

LEGAL RESPONSIBILITY FOR IHL AND HUMAN RIGHTS VIOLATIONS COMMITTED BY UNITED NATIONS PEACEKEEPING MISSIONS¹

Abstract

The question as to the relationship between International Humanitarian Law (IHL) and Human Rights Law in armed conflict and their application to peacekeeping operations is a very cardinal one. Another more challenging issue is the increasing allegations of violations of the rights of persons living within areas of armed conflict or disturbances by peacekeepers and absolute disregard to IHL rules. This research is laid out in sections to critically evaluate the laws concerning legal responsibility by States and troops in cases of armed conflict. Thus, the legal personality of the United Nations and other international organisations in general is appraised. Among the findings of this research are the facts that it is difficult to hold the United Nations responsible for violations committed by their peacekeeping troops because of the controversy as to the legal personality of the UN; the fact that individual peacekeepers can be criminally responsible for such actions. The research draws on judicial authorities and statutes to reach its conclusions.

Keywords: *Legal responsibility, Peacekeeping, Human rights, IHL.*

1. Introduction

International Humanitarian Law (IHL) is a body of rules which regulate armed conflicts otherwise known as the 'laws of armed conflict'. In other words, it is the branch of international law which comprises rules limiting the use and effects of violence in armed conflict. IHL functions to protect people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. The sources of IHL are The Hague Law, Geneva Law and Customary International Law. Human rights Law (HRL) on the other hand comprises principles which are geared towards ensuring that the rights of the people are guaranteed and protected at all times. Such rights are contained in the Universal Declaration of Human Rights (UDHR) of 1948, and in the various treaties and conventions of the United Nations e.g. The International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Socio- Cultural rights (ICESCR) among others. Controversies abound as to which of the two areas of law should apply in armed conflict. Some are of the view that IHL is solely applicable in armed conflicts while others argue that both IHL and HRL are applicable depending on the surrounding circumstances. Yet some other few contend that HRL may apply solely in certain scenarios of armed conflict. The basis for this seeming conflict is the fact that IHL does not prohibit the use of violence to conquer one's opponents nor does it prohibit the killing of persons but only seeks to limit and regulate the extent and effect of the use of force in armed conflicts. This is where it differs from human rights law which seeks the full protection of the rights of persons at all times admitting of derogations only in extreme circumstances. Another angle to the above mentioned controversy is the debate as to the application of IHL and HRL to peacekeeping operations. It is currently a standard practice of international law that Peacekeeping operations must adhere to the rules of IHL and human rights in the course of their peace operations. Where it is agreed that both International Humanitarian Law and Human Rights Law should apply in armed conflicts, another challenge still remains. What happens when these peacekeepers violate human rights and the rules of IHL in the course of their peacekeeping activities? Who bears the legal responsibility for such violations? Finding answers to all these and more is the objective of this research.

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2. Applicability of International Humanitarian Law and Human Rights Law in Armed Conflict

In explaining the relationship between IHL and HRL, the International Court of Justice in the *Barrier Case*² stated thus: as regards the relationship between IHL and HRL, three possible situations exist: a) certain rights may be exclusive problems of the IHL, b) others may be exclusive problems of the HRL, and c) others may belong to both branches of international law. Therefore, in order to answer this question, the Court should take into consideration these two branches of international law, namely Human Rights Law, and as a *lex specialis* International Humanitarian Law. Where there is an international armed conflict, International Humanitarian Law will prevail; Human Rights Law would apply only to the extent that it is not inconsistent with International Humanitarian Law; whereas if there is no armed conflict, Human Rights Law will prevail because International Humanitarian Law will find no basis to be applicable.³ Gleaning from the resolutions of the United Nations in the 1960s, it can be seen that it was the opinion of the UN that some human rights provisions remain relevant and will apply in international armed conflicts. This can be seen in Resolution No.237/1967 on the situation in the Middle East where the Security Council stated that essential and inalienable human rights must be respected in times of war.⁴ Similarly, the General Assembly in Resolution No. 2675/1970, on the basic principles for the protection of civilians during in armed conflict, stated that ‘fundamental human rights, as known in international law and enshrined in international instruments, continue to be fully implemented in armed conflicts’.⁵

