CROSSING THE BORDER: THE COMPLEMENTARITY NOTION OF PROTECTION OF RIGHTS OF VICTIMS OF ARMED CONFLICT UNDER INTERNATIONAL HUMANITARIAN LAW, INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL CRIMINAL LAW

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Abstract

The intersection between International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Criminal Law (ICL) norms is becoming more pronounced in the geared move towards the preservation of the rights and the human dignity of victims of armed conflict. Not until about a decade and half ago, this relationship was considered pseudo. But with the increased wave of conflicts situations across the globe, the synergy between these regimes of protection has not only been evident but normal and natural against the backdrop of their increasing relevance in both standard setting and penalties' prescription for violations. It is against this background that this paper considered the nature of rights *cum* protective valves encapsulated in these bodies of laws and their efficacies in times of war. It was found by this paper that the *milieux* within which they apply vary a great deal. While IHRL apply mostly in peace time and minimally during armed conflicts, the opposite is the case with IHL whose specialty always manifest in conflict situations. On the other hand, ICL is almost always evoked only after an armed conflict to bring grave violators to justice. The paper concludes that the rights of victims of armed conflict are better protected by the synergized application of these regimes and therefore recommends the strengthening of the interplay that exists between them.

Key words: Humanity, Rights, complementarity, Regimes, Criminal, Humanitarian.

I. Introduction

Protection of the rights of victims of armed conflict has become a global norm geared towards improving and safeguarding the sanctity of human dignity, not only in content and context but in practical terms. Humane treatment of victims of armed conflicts began when the principle of humanity assumed dominance during armed conflict.[1] This principle has well developed over the years through frameworks in the field of human rights law and international humanitarian law. Consequently, restraint on the part of belligerents is primarily based on the need for the respect of the innate nature of the sanctity of human life and human dignity but not for economic gain in favour of the party exercising restraint.[2]

Contemporary regimes of both international humanitarian law and human rights law therefore provide the bases for the respect and protection of the principle of humanity even during armed conflicts with International Criminal Law prescribing

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[1] . GIAD Draper, 'The Development of International Humanitarian Law,' in H Dunant (ed), *International Dimensions of Humanitarian Law,* (Martins Nijttof Publishers, 1998) 67.

[2]. *Ibid*.

sanctions against individuals who violate these norms.[3] Respect for rules of war is an imperative on the part of belligerents irrespective of the justness or otherwise of the conflict. Humanitarian concerns and the passion for respect for humanity over and above military considerations led to the signing of instruments to formally regulate the conduct of war. This began way back in the second half of the 1890s while human rights norms in its present form became a matter on the front burner of the international community at the turn of the 19th century with the adoption of the United Nations Charter in 1945.[4] Up until then the individuals enjoyed human rights via bills of rights and later through constitutional law and in some exceptional cases international treaties providing protection to minorities.[5]

Rights and protection in both regimes of norms are best companions. Protection is not possible over what is non-existent, in this case right. Neither is right a worthy right without protective mechanisms by way of frame works. As a specialized aspect of international law, humanitarian law has, arguably been able to protect human dignity during and after war times through a number of frameworks on war generally.[6]

Humanitarian concerns led to the codification of the law of armed conflict in the first and second halves of the 19th century[7] which existed as customary international law at the time.[8] It is however, believed that the 'modern humanitarian movement creating law'[9] began after the horrors of the battle of *Solferno*[10] in 1859.[11] An eye witness, Henry Dunant, a Swiss National published the horrific memories of the war in 1862 and 1863. The memories about this war and the Declaration of St. Petersburg of 1868[12] impelled humanitarian ideals culminating in the Hague

[3] E Ama Oji, *Responsibility for Crimes under International Law*, (Odade Publishers, 2013) 15-16.
[4]. HO Agarwal, International Law and Human Rights, (17th edition Central Law Publications, 2010) 729.
[5] N Quenivet, 'The History of the Relationship Between International Humanitarian Law and Human Rights Law', in R Arnold and N Quenivet (eds) International Humanitarian Law and Human Rights Law, Towards a New Merger in International Law (Martinus Nijhoff Publishers, 2008) pp 1-3.
[6] B Bowing, 'Fragmentation, Lex Specialis and the Tensions in the Jurisprudence of the European Court of Human Rights', (2009) *Journal of Conflict and Security Law,* 6.
[7]. Draper, (n1), p 69.
[8]. WA Qureshi, 'Untangling the Complicated Relationship between International Humanitarian Law and Human Rights Law in Armed Conflict', (2018) vol. 6 issue 1, *Penn State Journal of Law and International Affairs*, 208.
[9]. Ibid.
[10]. Between Austria and France.
[11]. Draper, (n1) p 70.
[12]. Ibid 69.

Convention of 1899[13] which was closely followed by the 1907 Hague Regulations. Earlier, in 1864, the very first Geneva Convention was enacted, and in 1929 the second Geneva Convention[14] came into place. It revised and improved on the first Convention and the 1907 Hague Regulations. These Conventions marked the unequivocal 'acceptance of secular compassion' which resulted in the avowed 'desire to reduce suffering in war,' and further, 'to protect and respect those who are, by definition, defenceless in the hands of the enemy as prisoner of war or sick, or as civilians.'[15] This forms the fulcrum and crux of our modern and present day humanitarian law. The Geneva Conventions of 12th August, 1949[16] revised and enhanced the provisions of the 1929 Convention. These Conventions with their two Additional Protocols of 8 June, 1977[17] fully express the humanitarian law or law of war of our time.[18] Extensive provisions for the protection of all categories of war victims are to be found in these conventions.[19]

To effectively reduce the negative impacts of armed conflict on the dignity of the human person, a convergence and synergy between international humanitarian law, human rights law and international criminal law is thus an imperative. A conflation of these norms is not only a blessing to humanity but an answer to the question of how dignified is human dignity in unusual situation of armed conflict in a civilized world of ours.

