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THE QUESTION OF ARMED CONFLICTS IN SUB-SAHARAN AFRICA AND THE INTERNATIONAL LAW OF WAR

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by
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To my parents
Jacob Onyoyo and Magdaline Akinyi
for their great love and care,
And to my wife Agatha and daughter
Stephanie Achola for their great endurance.
May their concern and strong sense of education
be a motivation for us.

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PREFACE

While I was publishing this work, the United Nations Organization, through its Secretary-General declared that the year 2000 would be the International Year for the Culture of Peace and Non-Violence.[1] With the same motivation I have selected to publish the third chapter of the whole dissertation entitled "The Question of Armed Conflicts in Sub-Saharan Africa and the International Law of War". The reason of this choice is simply its relevance with the recurrent armed conflicts in issue and their impacts on human development in Africa.

This publication gears towards further reading on the nature of civil war in the Sub-Saharan Region and orientates our reflections towards the culture of peace and non-violence for the sake of human development. This publication is an opening towards the world mega peace project for restoring peace and harmony in the world.

What is described in this publication explains the major causes of the armed conflicts in the region. It provides some proofs of facts taken from a few concrete examples of African war. In order to avoid limiting the discussion to a theoretical analysis and to give a critical evaluation of the causes of such armed conflicts, some of the major weaknesses are pointed out and reviewed in the of International Law of War.

Furthermore, it is hoped that this publication may provide a basis for deeper research into the problem of civil war and guide the "international interlocutors of peace" towards an immediate solution of mass destruction of humanity in the Sub-Saharan Africa. Reflecting on

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[1] Resolution 52/15 adopted on 20 November 1997 by the UN General Assembly.

the causes of armed conflicts, will facilitate the international research for lasting peace in the Continent.

LIST OF ABBREVIATIONS AND SYMBOLS

I. General Abbreviations and Symbols

AA.VV.	Auteurs Variés (Various Authors)
AD	*Anno Domini*
Art.	Article
Cfr.	*Confer* /Compare
Co.	Company
e.g.	*Exempli gratia* / for example
etc.	*et cetera*
i.e.	*id est* / that is to say
Ibid.	(*Ibidem*) same author same work quoted above
Idem, (Eadem)	Same author
Ltd.	Limited
Op. cit.	*Opus citatum*

II. Organisations, Conferences, Missions, Movements

AAPC	All African People's Conference
ACHPR	African Charter of Human and People's Rights
ACP	Africa Carribean Pacific
ACRA	African Conflict Resolution Act
ADB	African Development Bank
AEF	Afrique Equatoriale Française
AFRO	African Regional Organisation
AI	Amnesty International
ALC	African Liberation Committee
AMECEA	Association of Members of the Episcopal Conference of Eastern Africa
AMU	Arab and Mahgreb Union
ANC	African National Congress
AOF	Afrique Occidentale Française

ASAS	Association of Southern African States
B.E.A.	British East Africa
BSAC	British South African Company
CACEU	Central African Customs and Economic Union
CAO	Committee of African Organisations
CEPGL	Economic Community of the Great Lakes Countries
CFS	Congo Free State
CIL	Commission for the International Law
CNDD	Conseil National pour la Défense de la Démocratie au Burundi
CSSDCA	Conference on Security Stability Development and Cooperation in Africa
Dem. Rep. of Congo	Democratic Republic of Congo
ECA	Economic Commission for Africa
ECCAS	Economic Community for the Central African States
ECOMOG	Ceasefire Monitoring Group of ECOWAS
ECOWAS	Economic Community of Western African States
EMIROAF	Ethnic Minority Rights Organisation of Africa
FAR	Forces Armées Rwandaises
FIDES	Fonds d'Investissement pour le Développement Economique et Social
FNLA	Frente Nacional de Libertação de Angola
FRELIMO	Frente de Libertação de Mozambique
HURIDOCS	Human Rights Information Documentation Systems (International)
I.A.E.A.	International Atomic Energy Agency
I.A.I.	The International African Institute
I.C.J.	International Court of Justice
I.L.A.	International Law Association
I.L.C.	International Law Commission
I.A.M.O.	Inter-African and Malagasy States Organization
I.B.E.A.C.	Imperial British East African Company
I.C.C.	International Criminal Court
I.C.R.C.	International Committee of the Red Cross
I.D.A.	International Development Association
I.G.A.D.D.	Inter-Governmental Authority on Drought and Development
I.M.F.	International Monetary Fund
I.N.N.	International Negotiation Network
L.N.	League of Nations

L.A.S.	League of Arab States
MINUAR	Mission des Nations Unies au Rwanda
MINUAR	UN Mission of Assistance to Rwanda
MINURCA	UN Mission in the Central African Republic
MONUOR	Technical UN Mission sent to Uganda and Rwanda
MOSOP	Movement for the Survival of the Ogoni People
M.P.L.A.	Movimento Popular de Libertação de Angola
N.F.D.	North Frontier District
NGO	Non-Governmental Organisation
N.M.O.G.	Neutral Military Observer Group (Rwanda)
N.P.T.	Non Proliferation Treaty
N.R.A.	National Resistance Army
N.R.M.	National Resistance Movement
O.A.S.	Organisation of American States
O.A.U.	Organisation of African Unity
OMIB	OAU Mission in Burundi
ORSOM	Office de la Recherche Scientifique d'Outre-Mer
P.C.I.J.	Permanent Court of International Justice
P.U.G.	Pontificia Universitas Gregoriana
P.U.L.	Pontificia Universitas Lateranensis
PAC	Pan-African Congress
PAFMECA	The Pan African Freedom Movement for East and Central Africa (South Africa)
R.C.G.	Red Cross Geneva
R.C.I.	Red Cross International
R.G.S.	The Royal Geographical Society
R.P.F.	Rwandan Patriotic Front
S.C.	Security Council
S.I.O.I.	Società Italiana per l'Organizzazione Internazionale
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
SECAM	Symposium of Episcopal Conferences of Africa and Madagascar
SNF	Somali National Front
SWANLIF	South West African National Liberation Front (SWAPO & SWANU)
SWANU	South West Africa Union
SWAPO	South West Africa People's Organisation
UAM	Union Africaine et Malgache

UAS	Union of African States
UMSA	Unity Movement in South Africa
UN	United Nations
UNAVEM	UN Angola Verification Missions
UNCHR	United Nations Charter of Human Rights
UNDPI	UN Department of Public Information
UNECA	United Nations Economic Commission for Africa
UNESCO	United Nations Educational and Scientific and Cultural Organisation
UNIAS	Union of Non Independent African States
Unidroit	International Institute for the Unification of Private Law
UNITA	União Nacional para a Independência Total de Angola
UNITAF	UN International Task Force
UNO	United Nations Organisation
UNOSOM	United Nations Organisation in Somalia
UNPOS	UN Political Office for Somalia
UNTAG	UN Transition Assistance Group in Namibia
UNUC	United Nations Operations in the Congo
UPA	União das Populações da Angola
UPC	Union des Populations du Cameroun
USIP	United States Institute of Peace
WEU	Western European Union

III. Periodicals & Reviews

AAS	Acta Apostolicae Sedis
AR	Africa Recovery
ASIL	American Society of International Law
AJIL	American Journal of International Law
AJCPMR	African Journal on Conflict Prevention Management and Resolution
DHA	UN Department of Humanitarian Affairs
JDI	Journal du Droit International
HRLJ	Human Rights Law Journal
PIL	Public International Law
UNIDIR	United Nations Institute for Disarmament Research-Geneva

INTRODUCTION

The phenomenon of war has created within the international law a special attention especially within the period that followed the outbreak of the Second World War. Nations have signed Peace Treaties to outlaw the application of war in the international disputes. Despite several attempts to abolish war, the world has not managed to stop nations from fighting. As the need for eradicating the application of war to disputes increases, the need to have the Rule of law to control its outbreak, is equally in progress.

The International Law of War begins from the need to restore peace. The Peace Treaty of Westphalia in 1648, the Congress of Vienna that settled the Napoleonic wars in 1815, the Paris Conference of 1919 that settled the Great First World War; the Treaty of Versailles[2], and finally the Conference of San Francisco in 1945 that settled the Great Second World War, are good exemplaries of international effort to maintain international peace and security world wide.

War and peace appear as the key words in the preamble of the Charter of the United Nations as nations show their determination to save succeeding generations from the scourge of war which twice has brought untold sorrow to mankind[3]. The same Members of the UN have reaffirmed faith in fundamental human rights, in the dignity and worth of the human person ...Likewise the study of the question of war in the Sub-Saharan Africa begins from the same motivation[4].

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[2] D. W. BOWETT, *The Law of International Institutions*, Stevens & sons, London, 1982, p. 2.

[3] PREAMBLE OF THE UN CHARTER OF 1945.

[4] PREAMBLE OF THE UN CHARTER OF 1945.

The attempt to down play the occurrences of armed conflicts is in close link with the promotion and protection of human rights during the combat. It is a fact that the phenomenon of war in general has brought a situation of mass destruction of humanity in the Sub-Saharan Africa within a short period of time

Motivation

War in general and Civil War in particular is a hindrance to human development. The region known as Sub-Saharan Africa is known for a long time as the part of the world with the highest number of humanitarian cases of human suffering, hereafter, considered as against the principle of "Minimum Humanitarian Standards". Human development in the region is obstructed by the recurrent armed conflicts and ethnic clashes, which create an atmosphere of insecurity in the civilian populations.

It is our professional motivation to study the phenomenon of civil war and analyse possible application of force of law that would establish peace and restore hope among the African civil populations. Given that the majority of the war victims are the vulnerable civilians namely, women, children and the aged, who usually lose their property, relatives, friends and their lives in an endless fight, we are motivated to embark on the application of justice.

Africa has had great wars that the world tends to ignore. This dissertation addresses a number of questions regarding the war in Mozambique involving the FRELIMO, RENAMO and the government forces that was concluded in 1994 with General Peace Agreement[5] ; the war in Angola, between military and revolutionary movements such as UNITA, FNLA, and MPLA; war of Liberia; war of Somalia; war of Ethiopia; war of Uganda; war of the Great Lakes' Region; war of Nigeria; and war of the Republic of Central Africa.

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[5] 4 October 1992, Peace Accord was signed in Rome by the President of the Republic of Mozambique and the Leader of RENAMO. The UN Peace-keeping Operation in Mozambique established United Nations Operation in Mozambique (UNOM) to facilitate the actualization of the Agreement, to control and verify the Ceasefire, to monitor the withdrawal of foreign forces and to guarantee safe corridors for transportation. UNOM lost 24 personnel and the operation lasted 2 years.

Choice of the Topic

The expression that says, *home is always the best*, has motivated us to speculate the need for peace in the African continent at large and the Sub-Saharan region in particular. Of course war in the region has created a great interest of the International Community.

The element of war in the society can be fitted within the legal framework and its destructive aspects can be understood in a normative context. Therefore, we are inspired by the international struggle for lasting peace to write on "The Question of War in the Sub-Saharan Africa and the International Law of War".

The inspiration of chosing the above topic is merely a quest to underline the effect the traditional international law of war ought to have on the question of war in the Sub-Saharan Africa.

Interest and Originality of the Work

This work adopts two aspects, both theoretical and practical. Being a legal research, the work will review the most relevant sets of law that ought to operate during armed conflicts and will consult law doctrines in order to obtain certitude in the international deliberations. The interest is to consider closely, international bilateral and multilateral Peace Treaties, Peace Accords, Resolutions, Armstices, Conventions and Codes of Conduct whose scope is to eradicate war and all elements that may lead to its outbreak.

Since a doctoral dissertation does not limit itself on the theories, our work will make several references to practical violations of the International Law of War and will put in evidence the traces of facts of some selected events of war that have taken place in Sub-Saharan Africa. This move from theoreticism to pragmaticism explains the originality of the work.

It is a fact that a number of authors that have written about the topic are non-Africans and most of their legal speculations are based on abstract law. Virtually very little has been written about the International Law of War in reference to the question of the recurrent African civil war.

Our comparative legal approach is a way of studying the elements of African wars and elevating such wars to the international level. We have tried our level best to be as much original as possible in our approach despite the fact that being a scientific work we cannot avoid consulting various views and opinions of international jurists who also have discussed the same issue.

Difficulty

Evaluating main sources of the International Law of War, it is evident that areas dealing with non-international war or civil war have been less considered in depth. Practically very little has been written concerning the force of law and the African civil war. Due to this limitation our work has inclined heavily on war materials concerning Euro-American wars. The rights of war victims and the obligations binding on the States to guarantee sufficient protection to the civilians during the hostilities have been more discussed by the European and American Jurists than African Jurists.

We humbly admit that this work does not exhaust the subject. Albeit the techniques applied to this approach have maintained the originality of the work and its legal characteristics. This has been done as a comparative study starting from the already well-established International Law of War and its effects on the African region. Convincingly, this dissertation would have been different if, as many African Jurists as possible, had done a thorough work on the legal aspects of the African Civil Wars.

In regard to the fundamental standards of humanity, African civil wars are studied under the context of the International Humanitarian Law and Human Rights Law. We admit that still it is difficult to apply international approach to the question of war in Africa. The difficulty is the complications that such war entails and the risks in applying internationally approved rules of law. In response to such difficulty this study adopts a comparative and analogical method as a way of approaching the question under discussion.

We declare here that it is not an easy task to engage a thorough scientific evaluation of the issue since we did not find many relevant sources. Many authors who have written about the African armed

conflicts seem to refer more to the political perspective of such conflicts than the legal perspective. This limits the legal evaluation of the topic and moves our research slightly towards the international politics rather than international law.

We admit that the difficulty in finding relevant sources have also helped us to be as more original as possible since not many researchers have delved into the matter. For this we affirm that the question of armed conflicts in the Sub-Saharan Africa in the context of the International Humanitarian Law is a new issue. Our approach investigates into the new legal discourses within the international community and new bias in the protection of human dignity. This will include *inter alia,* the question of human development in connection with the phenomenon of war, studying the legal policies of the UN and its Special Agencies in question. The effect of armed conflicts in Africa today is affecting many areas of concern that will not be covered directly in this research but will provide us with new insights for handling the issue under discussion.

Methodology

As any other professional research of international legal system, more priority has been given to systematic methodology. The formulation of the thesis, collection of working instruments, composition of the thesis and writing the thesis have been adopted as framework. Critical analysis of the found materials characterises this work and therefore, renders it a scientific work.

The methodology pursued in this dissertation is that which is approved by the Pontifical Laterans University in Rome and the whole scheme is recommended by the professors of law. Then, the comparative approach to the question of war and the international law of war is adopted as the most accepted approach to legal research.

Articulation

Current civil wars in the Sub-Saharan Africa are characterised by a complex of factors that render them more sophisticated and more difficult to resolve. In regard to such complications the methodology has highlighted a historical analysis of the armed conflicts in the

continent maintaining the need to find the right rules to apply hereinafter. It is difficult to understand African civil wars without analysing in details the hostilities during the pre-colonial time, the colonial time and the post-colonial time. It is in this line that our approach seeks to evaluate the actual question of war in the region.

Our analysis tends, therefore, to analyse some evident violations of the International Law of War and seeks to evaluate the international approaches that have already been applied in similar cases.

A special regard is given to the International Humanitarian Law since it is the set of international law that deals directly with the tutelary of human rights (of soldiers) during armed conflicts. The research highlights the UN peacekeeping operations and the approaches thereto, that seek to stop recource to force. All this is done in order to focus on the protection of human rights during civil wars. In 1997 the UN Secretary General was requested by the Security Council to provide a comprehensive response to the problem of war in the African continent[6].

In the same context, the OAU General Secretary affirmed that conflicts have caused irreparable loss, damage and destruction to the continent and people, and acute humanitarian tragedies[7] have occurred.