The International Committee of the Red Cross (ICRC) holds the view that International Humanitarian Law could be applicable to UN peacekeeping operations if the conditions for its applicability are fulfilled- the nature of the situation, the facts at hand and the surrounding circumstances will all be put together to determine the applicability of IHL.⁶ It is the ICRC’s opinion that IHL would apply in a UN peacekeeping operation only and only if the UN forces engage in military action which has reached the threshold of an armed conflict, international or non-international and not to be determined by the formal mandate or nomenclature given to the UN peacekeeping forces by the UN Security Council. The above opinion of the ICRC is sound in the sense that once the required criteria is met and the threshold for an international or non-international armed conflict is reached, IHL should apply and regulate the activities of even the UN peace missions on ground. Thus, no separate criteria should be fashioned to determine the threshold of an armed conflict where UN peacekeepers are engaged other than the known and accepted standard criteria.

The rights and obligations of IHL are limited to times of armed conflict. Where the situation in which UN peacekeeping forces operate fall short of an armed conflict, IHL will not be the relevant legal framework. More so, the use of force in self-defence does not readily culminate to IHL becoming applicable when UN peacekeeping forces are not yet party to a conflict and when the use of force does not reach the threshold of an armed conflict.⁷ This is because self-defence is a principle of law enforcement which seeks to justify the use of force and it is well known that justification makes no difference on the applicability or otherwise of IHL in times of armed conflict. Mansson in her article evaluated and opposed the idea that human rights protection by peacekeepers is a function of modern peace operations only, contending that human rights protection had existed within UN operations from their earliest inception, strengthening the argument that

² Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory (*United Nations v Israel*) ICJ Advisory Opinion, 2004 ICJ 136

³ L. C. Spataru-Negură ‘The relationship between International Humanitarian Law and Human Rights Law’ Romania Association of Humanitarian Law- (date) <<http://www.arduph.ro/domenii/diu-doctrina/>> accessed 22 July 2018.

⁴ Ibid.

⁵ Ibid.

⁶ T. Ferraro ‘An ICRC Perspective’ (paper presented at the International Institute of Humanitarian Law seminar March 2008)

⁷ Ibid.

the human rights obligations of peacekeepers is not simply theoretical but is embedded in practice.⁸ In the same vein, Frédéric and Hoffman in their work opined that the rate at which the governance functions performed by the United Nations in peace operations is increasing has seen to a rise in human rights responsibilities and also contends that the role of the United Nations has shifted from being the benign promoter of human rights to the bearer of responsibilities.⁹ The article also made it clear that the United Nations can be a violator of human rights itself.¹⁰

A consequence of the current nature of contemporary peacekeeping operations is the fact that the peace forces are no longer restricted to merely observing the status of events or to bringing humanitarian aid only but can sometimes be drawn into the armed conflict in order to ensure peace, security and the protection of lives and property of civilians. Therefore, a question may arise as to which of the rules of IHL should apply when the UN peacekeeping forces are drawn into hostilities; is it the rules governing International Armed Conflict (IAC) or the rules governing Non International Armed Conflict (NIAC)? Where the UN peacekeeping forces are fighting a State's military force, the rules governing international armed conflict will apply but the rules of non-international armed conflict will apply if they are fighting non-state organized armed group.¹¹ If a UN peacekeeping operation becomes involved in an armed conflict with State armed forces, the international humanitarian law rules of international armed conflict will apply.¹² There is some debate on the regime that applies when there is an armed conflict with an armed group, particularly if the UN supports the government forces. Opinions differ as to the effect of a UN force engaging in armed conflict with an armed group. Some opine that an armed conflict between a UN force and an armed group is a non-international armed conflict whereas others believe that such intervention by the UN forces would 'internationalise' the conflict.

