, from <http://www.uthr.org/PDF%20files/End%20&%20Means.pdf>. See, Amnesty International, *Without Distinction: Attacks on Civilians by Palestinian Armed Group*. (2002). Retrieved on September 22, 2019, from <https://www.amnesty.org/download/Documents/120000/mde020032002en.pdf>.

³⁴ International Law Commission. (2001). *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries - 2001*. United Nations - Office of Legal Affairs. Retrieved August 26, 2022, from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

³⁵ UNHRC. (2008). *Resolution 9/17, Situation of Human Rights in the Sudan*. United Nations. Retrieved on September 6, 2019 from http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_17.pdf

³⁶ International Court of Justice. (1996). *Legality of the Threat or Use of Nuclear Weapons*. Retrieved on September 5, 2019 from <https://www.icj-cij.org/en/case/95> :

“It laid emphasis on two cardinal principles: (a) the first being aimed at the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets while (b) according to the second of those principles, unnecessary suffering should not be caused to combatants.”

conflict, stating that the right not to deprive of one's life arbitrary applies in hostilities too.³⁷

In the case of Delalic et al., The Chamber opined that:³⁸

While in 1949 the insertion of a provision concerning internal armed conflict into the Geneva Convention may have been innovative, there can be no question that the protection and prohibitions enunciated in that provisions have come to form part of customary international law.

Also the decision of the Appeals Chamber of the ICTY in *Tadic* held that:³⁹

Some treaty rules (governing internal strife) have gradually become part of customary law. This hold true for the common Article 3 of the 1949 Geneva Convention, as was authoritatively held by the International Court of Justice (Nicaragua Case...), but also applies to the Article 19 of the Hague Convention for the Protection of Cultural Property in the event of Armed Conflict of 14 May 1954, and ... to the core of Additional Protocol II of 1977.

4. Conclusion

There can be various methods of applying IHL in domestic jurisdiction. One such method of implications can be applying existing national law while giving prominence of IHL norms by special legislation. It can be argued that the domestic laws are capable of dealing with variety of issues such as war crimes or violations of human rights. However a limitation of this approach can be that domestic laws are not *lex specialis* as IHL and the quotient of punishment may not be adequate under domestic laws for the grave violations of IHL.

Another possible approach can be giving special power to domestic courts for the protection of IHL. The approach is simple to implement and does not require any special efforts to implement IHL. However judicial interpretation by national courts may be fiddly. An approach of ratifying the IHL treaties and giving the task of implementation to all the concerned parties such as law enforcement agencies, judicial and quasi-judicial bodies is likely to serve the purpose of protecting all the parties involved in any sort of conflict. Another ancillary but most important requirement is that of State must require its military commanders to prevent, suppress, and take action against those under their control who commit grave breaches.

³⁷ International Court of Justice. (1996).

³⁸ Prosecutor v. Delalic et al. (ICTY, Trial Chamber, 1998).

³⁹ Prosecutor v. Tadic (Decision on Jurisdiction) (ICTY, Appeals Chamber, 1995).

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