The question of war in the Sub-Saharan Africa and the International Law of War is a topic that requires a lot of geographical precision. Our area covers the known Sub-Saharan Africa where a lot of humanitarian sufferings have concentrated.

Division of the Work

Our work will be divided into five main working chapters. The first chapter that opens the work, is framed around the historical profile of the question of war in the Sub-Saharan Africa. This deals *inter alia*, with historical traces of recourse to war. The second chapter is based on the definition of important legal terms that are used in the

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[6] M. A. NOVICKI, "UN Security Council Focuses Spotlight on African Conflicts", in *Africa Recovery*, Vol. 11, 2 (October 1997), p. 1.

[7] C. KATSOURIS, "Sharp Fall in Resource Flows to Africa", in *Africa Recovery*, Vol. 11, 2 (October 1997), p. 5.

International Law of War. This will be followed by the third chapter whose focus is on the root causes of armed conflicts in the Sub-Saharan region. The fourth chapter will focus on the international community and the interventions in the problems of armed conflicts. The fifth chapter, which is the final, is an analytical evaluation of rules applied in cases of war.

Our scientific approach is based on the legal perspective of the problem of armed conflicts. In other words the problem of armed conflicts in the Central region of the Sub-Saharan Africa is evaluated within the limits of International Humanitarian Law and the Human Rights Law. The research paper will debate the historical development of the International Law of War including the world well known tragedies of war. The reason is that the problem of armed conflicts that scourge Africa today is traced into the past history when nations were crowning the recourse to force as a solution to their disputes.

Our area of research will provide critical analysis of the phenomenon of war in African region and frame it within the limits of the International Humanitarian Law. Consequently, relevant international legal instruments will be quoted to render the work more scientific.

Since the present armed conflicts is a question of the history of the African people, emphasis is given to the historical profile of aggression. The reason is that history provides the basis for research on African conflicts. Therefore, the research work will quote some specific events of armed conflicts in the African area, and will attempt to review them from legal point of view.

CAUSES OF AFRICAN ARMED CONFLICTS

Conflicts by their nature do not disappear simply through the invisible hand of God. Their causes and effects are always many and varied; their histories more complex than we normally think; their solutions more challenging than a remote observer could ever imagine."[8]

Introduction

It is a fact of evidence to affirm that armed conflicts that exist in many independent African States are caused by varied factors. Due to large causal variations of armed conflicts and the need to be as precise as possible, the chapter is divided into two areas of study: internal causes; and external causes of the alleged armed conflicts.

Each of these types of causes has historical trends that can be traced through various stages of development of the African people from loose *tribal states,* into the modern independent States. African people had conflicts even before the coming of European Imperial Powers to the Continent and history teaches us about the causes of those conflicts. At that time, most known causes were not similar to the causes of the armed conflicts which took place elsewhere especially, in Europe. African armed conflicts consisted of inter *tribal-states* disputes. Disputes over land, dispute over pasture lands, and conquests for power.

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[8] C. J. BAKWESEGHA, "The Role of the Organisation of African Unity in Conflict Prevention, Management and Resolution in the Context of the Political Evolution of Africa", in *African Journal on: Conflict Prevention, Management, and Resolution*, OAU Conflict Management Division, Addis Abeba, Vol.1, 1 (January-April, 1997), p. 5.

The historical profile of armed conflicts in Sub-Saharan Africa and the International Law of War develop from different backgrounds. For instance, the International Law of War in Europe and in America. In such a regard, this study of causes gives an in-depth exposé of the specific causes of present African armed conflicts and delineates their compatibility with the principles of the International Law of War.

The causes of armed conflicts in general are evaluated both as arbitrary violations of the normative principles of international humanitarian law and as scarce respect for human rights; these measures being the *de jure* principles which from the basis for decisions by the international courtes such as those within the United Nations Organization. Further, such laws and rights are appropriately applied, in terms of human dignity, during times of armed conflicts as well as in times of peace.

The scourge of conflicts within the Sub-Saharan region of Africa, in the first place, contributes a great deal to the precarious socio-economic situation in the region. It is correct to admit that the taking up of arms is the main cause of poverty, misery, and ill-being for the majority of African people in general. Such use of force has not only brought about killing and maiming but it has divided families and in turn, has caused an enormous displacement of persons throughout the continent.

Causes of war are determined by different ways in which war has been conceived in human history. For instance, in an historical analysis of the African armed conflicts we can see how the expansion of empires resulted into some terrible conflicts in the ancient Africa. It was the desire of Western Imperial Powers to use force to conquer and to subdue African territories. The ancient mentality of conquering nations, reducing them to subjects is still present in some independent States in the Sub-Saharan region of Africa. An example of this ancient method of conquering a nation is presented in the conflicts that are presently involving the countries of the Great Lakes region in central Africa.[9]

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[9] Great Lakes Region also known as *Convention portant création de la Communauté Economique et Monétaire des Pays des Grands Lacs* (CEPGL) is a sub-regional convention establishing an economic community among States that share great lakes in central Africa. The agreement includes judiciary civil and criminal acts among the member States. The economic community of the countries of the Great Lakes region was instituted during the Summit between the three States, Democratic Republic of Congo,

Under the the principle of self-determination of people military occupation of foreign territories is considered a violation of international law,[10] and it is one of the major threats to international peace and security between States in the Sub-Saharan Africa. The *de facto* civilians that are in the occupied lands find themselves conditioned to respect the authority imposed upon them. An example is the military occupation of the eastern part of the Democratic Republic of Congo by rebel groups. In several cases the authority is not the consequence of the decision and will of the citizens but it is an imposed power that people have either to accept or tolerate.

The approach to the study of causes of the armed conflicts in the Sub-Saharan Africa is in close link with the actual criticisms of the human suffering and frequent violation of the International Law of War, whose aim is to protect human rights of the combatants and civilians.

1 Internal Causes of Armed Conflicts

It would be wrong to review the causes of armed conflicts in Africa while excluding their historical and socio-economic dimensions. Historical and socio-economic dimensions are powerful forces that underly most armed conflicts on the African continent. It is evident that internal socio-cultural factors also play a role in crisis as in selected cases which are internationally discussed namely: the cases of the Great Lakes region; the Republic of Sudan; Somalia; and Liberia.

Arguing it from the same perspective of socio-cultural foundations, Ryan Van Eijk holds that most African societies are organised vertically and not horizontally. According to him there is no horizontal patterns of solidarity in the Sub-Saharan Africa.[11] However,

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Rwanda and Burundi held at Goma in 1967, at Bujumbura 1969 and 1974 then at Bukavu in 1975. Cfr. P. PENNETTA, *Le Organizzazioni Internazionali dei paesi in via di Sviluppo*, Vol. I, Cacucci Editore, Bari, Italy, 1998, pp. 179f.

[10] Cfr General Assembly resolution 1514 (XV) of 14 December 1960 and pre-United Nations international doctrines on the Sovereignty and territoriality of a State.

[11] RYAN VAN EIJK, "The United Nations and the Reconstruction of Collapsed States in Africa", in *The African Journal of International and Comparative Law*, Vol. 9, 1997, The African Society of International and Comparative Law, London, p. 573.

Van Eijk's views are limited particularly to the political situations in the dictatorial military regimes such as that in Burundi, yet from his argumentation, to conclude that there is no horizontal solidarity in the warring States in Africa only because civil populations in Africa usually live in harmony with each other in form of the *tribal-states,* would be to err by over-generalization.

There is a proof that horizontal solidarity exists in *tribal-states* which still survive and which affect the socio-political structures in the independent African States. Every *tribal-state* is structured in such a way that there is always an authority whose function is to ensure security to its subjects. It was in feudal societies, wherein, for example, the authority was in charge of the territory; this was the case of kingship (or feudalism) in Baganda, or Banyarwanda Kingdom in the 18th Century. The organs of the authority functioned efficiently and there were rules to be respected by all.

Having an effective authority, traditional societies (to which we shall hereafter refer to as *tribe-states*), managed to maintain certain order and in this respect factors that would lead populations into fighting were placed under control of the leader. For instance, in Baganda kingdom, nobody could declare a state of war against another group except the Kabaka (the king). It was the king to give official order to the army to attack their enemy group using the force of arms. Likewise he was to be the one to terminate declare a ceasefire and proclaim a state of peace.

1.1 Internal Disorder as the Cause of War

Internal armed conflicts are often caused by situations of extreme anarchy in which there are no established laws to ensure order (order here means the effectiveness of the judiciary organ) and to administer justice.[12] This is what Van Eijk refers to in his article on the "collapsed States" as States that have ceased to function.[13] His position is that

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[12] NDARUBAGIYE L., *Burundi: The Origins of the Hutu-Tutsi Conflict*, Foreword, p. ix. The author underlines the problem of justice and backward civiliztion in Burundi saying that they are the cause of cruelty and bestiality. Internal disorder is a major cause of civil wars and genocide cases that destroy lives of many civilians.

[13] Idem, p. 573.

some African States have stopped functioning as real States in *acts* and in *facts*. The author lists Somalia, Sierra Leone, Sudan and Democratic Republic of Congo as the best examples of international entities whose statehood stand to be questioned. These are categorised as "weak" or "soft" States. Van Eijk goes further explaining his point saying that a weak State does not just mean those States that are unable to carry out their responsibilities as States, but have ceased to function and in some cases even have almost disappeared,[14] such as Somalia. What remains in the "failed" State is the formal structure of a State, composed of a territory and a people but there is no functioning government and capacity to enter into relations with other States. The phenomenon of "failed State" is characterised by the absence of general discipline, particularly in the conduct of public business. Van Eijk defines the "weak State" as a State that exists in structure, but which is unable to control its population, to lead or direct the economy or to execute its political decisions.[15] In my opinion, the difference, therefore, between that of a failed state and a weak state, is one of time.

The issue is to define the situation of disorder that the so-called "collapsed" States are experiencing, especially, since the end of the *Cold War*. The situation of great disorder within the State has been described as failure to prevent factors that may lead to civil war. International law considers a State as collapsed when its government cannot manage to protect adequately the rights and duties of its citizens according to the requirements of the international law. *Ipso facto* Somalia is considered a *collapsed State* inasmuch as it cannot carry out its tasks according to the requirements of the international law to which it is a subject.

However, first and foremost it is difficult to define statehood and the relevant responsibilities of a State. An attempt to define "State" is found in the papers of the Montevideo Convention which define the state in terms of an entity possessing the following qualifications: (i) a permanent population, (ii) a defined territory, (iii) government and (iv) capacity to enter into relations with other States. According to this

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[14] Idem, p. 578.

[15] Ibidem.

Convention a State must fulfil all the mentioned criteria in order to be recognised by the international community.

This definition has created a number of controversies since some States meet the qualifications yet they can no longer take and implement their decisions. The role played by government or authority remains significant.[16] The international community highlights the role of good governance, law and order as *conditio sine qua non* for every State. The question of an effective government needs to be added to the definition of State.[17] It is not enough to have government. It is also necessary to have a government apparatus that can fulfil the duties and rights of the State and that can respect the obligations attached to those rights and duties.

Van Eijk points out that the international law does not define "effective government". The effective government means a government that exercises the effective control and power over the territory and the population according to the principles of justice. Rwanda, Burundi and the Democratic Republic of Congo are the examples of the States whose qualification of government is still questionable.

The question of government has two dimensions: political and juridical. The political dimension incorporates the actual exercise of power. The African political dimension resembles more a royal court where people, through coalitions and intrigue, try to conquer, retain or enlarge their influence. Political ideology does not play any role in this dimension.[18] The juridical dimension of government looks at how the power functions. This defines the functions of the judiciary body and the legislation. In most cases, where the civil war breaks-out, government ceases to function. The judiciary organ in Liberia stopped functioning when the military declared civil war against the rebels. In the process the statehood remains intact so long as there is no interference from the international community.

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16 Idem, p. 581.

17 Idem, quoted from M. WEBER, "The United Nations and the Reconstruction of Collapsed States in Africa", p. 581.

18 RYAN VAN EIJK, *Op. Cit.*, p. 578.

However, as the government stops functioning normally the State collapses and what remains is the country and not the State. A collapsed State is justified when one cannot speak anymore of a government. In this case one essential condition of being a State is not fulfilled.[19]

The question of when a State may be considered "collapsed" is still debatable. It is not yet clear the definition of the government within the international law and the situations in which a State can be declared "collapsed" or the opposite. This does not make it easy for the international intervention disregarding the general principles of sovereignty of a State, territoriality, and self-determination. It is not practical to think of external intervention of a State to establish a government *ex novo* which would, at the same time, respect the principle of territorial integrity of a State. In other words, it is a violation of the international general principles of the integrity of a State at the time when one State imposes its power over the other State under the pretext of establishing a stable government. The best example in this case is Somalia. Since the out-break of civil war in 1990s that caused the overthrowal of the former government, there has never been a succeeding government for the last ten years. Basing the situation of Somalia on the principle of the territoriality, sovraneignty of State, and the principle of self-determination, no other State can intervene in the situation with the intention of establishing a new government without violating the international law.

1.2 National Constitution

Acknowledging the role law plays in maintaining international peace, justice and order within States, we cannot avoid an encounter with armed conflicts and humanitarian decadence in such States where internal legislation does not enjoy its full autonomy and where politics outweighs principles of law. Subsequent fundamental question examines the effect of international law within national constitutions.

"*Ultimately, the sanctioning of certain principles of international law in African constitutions has a scant legal value both on the internal*

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[19] Idem, p. 588.

§and the international plane."[20] Some African States handle international law with resentment considering this to be a continuation of the bad experience of colonialism in the past. They develop an attitude of suspicion or scant interest in the present rules of the international customary law, and in our case, international humanitarian laws. Professor Cassese cites Ghana, Mali, Tanzania, Rwanda and Burundi as one of the examples of States that have developed negative attitude towards the international rules.[21] This group of States after their achieving of political independence from colonial powers adopted the constitutions that were modelled on the principles of their former colonial powers. They then changed their constitutions and, in the process, dropped any reference to international customs or else they turned such reference into a loose acceptance of "general principles" without concrete regard to their implementation.

Cassese observes that some States neglect general international law for political and historical reasons.[22] One excellent example is that of the crisis in Somalia wherein political leaders showed negative attitude towards the intervention of the international community into their domestic problems. In Central Africa and Somalia, a negative attitude was openly expressed against technical interventions of the international community. From the historical tracing of facts in Somalia, the then UN Secretary General, Boutros Boutros Ghali, was not well received when he visited the country in 1993.[23]

A Nigerian lawyer, B. O. Nwabueze made a clear reference to African countries saying that,

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[20] CASSESE A., "Modern Constitutions and International Law", in *Recueil des Cours: The Academy of International Law*, (III), 1986, p. 386. Cassese's view is that the constitutions are the grund norm of a State and respecting them implies the rule of law within the State. The Constitutions in the developing countries are not respected and there is a tendency of considering them as ""dead letters" in the Third World. This is a principal cause of disorder in the state.

[21] CASSESE, *Op. Cit.*, p. 381.

[22] Idem., p. 380.

[23] AFRICA SOUTH OF THE SAHARA 1994, p. 777 "SOMALIA". Bitterness against the intervention of the UN forces (UNITAF) in Somalia is expressed in the visit of President Bush followed by the visit of the UN Secretary General in 1993.

> *The State itself is an alien, if also a beneficial creation; its existence is characterised by a certain artificiality in the eyes of the people and it is remote from their lives and thought. The constitution embodies ideas that are not part of the native cultural heritage of the people, ideas originating in Roman law and Greek philosophy, but which by a process of assimilation have become a common heritage of the whole of Europe but certainly not of Africa.*[24]

This presents another extreme of the independent African countries. The constitutions do not represent the will of the majority as should be according to the definition of democracy. The States do not provide machinery for guaranteeing the observance of treaties by domestic authorities.