3. The Relationship between International Humanitarian Law and Human Rights Law

The conflict arising from the relationship between International Humanitarian Law (IHL) and Human Rights Law (HRL) and their applicability has raised several issues and challenges. It is the contention of some authors that HRL finds no application in times of conflict, whereas others contend that HRL applies at all times and even in situations of armed conflict. It is the agreement of most authors that the conflict arising from the applicability of the two branches of law ought to be solved by applying the principle of *lex specialis derogat legi generali*. The principle of *lex specialis* postulates that where two rules apply to a subject matter, but differ in their components, the rule which is more related to the subject matter in question ought to be preferred. Thus, the rule which is special and has a more objective standard should be applied in the circumstance.¹³ In other words the rule with a narrower or more precise scope of application should prevail over the rule which is general and broader in scope.

The interdependence between IHL and HRL has been confirmed in several decisions of the International

⁸ K. Mansson, The Forgotten Agenda: Human Rights Protection and Promotion in Cold War Peacekeeping, 10 *Journal of Conflict and Security Law* (2005) 379–403. DOI: 10.1093/jcsl/kri015 accessed 15 August 2018.

⁹ M. Frédéric and F. Hoffman, The UN as a Human Rights Violator? Some Reflections on the UN's Changing Human Rights Responsibility, 25 *Human Rights Quarterly* (2003) 314–342 DOI: 10.1353/hrq.2003.0019 accessed 15 August 2018.

¹⁰ Ibid.

¹¹ Ibid.

¹² M. Zwanenburg, United Nations and International Humanitarian Law, *Max Planck Encyclopedia of Public International Law* (MPEPIL) 2013 <<http://www.opil.oupilaw.com/view/10.1093:epil/>> accessed 17 August 2018.

¹³ M. Sasso'li and L. M. Olson, The relationship between international humanitarian and human rights law where it matters: Admissible killing and internment of fighters in non-international armed conflicts 90 *International Committee of Red Cross* (2008) 871, 599–627.

Court of Justice. In the cases of the *Construction of the Wall in the Occupied Palestinian Territory*¹⁴ and in *DRC v. Uganda*¹⁵ the ICJ held that human rights treaties continue to apply in times of warfare and they apply together with International Humanitarian Law. The side by side applicability of the two branches of international law is evident most especially in the event of belligerent occupation. According to Article 42 of 1907 Hague Regulations¹⁶, a territory is under occupation if effectively taken under control. Under the law of occupation, the acts of the occupying power which violate the applicable rules of International Humanitarian Law and Human Rights Law provisions are null and void.¹⁷ In the context of human rights law, the ICJ in the *Palestine Wall case*¹⁸ observed that the construction of the Wall led to the destruction or requisition of properties, and those acts were in violation of Articles 46 and 52 of the 1907 Hague Regulations and Article 53 of the IV Geneva Convention. The Court pointed out that these destructions were not justified by military necessity. The Court further held that the construction of the Wall and other accompanying acts ‘impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living’ under the International Covenant for Economic and Socio Cultural Rights (ICESCR).¹⁹ As regards the violations of civil and political rights, the Court observed that the construction of the Wall had deprived a significant number of Palestinians of their freedom to choose the place of their residence, thus impeding the freedom of movement under Article 12(1) of International Covenant for Civil and Political Rights (ICCPR)²⁰.

A similar approach of parallelism between IHL and HRL was displayed in the *Congo-Uganda case*, where the Democratic Republic of Congo claimed that serious and widespread human rights and humanitarian law violations were committed by the Ugandan forces in the occupied parts of the Congo, against the lives and property of the Congolese population.²¹ The Court observed that Uganda was responsible for violations of human rights law and humanitarian law.²² The foregoing observations and decisions of the ICJ in the cases above confirm that the two branches of law not only apply in the same situations, but can also prohibit same conducts. The Court’s findings serve a warning that even if the protection in one of the fields is found to be less than in the other field, the applicability of the latter will thus not be prevented.²³ The above position thus demystifies and waters down the concept of *lex specialis* in matters of applicability of IHL and HRL in armed conflict.