Consideration of the humanity of man because he belongs to mankind forms the core of modern humanitarian law with human right law as a veritable and indispensable ally. The recognition of the principle of humanity brought about restraint on, and limited the excesses of belligerents during armed conflicts.[20] To achieve this objective, the Hague Law fashioned out rules on the conduct of hostilities, means and methods of warfare, the Geneva Law[21] on its part went several

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[13]. Ibid.
[14]. Ibid.
[15]. Ibid 71.
[16]. While the first two Conventions determine general circumstances of casualties and distress situations, the last two provide for statuses and rights of the victims.
[17]. While the Protocol I expounds the provisions of the Geneva Conventions on International Armed Conflicts, Protocol II amplifies provisions of the Conventions on Non-International Armed Conflicts.
[18]. Draper, (n1), p 81.
[19]. *Ibid.*
[20]. M Maclaren and F Schwendimann, 'An Exercise in the Development of International Law: The New ICRC Study on Customary International Humanitarian Law', (2005) Vol. 06 No. 09, *German Law Journal* 1218.
[21]. That is, the four Geneva Conventions and their Additional Protocols.

steps further to provide for the protection of individuals in distress situations arising from armed conflicts.

The Geneva Conventions

Drawing from the fundamental standard of humanity generally, the nature of rights and protection provided in the Conventions differ. Each of the four Geneva Conventions of 12 August, 1949 provides specifically for particular category of victims of armed conflict. Geneva Convention I for instance make provision for the protection of victims of armed conflict in the fields. It provides for the 'Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field'[22] that are in the hands of the enemy. It is worth mentioning that the origin of this Convention dates back to the Geneva Convention of August 22, 1864. Thereafter, a range of treaties, each of them pointing to the need to upholding the dignity of the human person even in situations of armed conflicts were enacted.[23] In part two of this convention, detailed provision for the protection of victims, in this case, the wounded and sick is to be found.[24] These provisions are predicated on the consideration of fundamental standards of humanity.[25]

Man is conferred with natural rights for the reason of his membership of the human family. Core among these rights is the right to life, dignity of the human person and of fair hearing.[26] All (human) rights documents either at the international, regional or municipal levels hallow these basic rights because they are considered inseparable from man. Part IX contains provisions for repression of abuses and infractions. Article 49 for instance enjoins State parties to enact legislations for penal sanctions against persons committing or ordering to be committed grave breaches of the conventions.

Similarly, Convention II provides for intervention in the case of the wounded, sick and shipwrecked members of the armed forces of a belligerent in the hands of the enemy. Just like the first Convention, the second Convention in part two provides for the rights and protection of victims of armed conflict at sea. At the core of this

[22]. Geneva Convention I
[23] Quenivet, (n5), p 2.
[24] This is contained in G.C.I, Articles 12-18.
[25] K Casla, 'Interactions Between International Humanitarian Law and International Human Rights Law for the Protection of Economic, Social and Cultural Rights', (2012) Vol. 23 *Revista Electronica De Estudios Internationales,* p 2.
[26]. These forms the cardinal pillars of modern human rights and fundamental freedoms as can be found in International, Regional and National human rights instruments.

provision is the passionate consideration for the fundamental standards of humanity predicated on the sacredness of certain rights of man considered inalienable.[27]

Geneva Conventions III and IV on the other hand categorize and gave statuses to the identified victims in the first[28] and second[29] Conventions. Fighting members of a party to an armed conflict are categorized by Geneva Convention III as combatants with prisoners of war status upon capture by the enemy. They are entitled to humane treatment by their captors.[30] Internment of captured combatants is purely to break up links with those still in the battle field against any advantage the link might provide. They are to be released at the end of hostilities unconditionally. They are not criminals if their engagement and conduct is in tandem with the laws of war, otherwise they could be prosecuted for picking up arms illegally and for crimes resulting from such unlawful engagement.

The framework for the protection of the rights of the non-fighting members of a party to an armed conflict is Geneva Convention IV. Convention IV is relative to the 'Protection of Civilian Persons in time of War' and is particularly dedicated to the protection of civilians in time of war. Like the first three conventions, it continues to apply even after the cessation of hostilities. Application of the convention after armed conflict ensures and guarantees respect for the human dignity of civilians that have fallen victims of the conflict. They are entitled to certain safeguards against violation of their rights and freedoms under international humanitarian law.[31] These rights include respect for their persons, their honour, their family rights, their religious convictions and practices and their manners and customs.[32] Umozurike[33] identified two categories of civilians. One of them according to him is designated 'protected persons' and this consists of: *persons who find themselves, in the event of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals*.[34]

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[27]. See for instance the provisions of Common Article 3(1) (a-d).
[28]. The first Geneva Convention provides for the 'Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.'
[29]. The second Geneva Convention provides for the "Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
[30]. They are prisoners of war once captured and a detailed provision on their treatment in contained in the third Convention known as the 'Prisoner of War Convention.'
[31]. CC Wigwe, International Humanitarian Law, (Readwide Publishers, 2010) p 134.
[32]. *Ibid*.
[33]. O Umozurike, 'Protection of the Victims of Armed Conflict: Civilian Population,' in H. Dunant (ed), *International Dimensions of Humanitarian Law,* (Martinus Nijttof Publishers, 1998) p 188.
[34]. Ibid.

Part III of Geneva Convention IV lay down special safeguards for the protection of this category of civilians in its articles 27-34. The second 'comprise the entire population of a country in conflict regardless of nationality, race, religion or political opinion.'[35] Part II of the convention comprising of articles 13-26 provide for their protection. In terms of coverage, the later covers wider ground, in fact, the entire population in the territory of a party to the conflict without any form of discrimination. However, the obligation to protect and ensure respect for the rights of civilian victims is stronger in the former, reason being that, the administering authority styled occupying power is under strict obligation to protect the rights and freedom of victims in its hands.