The result of this constitutional discrepancy is lack of respect to the constitution. Even leaders tend to disrespect the constitution simply because it is foreign to them or rather it does not represent the will of the majority.

However, Antonio Cassese, Italian professor sustains that, *the common knowledge is that international law can only be implemented by State bodies.*[25] Domestic legal systems should be ready to implement international humanitarian law and should enforce its operation. Doing so the international community would turn to the domestic laws in order to fulfil its mandate.

African independent States had, by the year 1961, agreed to adopt the *Law of Lagos*[26] that obliges members to adopt the rule of law in their constitution. The intention was to avoid in advance the breach of international law and all elements that may lead African nations to chaos and a threat to peace.

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[24] *Op. Cit.*, p. 349.

[25] Idem, p. 341.

[26] La Loi de Lagos, See Kèba Mbaye, "L'Afrique et les droits de l'homme", in *Revue juridique et politic:Iindépendance et politique*, Anno 48, 1 (Janvier-Avril, 1994), Ediena, Le Vésinet, pp. 1-16.

As has been explained, in the historical profile[27] we learn that during primitive era human societies were guided by the principle of might makes right. The primitive world was ruled by the powerful nations, for example, the Zulus, the Mandingos, the Baganda and the Asante. The strongest became the victor and the victor had right. But in civilised and modern human societies, the conduct of the use of force is considered irrational and uncivilised because it does not prove the effective existence of law. Declaring a state of war against an enemy is no longer licit act in modern civilised human society where law ought to reign.

The weakness in most of the African legal systems is that the judiciary is not independent from politics. In other words, the function of the judiciary is often controlled by government's executive authority. This disadvantage is the weak point in the prevention mechanisms of armed conflicts in the Sub-Saharan Africa. For example, the outbreak of war in the State of Somalia could have been avoided if the judiciary had all legal power to carry out its office and could exercise the force of law to bring the State to justice.[28] The same applies to the armed conflicts of Rwanda, Burundi, and Liberia. In these selected cases the judiciary is under political control (the Executive organ). Consequently the principle *inter arma silent leges* is felt in form of disorder and of unnecessary killing of innocent civilians during the emergency.

Louise Doswald-Beck affirms the disorder created by conflicts saying that,

> *...it may even seem contradictory to speak of law in wartime, but international humanitarian law is the only hope of limiting the barbarities of armed conflict by the rule of law,*

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[27] Reference is made to the first chapter of the dissertation that treats the historical profile of African wars.

[28] Cfr. Jean-Claude KAMDEM, "Le Cas du Cameroun", in D. MAUGENEST & PAUL-Gerard Pougoue, *Droit de l'Homme en Afrique central: Colloque régional de Yaoundé (9-11 Nov. 1994)*, Editions Karthala, Paris, 1996, p. 152. KAMDEM analyses juridical order distinguishing the executive power from legal power. *De par son statut, le juge constitutionnel est un fonctionaire dépendant de l'Executif.* Constitutional judge must be nominated by the President of the Republic according to his competence and experience. The role of the Executive is only to control the constitutionality of law without claiming power over it.

and is of crucial importance particularly because of the vulnerability of people in such situations.[29]

This is the reality in the "collapsed" States in Africa where government does not carry out its duties while the judiciary is totally weakened by war. The rule of law as the supremacy of law and as a measure for justice and equity fails to establish itself in the "collapsed" States.

It is correct therefore, to affirm that it is the national constitutional law that holds the nation together. States with stable governments are known to have effective constitutional laws that are the main norms or *grund norm* to which all other national laws owe their significance. Flashingback to the failed States, it is evident that national constitution is enstranged from the citizens. Such constitution embody certain ideas that are not compatible with the native culture of the people. In such cases constitutional reform is not democratic at all and it is usually manopulated by certain elite in power. In regard to this constitutional failure, citizens refrain from respecting the constitution and obviously make recourse to force in order to achieve their rights.

1.3 Law and Politics

Theorists of law have discussed the differences and similarities between law and politics. In social set-ups, political groups that are formed to protect political rights of individuals tend to overshadow the organs of law simply because the two have different objectives.

Political groups are like football teams that form a closed society of fans. Each political group considers the other not as complementary group but as a rival that is supposed to be eliminated. They are groups that struggle for political objectives and whoever does not adhere to their objectives is either real or a potential enemy. Politics builds up tensions in many African States. It inclines towards the thirst for power and dominion while law crowns its doctrine with justice and equity.

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[29] L. DOSWALD-BECK , "International Humanitarian Law: A Means of Protecting Human Rights in Times of Armed Conflicts", in *African Journal of International and Comparative Law*, Vol. 1, 1989, London, p. 596.

In respect to the abuse of political rights of the African people, some governments end up as racist regimes in which certain parts of population undergoes discrimatory treatment. Usually the part of the population that suffers most is that which belongs to the opposition parties or the minority groups. In less democratic political environments the opposition is denied the right to carry out their duties. As a result, members of the opposition take up arms. This practice causes tacit rebellion against the government and induces people to resort to arms as the last resolution.

Law is founded on the principle of *justice, equity, non-discrimination* and *equal rights.*[30] Law is not limited to an elite group of individuals who dominate political and economic power but it must hold true for every human person simply by virtue of being the human being as prime possessor of human dignity. Law does not care whether an individual is *Batutsi* or *Bahutu*, white or black, African or European, but protects every person because every person is *subjectum iuris*. The main objective of law is to safeguard the rights of every individual regardless of ethnic group, racial group or religion.

Whenever people are in conflict with each other it is law that can create a balance among them and re-establish order. In the same manner, whenever there are chaos within a State it is the constitution and the judiciary organ that may bring the situation back to normal. In short it is the effectiveness of the rule of law principle that is lacking in the "failed" States.

One of the major paradoxes of law and politics is that the two are so much linked together that there is no possible chance to say that law functions freely. The State as a political institution and this grants more emphasis to political domination. The making of the law is the duty and the right of the parliament; its application is the duty of the government. In dictatorial States things are different. Law appears as a tool to serve the dictator. The people are subjected to the commands of the "dictator-made laws" that in several cases, favour the interests of the dictator.

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[30] G. DEL VECCHIO, "Il Fenomeno della Guerra e l'idea della Pace", in AA.VV. *Rivista di Diritto Internazionale*, Anno V, 1910, Martinus Nijhoff, La Haye (Holland), p. 88. In 1795 Emanuel Kant published his dissertation known as For the Pertual Peace in which he affirms that internal freedom of nations is the possibility of their universal legal co-ordination. According to Kant For the Perpetual Peace means, "Civil Constitutions in every State must be Republican".

This is the case also in authoritarian governments in which the head of government is above the national law. In such cases law is under the command of internal politics and if there is no democratic government, then such legal systems cannot function according to the doctrine of justice and equity.

In parliamentarian governments, with the participation of elected politicians and competent legislators, the Parliament Acts are to represent the will of the majority not just the interest of an elite group. It is noted that true democracy is the main crackdown in many independent States in the Sub-Saharan Africa. The role of law is suppressed by political powers so much so that the administration of justice is left in the hands of the elite who hold the lion's share of the government. Unfortunately the elite sometimes tend to favour tribal groups and this today is what is charged as favouring ethnicity, and further it is what causes inter-ethnic clashes in the Sub-Saharan Africa.

Law and politics are two great entities within one particular State and both ought to be distinguished from each other in order for the State to function. The three organs of the government are to be well distinguished: the *legislative,*[31] *executive,*[32] *and judiciary*[33] organs. In such a distinction, law and politics can be exclusively separated from the dominating influence of the other. The judiciary operates as an independent entity respecting its objectives and functions within society of law, while politics also operates as an independent entity respecting its objectives and functions within the society of politics. Doing so does not imply that politics is to be eliminated or the judiciary is to be eliminated or subdued. The good governance requires both law and politics.

The States must divide the role of offices in such a way that each is operating for the perfection of the goals of the State. It is in this

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[31] CARLETON KEMP ALLEN, *Law and Order: An Enquiry into the Nature and Scope of Delegated Legislation and Executive Powers in English Law*, Third Edition, Stevens & Sons, London, 1965, p. 1ff. This author illustrates the importance of the separation between the legislative and executive organs within a government. In his legendary the balance of power within a government plays a very important role in establishing order.

[32] Ibidem.

[33] Ibidem.

manner that the *rule of law* can be implemented and it is in this manner that national peace can be restored in the "failed" States in Africa. Whenever politics dominates law, there will always be tension and clashes among groups of people.

1.3.1 Civil War and Politics in Africa

Politics plays an important role in the civil strife within African States. Another paradox is that regimes fail to distinguish the role of law and that of politics. Giorgio Del Vecchio discusses the question of war and the idea of peace emphasising that the legislative power must be separated from the executive power because the failure to do so will jeopardize the equal freedom of all the citizens.[34] This is how dilapidated politics can lead to mono-party military dictatorship as that that took place in the Republic of Burundi in 1972,[35] and several other African States that have faced or are now faced with civil war.

Burundian civil warfare erupted as a consequence of political tensions within the State.[36] The brutal genocide of 1972 resulted from an attempted *coups d'état* during the leadership of Micombero. He tried to break-up the dominion of one ethnic group which was in the political power.[37] Finally to balance the political situation, civil war erupted between political rivals.

Political leaders often adopt discriminating principles through the reduction of political parties to ethnic rivals. The group that wins the elections usually seeks to strike down the other and *vice versa*. The experience of mass deaths among the inhabitants of Kamenge estate in the city of Bujumbura is one example of ethnic in-fighting. Due to racist regimes the people living in Kamenge were massacred and their houses were mercilessly destroyed. Some of the provinces in which mass killing occurred include: Gitega, Kayanza, Muramvya, Bubanza, Ngozi

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[34] G. DEL VECCHIO, "Il fenomeno della guerra e l'idea della pace", in AA.VV. *Rivista di Diritto Internazionale*, Anno V, 1910, Martinus Nijhoff, La Haye (Holland), p. 89.

[35] L. NDARUBAGIYE, *Burundi: The Origins of the Hutu-Tutsi Conflict*, p. 41.

[36] Supra. Civil war in Burundi has been explained under chapter one of the work.

[37] SOUTH OF THE SAHARA 1994, p. 201f.

and Kirundo. The same politics provoked thousands of killings in the country-side where the government could nolonger take control over the situation. The innocent lost life during the racist regime of Burundi and Rwanda due to ethnic and political differences of their statesmen.

Rwanda suffered the same fate. A change from monarchism to republican led the nation to tensions and genocide when political groups were divided according to ethnic lines. In 1963, a serious tribal conflict erupted within the nation and many people were left dead.[38] When Grégoire Kayibanda was elected the first head of State in 1969 different political parties were formed and among them was *ParmeBahutu, Partie de l'émancipation du Peuple Bahutu.* In 1972, tensions between Hutu and Tutsi arose and a *coups d'états* took place. Political instability of Rwanda led to so many killings and injury of the civilians.

Somali civil warfare also resulted from political instability when the political parties were divided giving precidence to dominant clans. Somali National Front and United Somali Congress of 1991 sought reconciliation.[39] In a turmoil rife with confusions and political tensions civil war broke out, and Somalia became another one of the "collapsed" States.

Faulty politics has caused terrible civil warfare in Liberia and in the Democratic Republic of Congo. In both cases it is clear that politics dominates over the judiciary and the whole nation is guided by politics other than justice. In the two States, the government failed to carry out its duties according to the principles of justice and equity. All this has led to "collapsed" State, a State with no general discipline. It is a State that exists indeed in structure, but which is unable to control its population, to lead or direct the economy or to execute its political decisions.[40] A collapsed State is also unable to collect taxes as it should, so the State boundaries often exist only *de jure* but not *de facto.*[41]

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38 *Op. Cit.*, p. 697.

39 *Op. Cit.*, p. 776.

40 RYAN VAN EIJK, *Op. Cit.*, p. 578.

41 Ibidem.

1.4 PROLIFERATION OF ARMS

The transfer of arms into Africa is connected with the situation of turmoil, confusion and conflicts. For example, during the civil armed conflicts in Somalia, transportation of arms into the country soared.[42] In general the proliferation of arms in Africa has been promoted by situations of war in a number of States.

It is evident that weapons are smuggled easily into warring States during the conflicts. This is the moment in which the State fails to function; trafficking of arms is not controlled. The power is in the hands of those who have the weapons. Decision on civil war is left in the hands of the belligerents. In turn, this has led to the failure of the States wherein government has proved to be insufficient to carry out its duties to defend the rights of the State and to prevent an outbreak of civil war. The function of law in the "collapsed" States is pathetic since it becomes an instrument for politics. Van Hoogstraten reacts against such type of law saying:

> *The law, guiding our every act, is not a governing doom whose blows we can neither foresee nor avoid. If this were so, it would not achieve its ends nor would it be a guide....*[43]

The scope of law is to establish order and justice. Its orientation is to try as much as possible to establish peace and security. It is through the effect of law that State would take control over the inflow of arms and would direct the good usage of arms that are meant for military objectives only.

1.5 MILITARY GOVERNMENT

The function and role of the military is to see to it that the rights of the people are defended. The military as a defensive organ has one

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[42] RYAN VAN EIJK, *Op. Cit.*, p. 85.

[43] M. H. V. HOOGSTRATEN, "The United Kingdom Joins an uncommon Market: The Hague Conference on Private Law", in *The International and Comparative Law Quarterly*, Vol. 12, The British Institute of International and Comparative Law, London, 1963, p. 161.

principal role, to safeguard the rights of individuals. In many African civil wars, the military has been accused of causing unnecessary conflicts. Military regime of General Idi Amin in Uganda sets an example. The army went haywire and massacred a number of people without trial. The violations of the humanitarian law by the military have been common in the military government of Nigeria and many other States. Serious violation of both human rights and humanitarian law has been frequent under the military rule. It is opposite to what Van Hoogstraten calls law: it is a governing doom.[44] If at all there was a just governing law to discipline the military in the military regime of General Idi Amin there would be no such violations to human rights as what took place in Uganda during the time of Amin.

Military rules in the Sub-Saharan Africa have violated tremendously the international obligation of *pacta sunt servanda.* Bilateral agreements, peace-accords or ceasefire have not been observed especially in the long-lasted armed conflicts in Liberia and in Angola. The international obligation of *pacta sunt servanda* holds that every treaty in force should bind upon the parties to it and must be performed in *bona fide.*[45]

However, in Liberia, the belligerents *mutatis mutandis,* continued to fire against each other even after solemn armistice was signed in presence of important arbitrators. During the combats, the belligerents have tended to behave as though there is no regulations (or no treaties) to be respected. The same case in Somalia, Liberia, Democratic Republic of Congo, Rwanda and Burundi where the peace-agreements signed, have not been respected by the parties in conflict.

Bernard Adam summarises the whole problem in terms of the illegal transfer of arms towards African Countries[46] During the *Cold*

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[44] Supra

[45] Art. 26 of the Vienna Convention has stressed on the international principle of *Pacta Sunt Servanda*: Every Treaty in force binds the parties and must be excuted by them in good faith. This is what is also known as "Gentleman's Agreement". The consensus of the parties signing the agreement renders them subjects to the requirements of the Agreement.

[46] B. ADAM, "Les Transferts d'armes vers les pays africains: quel controle?", in AA.VV. *Conflits en Afrique: An Analyse des crises et pistes pour une prévention*, Fondation Roi Baudouin et Médecins sans Frontieres, GRIP, Bruxell, 1997, pp. 101-138.

War African States could not be neutral to the war between the two Superpowers and they served as a base for their military operations. Through this the African governments and individuals got easy access to both heavy and light weapons.