Derogations from the obligations in any Human rights treaty can only be permitted in extreme circumstances. Human rights treaties consider the state of war in which humanitarian law applies, as the condition which justifies derogation from treaty obligations. Article 4 ICCPR and Article 15 European

¹⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion of 9

July 2004, General List No. 131 [2004] ICJ Rep 136 at 178 para. 106.

¹⁵ Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) Judgment of 19 Dec. 2005 General List No. 116 at para. 216.

¹⁶ International Conferences (The Hague) *Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land 18 October 1907*. <<http://www.refworld.org/docid/4374cae64.html>> accessed 25 August 2018.

¹⁷ Dinstein, *Belligerent Occupation and Human Rights*, 8 *Israel Yearbook of Human Rights* (1978) 142.

¹⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion of 9

July 2004, General List No. 131 [2004] ICJ Rep 136 at 178 para. 106.

¹⁹ *Ibid* at paras 133-134

²⁰ *Ibid*.

²¹ *Congo-Uganda*, supra note 26 at paras 181 – 195.

²² *Ibid* at para. 220.

²³ A. Orakhelashvili, *The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?* 19(1) *European Journal of International Law* (2008) 161–182. DOI: 10.1093/ejil/chm05 accessed 20 August 2018.

Convention on Human Rights (ECHR) provide that in an officially proclaimed public emergency which threatens the life of the nation, the State parties may derogate from their obligations under the relevant treaty to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law. These other obligations envisaged by the provision include humanitarian law. While administering Article 15 ECHR, the European Court of Human Rights is duty-bound to test whether the conduct and measures of the derogating State are in accordance with humanitarian law.²⁴ Measures derogating from other treaties, such as ICCPR, have also to be in accordance with humanitarian law, a fact which was also clearly affirmed by the United Nations Human Rights Committee in its General Comment No.29.²⁵ The principles of humanitarian law, especially the principle of the distinction between civilian and military targets, necessity and proportionality, and humane treatment of protected persons all form the benchmark below which derogation from human rights treaties cannot justify the freedom of action of State parties. In other words, while emergency derogations from human rights law are possible, there are no such derogations permitted under humanitarian law, because humanitarian law applies precisely to those situations which are among those justifying the emergency derogations from human rights treaties.

4. Legal Responsibility for IHL Violations and Human Rights Infringement

The further question to be evaluated in this research goes thus: when a rule of International Humanitarian Law is violated or a Human Rights obligation is infringed upon, who bears the legal responsibility for such violations; more so when they are committed by peacekeeping personnel? Where there is proof of commission of such violations, even if the act is not attributable to a State or the United Nations, individual criminal responsibility may exist under international criminal law. The challenge here stems from the fact that international organisations cannot be parties to treaties. Therefore, such responsibility can only be imposed on them by identifying and locating the relevant rules and rights in general international law. Different opinions abound as to who bears responsibility for violations committed by peace forces while keeping the peace in areas of armed conflict. It is the contention of some authors that it is the troops contributing States that ought to bear the responsibility, while some others contend that the United Nations can share in such legal responsibility; another group opine that the peacekeeping personnel should be individually responsible for crime/human rights violations committed while on a peace mission.

In order to establish international legal responsibility for an international organisation such as the United Nations, the personality of such an organisation must first be determined. The legal personality of the UN must be recognised under the domestic law of the Member States as stipulated in Article 104 of the UN Charter thus: 'The Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes'. However and unfortunately, the UN charter is silent on the international legal personality of the UN as it concerns its rights and duties under international law. More so, there is no treaty which has identified that the UN possesses international legal personality. But there are principles in customary international law which deal on issues such as international legal personality and responsibility. Akande has identified two schools of thought with regard to establishing the international legal personality of an international organisation. They are the inductive and the objective approach. The inductive approach presupposes that the legal personality of an international organisation follows from the capacities, powers, rights, and duties conferred on that organisation in its constituent instrument and developed in practice. Thus, an international organisation will only have legal personality if its members intended it to have such personality or if such personality is necessary for it to fulfil functions as given by its members.²⁶ The objective approach proposes that the

²⁴ Ibid at 165.