The focus of Geneva Convention IV is on all civilians, the entire non-fighting population in the territory of a party to the conflict. Once their normal course of life and business is altered or affected by armed conflict situation, they become victims, and as such deserve special care and attention in order not to feel less human by reason of circumstances of war.

II. The Nature of Rights of Victims of Armed Conflict

a. Under International Humanitarian Law

International Humanitarian Law is a specialized branch of Public International Law. This aspect of the law of nations which grew via, and applied as customary law[36] from the middle ages up till the 18th century is now clearly and comprehensively expressed in the four Geneva Conventions of 1949 and the two Additional Protocols to the Conventions. Codification of the international humanitarian norm was first achieved when the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted in 1864.[37] Situations of armed conflicts as they affect life and human dignity spurred the development of international humanitarian law to the present level. Protection and preservation of human dignity is core to this principle. It does not permit of treatment capable of engendering a feeling of less humanity even in worst situations of armed conflicts. Dehumanizing treatments are prohibited and criminalized as war crimes.[38]

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[35]. Ibid.
[36] Quenivet, (n5) p.2.
[37] Ibid.
[38]. See *Prosecutor v. Bralo*, IT-95-17-S, Sentencing judgment, 7 December 2005. The accused was convicted for, among others, outrages upon personal dignity of torture and inhuman treatment as a war crime. See also *Prosecutor v. Brdanin,* IT-99-36-T, Judgment, 1 September 2004.

Rights of victims of armed conflict under international humanitarian law are by nature, not to be derogated under any circumstances otherwise preservation of human dignity, the very essence of humanitarian law will be illusory. Thus, international humanitarian law arguably, derogates from human rights law regime.[39] Application of humanitarian law begins as soon as there is an outbreak of armed hostilities. It is largely dormant in peace time but will continue to apply even in peacetime after hostilities until normal situation is completely restored. For example, humanitarian law will continue to apply in situations where victims are held by their adversary or in situation of occupation by the enemy and even when they are in neutral environment.[40] The implication is that the law of Geneva (humanitarian law) will continue to apply until every victim in enemy custody is repatriated or the situation of occupation is determined.[41]

By nature, the rights secured or guaranteed by humanitarian law are not only inalienable but non-derogable. Even where the victim is being tried for criminal offences, his/her rights still subsist. He or she will still be entitled to decent and humane treatment even in prison if sentenced. As long as humanitarian law continue to apply, so long the rights and privileges (if any) of victims of armed conflict inure with the protection of the law. Basically, victims' rights under international humanitarian law are individuals' rights as they address the individual of the human person as opposed to group. It creates obligations that are binding on both state and non-state actors and the consequences of violation of any aspect of the law of war amounts to grave violation which attaches individual criminal liabilities even at the international plane, especially now that individuals are subjects of international law.[42]

b. Under International Human Rights Law.

In scope and sphere of application, human rights law covers wider ground than international humanitarian law. Human rights law has developed to the extent that it touches on almost all kinds of situation relating to both individual and collective or group rights.[43] It is not in doubt that human rights law provides a set of standard rules

[39] Quenivet, (n5), p 5. Human rights law regime allows derogation of some of its provisions once such derogation does not go contrary to the Constitution and other relevant enactments. See C Droege 'The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', (2007) Vol. 40 No. 2, *Israel Law Review*, p 318.
[40] AP I, Articles 19 and 31.
[41]. G.C.III Article 118 and G.C IV, Article 133.
[42]. Oji, (n3), pp 105-7.

applicable to both international and national laws[44] and, international humanitarian law is not impervious to human rights' tenets.

Human rights law invasion into the domain of international and municipal laws actually began with the adoption of the United Nations Charter in 1945 after the Second World War, and has since then greatly influenced these bodies of norms. In 1948 the Universal Declaration of Human Rights was adopted with nebulous human rights provisions. However, the document prides as the first in the advancement of human rights tenets globally. Drawn from the fluid provisions on human rights and freedoms by the UN Charter,[45] it did in fact set the pace for further developments in this field. In 1966 a major feat was achieved in the field of human rights development with the codification of the Universal Declaration when two separate covenants were enacted.[46] The first was the International Covenant on Civil and Political Rights[47] while the second is styled International Covenant on Social, Economic and Cultural Rights[48] both of 1966. With these enactments, a separation of civil and political rights from social economic rights was achieved thereby providing the means for their implementation as peculiar to each of them.

Since then, human rights law influence on international humanitarian law has quite been obvious, thereby justifying it as a 'lawyer of standard rules for all.' For example, fundamental standards of humanity and human dignity, the core of international humanitarian law, are basic human rights law concepts. The observance of these basic standards usually, is the result of fundamental guarantees for human dignity in any civilized society in all climes.

However, some of the rights found in a number of human rights instruments are such that could be derogated whenever the situation warrants with the exception of just a few.[49] The irresistible impulse therefore is to think that some human rights

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[43]. M Odello, 'Fundamental Standards of Humanity: A Common Language of International Humanitarian Law and Human Rights Law,' in R Arnold and N Quenivet (eds) *International Humanitarian Law and Human Rights Law,* (Martinus Nijhoff, 2008) 24.

[44]. *Ibid.*

[45] Generally, provisions on human rights and fundamental freedoms can be found in paragraph two of the preamble of the Charter of the UN and articles 55 (c) and 62 (2) of the UN Charter.

[46] J O Oraa, 'The Universal Declaration of Human Rights' in F G Isa and K de Feyter (eds) *International Protection of Human Rights: Achievements and Challenges*, (University of Deusto, 2006)19-47.

[47]. Herein ICCPR.

[48]. Herein ICSECR.

[49]. Oraa, (n46) 25.

stipulations are superior or more important than others. The test of every human rights provision is its enforceability and the ability to protect the entire gamut of the humanity and dignity of man even in worst of situations.