> *During the Cold War, proxies of Superpowers in the African Continent were flooded with weapons meant to defend the interests of their allies in Europe and elsewhere. The major weapon suppliers to the Continent were the former Soviet Union, the United States of America, France, Portugal, Britain and South Africa.*[47]

The period that followed the end of the Cold War the Africans regarded the weapon as instruments of political power. Not only the military was armed but also the irregular paramilitary. Such groups had quick access to armaments provided that they aligned with one of the Superpowers.[48] This shows clearly the havoc that the trafficking of arms cause in the human society - that stimulated the formation of SALT (Strategic Arms Liberation Talks) between the Superpowers the former USSR and the United States of America.

Adam regards the trafficking of arms into Africa as a lack of conscience and political motivation of the leaders of the exporting countries.[49] Another reason of the proliferation of arms in Africa is the prevailing situation in the States under crisis. Third reason for the trafficking of arms is also the lack of conscience and political motivation of the recipient countries. Their governments have failed to

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[47] KALLIERS JAKKIE, "Some Practical Proposals Regarding Early Warning of Inter-State Conflicst in Africa: The Political-Military Dimension", in S. BASSEY IBOK & WILLIAM G. NHARA, *OAU Early Warning System on Conflict Situations in Africa*, OAU, Addis Ababa, *Senza Data*, p. 83.

[48] F. BARNABY, "The Non-Proliferation Treaty", in LINUS Pauling, "The Nature of Peace", in *Bulletin of Peace Proposals*, 3 (1970), International Peace Research Institute, Oslo, Universitetesforlaget, p. 244.

[49] F. BARNABY, *Op. Cit.* p. 102. See also GLUCKMANN A. & THIERRY WOLTON, *Silenzio Si Uccide*, Longanesi & C., Milano, 1987, p. 20, The authors underline the role of the examination of conscience making reference to dictators such as SEKU TOURE who changed his name to KWAME TOURE-SEKU (TOURE) and Kwame. The text of Gluckmann and Thierry criticizes the world economic politics in which one hand gives and the other one takes. At the same time they appeal for the access of humanitarian aid to the zones that are hit hard by misery where government and opposition forces are in conflict.

control the inflow of arms into the country. Johan Galtung views the lack of conscience saying that, *"Violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations."*[50]

Violence is provoked mostly by armed forces. It is not our merit here to declare which forces in particular but to give a general overview of such occurrences. Galtung explains further saying that *"peace is not only a matter of control and reduction of the overt use of violence, but of...vertical development."*[51] Vertical development is the good relationship between the authority and the people.

An impending consequence of the proliferation of arms is the increasing internal and international insecurity and instability in the weak States in the Sub-Saharan Africa.

Sub-Saharan Africa, just as other parts of the world must regard the inflow of arms as the cause of insecurity within State. On this ground, governments must enact regulations that would control the inflow of arms and disarm both the irregular and the private troops. In relevance to the Resolution[52] on the Transparency in Armaments (UN Conventional Arms), regional confidence building, non-proliferation and weapons of mass destruction,[53] African governments must monitor the transfer of arms and to ascertain that arms are transferred for the good purpose of the State: respect for the need to maintain national and international peace and security.

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[50] J. GALTUNG, "Violence, Peace and Peace Research", in LINUS Pauling, "The Nature of Peace", in *Bulletin of Peace Proposals*, 3 (1970), International Peace Research Institute, Oslo, Universitetesforlaget, p. 198.

[51] J. GALTUNG, *Op. Cit.*, p. 199.

[52] UN General Assembly Res. 46/36L, of December 9, 1991.

[53] KALLIERS JAKKIE, "Some Practical Proposals Regarding Early Warning of Inter-State Conflicst in Africa: The Political-Military Dimension", in S. BASSEY IBOK & WILLIAM G. NHARA, *OAU Early Warning System on Conflict Situations in Africa*, OAU, Addis Ababa, *Senza Data*, pp. 83f.

1.6 THE PRINCIPLE OF NEGLIGENCE

The history of conflicts in the world taught the European nations a lesson. In the same line of thought, the formation of the Geneva Red Cross Convention was inspired by the horrors of war during the early 19th Century.[54] We therefore admit that, with this as the background, European nations would have not involved themselves into armed conflicts during the conquest of Africa that left a number of human persons dead. Worse still, being aware of the horrors of war and the human dignity, European imperialists did not care about the value of Africans who fought for their freedom and self-determination during the wars of national liberation.

Humanitarian law initially only regulated international conflicts by peace treaties. The period prior to the Second World War there was less interest concerning the situation of armed conflicts in the Sub-Saharan Africa. This possibility arises only in the period after the Second World War and more after the international Conference of Tehran in 1968. The reason is simply that African States were not yet recognised as subjects to the international law until the time of independence from colonial powers. The participation of States from the Sub-Saharan Africa before adhesion to the UN Charter, as members of the International Organisation with the independence from the colonial powers was scant. This raised a question of an historical phenomenon that determined the foundation of African States and the participation of African States in international discourse.

However, despite the short time of independence, the Principle of Negligence still prevailed in the international community. The international community has been blamed for its late intervention in the African situations of armed conflicts. Such lateness was noted in the case of Somalia in 1992, and that of Rwanda in 1994.

Prior to the First World War there was the Great Conference of Berlin (1884/5) that designed the borders of the European colonies in Africa. Even here no African nation was represented in the debate, leave alone the already Free State of Liberia (1847). This is the question

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54 B. MORSE, "Practice, Norms and Reforms of International Humanitarian Rescue Operations", in *Recueil des Cours* Collected Courses of The Hague Academy of International Law, Vol. 4, 1977, p. 127.

of negligence on the part of European Imperial Powers that masterminded the Berlin Conference.[55]

The same principle of negligence is expressed in the language used in defining non-international armed conflicts in the Geneva Conventions of 1949. The term "internal troubles, (*troubles intérieurs*)" as a question of internal affairs of the State has de-accelerated the international peacekeeping operations in Africa. Civil war was not considered an international concern of States, thus implying non-application of international law to the internal affairs of a sovereign State. Every State has the right and duty to make laws and sanction criminal acts within its sovereignty. The main principles are non-interference with internal affairs and territorial integrity that each State enjoys.

1.7 Violation of the International Law of War

Military law and the international legal environment of military operations are unfamiliar to some army officers; this is another principle of negligence. The situation of ignorance of the International Law of War and the customs of war is a serious cause of many war crimes in the African context. The same analysis of *ignorantia leges* is found in the publication of Burrus M. Carnahan when he describes the origins and influence of the *Lieber Code*.[56] Regular army chief legal officers must play their role to ensure that military persons are well informed about the rules and customs of war, keeping in mind all the duties and rights of a fighter.

Irregular forces, the guerrillas in the African civil wars, form the group of fighters who do not abide by the law and customs of war. There are so many careless criminal offences incurred on the civilians without any connection with the provisions of the military law or the customs of war. For example, the known Lord's Resistance Army in the Northern region of Uganda the fight against the Uganda People's

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[55] E. HERTSLET, *The Map of Africa by Treaty*, Vol. 1, No. 1-94, Frank Caso and Company Limited, 1967, "Scramble for Africa – 1882"See also Chapter one.

[56] BURRUS M. CARNAHAN, "Licoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity", in *American Journal of International Law*, Vol. 92, 2 (April 1998), The American Society of International Law, USA, p. 214.

Defence Force the former National Resistance Army[57]. Human Rights abuse is a great problem in the region around Gulu where the rebels are found. Children are taken as hostages. Civilians living in the villages are always the victim of the attacks from the rebels. Some people undergo dehumanising physical and mental tortures that is prohibited by Human Rights Conventions. The nature of the guerrilla fight does not connote any struggle for freedom but it is unnecessary war crime that must be seriously dealt with and abolished.

The principle of Criminal Law: *Ignorantia leges non excusat* concludes this discussion affirming that crimes cannot *ex jure* be pardoned by law courts simply because the offender proves to be ignorant of the requirement of law at the moment of action. It is a supreme responsibility of all to inform themselves about law, and for what it stands. Ignorance and negligence of law must be brought to court by both domestic law courts, and the *ad hoc* international criminal tribunal.

1.8 Deliberate Violations of Laws

Not all human rights abuses are caused by *ignorantia leges,* but many cases are caused by deliberate violations of already established laws. The criminals are individuals who are sane and are conscious of their illegal acts. They decide deliberately to commit an offence. This is the most serious issue facing the modern international law, because there is no international judiciary organ dealing with criminal cases at international level.

Furthermore, still we can question the capacity and competence of the affected States. The State is supposed to safeguard the rights and fundamental freedoms of the populations under its protection. Should the security forces fail to fulfil the duty, then the State has a right to ask for external intervention. And should the State fail to ask for external intervention within its territory, then it is upon the United Nations to take legal measures.

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[57] AMNESTY INTERNATIONAL Index: AFR 59/01/97 Uganda: "Breaking God's Commands": the Destruction of Childhood by the Lord's Resistance Army.

Every person, excepting those who are not deemed otherwise responsible under the law, is fully culpable for illegal acts committed unless the law courts prove the person not guilty.

1.9 Empowering the Ancient Regime - "Tribe-States"

The base of every State is the indigenous people who form the group of citizens. It is through social contract that particular groups of people agree to live together within a specific territory under one flag. It is the same people who, through their desire to live together elect democratically their government. A democratically elected government generally consist of executive organ; legislative organ and judiciary organ, and vote democratically for their Constitution.

Before we get to the modern structure of a State we must be aware that African nations originate from ancient regimes that were very powerful.[58] This is the structure that we call "tribe-state". African States that by the principle of *uti possidendi* have adopted the borders as they were during the colonial powers;[59] they consist of ethnic groups generally known as tribes. Each ethnic group still carries on its traditional identity as a society of people and speak of their territory as their land. It is through national politics that they agree to come together and to form "a federal" or "con-federal State" under the same constitution. But this does not mean that the legal identity of the rights of "tribe-states" is nullified. Neither should we suppress the existence of "tribe-states" just for the role they play in society.

The suppression of tribe-states by national politics has caused the tension that is generally known as ethnicity or tribal differences. Best example of this lies in the situation common to Rwanda and Burundi, where individuals have been living together for centuries; they have the same language, and they intermarry. As such their cultural differences

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[58] The ancient regimes have already been elaborated in the historical profile of this work.

[59] Cfr. J. BALORO, "International Humanitarian Law and Situations of Internal Armed Conflicts in Africa", in *African Journal of International and Comparative Law*, Vol. 4, 1992, p. 449, "Even though the causes of these conflicts are numerous the principal underlying cause is traceable to the partition of the African continent in the nineteenth century and its subequent subjugation and colonization by the European powers".

are not so great as the cultural differences in Kenya, in Tanzania or in the Democratic Republic of Congo. Nevertheless, their struggle for identity provoked an act of genocide[60] in which each group has demanded the recognition of its rights and fundamental freedoms.

The case of Somalia is slightly different since there is no a question of ethnic groups but a question of powerful clans. Some clans dominate over other clans and this hinders political harmonisation within the State. After the regime of Siad Barre Somalia became an insecure State with no stable government but under the hands of warlords.

Tribe-state is an important element in all cultures, because it gives the people their real identity and pride. Suppressing the existence of tribe-states in the Sub-Saharan Africa would be no solution to the African problems of peace. In federal States, such as Nigeria and Tanzania, the tendency is not to nullify the tribe-state in the ancient tribal regimes but to give it more meaning within a new structure. What is significant is how to integrate each tribe-state in the political, social, and economic running of the State. Doing so should not mean that there be clashes in such States. Rather, suppressing the ancient system may cause more clashes, because ethnic groups may struggle for their identity within the States where they are found.

The international community and world public opinion referred to the tragic civil wars in Rwanda and in Burundi as being tribal wars. In this view, the war was caused by the litigation between the majority *Bahutu* tribe and the dominating *Batutsi* tribe. First correction is that these are not tribes because they have same cultural heritages and they live in harmony accepting intermarriage. Second correction is that the genocide was not provoked by the fact that some are from *Bahutu* lineage while others are from *Batutsi* lineage. This is a clear cover-up of the political problem facing the "failed" States. Tribal hatred in both Rwanda and Burundi that violated the UN convention on genocide is

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[60] From our research in Bujumbura (5th September to 19th of september, 1998), we have learned that both Hutu and Tutsi in Burundi share the same social life, the same culture and they mixed up. Hatred and intolerance is rooted in the national politics that has been there since independence. Multi-party democracy lost its meaning and became an instrument of conflict as the two main parties were divided into tribal lines, *Uprona* and *Frodibu*. Worse still bad leaders have tuned people to conflict under the pretext of having a super race.

connected with the internal politics that have lasted for a long time. In Rwanda, the government of Habyraimana introduced a compulsory identity pass for the citizens which would indicate the ethnic group to which one belonged. Consequently, this was criticised by public opinion only after the tragedies, in 1994.

Rwanda and Burundi are States with background that has been interwoven with disputes for a lengthy time. Both *Bahutu* and *Batutsi* communities lived together for a long period of time without killing, a part from normal quarrels. Litigation and prejudice were always there, as in other feudal States in the past. Political domination by the *Batutsi* over the majority *Bahutu* is a causal phenomenon that should not be ignored. From prejudice we get to the politics of extermination or elimination of one ethnic group from the other, the genocide in Rwanda and in Burundi.

If at all the democratic governments of both States had adopted the mechanism of social contract between the two ethnic groups and had implemented into their systems the rule of law, there would have not occurred such humanitarian tragedies. Another hypothesis is that if at all the judiciary and the legislative organs were keen enough on the role of law for order, the tragedy of genocide in Rwanda and Burundi might not have occurred. Although this is a presupposition that cannot be proved, history itself reinforces the positive impact of the strong role of justice and law in peace-keeping matters.

Civil war in Rwanda and Burundi has been provoked by the domination of politics over the administration of social justice. The mistake is that one ethnic group regarded political leadership as heritage excluding the participation of the other. This is one of the fundamental failures in the governments of Rwanda and Burundi that led the two nations into bloody civil wars and blood revenge.

Another failure, as has been cited above, deals with the engagement of military in national politics whereby the culprit is the militarisation of the government and irregular groups. In these two States, access to arms is another fundamental cause of conflict. The extremist *Bahutus* adopted the principle of self-defence from political injustice while the *Batutsi*-dominated government was making recourse to the use of force. The two Parties formed belligerent groups, each of which was convinced of the need for war to solve the tension. This is

simply a defensive mechanism that can be corrected through mutual understanding and establishment of social contract which equally favours both ethnic groups.

"*The Batutsi almost effortlessly established an aristocracy over the humbler, smaller, less skilled and cattleless Bahutu, a Bantu people....*"[61] The mentality leads the people back to one thousand years back when people lived with less developed human standards. General opinion is that Africans need a change in mentality with a new outlook on traditions in order to overcome unnecessary disputes.

René Dumont, Marie-France Mottin expressed their views on African war situation saying, "L'Afrique noire est mal partie". (Africa made a false start). [62] His viewpoint is inclined towards the economic injustice. We can apply the same expression to the *casus belli* in Rwanda and Burundi saying that the two States had a false start. Right before independence, the Belgian colonial government was to understand the need of "social contract" between the two communities and to care for a balanced participation of the *Bahutus (85%)* and the *Batutsis (14%)* including the *Batwa (1%)* people for the common good of their country.

Ethnicity has been crowned as being the main cause of inter-tribe States armed conflicts.[63] Ethnicity in itself has no mistake. It is a question of incorporating the ancient regimes within the new State regime sequential to the colonial powers in the Sub-Saharan Africa. National politics in many countries has adopted the tendency of suppressing the tribe-states referring to any element that might lead to such participation as tribalism.

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61 C. LEGUM, *Africa Handbook*, Penguin Books, 1961, p. 211.