²⁵ General Comment No. 29 (2001) CCPR/C/21/Rev.1/Add.11 31 August 2001 at 5 (para. 11).

²⁶ D. Akande, International Organisations, in M. Evans (ed) *International Law*, 3rd edn OUP Oxford (2010) 256-257.

organisation has international legal personality as long as certain objective criteria set out by law are fulfilled such as: being composed mainly of States or/and other international organisations, being established under international law and possessing independent organs which have a separate will from that of the members.²⁷ Going by the criteria enumerated in the objective approach, one cannot be wrong to assert that the United Nations possesses international legal personality. This stems from the facts that it is an organisation comprising of almost all the States in the world.²⁸ Secondly, the UN was established under international law by the United Nations Charter of 1945.²⁹ More so, the UN has various independent organs which see to the smooth running of the organisation e.g. the UN General Assembly, the Security Council, the Trusteeship Council, the Economic and Social Council, the International Court of Justice and the Secretariat.

In the ICJ Advisory Opinion regarding Reparation for Injuries suffered in the Service of the United Nations, the Court *inter alia* answered the question whether the UN has capacity to bring international claims against a State allegedly responsible for damages which the UN had suffered. The ICJ in answering this question considered the characteristics of the UN and determined if it possessed international legal personality. The Court stated that to possess international legal personality, the entity must be capable of availing itself of obligations incumbent upon its members. Thus, the ICJ concluded that the UN is an international legal person and therefore a subject of international law and is capable of bearing international rights and duties.³⁰

There are three different ways in which the UN can be bound by human rights obligations viz: on the first hand, the UN as a subject of international law is bound by international human rights standards to the extent that these standards have reached international customary law status- this is known as the external conception. On the second hand, the UN is bound by the human rights obligations under the UN charter in order to promote human rights standards- this is the internal conception. On the third hand, the UN is bound by human rights standards inasmuch as its Member States are bound- this is the hybrid conception.³¹ The hybrid conception means that whenever a human rights obligation is binding on Member States, it is binding on the UN too. But because the UN cannot become a party to treaties such as the ECHR and ICCPR, when such obligation arises from a treaty, the UN cannot be held responsible under the treaty. However, this does not mean that the UN is totally absolved of all responsibilities but rather the obligations of Member States may influence the obligations of the UN.³²

A brief evaluation will be made of the Universal Declaration of Human Rights (UDHR)³³ to determine whether the UN is obliged under it to comply with human rights obligations. It is the agreement of many writers that most of the human rights standards stem from the UDHR and have obtained the status of legally binding norms, while some have acquired *jus cogens*³⁴ status. A wide range of statements and documents from the UN stipulate the fact that human rights norms make up the legal framework for peacekeeping operations. A good example of this notion is the Capstone Doctrine³⁵ which stipulates thus:

²⁷ Ibid pp.254

²⁸ Not all States are members of the United Nations e.g. The Vatican City, Palestine.

²⁹ Charter of the United Nations (the UN Charter) (24 October 1945 1 UNTS XVI), Preamble.

³⁰ Reparation for Injuries suffered in the Service of the United Nations Advisory Opinion I.C.J Reports, 1949 pp. 177-180 < <http://www.icj-cij.org/docket/files/4/1835.pdf>> accessed 12 September 2018.

³¹ K. M. Larsen, *The Human rights Treaty Obligations of Peacekeepers*, Cambridge (2012).

³² Ibid.

³³ Universal Declaration of Human Rights (UDHR) adopted by UN General Assembly Resolution 217 A (III) parts, 10 December 1948.

<<http://www.watchlist.org/wordpress/wp-content/uploads/Universal-declaration-of-human-rights.pdf>> accessed 13 September 2018.

³⁴ Jus cogens as peremptory norm of general international law and further states that “[...] a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a norm from which no derogation is permitted.