One of the leading international human rights instruments, the International Convention on Civil and Political Rights (herein ICCPR) expressly allows for derogation in situation of public emergency threatening the life of the nation.[50] This must however, be strictly in compliance with relevant laws in order to prevent abuse and arbitrariness by the government.[51] The justification for derogation arguably appears to consider national interest to be of paramount importance than the rights and civil liberties of the citizens. Since both are constituents of every modern state, whatever therefore may be the threat to the life of a nation, it should not be considered enough justification to derogate on the rights of its citizens. This is because the life of a nation cannot be separated from the general wellbeing and decent treatment of its citizens. A very high standard requirement was therefore set by the UN Human Rights Committee in its General Comment on Article 4 of the ICCPR before derogating on any of its provisions. It is stated in the comment that:

> … in addition to the provisions in article 4 and 5, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if, and to the extent that, the situation constitutes a threat to the life of the nation.[52]

Compared with international humanitarian law, human rights law appears less preferred in situations of armed conflicts. It does not however mean that it is completely irrelevant. To the extent that it resists derogation, it perfectly complements humanitarian law. In spite of this shortcoming, human rights practice by nations of the world forms the bench mark by which the civility of any nation is assessed. Development in this field of law has been positively rapid since 1945 following the adoption of the United Nations Charter and subsequently, the Universal Declaration of Human Rights in 1948 among others.

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[50]. Article 4(1) of the ICCPR. (The Covenant was Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49). See also Article 27 of the African Charter on Human and Peoples' Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

[51] Droege, (n39)318.

[52]. UN Human Rights Comment, General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights), 24 July 2001.

Initially, obligations under human rights law basically foist on States and not individuals[53] even though individuals are the right bearers. This to a larger extent accounts for the vagueness and shrewdness in the application and realization of human rights' norms notwithstanding the fact of their clarity in instruments.[54] The limitation of human rights norms is more glaring in non-international armed conflicts where non-State elements are actively involved. It was believed that non-state parties would not be bound by international human rights treaties since they are not state entities to which treaty obligations under human rights attach. This however, has since changed with the recognition of individuals and insurgent groups as legal entities with rights and obligations under international law.[55] Consequently, violation of the human rights of individuals during armed conflicts attaches individual criminal responsibilities on the individual violator(s) under international humanitarian law and human rights law norms.

Human rights law is, unarguably, an imperative in all civil societies of our time. Even though it is not necessary to recognize new set of rights or a re-definition of the existing rights in favour of victims of armed conflict, the one thing that is however, urgently desirable, is, "specific rules and clear guidelines to apply existing rights."[56] This is an imperative if these rights must have meaning and positively improve the dignity of man at all times and in all situations.

c. Under International Criminal Law.

Grave breaches of international humanitarian law and international human rights law constitute crime under international law. To ensure that the rights of victims of armed conflict are not bare and more particularly to end impunity on the parts of perpetrators, the criminalization of certain breaches of international law became necessary thereby establishing direct and individual criminal responsibility.

Serious violations against international humanitarian law and international human rights law are regulated by international criminal law. Individual criminal accountability has been recognised by international criminal law as a norm.[57]

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[53]. Odello, (n43) 28.
[54]. Ibid.
[55]. M N Shaw, *International Law*, (6th edition Cambridge University Press, 2008) 245 and 257. See also Oji, *op cit*, p 105.
[56]. Odello, *(n43)* 29.
[57]. International Legal Protection of Human Rights in Armed Conflict, United Nations Human Rights Office to the High Commissioner, New York and Geneva, 2011, 74. Available at: <*http://Ohchr.org/.../HR_armed_conflc...*> accessed on 24/4/2019.

International criminal law is a body of international rules which proscribe certain categories of conduct and make those who engage in them personally liable.[58] In this category are breaches that are considered war crimes[59] and crimes against humanity,[60] notwithstanding the conflict paradigm.[61] Even before the establishment of the International Criminal Court (herein ICC), the *ad hoc* tribunals in Yugoslavia[62] and Rwanda[63] provided for direct criminal responsibility,[64] and later the Special Court for Sierra-Leone (herein SCSL).[65] The ICTY, ICTR and the SCSL[66] were neither established to try non-criminal conducts nor ordinary violations of international law below the threshold of grave breaches. They were established as a response to the brazen barbarity and savagery brutality resulting in the desecration of the dignity of the human person in the internal armed conflicts which took place in these countries.

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58. A Cassese, *International Criminal Law*, (2nd edn Oxford University Press, 2008) 3.

59. Rome State of the International Criminal Court, Article 8.

60. Ibid, Article 7.

61. In the case of *Prosecutor v. Tadic,* IT-94-1-AR72, Appeals Chamber, Decision, 2 October, 1995, paras 74-75. The Appeals Chamber held inter alia: "The Prosecutor makes much of the Security Council's repeated reference to the grave breaches provisions of the Geneva Conventions, which are generally deemed applicable only to international armed conflicts. This argument ignores, however, that, as often as the Security Council has invoked the grave breaches provisions, it has also referred generally to "other violations of International Humanitarian Law," as expression which covers the law applicable in internal armed conflicts as well." The Extraordinary African Chambers: Hybrid Court to that tried former dictator *Hissène Habré* of Chad charged for the under-listed offences which, beyond any shadow of doubt are grave breaches of the Geneva Conventions and human rights law provisions:
- The practice of murder, summary executions, and kidnapping followed by enforced disappearance and torture, amounting to crimes against humanity, against the Hadjerai and Zaghawa ethnic groups, the people of southern Chad and political opponents;
- Torture; and
- The war crimes of murder, torture, unlawful transfer and unlawful confinement, and violence to life and physical well-being.

62. Established for the prosecution of persons responsible for serious violations of IHL committed in the territory of the former Yugoslavia since 1991, via Security Council res. 827 of 25 May 1993.

63. Established for the prosecution of persons responsible for genocide and other serious violations of IHL committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1 January and 31 December 1994, via Security Council res. 955 of 8 November 1994.