62 The expression was used in the Arusha Declaration of 1966 by Mwalimu Julius Nyerere. Cfr. RENE Dumont, Marie-France Mottin, *L'Africa Strangolata*, Società Editrice Internazionale, Torino, Italia, 1985, p. 105. The author analyses the Ujamaa ideology of Nyerere in Tanzania underlining the approach to harmonize African States.

63 SUNDAY BABALOLA AJULO, "Myth and Reality of Law, Language and International Organisation in Africa: The Case of African Economic Community", in *Journal of African Law*, Vol. 40, 1996, School of Oriental and African Studies University of London, p. 31. The author is not the first to regard linguistic pluralism as a major of obstacle for the maintenance of international peace and security.

Tom Mboya, a well-known Kenyan personality, once defined tribalism in terms of positive and negative tribalism saying *positive tribalism is necessary for the pacification in Africa.*[64] Mboya distinguished negative tribalism as that which involves prejudice and negates the other. Negative form of tribalism is harmful to Africa. Mboya's insights denied tribal superiority while admitting that we are born of different tribes. The question of the Bahutu and Batutsi in the Great Lakes' Region is an example of the exploitation of the negative tribalism practised within national politics.

Positive tribalism instead is complementary to cultural values and gives Africa an identity in the world. Saying this, tribalism becomes not something to be combated during the struggle for independence, but rather to be promoted for the harmony of the pluri-tribal States of Africa. We support this view because it is within the popular culture of a people that gives them their legal identity as a people with full *opinio iuris* and *consuetudo iuris*. It is through the wisdom of the ancient regimes that we can re-enforce our knowledge of legal concepts such as human rights, human dignity and integrity and even the democracy in administrating justice.

The failure to situate the role of the ancient regime in the new systems and to form a kind of federal States that represent the rights of each ethnic group has caused deadly conflicts.

1.10 POVERTY AS THE CAUSE OF CONFLICTS

Problems of insecurity in the Sub-Saharan Africa have been based on the phenomenon of wide poverty in which most of the States find themselves. Many Marxist theories, on the causes of conflicts, place poverty up front as the cause of class-struggle since the gap between the rich and the poor will always create tension and conflict. Ibbo Mandaza, in evaluating "Socio-Economic Conflicts in Africa towards a Conceptual Framework" regards mass poverty and economic imbalance within individual States and within the international community as a relevant cause of armed conflicts in the poor, Sub-

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64 T. MBOYA, *Freedom and After*, East African Educational Publishers Ltd., Nairobi, 1963, pp. 69ff.

Saharan Africa.[65] Civil warfare is more a question of internal disorder than economic difference and ideologies.

1.11 MILITARY AND LEADERSHIP IN AFRICA

In most of the warring States in Africa, the differentiation of military and civilian functions creates tension. In many States where a *coups d'états* has occurred it is clear that the military crave political power and neglect the military objectives. The problem is grounded on corruption in the government and incorrect administration of justice.

In the Sub-Saharan Africa military proness has always been a major qualification for leadership. For example, military function in the powerful Zulu kingdom, Ethiopian empire, and among the Mandingos was the qualification for the leadership in such societies. The military trend still dominates many African States where military protects the interest of the civilian political leaders. Should there not be full comprehension the military takes the political power. This is why some African countries still lie in civil war and recurring abuse of human rights.

The main responsibility lies upon the State itself. Should the State fail to satisfy the requirements of law it will never experience a moment of peace and will stand to collapse sooner or later.

1.12 NON-INSTITUTIONALISED POLITICAL SUCCESSION

Problem of political succession in Africa also has been mentioned as the cause of crisis and violence in the continent. Succession signifies transition from one leader to another. Roger and Holm regard this transition as a fundamental element to keep a State stable; therefore, it must be regulated by the constitutions.[66] In a liberal democracy, elections must be followed according to a set of agreed-upon legal

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[65] IBBO MANDAZA, "Socio-Economic Conflicts in Africa towards a Conceptual Framework", in S. BASSEY IBOK & WILLIAM G. NHARA, *OAU Early Warning System on Conflict Situations in Africa*, OAU, Addis Ababa, *Senza Data*, pp. 89-92.

[66] ROGER M. GOVEA and JOHN D. HOLM, "Crisis, Violence, and Political Succession in Africa", in *The Third World Quarterly*, vol. 19, 1 (1998), Carfax Publishing Ltd., United Kingdom, pp. 129-148.

procedures; this way there will be no space for *coups d'état* to take place. The procedure is different in monarchical regimes where there is no election. National constitutions must be respected in all cases.

The problem with political succession in the Sub-Saharan Africa is expressed in form of domination of one person or his clan or tribe in the political power of the State. The tendency is to embrace military which is the main State organ for security and defence of the State. Definitely law becomes the instrument to justify the leadership in all circumstances. In cases of the political succession, the States collapse all for a sudden when the people are not sufficiently empowered to be the protagonists of their peace and good governance.

2 External Causes of Armed Conflicts

Sub-Saharan Africa has suffered the consequences of the Cold War between the two great superpowers of the time. States were split between the capitalist bloc and socialist bloc. A State aligning with one had automatically to lose her relationship with the other. The collapse of the socialist bloc, instead, introduced another type of conflict and domestic tension in the Sub-Saharan Africa.

A number of authors have blamed colonialism in African. Colonial regime in Rwanda, for example, has been blamed for being responsible of a scheme that disrupted "the harmony" in Rwanda.[67] Such blaming also considers the partition of Africa (the colonial heritage)[68] among the European Imperial Powers as a plan that creates inter-border conflicts today. The division of the borders did not take into account the political and ethnic reality of the African people.[69]

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[67] D. KAMUKAMA, *Rwanda Conflict: Its Roots and Regional Implications*, Fountain Publishers, 1993 Kampala, p. 6.

[68] RYAN VAN EIJK, *Op. Cit.*, pp. 574f.

[69] J. BALORO, "International Humanitarian Law and Situations of Internal Armed Conflicts in Africa", in *African Journal of International and Comparative Law*, Vol. 4, 1992, The African Society of International and Comparative Law, London, 449-471. The insights of Baloro regarding the causes of war is closely connected with the errors in partitioning the African according to the interest of the European colonial powers. The Conference of Berlin did not take into account the boundaries of the African ethnic

Inter-states border conflicts, common to some States in Central region of Africa, are provoked by the fact that some ethnic groups were split up into two by the frontiers drawn by the Berlin Conference. The Tutsi people between the borders of Rwanda, Democratic Republic of Congo and Uganda. The Maasai people between the borders of Kenya and Tanzania, the Somalis between the borders of Kenya, Somalia and Ethiopia and several other cases.

Professor John Baloro has observed the underlying causes of many conflicts in Africa saying that such conflicts have their roots in the partition of the continent among the European Imperial Powers.[70] This observation is deemed correct, as seen in the secession of Eritrea from Ethiopia, which is the root cause of the armed conflicts in that region. The same case applies to the question of Biafra and Nigeria in 1967,[71] and Katanga in 1960. The border problem is the cause of conflicts between Somalia and Djibouti, Somalia and Kenya, and Somalia and Ethiopia. The same is valid for Benin and Nigeria, Cameroon and Nigeria, Democratic Republic of Congo and Rwanda.

The problem of armed conflicts in Angola and Mozambique is related to the transfer of power from the Portuguese to the Angolan and Mozambican people.[72] The nature of their armed conflict is related to the struggle for self-determination in the two States. In other States there is fighting between dissidents and the government.

External cause of the war in Africa has a lot to do with the abuses in international humanitarian assistance. For example in Southern Sudan the rebel movement SPLA refused to allow the international humanitarian agencies to move food and other relief such as medical supplies from the northern part of the country. The reason they gave in support of this position was that such ostenible supplies to civilian populations may in fact turn out to be war material of use to the armed

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groups. As a result the European boundaries that were adopted by the Independent African States are the cause of inter border conflicts and inter tribal armed conflicts in the Sub-Saharan Africa.

[70] J. BALORO, *Op. Cit.*, p. 450f.

[71] Supra. Chapter one.

[72] J. BALORO, *Op. Cit.*, p. 450f.

forces of the Sudanese Central government. It is a form of reprisal as customarily defined by the International Law of War.

> *In Ethiopia, the government Relief and Rehabilitation Commission banned all non-Ethiopian aid agencies with the exception of the UNICEF from operating in Eritrea and other parts of the north such as Tigre where the EPLF and other insurgent movements have been operating.*[73]

The reason is the allegedly grave safety risks to which the personnel of these agencies would be exposed as the central government could guarantee their safety against attacks by the rebels.

Africa has been the battlefield of the Cold War from 1917 to 1990, the battlefield of the world superpowers. The industrialised countries that produce arms tend to exploit the weakness in some African States as a chance to sell their weapons. Proof of this is shown by the proliferation of Italian landmines in Angola and in Mozambique, the Russian rifles in Ethiopia and in Sudan. There is a chain of this kind of transportation of arms into the warring States as a means to sell the arms to the States that are engaged into fighting.

In addition, the end of the Cold War has left many African States in problem since most of these States were materially supported either by the former USSR or United States of America. The failing of the Soviet Union is the failure to continue the former assistance. Since economically some of the African States could not continue on their own, they fell into the hands of some States whose interest was not to develop Africa but to benefit from the situation of chaos through selling arms.

The political and economic crisis that followed the Cold War is one of the major external causes of the African armed conflicts and the humanitarian decadence in the region.

2.1 Peace and Security in the OAU Charter

Organisation of the African Unity is the main regional legal organ that is concerned with the direct maintenance of international peace and

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[73] J. BALORO, *Op. Cit.*, p. 453.

security in the region. Despite the good will and great effort of the founding fathers that is expressed in the Preamble of the OAU Charter, the problem of violation of human rights and humanitarian law is given less attention. Almost at the end of the Preamble of the Charter a desire for the unity of African States is mentioned as a means to assure the welfare and the well-being of the people. OAU gives priority to the unity of States as prime means to protect the basic rights of the peoples.

Little attention is given to the maintenance of peace and security within the continent. More attention is given rather to the need of "de-colonising of the States that were still under foreign rule and the observation of the principle of self-determination" because these were the main problems facing African States at the time when the Charter was adopted. Independence of South Africa and other States that were still under colonial powers occupied the main position in the Charter.

Article 2 of the Charter, paragraph one, section (e) determines that: "To promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". The position of the paragraph is one way of minimising its significance. The basic rights of the peoples should have been highlighted as principal element for all member States. The thirty-three articles of the Charter dedicated little attention to the principles of the Universal Declaration of Human Rights and the International Humanitarian Law. In line of principle, these omissions or violations and abuses of rights and law stand out to be serious problems facing most of the African States.

In the preamble, it is mentioned that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples. Most African States that have experienced armed conflicts have not known how to adjust their legal systems in order to ensure freedom, equality, justice and dignity. Moreover the conditions for peace and security have not been fully established in most States.

Most of the armed conflicts in Sub-Saharan Africa are caused by the problem of lack of unity among African States. Every State seems to enjoy all the freedom to operate the way it considers opportune under the pretext of self-determination and the territorial integrity. No State feels comfortable to be discussed or to be corrected by another State. In

the same argument, no head of State feels comfortable to be criticised by other heads of States because this would mean violation of article 3 of the Charter. The section of the article reads:

> *there is sovereign equality of all member States, there is no interference in the internal affairs of States, there must be respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.*

It is for fear of violating this article that members of the OAU find it difficult to intervene into internal matters that affect civilians.

Abdul Mohammed affirms that the conflicts and civil wars in the African States can be explained in terms of leadership. Those who control the State use its power to get the lion's share of the available resources.[74]

The conflict is caused by unequal available access to State power, and by the lack of equity in the distribution of resources; development of resources now scarce or non-existent; access to State power is limited to a minority group. Abdul highlights that the highly centralised State system has benefited a small minority of the population.[75]

Clinging to power has rendered operations within OAU pretty difficult since some governments tend to survive in power and care nothing about the population. The main difficulty is the will and ability to act. Leaders are not motivated to co-operate with the organisation and to struggle for its goals.

2.2 Permanent International Criminal Court

War crimes, crimes against peace, and crimes against humanity arise mostly because there is no strong international organ to execute the violators of the International Law. This problem is linked with the lack of international agreement to codify the international criminal law

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[74] ABDUL MOHAMMED, "War, Armed conflict, Destabilisation", in AA.VV., *Voices from Africa*, United Nations Non-Governmental Liaison Service Palais des Nations, CH-1211, Geneva 10, Switzerland, senza data, p. 72.

[75] Ibid., p.74.

and to establish a permanent International Criminal Court that would bring the violators of law to justice.

The absence of an international judiciary organ for criminal acts has assured war criminals their safety, as far as law of human rights is concerned. It was in 1993 that an *ad hoc* International Criminal Tribunal was established, for criminal cases of the war in Rwanda, under the auspices of the UN. This can be evaluated against two aspects: first, the idea untimely, since many offences which had already occurred in the past and in that war had gone out of control; second, it only concerned the situation of Rwanda and nothing to do with other similar situations in the neighbourhood.

Individuals must feel responsible for the rights and duties concerning human rights and the humanitarian law of war. Should an individual, "physical or legal person" disrespect any of the international legal prescriptions regarding international law such a person should be brought to justice. To do so can serve as a warning to others who may feel irresponsible of their duties and as an education in the requirements of law. Justice must reign over States and governments must also act responsibly in accordance with the international law.

A Burundian learned man once said, "The problem of Burundi, before being ethnical and political, is in the first place a lack of justice and a case of backward civilization on all levels."[76] The question of administration of justice in most of the warring States in the Sub-Saharan Africa is a serious question. Those who are involved in war crimes behave as though the State has no laws to discipline human conduct. The same author condemns killing, saying that it is a behaviour of a primitive person who cannot judge his or her acts before taking action. Brutality and bestiality involved in genocide of Burundi and Rwanda in turn have added to the corruption of national legal system. The same author provokes the international intervention by saying that "Burundi is suffering from a very serious disease which can be fatal unless something is done in time."[77]

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[76] L. NDARUBAGIYE, *Burundi: The Origins of the Hutu-Tutsi Conflict*, Self-published, Nairobi, 1996, Foreword, p. ix.

[77] Ibid.

Silence of the international community can furthermore be looked at as an indirect cause of bloody armed conflicts present in Central Africa.

The mere abscence of the international criminal code of law and permanent criminal tribunal has served as a cause for the outbreaks of dehumanising crisis in the Sub-Saharan Africa.

2.2.1 *Ad hoc* International Criminal Tribunal of Arusha

The International Criminal Tribunal of Arusha, that was established by the Security Council of the United Nations to carry out the application of law in the crimes against humanity that occurred within the Rwandan territory came into existence as a request made by the Rwandan government to the UN. The International Criminal Tribunal for Rwanda was established by UN Security Council Resolution 955 of November 8, 1994, to prosecute the persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda.[78] However Rwandan government voted against the resolution. They reasoned as follows: 1) Rwandan government did not accept the limitation of the Tribunal's competence to the acts committed from January 1, to December 31, of 1994 since equally serious crimes had been committed before then and after. 2) Rwanda complained about the inadequacy of the Tribunal's structure in relation to the task layed before it. 3) Rwanda firmly opposed the exclusion of capital punishment from the penalties which the Tribunal could impose on the persons found guilty.

In addition to these, Rwandan government wanted the Tribunal to be established within its territory or rather demanded that the Tribunal should imprison the sentenced persons within Rwandan territory.[79] All these reasons, that led to disagreement of the Rwandan government, contributed to put into question on the effective function of the *ad hoc*

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[78] C. P. MAINA, "The International Criminal Tribunal for Rwanda: Bringing the Killers to Book", in the *International Review of the Red Cross*, 321(November 1, 1997), p. 695.