³⁵ United Nations Peacekeeping Operations: Principles and Guidelines’ Capstone Doctrine published by the UN department of Peacekeeping Operations 18.1.2008

International human rights law is an integral part of the normative framework for United Nations peacekeeping operations. The Universal Declaration of Human Rights, which sets the cornerstone of international human rights standards, emphasises that human rights and fundamental freedoms are universal and guaranteed to everybody. United Nations peacekeeping operations should be conducted in full respect of human rights and should seek to advance human rights through the implementation of their mandates [...] United Nations peacekeeping personnel- whether military, police or civilian should act in accordance with international human rights law and understand how the implementation of their tasks intersects with human rights. Peacekeeping personnel should strive to ensure that they do not become perpetrators of human rights abuses. They must be able to recognise human rights violations or abuse, and be prepared to respond appropriately within the limits of their mandate and their competence. United Nations peacekeeping personnel should respect human rights in their dealings with colleagues and local people, both in their public and private lives. Where they commit abuses, they should be held accountable.³⁶

The foregoing doctrine further validates the fact that the promotion and enforcement of human rights is an integral part of any peacekeeping operation and thus it ought to be respected even in times of armed conflict.

5. State Responsibility for Peacekeepers' Actions

Peacekeepers are not free from violation of human rights, therefore a discourse on who takes responsibility over acts of violations committed by peacekeepers, peace builders or even peacemakers in a warring state becomes imperative. The acts of violation of human rights may be committed against co-peacekeepers or against innocent civilians in the combating States. It is the contention of some experts that the State contributing troops are the ones to bear responsibility for violations committed by peacekeeping troops. There are two key factors in this evaluation: first, whether the State sending its troops has exclusive control over such troop; and second, whether there is extraterritorial application of human rights obligation to the sending State.³⁷ The decisions delivered in Inter-American Human Rights System³⁸ and European Court of Human Rights³⁹ both reveal that human rights obligations will apply extra-territorially when a State has effective control over its military operation in a foreign warring country or jurisdiction. Under international law more so, when a unit from a State is serving under the auspices of an international organisation, its activities are attributable to the sending State, the international organisation or both.⁴⁰ The rationale behind this international standpoint is that peacekeepers do not act in a legal vacuum and that immunity does not extend to all UN peacekeeping activities, but only to those acts genuinely and legitimately carried out in the official capacity of the organisation. One justification for State responsibility of its troops in the international pool of troops is the fact that the troops were still in the service of sending State and the State maintained the power to decide personnel issues and to punish the troops under the State disciplinary, punitive and criminal law.

The foregoing projection of State responsibility does not exist without inhibition. The immunities of international organisations and State troops pose an exception to responsibility of States over the actions of their troops. So also, many States may not have the needed legal infrastructure and superstructure for extraterritorial application of their domestic criminal or disciplinary law and measures.

³⁶ Ibid.

³⁷ R. J. Wilson and E. S. Hurvitz, 'Human Rights Violations by Peacekeeping Forces in Somalia' 21(2) *Human Rights Brief* (2014) 2-8 <<http://www.digitalcommons.wcl.american.edu/>> accessed 22 September 2018.

³⁸ *Ameziane v United States*, Inter-Am.Comm'n HR, Report No. 17/12, Admissibility (2012) <<http://www.ccrjustice.org/files/2012-03-30%20Ameziane%20IACHR%20Admissibility%20Decision.pdf>> accessed 23 September 2018.

³⁹ *Al-Skeini and Others v The United Kingdom*, (55721/07) (2011) 53 EHRR 18 <<http://www.hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>> accessed 23 September 2015.

⁴⁰ M Simons, Dutch Peacekeepers are found Responsible for Deaths, *New York Times* (6 September 2013) <<http://www.nytimes.com/2013/09/07/world/europe/>> accessed 21 September 2018.