64. See ICTY Statute, Article 7 (1) and ICTR Statute, Article 6 (1). Both Articles similarly provide that: 'A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in article … of the present Statute, shall be individually responsible for the crime.'

65 Special/Extraordinary African Chambers in Senegal which tried *Hissene Habre* of Chad is one excellent example. See the Rome Statute of the ICC, Article 4 paragraph 2 which provides that, 'The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.'

66. The Special Court for Sierra-Leone was established by an Agreement between the United Nations and the Government of Sierra-Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000. According to article 1(1) of the Statute of the Court, the Court is to "… prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone."

Jurisdiction over these crimes is exercised primarily by domestic courts[67] under normal circumstances, that is, where the criminal justice system of the country concerned, is well developed and the political will of the leader demonstrate the resolve to punish violations. This municipal jurisdiction is complemented by the International Criminal Court (the World's Criminal Court)[68] which is specially designed and equipped to try perpetrators of heinous crimes that offend the sensitivity of the international community.[69] Usually, the ICC exercises jurisdiction based on referrals by States who are unable or unwilling to prosecute.[70] It may also receive referrals from the Security Council, the prosecutor may also issue same *suo moto.*[71]

Articles 7 and 8 of the Rome Statute of the International Criminal Court provides for the subject matter jurisdiction of the ICC. Article 8 of the Statute define war crimes to mean,

a. Grave breaches of the Geneva Conventions of 12 August 1949;
b. Other serious violations of the laws and customs applicable in international armed conflict; and
c. In the case of an armed conflict not of an international character, serious violations of the laws and customs applicable in such conflict.[72]

Article 7 on the other hand define crimes against humanity for the purpose of the Rome Statute to mean "any act committed as part of the wide spread or systematic attacks directed against any civilian population, with knowledge of the attack." Some of the crimes under this category of breaches are 'murder; extermination; enslavement; deportation or forceful transfer of population….'[73] It is important to note that under international customary law, crimes against humanity do not require a

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[67]. This is provided in the Statute of the ICC, Article 1and paragraph 10 of the Preamble to the ICC Statute. See O Soler, 'Complementary jurisdiction and international criminal justice,' (March 2002) Vol. 84 No 845, *International Review of the Red Cross* 148. See also M Benzing, 'The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity,' (2003) Vol.3, *Max Plank UNYB* 592.

[68]. Ibid.

[69]. In principle, the ICC is seen as the successor of the ICTR and ICTY.

[70]. Statute of the ICC Article 1 provides *inter alia*: 'An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.'

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[72]. Crimes in these categories include: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful confinement, taking of hostages, declaring that no quarter will be given, using civilians as shield, etc.

[73]. See the Statute of the ICC, Article 7 (1) (a)-(k).

connection to an armed conflict.[74]

Direct individual criminal liability 'does not necessarily equate with physical perpetration. In some instances, the perpetrator may not have physical contact' with the victim.[75] Article 25 (3) (a)-(f) of the Rome Statute makes elaborate provisions on direct criminal liabilities that would confer jurisdiction on the Court to include situations where that person:

> (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
> (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
> (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
> (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
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> (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
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> (ii) Be made in the knowledge of the intention of the group to commit the crime;
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> (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
> (f) Attempt to commit a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.'

Beyond the criminalization of grave breaches against international humanitarian law and international human rights law under international law, the international criminal court is, for the international community, a permanent world's penal adjudicatory body against violators of these norms resulting in heinous crimes.

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[74]. See International Legal Protection of Human Rights in Armed Conflict, United Nations Human Rights Office to the High Commissioner, New York and Geneva, 2011, 76. Available at: *<http://Ohchr.org/.../HR_armed_conflc...>* Accessed on 24/4/2019. See also *Prosecutor v. Dusko Tadic* IT-94-I-T, Judgment (7 May 1997) Para 141.

[75]. P V Sellers, 'The Protection of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation' 14. Available at: *<www2.ohchr.org/.../Paper_ Prosecution_ o...>* accessed on 24/4/2017.

Criminal prosecution has punishment as its end. In this case the victim of crime is only satisfied that the offender has been punished by the law[76] and almost always without more, thereby leaving the victim with nothing to alleviate the harm suffered. Jurisprudentially, a conduct becomes a crime where, apart from being contrary to prohibited conducts,[77] it inflicts injury on its victim one way or the other. It would therefore not be adequate justice if the culprit is only punished for his criminal acts without more.[78] Balancing the dictates of penal laws with addressing the injury inflicted on the victim is not only restorative in outcome but implants genuine confidence and trust in victims of breaches that the penal system would meet the true ends of justice.

Emerging trends in both international and domestic criminal justice systems point to the need to achieve a balance between the punishment of the offender and the rehabilitation of the victim. This is an imperative for any society that is determined to respond to the demands of social security and cohesion using the criminal justice approach.[79] There should be a shift from dependence on the sentencing policy which places heavy reliance on the machinery of punishment to the neglect of the victim's remedy.[80] In Nigeria for instance, the two major procedural laws before now support this position.[81] Legislative mechanisms and institutional structures that support this are lacking in a majority of the third world countries. In 2014, Kenya took the bold step and enacted the Victim Protection Act.[82] According to Oji,[83] this vacuum in statutory provisions 'diminishes public interest and confidence in the administration of criminal justice,' thereby discouraging victims from approaching the courts and the perpetrators of crimes move freely instead of being made to account for their dastard acts. The reluctance and apathy by victims to invoke the criminal process against offenders may make the victims and the community to engage in self-help.[84]

This, however, is not the case with the international criminal justice system, especially with the Rome Statute that established the ICC. Even before the creation of

[76]. E A Oji, 'Compensation for Victims of Crimes in the Nigerian Criminal Justice System: the Need to Follow International Trends,' (2015) vol. 18 No. 1, *The Nigerian Law Journal* 120.
[77]. Ibid 121.
[78]. A Olatubosun, 'Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal-Victim Relationship,' (2002) volume 44 No. 2, *Journal of the Indian Law Institute* 208.
[79]. Oji, (n76) 121.
[80]. Olatubosun, (n78) 205.
[81]. See the CPA section 255, the CPC sections 356-357, the ACJA 2015 sections 319(a) and 321(a).
[82]. No. 143 (Acts No. 17) of 2014.
[83]. Oji, (n3)p121.
[84]. Olatubosun, (n78) 208.

the Court, the United Nations had in 1985 issued a declaration titled, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[85] It proposed four basic principles *inter alia*: of access to justice; restitution; compensation; and assistance.[86] These translate to what one may refer to as indices of a complete criminal justice, that is, punitive on the offender and restorative on the victim.