[79] OLIVER DUBOIS, "Rwanda's National Criminal Courts and the International Tribunal", in *International Review of the Red Cross*, 321(November 1, 1997), p. 717.

International Criminal Tribunal for Rwanda in particular and for the Sub-Saharan Africa in general.

It is still uncertain whether it is within the jurisdiction of the Tribunal to charge the Rwandan government for the genocide and violations of human rights and humanitarian law, if at all this was involved in the alleged crimes. It has been asserted that the International Criminal Tribunal was established in the same *ratio* with that of former Yugoslavia as a support to the national judicial power of the concerned governments and as a means of enforcing strict respect to the international humanitarian law and the protection of human rights during armed conflicts.

Another important question is based on the subjects to the jurisdiction of the Tribunal. According to the definition of armed conflict, two armed parties must be involved in the fight. In this definition, the killing of unarmed and non-resisting persons would fall outside the scope of an armed conflict. The definition tends to exclude unilateral attacks directed against particular civilians *hors de combat*. It is true that the armed conflict involved two main parties, the FAR and the RPA. But it is equally true that crimes were also committed by businessmen, doctors, priests, editors, journalists and some other armed groups over and above military combatants. This calls attention to the prosecution of the civilians who committed the genocide and all other logistic forces that directly or indirectly provoked the conflict. This includes *inter alia*, the *Radio-Television Libre des Mille Collines* (RTMC) that spread violent and racist propaganda on a daily basis creating hatred and provoking one ethnic group to kill the other.

Shall the Tribunal charge the heads of State, if they are found guilty in matters concerning crimes against humanity? Provisions of the International Criminal Tribunal for Rwanda in Arusha are still unclear regarding the persons that the tribunal can prosecute. What is clear is that the *ad hoc* Tribunal was established to assist the government of Rwanda in applying legal measures to prosecute war criminals.

International law exponents affirm that a leader can be criminally liable (and suffer war as a sanction) for violations of the law of nations

involving oppression of the leader's own people.[80] It is explicitly clear from the already given examples that some African leaders have violated tremendously the law of human rights and the international humanitarian law.

The dualism that exists, in the application of the law of The Hague and the humanitarian law in cases of armed conflicts and the protection of the civilians, has made some governments have opportunity to argue that some types of protections are really part of customary law as opposed to the law of Geneva, or sometimes they are not really part of customary law. This argument leads to the justification of conduct of some governments in the Sub-Saharan Africa where there is a wide proliferation of non-international armed conflicts.

For example, Rwandan government adopted the UN Convention on the Prevention and Repression of the Crime of Genocide of 1975 with a reservation of art. 9 (32) but failed to ratify the *Jus Cogens.*[81]

Here, the fundamental problem is that international peace negotiators are always looking for political settlement of disputes while political settlements involve politicians most of whom are the heads of States. The paradox is, if they are the leaders who are directly responsible for the victimization, it is obvious that one would run into a difficult decision on how to deal with those persons, and with the entire issue of peace *versus* justice.[82] A suggestion here is to look for the development of new international legal instruments that would eliminate the eligibility of political negotiators. New standards and criteria are needed for the international accountability especially in the three core

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80 ASIL Proceedings, 1997, "Effectuating International Criminal Law Through International and Domestic For a: Realities, Needs and Prospects", in AA.VV, *ASIL*, pp. 259-522.PAUST, JORDAN J., "Effectuating International Criminal Law Through International and Domestic Fora: Realities, Needs and Prospects", in *ASIL - The American Society of International Law*, April 9-12, 1997, Washington D.C., pp. 259-269.

81 I. BOTTIGLIERO, "Il Rapporto della Commissione di Esperti sul Ruanda e l'Istituzione di un tribunale Internazionale Criminale", in *La Comunità Internazionale*, Vol. 49, 4(quarto Trimestre 1994), Società Italiana delle Organizzazione Internazionale, Italia, p. 765.

82 See ASIL Proceedings, 1997, p. 260

areas of *Jus Cogens*: crimes of genocide, crimes against humanity and war crimes.[83]

2.3 INTERNATIONAL CRIMINAL COURT (ICC)

Diplomatic Conference of Plenipotentiaries on the establishment of a Permanent International Criminal Court that was held in Rome in 1998, is a legal approach to apply the principle of justice to the problem of crimes of war, crimes against peace and crimes of humanity. United Nations values the significance of creating a Permanent Criminal Court to deal with issues of war crimes, crimes against peace and crimes of humanity. UN General Assembly at its 49th session in 1994, decided to establish an *ad hoc* Committee on the establishment of an International Criminal Court and the International Criminal Code.

The following are some of the quoted opinions that motivated the Rome Conference in 1998:

> *Many thought, no doubt, that the horrors of the Second World War the camps. the cruelty, the exterminations, the holocaust could never happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in Rwanda. Our time-this decade even has shown us that man's capacity for evil knows no limits. Kofi Annan (UN Secretary General - 1998).*[84]

Crime against humanity is subject to the law and the criminals are called to justice so long as their act is against the law. The establishment of the International Criminal Court matures after many years of debates about the application of international law to the question of armed conflicts. The ICC operates as a subsidiary organ of the Security Council among the UN judicial organs. However ICC operates as an independent judiciary organ adopted by a multilateral treaty (in Rome, 1998).[85]

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83 These three areas have been defined under chapter two of the thesis.

84 *UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court - June 15 to July 17, 1998* in Rome. The quotations are made on the preparation drafts that are not documentated.

85 Rome Statute of the International Criminal Court has not entered into force.

> *The potential Pol Pots of this world - yes, the planners and not just the perpetrators - must be deterred by the prospect of criminal justice. And is it fair and realistic to expect the survivors to forgive and to co-operate if there is no justice? In the absence of justice, private revenge may prevail, which will spread fear and undermine the possibility of reconciliation.*[86]

The two quoted versions suggest the rule of law as the measure of establishing Peace and Justice under the principle: *nullum crimen, nulla poena sine lege*. The international effort to establish an International Criminal Court and the codification of the International Criminal Law compose a great hope for the field International Humanitarian Law.

Absence of prosecutions of sexual violence against women during conflict, as well as the problematic definition of such crimes in international humanitarian law, led many to conclude that these crimes were perceived as inevitable, merely one of war's unfortunate by-products, rather than the horrifying military strategy that the recent conflicts in the Former Yugoslavia and Rwanda have shown such crimes to be.[87]

The same text elaborates saying that,

> *it is hoped that an international procedure which condemns genocide and which holds the perpetrators accountable will send a message that impunity for such crimes will not be tolerated by the international community and will ensure that justice is attainable.*[88]

International community is directing more attention towards the rule of law rather than the former application of political principles to establish justice and order. The International Criminal Court deals with all violations of human rights and humanitarian law embarking on the principle of criminal law.

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86 Ibidem.

87 Ibidem.

88 Ibidem.

> *There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance (Benjamin B. Ferencz, a former Nuremberg prosecutor).*[89]

Persons responsible for crimes such as genocide will be prosecuted by the Court and punished according to the law in collaboration with the national courts within the State in question. International Law Commission proposes that the International Criminal Court will take over when national criminal justice institutions are unwilling or unable to act. In the same line, the purpose of the prosecution and relevant punishment is to deter future war criminals.

Shall the ICC have power to prosecute heads of State should they be involved in crimes? Article 1 of the Rome Statute prescribes that,

> *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....*[90]

This article and article 5 do not explain clearly the power the Court has over the heads of States, should they be involved in crimes of genocide, crimes against humanity, war crimes and the crime of aggression as expressed under article 5.

3 Some Selected Cases of Armed Conflicts and Causes

Before concluding our discussion on the causes of armed conflicts it would be correct to present a quick view of some selected cases of such conflicts. Whatever has lead to such conflicts can then

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89 From the preparation papers for the Statute of the International Criminal Court of 1998 in Rome.

90 The Statute of the International Criminal Court adopted on 17 July 1998 in Rome.

serve to confirm the influence of internal and external causes that we have discussed.

3.1 Democratic Republic of Congo: Historical Trace of Facts

Civil war in the former Zaire has its origin in the year 60s when the country was struggling for its independence from the Belgians. UNOC [91](The United Nations Congo Force) was formed to secure the withdrawal of the Belgian forces, to assist the government in maintaining the law and order and to supply technical assistance. It lasted between for over four years (1960-4).[92] The tragedies caused by the national Armed Forces on the civil population caused an alarm. The implications of such conflicts are prolonged again in the year 90s with the downfall of the regime of President Mobutu.

The recent conflict has been a combination of many factors which occurred at the same period of time. First of all, due to the high level of corruption in the authoritarian government of President Mobutu Sese Seko the economy of the country was at its worst. This is intermingled with international unpopularity of the President in terms of the protection of human rights and the natural resources of the country.

At the same time, the health of President Mobutu was deteriorating and this forced him to stay outside the country for a long period of time, both in France and in Switzerland. Contemporaneously, the conflicts that erupted in both Rwanda and Burundi forced many refugees into former Zaire both in Goma and Bukavu in the Kivu region. The flow of Rwandese refugees into former Zaire caused inter-State disputes between Rwanda and the former Zaire.[93]

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[91] UNOC (United Nations Operations in the Congo) was authorized by Security Council Resolution, S/RES/846 of 1960. UNEF was also formed. See also CASSESE, Antonio, Op. Cit., pp. 121ff.

[92] Cfr. *UN Peace-Keeping Operations*, DPI/1827, Agosto 1996, Roma.

[93] Humanitarian decadence of former Zaire is termed as structural and social problem of the Zairean populations. The problem of health, development. Vincent Janssens explains in his article, "Zaire: Problematique humanitaire", "Le problème de fond se situe..au niveau de la faillite du système de santé". Cfr. VINCENT Janssens, "Zaire: Problèmatique humanitaire", in AA.VV., *Conflits en Afrique: Analyse des crises et*

Sporadic and intense violence erupted in Masisi and the surroundings of North Kivu Province of Eastern Zaire.[94] On October 8, 1996 a local Zairean official announced of stripping the Tutsi (Banyamulenge) community in the province of their citizenship and property. But this is in connection with the decision made in 1981 by the government of Zaire, concerning the legal policy on nationality.

Large groups of *Bahutu* and *Batutsi* were fleeing from the war striken regions of Rwanda into Eastern part of former Zaire, Burundi, Tanzania and neighbouring Uganda for safety. Among the refugees, there were also the criminals of the genocide in Rwanda. With all this underway, the Zaireans were also emmigrating from the inflicted regions towards the inland. The displacement of the masses in the region created a conflict between the two governments: Rwanda and the then that of the former Zaire. The Rwandan government had sent some troops into Eastern part of the former Zaire and according to government reports it was so to secure Rwandan territories from Zairean bombardments. Yet Rwandan government officials did not admit the offence.

Both the UNO and the OAU were following the conflict in the Great Lakes Region with great concern. On October 21, the Secretary General of the UNO issued a Statement expressing the concern of the Organisation concerning the deteriorating situation of the Region and on November 7, 1996, discussions were held in Rome concerning the situation of Zaire, and Mr. Ibrahima Fall was sent by the Secretary General to Kinshasha purposely to maintain peace. The International Community was making an appeal for funds to send humanitarian aid to the inflicted region of the Great Lakes. At the same time, UN High Commissioner for Refugees, Mrs. Sadako Ogata made an appeal for an

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pistes pour une prévention, ibid., p. 234f. In 1960 in Congo the national forces massacred hundreds of the Baluba people in the province of Kasai during a political crisis, Cfr. CASSESE, Antonio, *I Diritti Umani nel Mondo Contemporaneo*, p. 120.

[94] THIERRY COPPENS, "L'Afrique des Grands Lacs ou le monde humanitaire en désarroi", in AA.VV, *Conflits en Afrique: Analyse des crisis et pistes pour une prévention*, Les Publications du Grip, Bruxelles, 1997, p. 98. "Dans le Masisi, des miliers de Zairois rwandophones 'd'origine tutsie' ont été victimes d'une répression dirigée par les autorités locales et appuyée par des miliciens interhamwes sous l'oeil complaisant des forces armées zairoises". Many people who camped in the Kivu region, Goma, suffered terrible epidemics such as cholera and starvation. A number of refugees were killed by rebels during the Kabila vs Mobutu warfare.

immediate end to the fighting in order to avert another humanitarian disaster in the region.

The question of Banyamulenge became a great controversy while President of Rwanda, Mr. Pasteur Bizimungu called for a Second Berlin Conference to re-define the borders according to ethnic lines.

The Secretary General dispatched a delegation to Kinshasha and to Kigali to study the controversy. OAU sent a delegation into Zaire to assess the situation of "Banyamulenge" who are just a community of Rwandese descent who settled at a place called Mulenge. When some Zairean local authorities made an attempt to push the Banyamulenge out of the territory, the citizens reacted that decision taking up arms against the State claiming their right of citizenship. Zairean government was convinced that Banyamulenge people were backed by the Rwandan government since they could not afford possessing such sophisticated weapons. They also charged Rwandan and Burundian soldiers who were fighting along with the Banyamulenge against the government of Mobutu.

The situation of the refugees in the camps of Goma and Bukavu was worsening. There was violence as refugees were also attacking one another. The rebels were also attacking the camps killing thousands of the refugees. The Zaireans were bitter with the International Community for having taken advantage of their generosity to host the refugees. The intention had been to take the refugees back to their country.

Violence broke out. Rwandan government supported the opinion of creating humanitarian corridors of repatriating their people. But even in this operation it is clear that the life most of the refugees was still at stake. Rwandan government distinguished between the normal refugees and the FAR militiamen who were to be disarmed and neutralised. People who had committed genocide crimes were to be handed to the International Criminal Tribunal based in Arusha for judgement.[95]

The crisis in the Eastern Zaire is climaxed with the falling of the former government of President Mobutu and the rising to force of Mr. Desideré Laurent Kabila through the combats of the ADFL (Alliance of

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95 "The Crisis in Eastern Zaire", in *OAU Conflict Management Bulletin: Resolving Conflicts*, Vol. 1, 6 (October-November, 1996), Addis Ababa, pp. 2-5.

Democratic Forces for the Liberation of Congo-Zaire). The succession of Kabila changes the name of the country into Democratic Republic of Congo (former Zaire), with intention to rehabilitate what the régime of Mobutu had destroyed, *inter alia*, the economy of the country.

3.2 Genocide in Burundi: Historical Trace of Facts

The problem of systematic killings and extermination of people in the Republic of Burundi is defined within world public opinion as the tribal strife between two major groups: the *Batutsi* and the *Bahutu*. This is in close connection with the history of the State. Before the arrival of the Belgians, Ruanda-Urundi was within the then German East Africa since 1899 until 1916. The League of Nations gave Rwanda and Burundi to Belgium as a mandate territory in 1916 then this mandate became trusteeship administration under the auspices of the UN The Trusteeship Council in 1945.

The crisis in Burundi (Dominant Minority Society) has a lot to do with political conflict that lead the two major ethnic groups to genocide. The two ethnic groups in power are the *Batutsi* and the *Bahutu;* the *Batutsi* are holding military and political power while the *Bahutu* (the majority group) are systematically kept out of the political and administrative power. Statistically, the *Bahutu* compose 85%, while the *Batutsi* make up 14% and the *Batwa* 1% of the whole population of about 6 million people. They all speak Kirundi as a common language and live side by side with each other. These ethnic groups intermarry among themselves yet they remain politically different.[96]

Historically both *Batutsi* and *Bahutu* lived in a monarchy in which the king was always a *Batutsi* by inheritance and the soldiers were also Batutsi. The *ganwa* is the prince while the *mwami* is the king. Both belonged to the royal *Batutsi-Hima*. Other *Batutsi* masses are divided into two groups, *Banyaruguru* and the *Bahima*. Their relations with the *Bahutu* were in equal footing, and intermarriage was

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[96] E. SUY, *Conflits en Afrique: Analyse des crises et pistes pour une prévention*, GRIP, Fondation Roi Baudouin-Médecins sans Frontiéres, 1997, pp. 149f. Since the independence of Burundi 1962, the administrative, economic, judiciary power have been in the hands of the minority Tutsi. Les principaux massacres ont lieu en 1965, 1972, 1988 et 1991 et créent un sentiment de peur et de haine réciproques entre les Hutus et les Tutsis.

common.[97]Unfortunately the mentality of superiority and the inferiority, respectivley, in the two rival groups, has continued for too long.