Having said that troops cannot be held responsible for acts done in official duty, it is pertinent to emphasise that the statement is too wide and needs to be restricted. This is because there are acts which can be argued not to fall within the ambit of official duty. Such acts include rape, violence to life and person, cruel treatment or other outrages upon personal dignity; such that when committed, international human rights law will apply and it may not be wrong to argue that both Common Article 3 of the Geneva Convention (GC)⁴¹ and Article 4 of Additional Protocol II (AP II)⁴² to the Convention will apply too.⁴³ Common Article 3 prohibits ‘violence of life and person, cruel treatment and other outrages upon personal dignity’. In particular, humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault are all prohibited by Article 4 of the Additional Protocol II to the Convention. This means that when peacekeeping troops in the course of a peace operation commit such human rights violations as listed above in Articles 3 GC and 4 AP II, it will not be out of place to hold them individually and criminally responsible for such violations. In fact, the law mandates that such persons be tried in the domestic Courts or international Courts such as the International Criminal Court (ICC), or the International Court of Justice (ICJ) or be tried by a special tribunal set up for that purpose.

If State responsibility is equated to criminal responsibility in which case the suspect is not the State as an entity but merely an individual who perpetrated the atrocities leading to the violation of human rights; the big question then becomes: can a State be prosecuted for a crime committed by a member of its troop? Under criminal responsibility, it is the sending State that can prosecute its members because it is the State that has exclusive or effective control over its troops and such sending State must have extraterritorial applicability obligation. Thus a State in political chaos may not be able to prosecute the peacekeeping troops. Therefore, it is not surprising that in the case of Somalia for instance, the Somali government which was in turmoil did not have the wherewithal or legal power to prosecute the troops. More so, Somalia would have met a brick wall if the country requested that the sending State ought to prosecute its troops. This is because sovereignty and State immunity would all have worked against Somalia’s request.

6. Conclusion and Recommendations

The protection of Human rights is a course which should not admit of exceptions except in the face of imminent need for State security, peace and order. Thus, where peacekeeping personnel have been found to commit acts of human rights violations and flagrant disregard to the rules of international humanitarian law, the law should not hesitate to take its full course upon them. It is good law that such erring peacekeepers should bear individual criminal responsibility for their actions. This entails prosecuting them before International tribunals such as the International Criminal Court (ICC), International Court of Justice (ICJ), or other special tribunals that may be set up for that purpose. This is to ensure that future occurrences of such violations are forestalled. More so, States can also take up the judicial responsibility of bringing such perpetrators to justice. This can be achieved by prosecuting such alleged Peacekeepers before the domestic Courts of the country which sent them on the peace mission. The United Nations though may be difficult to be held responsible as a body for the violations committed by their personnel, however, one or two policies enacted by the United Nations can assist to ensure that such persons are brought to book and that justice is served. Punitive sanctions can be meted out against such personnel who are found guilty of those violations. This may include economic sanctions in the nature of not paying them their entitlements for going on the mission, or even compelling them to render apology to the victims of such violations. A hybrid remedy in the nature of payment of compensation to the victims or their families (where the victim is deceased) may be ideal. This is hybrid in the sense that damages may not ordinarily be a remedy to a criminal offence.

⁴¹ Geneva Convention for the Amelioration of the condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 1 1949, 6 UST 3114, 75 UNTS 31; Geneva Convention for the Amelioration of the condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art 3, Aug.12 1949, 6 UST 3217, 75 UNTS 85; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12 1949, 6 UST 3516, 75 UNTS 287; Geneva Convention Relative to the Treatment of Prisoners of War art.3, Aug. 12 1949, 6 UST 3316, 75 UNTS 135 (hereinafter Common Article 3).

⁴² Protocol Additional to the Geneva convention of 12 August 1949, and relating to the Protection of victims of Non-International Armed Conflicts (Additional Protocol II) (Geneva, 1977 1125 UNTS 609), Art. 4

⁴³ RJ Wilson and ES Hurvitz ‘Human Rights Violations by Peacekeeping Forces in Somalia’ (2014) 21(2) Human Rights Brief 2-8 <<http://www.digitalcommons.wcl.american.edu/>> accessed 22 September 2018.