Compensation and restitution are compatible concepts that aim at the restoration of the liberty and family life of the victim of crime among others.[87] The jurisprudence of the ICC in relation to the welfare of victims of crime revolves around the foregoing, and it is a matter of law with the establishment of the Trust Fund for Victims in Article 79 of the Rome Statute.[88]

Full restoration of the victim back to his position prior to the commission of the crime where possible, is one of the targets of the international criminal justice system and this should be emulated by domestic criminal justice systems. Where however, full restoration is not achievable, compensation may be awarded in favour of the victim or his surviving relatives if the victim is no more.[89] Funds for this purpose are paid into the Trust Fund for Victims.

In the Nigerian criminal justice system, award of compensation[90] and the quantum has been a subject for judicial pronouncements thereby establishing the fact that our courts are enjoined to award compensation.[91] Arguing for a complete and balanced criminal justice for victims in Nigeria, Oji,[92] stressed that:

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[85]. Otherwise known as Victims Declaration. UN Doc. AREs/40/34/ (1985). Available at: <www.justice.gov.za/.../2006_compedium,> accessed on 24/4/2019.
[86]. See Oji, (n3) 143-4.
[87]. Ibid 128.
[88]. In Germany, after the Nazi slavery, German Companies that committed crimes against their former Nazi's slaves developed a Fund to pay compensation for their former Nazi's slaves than being confronted with many law suits. The agreement to establish a Fund was called 'Princz Agreement' after the case of *Princz v. Federal Republic of Germany*, 26 F. 3d 1166, 1176-85 (D.D. Cir. 1994).
[89]. Oji, (n3) 127.
[90]. See the case of *Tsofoli v. Commissioner of Police,* (1971) NSCC 330 at 333, where the said that: '… in every case, the matter of compensation is governed by statute, and there is no inherent power in any court to award compensation,' cited by Oji, ibid 143.
[91]. See the case of *Ngwu Kalu v. The State* (1988)4 NWLR 503 at 513 where the court remarked that 'it has to be emphasized that in these cases of murder, justice must also be done to the victim whose life has been cruelly cut short. Indeed, this Court has said it on several occasions.' Lamenting the imperativeness of compensation to victims of crimes, Justice Aniagolu JSC in the case of *Nwafor Okegbu v. The State,* (1979)1 SC 1, stated that, 'where else would this be more appropriate than a tragic case like this in which a young body with a promising future was unceremoniously sent to the grave by hoodlums.'
[92]. Oji, (n76) 143.

> The judiciary should be proactive and use all available legislation to award victims of crime adequate compensation so that the victim gets something out of the criminal justice system and not just the 'satisfaction' of seeing the offender punished.

The Kenyan approach using specific legislation to take care of the interest of victims of crime is commendable. Section 15 of the Kenyan Victim Protection Act expressly provides that a victim has a right to restorative justice. Award of reparation is no longer strange to the African criminal justice system following the conviction of *Hissene Habre* of Chad by the Extraordinary African Chambers on the 30 May 2016. On the 29 July 2016, barely two months afterwards, substantial reparation was awarded to victims by the court against *Hissene*.[93]

In addition the rights of victims of crime to participate in the trial and to protection of their lives together with their witnesses are enshrined in the Rome Statute in Article 68. The article further provides for the mechanisms for the realisation of these rights. Paragraph one provides that the victim shall be entitled to protection generally. It states that the Court shall take appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses. Usually the court takes into consideration relevant factors such as the age, gender, health, nature of the crime among others in ensuring the safety and wellbeing of victims.[94]

III. The Interplay between the Norms

Principles of territorial sovereignty in the application of human rights found its support in the traditional view that human rights law can only be applied by a state within its territorial limits. Most human rights provisions do not only protect citizens of a particular state but everyone who qualifies as a right bearer irrespective of citizenship. Even in such situations, reference would be made to the particular instrument the right in question is contained. For international humanitarian law, the issue of territorial limitations in its application is of no moment, the obligation and

[93]. SAE Hogestol, 'The Habre Judgment at the Extraordinary African Chambers: A Singular Victory in the Fight Against Impunity' (October 2016) Vol. 38 No.3, *Nordic Journal Of Human Right* 147.
[94] The Statute of the ICC provides for the establishment by the Registrar of the Court, the 'Victims and Witnesses Unit' in article 43(6) of the ICC Statute. The Unit is to advise the prosecutor and the court on appropriate protective measures, security arrangements, counselling and assistance.

protections contained in this body of rules would apply whenever and wherever there is an outbreak of armed conflict.