The massacre of April 29, 1972 *Batutsi* military men entered schools killing *Bahutu* students, about 300,000 *Bahutu* were killed.[98] The issue of this genocide provoked historical prejudice between the two groups, that of superiority and inferiority. Many *Bahutu* intellectuals, including government workers, were exterminated by the *Batutsi* military men.

The effect of conflict forced large number of *Bahutu* and some *Batutsi* to flee the countries and to seek refuge in the neighbourhood, namely, former Zaire, Tanzania and Rwanda. During the tragedy of 1972 all *Bahutu* were eliminated from military forces and government offices.

In 1976, Colonel Jean-Baptiste Bagaza (a *Batutsi* from *Bahima* clan) seized power and claimed national reconciliation and integration of the nation. Bagaza tried to balance the power by appointing *Bahutu* in the high posts. In 1981 referendum, Bagaza won the votes as the head of State. During the years that followed, however, Burundi underwent rapid deteroriation of human rights.[99]

In 1987, Bagaza was overthrown by Major Pierre Buyoya (a *Batutsi* from *Bahima* clan) through a bloodless *coup d'état*. He accused Bagaza of corruption and he formed military committee for national salvation.[100]

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97 Cfr. *AFRICA SOUTH OF THE SAHARA 1994*, p. 201.

98 A. CASSESE, *I Diritti Umani nel Mondo Contemporaneo*, p. 120.Cassese, illustrates the Burundian genocides as one of the grevious atrocities committed after the Convention against genocide in 1948. A group of Tutsi massacred a large of Hutu group.

99 Cfr. L. NDARUBAGIYE, *Burundi: The Origins of the Hutu-Tutsi Conflict*, Translation from the Original French by Séverin Karabagega, Nairobi, 1996. The reading of the whole book is recommended. The Conflict between the Hutu community and the Tutsi Community has a lengthy History that the author describes with keeness. The author narrates his living experience in the Burundi Conflict. He mentions the occasions in which he escaped death. The Genocide of Burundi are found in many other writings and various publications. The event of 1972 in Burundi is a violation of UN General Assembly's Convention on the Prevention and Punishment of the Crime of Genocide adopted by Resolution 260A (3) of December 9, 1948.

100 Idem, p. 202.

In 1990, the massacres in Ntega and Marangara claimed about 25,000 lives and about 5,000 in 1991. Another tragic period follows the assassination of President Melchior Ndadaye on October 21, 1993. Between 1965 and 1995, many *Batutsi* and *Bahutu* have lost their lives, and many have been wounded, displaced by the civil war. *Bahutu* extremist group formed guerrilla (*assaillants*) warfare groups against the government. Camps of massacre in Mwaro, Ruyigi, Gitega are where human persons have been killed maliciously. *Conseil National pour la Défense de la Démocratie au Burundi* C.N.D.D. was created as an underground movement to bring peace between the disputing parties but without any proper success in Burundi.

Micombero and Bagaza stand out to be the turning points in the crisis of Burundi. In January 1965, Pierre Ngendandumwe (a *Bahutu* Prime Minister) was assassinated. Mwambutsa, the *mwami* appointed a *Batutsi* in his place. Ntare V, the son of Mwamutsa deposed his father from power and he appointed Michel Micombero the Prime Minister. Micombero later overthrew Ntare and claimed Burundi a Republic abolishing monarchy.

The abuse of human rights and fundamental freedoms spring from the very differences that emerge through politics and cultural prejudice, as is easily evidenced in this part of Africa.

After the massacre of 1988, a year after the coming to power of Major Buyoya, he inaugurated a political system that would lead to national reconciliation making the referendum of unity between the Church and political powers. June 1993 presidential and legislative elections were held that put Mr. Melchior Ndadaye to power (a moderate *Bahutu*) with his party FRODEBU over UPRONA (*Batutsi* dominated party). In 1997, Major Pierre Buyoya (a military leader), through *coup d'état* rose again to power forcing the former elected president to seek refuge in the US embassy in Bujumbura.

3.3 Genocide in Rwanda: Historical Trace of Facts

Another similar case is that of Rwanda. Where the tension and intolerance are expressed in ethnic terms; having Tutsi the minority

14% group and Hutu, the majority 85%.[101] In 1990, the *Front Patriotique Rwandais* (FPR) launched an offence against the government's forces *Forces Armées Rwandaises* (FAR). This is a group of Tutsi from Uganda with primary objective of forcing the regime of Major General Juvénal Habyarimana (1973-1994) to surrender power to the Hutu majority as a form of democracy. FAR, FPR, and the military regime staged a combat for the protection of human rights. The political conflict and violence motivated the Head of State, Habyarimana to authorise multi-party system legalising many political parties in Rwanda.[102]

1982 cross-border refugee problem in Rwanda and the crisis between Uganda and Rwanda concerning the status of the refugees erupted. In 1986, UN High Commission for refugees UNHCR reported that about 110,000 Rwandans were in Uganda.[103] The Rwandans in Uganda formed a guerrilla group, FPR, to combat the military forces of Habyarimana. There were hostilities in Kigali and other regions of the country leaving many civilians dead, wounded and deprived of their property.

Rwanda refused the return of the refugees while Uganda accepted to grant citizenship to those who have been in the country for over 10 years.

In 1990, over 600,000 people were struck by famine all over the country. About 10,000 of FPR guerrillas with Tutsi domination crossed the border of Uganda into Rwanda. The same year hostilities were felt all over in the town of Kigali.

The cease-fire accord of N'Sele in March 1991 failed issuing into mass killing against human rights. Many Bahutu and Batutsi died and a number of them were displaced. The OAU Arusha peace accord of July 1992[104] was followed with very little success. UN neutral military

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101 Cfr. D. KAMUKAMA, *Rwanda Conflict: Its Roots and Regional Implications*, Fountain Publishers Ltd. Kampala, 1993. The reading of the book is recommended for complete narration of the Rwanda conflicts. The book is more political than legal so I am not going to quote it in this work.

102 Idem, pp. 146ff.

103 *AFRICA SOUTH OF THE SAHARA 1994*, p. 697.

104 Also known as Arusha One (Arusha I), Arusha First Accord.

observers was set by the Security Council at the request of the Rwandan government, but even this could not prevent the tragedy. The massacre at Kibuye in August 1992 and that of Gisenyi region of the beginning of 1993 caused millions of life. Tension increased and bitterness stockpiled.

Intervention of UNAMIR (United Nations Assistance Mission for Rwanda) pushed for ceasefire talks that brought about the Arusha Peace Agreement signed on August 4, 1993 between the head of State Habyarimana and Alex Kanyarengwe of FPR. One of the consequences of UNAMIR and the Arusha Peace Agreement is the declaration which the Rwandan government made concerning article 90 of the Additional Protocol I. It orders the creation of a Fact-Finding Commission to inquire into facts alleged to be a serious breach as defined in the Conventions and the Protocol.

The most tragic genocide of 1994 erupted following the presidential plane crash that killed two heads of State, Habyarimana (Rwanda) and Cyprien Ntaryamira (Burundi), on April 6, 1994.[105] This event is followed with mass killing, blood bathe, in Rwanda.[106] Thousands of innocent civilians, including women and children, the displacement of a significant number of the Rwandese population, including those who sought refuge with UNAMIR, and the significant increase in refugees to the neighbouring countries. Fighting, looting, banditry and the breakdown of law and order especially in Kigali were reported by the media.[107]

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[105] THIERRY COPPENS, "L'Afrique des Grands Lacs ou le monde humanitaire en désarroi", in AA.VV, *Conflits en Afrique: Analyse des crisis et pistes pour une prévention*, Les Publications du Grip, Bruxelles, 1997, p. 97. The author of this article mentions, "Le 6 avril 1994, l'assassinat du président rwandais Habyarimana sert de signal au déclenchement du génocide de la population tutsie et au massacre des hutus opposés au régime habyarimaniste. En trois mois, plus d'un demi-million de personnes périssent sous les coups de machette de malices parfaitement entraînées et organisées de longue date". With this Statement we can see the humanitarian horror that followed the assassination of the two Heads of States in Rwanda.

[106] E. SUY, "Introduction", in AA.VV., *Conflits en Afrique: Analyse des crisis et pistes pour une prévention*, Les Publications du Grip, Bruxelles, 1997, p. 9. About 500,000 Rwandese were killed in the course of genocide in 1994.

[107] Consiglio di Sicurezza "Africa": Situazione in Ruanda, in *La comunità internazionale*, Vol. 50, 1 (1995), pp. 126-156.

3.4 Armed Conflicts in Somalia: Historical Trace of Facts

The instance of Somalia is different from the genocides in Rwanda and Burundi, in that the Republic of Somalia was under dictatorship and the sudden collapse of the State of peace followed from the long lasting need for democracy.

The conflicts in Somalia were rooted in the unpopular dictatorial regime of the late Siad Barré who rose to power in 1969 through military force. His taking of power motivated civil wars among the Somalis.

Somalia is a mono-ethnic nation with different clans, where the Islamic religion dominates. Somalis speak Somali and they are called Somalis.

The deadly conflicts of Somalia increased when the military seized power under the command of Major General Mohamed Siad Barre in 1969, after the assassination of Shirme, the then President. The intention was to preserve democracy, justice, and at the same time eliminating corruption and tribalism. Somalia became democratic republic under the military rule.[108]

However tensions were growing among the sub-clans of Somalia. The appointment of Ali Mahdi Mohamed as interim President was opposed by SPM (Somali Patriotic Movement) and the SNM (Somali National Movement).

This was followed by a State of anarchy in 1991. Meanwhile the division between various clans and sub-clans worsened. Said Barre, together with his loyal armed forces, was attempting to regroup support in his native region of Gedo. Tension groups were SNF (Somali National Front), USC (United Somali Congress), SNM, SPM and the military forces. During June 5-12, 1991 a cease-fire conference was held in Djibouti seeking reconciliation and national integrity. The conference was chaired by Somali's first President Aden Abdullah Osman.[109]

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108 *AFRICA SOUTH OF THE SAHARA 1994*, p. 776.

109 Ibidem.

The situation of conflict changed when General Mohamed Farah Aidid elected chairman of USC. An outbreak of fighting in Mogadishu erupted 400 people killed and several others were wounded. Somalis were separating more and more into clans and sub-clans. Aidid from the Habir Gedir while Ali Mahdi from Abgal. Fighting between Aidid supporters and Mahdi's supporters left a number of civilians in dangerous situation. About 1,000 civilians were killed in a short period of time during the inter-clan clashes in the interior of Somaliland.

The civil war in Somalia that forced General Siad Barre out of power caused controversy in the international community. Despite the efforts of the UN Security Council the civil war was ravaging the country, leaving civilians in a state of danger. The United States agreed to send troops to salvage the situation. This was followed by the visit of president George Bush in January 1993. He met a jubilant welcome from the people who shouted "Saviour of Somalia". This was contrary to the cold welcome given to the UN Secretary General, the then Mr. Boutros-Boutros Ghali whose visit followed that of Bush. It was the supporters of Aidid who jeered at him and his security was put at stake. As a result, he was then forced to take refuge in US Embassy.[110]

The external peacekeeping operations created ill feeling and controversy. Things were not very clear as to how long the US troops (Operation Restore Hope) were to stay in Somalia and the duty of the UN troops. It was hard to decide whether to activate the disarmament or protect the relief food so it could reach the dying masses in the interior of Somalia.

It did not take long. On December 1992, US troops was disembarked in Mogadishu and quickly they secured control. The operation caused a number of civilian deaths.

UNITAF (United Task Force) intervened. It put the pressure on Aidid and Mahdi to sign peace talk agreement and to make reconciliation at Mogadishu. This was done but it was short lived. UNITAF committed itself in disarming the Somali forces in conflict. The operation again caused many civilian deaths. Heavy fighting erupted when the United Task Force seized the SNA (Somali National

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[110] Idem, p. 777.

Alliance) base in the southern Somalia. Aidid opposed the UN troops, as could be expected.

In 1993, the UN Secretary General proposed a multinational force of 28,000 soldiers UNOSOM II. The members of peacekeeping forces were being killed by the forces of General Aidid. UN Security Council charged Aidid of war crimes. US helicopter attacked Aidid's home destroying ammunition dumps.

Humanitarian aid was always under the threats from the Somali forces. Civilians were dying from starvation and diseases. International aid appeal was urgent as the group of Aidid was threatening the UN mission in the conflict areas in Somalia.

Mohamed Sahnoun, an Algerian diplomat was appointed by the UN Secretary General to monitor the situation in Somalia basing himself in Mogadishu. In the meantime the USC was involved in tense warfare capturing the hiding place of Siad Barre Guerba-Harre. Siad Barre had to escape to Kenya for refuge. The condition of the civilians was severe especially in the rural areas where the convoys could not easily penetrate.

For aid agencies with relief supply and personnel, it became difficult to penetrate the country that was living under a state of anarchy. As a result agencies had to hire armed guards from among the local clans for protection from looting of the relief supply. Due to risks UN Security Council resolution of July 27 approved an urgent airlift of food aid and medicine to reach Somalia.[111]UN efforts were insufficient to ensure effective delivery of relief to those in need since the UN convoy was still subject to attacks.

Mohamed Sahnoun's resignation in 1992 created another crisis. He criticised the bureaucratic method of the UN Security Council in dealing with humanitarian cases.[112]

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111 Ibidem.

112 Ibidem.

3.5 Armed Conflicts in Liberia: Historical Trace of Facts

Liberia presents another war that started with decayed regimes and that ended up in civil war. It is not the same with that of Somalia but they share the same tactics. Siad Barre used military power to get into power and to dictate his people while Samuel Doe used the same military approach to get into power and to maintain his position.

From the independence of Liberia in 1847, up to 1980 the political power was in the hands of the freed slaves who were brought from America. They adopted American constitutional model since independence from the American government. Liberia resisted the European colonisation even the domination of the League of Nations could not subdue the freedom enjoyed within the country. The government of President Tubman stands to be the longest from 1944-1971.[113] The domination of power left the indigenous Liberians at the margines of politics and this is the cause of conflicts that erupted later.

Liberia's humanitarian crisis followed the years 80s when Samuel Doe got into power through *coup d'état.* His motive was to change the American model that was adopted in the constitutions of 1847 through the use of military force.

The Liberians lived ten years of dictatorial regime of Samuel Doe (a military). The country went into internal anarchy and economic chaos, creating havoc and mass suffering throughout the country. In December 1989, Liberia was faced with bloody civil war as rebels launched a fight against the government of Samuel Doe. About 150,000 Liberians were killed in the uprising. Brutality and terrorism ravaged the old independent African country living the population in great confusion and fear. The country fell into a state of lawlessness and confusion as there was no stable government and guerrillas were fighting in all regions of the country.

Civil war in Liberia caused many problems within the country, and consequently, a number of Liberians fled the country to seek refuge elsewhere.

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113 A. SACCO, *Il Diritto Africano: Trattato di Diritto Comparato*, Utet, Torino, Italy, 1995, p. 296f.