The old notion that human rights law only addresses the interest of group of persons as opposed to IHL on individuals might account for its territorial proclivity. Whatever it may be, the complexities of modern armed conflicts have broken this wall of disparity in the sphere of applicability thus down playing on their territorial nuances.[95] Thus, its sphere of application is now extra-territorial just as international humanitarian law. International Criminal Law on its part criminalizes violations of the above two streams of rules that are considered gross in magnitude and effect in relation to human dignity and general human sensibility. Such violations are either punished by municipal courts or by the ICC through its complementary jurisdiction of local courts to punish heinous crimes; or by a specially arranged court or tribunal properly constituted by the appropriate constitutive instrument. For example, the Extraordinary African Chambers, a hybrid Court established to try the former Chadian dictator, *Hissène Habré*[96] who was charged for grave breaches of the Geneva Conventions and human rights law provisions.[97]

His offences ranged from the practice of murder, summary executions, and kidnapping followed by enforced disappearance and torture, amounting to crimes against humanity, against the Hadjerai and Zaghawa ethnic groups, the people of southern Chad and political opponents; to torture; and to war crimes of murder, torture, unlawful transfer and unlawful confinement, and violence to life and physical well-being.[98] Interestingly, the Extraordinary African Chamber trial of Hissene was conducted 'unbehalf of Africa.' He is the first African leader to be convicted before a domestic court of another country.[99]

Earlier, the Special Court for Sierra-Leone was established by an Agreement between the United Nations and the Government of Sierra-Leone.[100] According to article 1(1) of the Statute of the Court, the Court is to:

> … prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law

[95] C Droege, 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2007) Vol. 40 No. 2, *Israel Law Review* 327.
[96] *Prosecutor v Hessein Habre* Chambre Africaine Extraordinaire D'Assises. Available at <https://ihl-data-bases.icrc.org/applic/ihl/ihl-nat.nsf/caselaw>. Accessed on 9/12/2019.
[97] The summary of the charges against Hissene were: crime against humanity; war crimes; and torture, committed during his eight years rule (1982-90).
[98]. All these were considered grave breaches of international humanitarian law.
[99]. Hogestol, (n93) 147.
[100]. The Court was established pursuant to Security Council resolution 1315 (2000) of 14 August 2000.

> committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

For an effective protection measures for victims of armed conflicts, the interplay or complementarity of these legal regimes is not only desirable but imperative. There is no human rights provision considered fundamental that cannot be found in IHL provisions and the statute of the ICC.

Overlap between International Human Rights Law and IHL can be seen in their basic provisions. For example, the taking of human life by extra-judicial means is prohibited by both regimes and the statutes of the ICC and where this happen those responsible are individually held accountable. The right to life has attained a peremptory status of customary international law prohibiting the taking of human life under circumstances that are not justifiable in law.[101] As the lawyers' law, IHRL has positively influenced almost every field of law with its basic protective norms.[102] For their basic nature and relevance to human existence, derogation is not allowed on some of them at all. Where allowable, it must meet two conditions. Firstly, it must strictly comply with relevant laws under which it may be justified and secondly it must be shown to be in the best interest of the right bearer.[103] For example, the Committee against Torture, places obligation on the State parties to '…recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict….' Events and circumstances are not to constitute impediments to the enjoyment of the right to freedom from torture or degrading treatment.[104] Other rights in this category include the right to life,[105] arbitrary arrest and imprisonment[106] right to dignity[107], right to family[108] *etcetera*.

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[101]. J M Henckaerts, 'Study on Customary International Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict' (March 2005) Vol. 87 No.857, *International Review of the Red Cross* 195.
[102]. Ibid.
[103]. H J Heintze, 'On the Relationship between Human Rights Law Protection and International Humanitarian Law' (2004) Vol.86 No.856 *International Review of the Red Cross,* 791.
[104]See ICCPR, Art 7 and ACHPR Art. 5
[105] Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by the General Assembly Resolution 39/46 of 10 December 1984. The Convention entered into force on 26 June 1987, in accordance with article 27 (1).
[106] The CAT, Article 1 contains the definition of torture
[107] IT-96-23 and 23/1-A-T (22 February 2001)
[108] Statute of the ICC, ARTICLE 7 (2) (e)

This right has its origin in the United Nations Universal Declaration of Human Rights of 1948 wherein article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The International Covenant on Civil and Political Rights, believed to be a codification[109] of the civil and political rights contained in the Universal Declaration, simply reproduced the definition of torture by the 1948 Declaration and added a prohibition against scientific or medical experimentation without the consent of the victim.[110] The two definitions are fluid and lacking in clarity for failing to state what constitute torture. However, the Convention against Torture,[111] for short, a human rights instrument contains a more detailed definition[112] which was adopted in part by the International Tribunal in *Prosecutor v Kunarac, etal*.[113] The Tribunal in attempting a distinction on the meaning of torture under the two norms held the following to constitute torture under international humanitarian law:

> The infliction, by act or omission, of severe pain or suffering whether physical or mental; the act or omission must be intentional; the act or omission must aim at obtaining information or a confession, or at punishing, intimidating or accepting the victim or a third person, or at discriminating on any ground against the victim or a third person.

Both norms aim at guaranteeing the dignity of the human person at all time. Armed conflict situation is not an excuse for a State or a party to the conflict to subject any one to torture in whatever form because the obligation to respect the dignity of the human person inures at all time. The ICC which is established to try crimes against international law predominantly committed during armed conflicts similarly define torture to mean "…the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions".[114]

Far back in 1863 torture was declared a non-military necessity. Article 16 of

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[109]. Oraa, (n46) 25.

[110] See ICCPR, Art. 7 and ACHPR Art. 5.

[111]. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. The Convention entered into force on 26 June 1987, in accordance with Article 27 (1).

[112]. The CAT, Article 1 contains the definition of torture.

[113] IT-96-23 and 23/1-A-T (22 February 2001).