CONCLUSION

Raising the question of armed conflicts in Sub-Saharan Africa today is a way of bringing the objectives of the International Law of War into discussion. As has been illustrated in this dissertation, the international law originated with the problem of disputes between nations. The International Law of War developes from the tragedy of armed conflicts to which the humanity is exposed. In regard to the value and the dignity of the victims of armed conflicts, we re-affirm that the *salus popoli suprema lex*, the protection of persons should be the supreme guidelines of international law. In regard to the question of armed conflicts the "minimum humanitarian standards" within the States is a responsibility of the State and in this case the African States are part and parcel of resolution 1998/29 of the UN Commission of Human Rights.[114]

The first international attempt to prevent war began with the Covenant of the League of Nations whose objective was to stop the world from having another brutal experience similar to that of the First World War. Of course this alone did not prevent the experience in which human dignity was destroyed and many civilians were mutiliated, exterminated and killed in the concentration camps.

In this conclusion we repeat that the experience of the Second World War taught the nations the importance of having an international body that would control all circumstances that may lead to nations into armed conflicts.

We must admit that the international community has concentrated its attention on international wars, of the declared type, paying less attention to non-international armed conflicts. The period before the 1977 Second Geneva Protocol overlooks the human tragedy caused in

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114 E/CN.4/1999/92.

the internal armed conflicts such as guerrilla warfare and the like. This is an oversight of one of the most important objectives of the international law. Sadly enough, the international community is taking a long time to come up with effective legal procedures that would guarantee the right to life for all.

Our Century is faced with another tremendous war. That is, non-international war that mainly involves ethnic groups. Such terms as ethnic cleansing, in former Yugoslavian countries, genocide in Rwanda and Burundi, tribal clashes in several African countries introduce within the international community new dimension of war. It is nolonger war between the forces from the rival nations. War nolonger takes place within a defined and delimited battlefield so that its effects may be limited and controlled. Instead, the concept of armed conflicts in the second and the third millenium affects more civilians than the military forces in the battle. The poses challenge to the International Law of War since it becomes increasingly difficult to find the solution to the non international armed conflicts.

Likewise, International Humanitarian Law (IHL) has concentrated more on international armed conflicts and paid less attention to the non-international armed conflicts, for instance, the civil wars in the Sub-Saharan Africa. Instead, much of juridical power has been entrusted to the single governments and States. It was not a big deal whether *de jure* governments are competent enough to guarantee protection and security to the civilian population during the civil warfare or not.

The *ad hoc* International Criminal Tribunal of Arusha, established to look into the charges of genocide in the Republic of Rwandan stands to be the first attempt of the UN Security Council to apply international rule of law to the violations caused by such genocide in Rwanda. It is incorrect that this procedure has not been applied to the cases of war crimes and crimes against humanity in Liberia, Angola, the neighbouring Burundi, Democratic Republic of Congo, Nigeria, Somalia, Sudan, Uganda and Ethiopia.

The regional approach to the question of conflicts has been generally accepted as the best approach to the regional problems. It is true, to our knowledge, that the issue of armed conflicts in the central part of the Sub-Saharan Africa is beyond the capacity of the regional

and sub-regional Organisations alone. Much more, is required to stop the fighting and to establish rule of law within the States, in which international law can be fully respected. The whole international community must participate actively in the struggle to restore peace in the Sub-Saharan Africa and powerful States must be transparent in their dealings with the question of armed conflicts in the region.

African States still have a lot of problems with their internal judicial systems and this has not permitted most of the governments to implement successfully the international law especially the human rights and the humanitarian law.[115] However, it is not a question of justifying the wrong. It is a question of saying that the human tragedy in the Sub-Saharan Africa needs *Lex Specialis* that would bring to justice all the war crimes, crimes against humanity, crime against peace, and prevent similar tragedies in the future. States have a juridical obligation to recognize human rights within their constitutions and legislation, seeing to it that human rights law is strictly protected and fully implemented. Any violation to human rights and fundamental freedoms must be executed accordingly[116] and any factor that may lead to the violation of such laws must be prevented in good time.[117]

It is a fact that many African States have tended to neglect the implementation of human rights within their legal systems. The end

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115 Cfr. C. J. BAKWESEGHA, "The role of the Organization of African Unity in Conflict Prevention, Management and Resolution in the Context of the Political Evolution of Africa", in *African Journal on: Conflict prevention, management and Resolution*, OAU, A Quarterly OAU Survey of Peace, Security, Peace Operations & Related Topics in Contemporary Africa, Vol. 1, 1(January-April 1997), Addis Ababa, p. 4. The author affirms that conflicts constitute one of the greatest challenges in the African Continent maintaining that issues of identity, governance, resource allocation, state sovereignty and power struggle, sometimes coupled with the personality question, have all conspired... to make Africa have the unenviable record of hosting the biggest number of uprooted communities in the world... .

116 Appendix I.

117 OAU has set up a machinery to deal with the Early Warning System and Research in Addis Ababa (Conflict prevention, management and Resolution). This approach must be effective and must act with clearity in matters dealing with conflicts. The reason is that the causes of such conflicts and clashes within African States are so delicate that the OAU may risk not solving the problem in issue. See *African Journal on: Conflict prevention, management and Resolution*, OAU, A Quarterly OAU Survey of Peace, Security, Peace Operations & Related Topics in Contemporary Africa, Vol. 1, 1(January-April 1997), Addis Ababa.

result is that individuals have lost their lives in situations dealing with armed conflicts and thousands have been deprived of their basic rights during such situations. The governments in "collapsed States", for example, have not managed to prosecute non-State actors who have violated the human rights law and the humanitarian law. In such cases the question is put into the hands of international authorities who are supposed to monitor the violations of the international law. International liability of a State must be ensured. The damages caused by the agents of the State, as a result of their criminal acts, must be brought to action.[118] The definition of the prosecution of the international criminal cases is still under debate and a clear definition is still awaited.

We conclude, saying that the question of African armed conflicts, is a question of the rule of human conscience that recognizes the rationality in the principles of the Law of War and which seeks to avoid any outbreak of deadly conflicts as those that have been evaluated in this dissertation.

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[118] YEARBOOK OF INTERNATIONAL LAW COMMISSION 1995, Vol. 2, (part 2) United Nations, New York and Geneva, 1998, pp. 18ff, "Responsibility of States".

APPENDIX I

Appendices of Relevant International Documents

Principles of International Co-Operation in the Detention, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity

The General Assembly:

Recalling its resolutions 2583 (XXIV) of 15 December 1969, 2712 (XXV) of 15 December 1970, 2840 (XXVI) of 18 December 1971 and 3020 (XXVII) of 18 December 1972,

Taking into account the special need for international action in order to ensure the prosecution and punishment of persons guilty of war crimes and crimes against humanity,

Having considered the draft principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Declares that the United Nations, in pursuance of the principles and purposes set forth in the Charter concerning the promotion of co-operation between peoples and the maintenance of international peace and security, proclaims the following principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity:

1. War crimes and crimes against humanity, wherever they are committed, shall be subjected to investigation and the persons against whom there is evidence that they have committed such crimes shall be subjected to tracing, arrest, trial and, if found guilty, to punishment,

2. Every State has the right to prosecute its own nationals for war crimes or crimes against humanity.

3. States shall co-operate with each other on a bilateral and multilateral basis with a view to halting and preventing war crimes and

crimes against humanity, and shall take the domestic and international measures necessary for that purpose.

4. States shall assist each other in detecting, arresting and bringing to trial persons suspected of having committed such crimes and, if they are found guilty, in punishing them.

5. Persons against whom there is evidence that they have committed war crimes and crimes against humanity shall be subjected to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. In that connexion, States shall co-operate on questions of extraditing such persons.

6. States shall co-operate with each other in the collection of information and evidence which would help to bring to trial the persons dedicated in paragraph 5 above and shall exchange such information.

7. In accordance with article 1 of the Declaration on Territorial Asylum of 14 December 1967, States shall not grant asylum to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity.

8. States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

9. In co-operation with a view to the detection, arrest and extradition of persons against whom there is evidence that they have committed war crimes and crimes against humanity and, if found guilty, their punishment, States shall act in conformity with the provisions of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

2187th Plenary meeting of December 3, 1973.

APPENDIX II

Respect for Human Rights in Armed Conflicts

General Assembly,

Reaffirming that only complete respect for the Charter of the United Nations and general and complete disarmament under effective international control can bring about full guarantees against armed conflicts and the suffering caused by such conflicts, and determined to continue all efforts to these ends,

Conscious of the fact that armed conflicts continue to cause untold human suffering and material devastation,

Convinced that in all such conflicts rules designed to reduce the suffering as much as possible and to increase the protection of non-combatants and civilian objects are needed,

Reaffirming the urgent need to ensure full and effective application by all parties to armed conflicts of existing legal rules relating to such conflicts, in particular the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, and to supplement these rules by new ones which take into account the modern developments in methods and means of warfare and which are practicable,

Welcoming the convocation by the Swiss Federal Council of the first session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, to be held at Geneva from 20 February to 29 March 1974, with a possible second session in 1975,

Welcoming as an excellent basis for discussion at this Conference the draft Additional Protocols to the Geneva Conventions of 1949 prepared by the International Committee of the Red Cross after thorough consultations with government experts, particularly during conferences held at Geneva in 1971 and 1972,

Recalling the successive resolutions adopted in the preceding years by the United Nations relating to human rights in armed conflicts, in particular General Assembly resolution 2852 (XXVI) and 2853 (XXVI) of 20 December 1971 and 3032 (XXVII) of 18 December 1972,

Noting resolution XIII adopted by the twenty-first International Conference of the Red Cross, held at Istanbul in 1969, and the resolution on the reaffirmation and development of international humanitarian law adopted by the twenty-second International Conference of the Red Cross, held at Teheran in 1973,

Noting with appreciation the report of the Secretary General on respect for human rights in armed conflicts,

Recalling resolution 3058 (XXVIII) of 2 November 1973 in which the General Assembly invited the Diplomatic Conference to submit its comments and advice regarding the draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict,

Recalling its resolution 3076 (XXVIII) of 6 December 1973 concerning napalm and other incendiary weapons and all aspects of their possible use as well as the resolution on the prohibition or restriction of use of certain weapons adopted by the twenty-second International Conference of the Red Cross, held at Teheran in 1973, inviting the Diplomatic Conference to take up the question of rules on the prohibition or restriction of use of specific conventional weapons which may cause unnecessary suffering or have indiscriminate effects,

Welcoming, in this regard, the survey prepared by the Secretariat on existing rules of international law concerning the prohibition or restriction of use of specific weapons,

1. Expresses its appreciation to the Swiss Federal Council for convoking in 1974 the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and the International Committee of the Red Cross for the extensive work it has performed in preparing the draft Additional Protocols to the Geneva Conventions of 1949;

2. Urges that the national liberation movements recognized by various regional intergovernmental organizations concerned be invited to participate in the Diplomatic Conference as observers in accordance with the practice of the United Nations;

3. Urges all participants in the Diplomatic Conference to do their utmost to reach agreement on additional rules which may help to alleviate the suffering brought about by armed conflicts and to protect non-combatants and civilian objects in such conflicts;

4. Calls upon all parties to armed conflicts to acknowledge and to comply with their obligations under the humanitarian instruments and to observe the international humanitarian rules which are applicable, in particular the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949;

5. Urges that instruction concerning such rules be provided to armed forces and information concerning the same rules be given to civilians everywhere, with a view to securing their strict observance;

6. Requests again the Secretary General to encourage the study and teaching of principles of international humanitarian rules applicable in armed conflicts;

7. Requests the Secretary General to report to the General Assembly at its twenty-ninth session on relevant developments concerning human rights in armed conflicts, in particular on the proceedings and results of the 1974 session of the Diplomatic Conference;

8. Decides to include in the provisional agenda of its twenty-ninth session the item entitled "Respect for human rights in armed conflicts".

APPENDIX III

Fundamental Rules of International Humanitarian Law Applicable in Armed Conflicts

1. Persons *hors de combat* (those who have been put out of action or otherwise disabled) and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.

2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat.*

3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and medical supplies. The emblem of the Red Cross (Red Crescent, Red Lion and Sun) is the sign of such protection and must be respected.

4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their family and to receive relief.

5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

APPENDIX IV
Humanitarian Law of Armed Conflict

1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field – entered into force October 21, 1950.

2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea – entered into force October 21, 1950.

3. Geneva Convention relative to the Treatment of Prisoners of War – entered into force October 21, 1950.

4. Geneva Convention relative to the Protection of Civilian Persons in Time of War – entered into force October 21, 1950.

5. Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) – entered into force December 7, 1978.

6. Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) – entered into force December 7, 1978.

7. Resolutions of the Geneva International Conference, Geneva, October 26-29, 1863.

8. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 18 Martens Nouveau Recueil – entered into force, June 22, 1865.

9. Additional Articles Relating to the Condition of the Wounded in War, 18 Martens Nouveau Recueil.

10. Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles, entered into force November 29/December 11, 1868.

11. Project of an International Declaration concerning the Laws and Customs of War, Brussels, August 27, 1874.

12. The Laws of War on Land, Manual Published by the Institute of International Law (Oxford Manual), Adopted by the Institute of International Law of Oxford, September 9, 1880.

13. Final Act of the International Peace Conference.

14. Convention II with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land – entered into force September 4, 1900.

15. Convention III for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864 - entered into force September 4, 1900.

16. Declaration (IV, 1), to Prohibit, for the Term of Five Years, the Launching of Projectiles, and Explosives from Baloons, and Other Methods of Similar Nature – entered into force September 4, 1900.

17. Declaration (IV, 2), concerning Asphyxiating Gases - entered into force September 4, 1900.

18. Declaration (IV, 3), concerning Expanding Bullets - entered into force September 4, 1900.

19. Convention for the Exemption of Hospital Ships, in Time of War, from the Payment of all Dues and Taxes Imposed for the Benefit of the State – entered into force March 26, 1907.

20. Final Act of the Second Peace Conference.

21. Convention (III) relative to the Opening of Hostilities – entered into force January 26, 1910.

22. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land - entered into force January 26, 1910.

23. Convention (V) respting the Rights and Duties of Neutral Powers and Persons in Case of War on Land - entered into force January 26, 1910.

24. Convention (VI) relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities - entered into force January 26, 1910.

25. Convention (VII) relating to the Conversion of Merchant Ships into War-Ships - entered into force January 26, 1910.

26. Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines - entered into force January 26, 1910.

27. Convention (IX) concerning Bombardment by Naval Forces in Time of War - entered into force January 26, 1910.

28. Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention - entered into force January 26, 1910.

29. Convention (XI) relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War - entered into force January 26, 1910.

30. Convention (XII) relative to the Creation of an International Prize Court (1907).

31. Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War - entered into force January 26, 1910.

32. Declaration (XIV) Prohibiting the Discharge of Projectiles and Explosives from Baloons, The Hague, - entered into force November 27, 1909.

33. Rules Concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, Drafted by a Commission of Jurists at The Hague, December 1922 – February 1923.

34. Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, (Geneva) - entered into force February 8,1928.

35. Convention on Duties and Rights of States in the Event of Civil Strife, - entered into force May 21, 1929.

36. Draft International Convention on the Condition and Protection of Civilians of enemy nationality who are on territory belonging to or occupied by a belligerent, Tokyo, 1934.

37. Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950.

38. Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War, New Delhi, 1957.

39. Human Rights in Armed Conflicts. Resoultion XXIII adopted by the International Conference on Human Rights, Teheran, May 12, 1968.

40. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, November 26, 1968.

41. Respect for Human Rights in Armed Conflicts, Resolution 2444 (XXIII) of the United Nations General Assembly, December 19, 1968.

42. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Opened for Signature at London, Moscow and Washington, April 10, 1972.

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