[114] Statute of the ICC, article 7(2)(e).

the *Lieber* Code of 1863 in addressing the issue of torture provided that "Military necessity does not admit of cruelty – that is, the infliction of suffering for the sake of suffering or for revenge … nor of torture to extort confessions…." A violation of this ambivalent norm carries criminal consequences as same is considered to be a grave breach against international humanitarian law.[115] Education of the relevant agencies and authorities on the contents and tenets of IHL is usually undertaken in peace time in order to ensure effective application and maximum benefits by all concerned in the event of an outbreak of armed conflict. Once there is an outbreak of armed hostilities that meets the threshold of articles 2 and 3 of the four Geneva Conventions, the rules of IHL would apply and continue to apply even after actual armed hostilities until every single victim of the situation have been restored to the *status quo* where possible and practicable.[116] However, because the United Nations Charter abhors the use of force and conducts that are inconsistent with the letters and spirit of the Charter touching on world peace and security, Common Article 2 armed conflicts are now very rare.[117]

Vulnerable groups, especially children and women, both humanitarian law and human rights law regimes make adequate provisions for their protections and welfare. Article 4(3) paragraphs a-e of AP II provide for safeguards of their rights. Paragraph 'c' which is considered a direct replica of article 38 of the Convention on the Rights of the Child[118] and articles 1 and 2 of the Optional Protocol[119] to the Convention particularly prohibits the recruitment of children by parties to an armed conflict. Recruitment of under aged children, taken into account the age benchmarks in the above instruments and the Statutes of the ICC including deportation of civilian population are prohibited and therefore criminalized under articles 7(1)(d) and 8(b) (xxvi) & (e) (vii) of the ICC Statutes.

Sexual exploitation of women is deprecated by both humanitarian law and human rights law and is termed a grave breach of these norms and thereby punishable

[115] See Statute of the ICC, Article 8(2) (a)(ii).
[116] GC III, Articles 118 and 119.
[117] United Nations Charter, Article 2(4).
[118] Convention on the Rights of the Child. The Convention was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, in accordance with article 49.
[119] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. The Protocol was adopted and opened for signature, ratification and accession by General Assembly resolution *A/RES/54/263 of 25 May 2000*, and entered into force on 12 February 2002.

under articles 7(1)(g) and 8 (2)(a)-(f) of the Rome Statutes as crime against humanity and war crime respectively. This cannot be considered mere repetition of rights by these instruments especially when viewed against the backdrop of their fundamental nature. A cursory look at the provisions of articles 7 and 8 of the Rome Statute show that the acts criminalized therein are grave violations of basic and fundamental rights that are contained in human rights instruments. A numeration of some of these basic rights has been achieved by humanitarian law instruments.

The implications of these mix and interplay are threefold. In the first place, mankind is distinguishable from other lives because they possess certain rights that are by their origin and nature innate or inborn and therefore should not be separated from him. Secondly, these rights must not be denied under any circumstances except in circumstances strictly allowed by law if man must retain his dignity of humanity. Allowable exceptions or limitations must conform with the law, for example in time of public emergency it must amount to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed, and same must be relaxed as soon as the situation eases[120] off; and thirdly no legal rule gives rights, they only recognize and guarantee God given rights and freedoms, therefore just as you cannot give what you do not have, it will be criminal for anyone to take away what he has no power to give. This perspective of the natural law theory forms the prop for the universalization and internationalization of human rights. Relativism as a concept does not negate the natural law theory, it emphasizes that the cultural and religious variations of the States should be factored into the human rights movement. Respect, protection and promotion of human rights by all nations of the world have been acknowledged to be one sure way of consolidating on world peace and security just before the end of the WW II by Truman when he said:

> The Charter of the UN is dedicated to the achievement and observance of human rights and fundamental freedoms, unless we can attain these objectives for all men and women everywhere without regard to race, language or religion one cannot have permanent peace and security in the world.[121]

However, the exceptions to this prohibition are contained in relevant national and international penal instruments. For example, a detailed guide to a generally

[120]. GC III, Article 118.

[121] H S Truman was the 33rd US President in an address at the San Francisco Conference in 1944?

allowable circumstance for derogation is contained in the General Comment of the UN on article 4 of the ICCPR which brings to the fore the imperative synergy between the rules of IHL and that of HRL in the protection of the rights of any-one caught in the web of an armed conflict thus:

> During armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and 5, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if, and to the extent that, the situation constitutes a threat to the life of the nation.

IV Conclusion

The right to the dignity of the human person has become a marker with which the civility of the nations of the world is assessed. From the Divine law dogmas to Natural law tenets and to the era of legal positivism, the basic rights of individuals stood tall and sacrosanct. In the first two periods, man was considered a being, born with certain rights that their violation, even by the sovereign was forbidden. In legal positivism, enactment of legislation by bodies duly constituted for the purpose becomes the in thing. It separated legal rules from moralities, with the postulation that the two streams flow in distinct parallel courses without meeting. But because there is actually no piece of legislation that is completely devoid of a modicum of morality, the sensitivity and human consciousness in the protection and preservation of the dignity of the human person even in the worst of situations are not only heightened but firmly entrenched in civilized consciences.

Armed conflict is as old as man himself. Through the ages, the notion of protection of the rights of victims of armed conflict was viewed in different light at different times of human civilization. What solely began with the protection of combatants turned prisoners of war witnessed a robust and broadened consideration of all possible victims, whether actively involved in armed hostilities or not in the 1949 four Geneva Conventions and their 1977 Additional Protocols. These treaties considered a perfect reflection of international humanitarian law as of today, represents a combination of two notions, one of a legal nature and the other moral thereby opening an era in which man and the principles of humanity come first.

In 1945 the United Nations Charter was signed. It gave human rights its current name. Though nebulous in its provisions on human rights and fundamental freedoms, it was nevertheless seminal as subsequent developments showed. Consequently, the Universal Declaration of Human Rights was enacted in 1948 which was codified in 1966. In evolution and development, the establishment of the Nuremberg and Tokyo Military Tribunals, the ICTY (1993) and ICTR (1994) provided the necessary impetus toward putting in place a world criminal court and criminal justice system for the international community. This climaxed in the signing of the Rome Statute in 1998. Today, and for the benefit of man and humanity in both peace and armed conflict times, a conflation of these regimes is significantly advancing the avowed dignity of man and the principles of humanity in a depraved world.