

INTRODUCTION

The absence of an international legislature led some 19th-century philosophers to deny that international law was a real law. Nowadays, such a charge is directed towards international law because of the absence of sanctions, i.e., the absence of an obligatory Judicial authority and the absence of a centralized executive body to enforce judgments. In the opinion of many contemporary jurists, the hallmark of any system of law is that its rules and provisions are capable of being enforced against malefactors and since international law is not generally enforceable, it is not a true law. With regard to the law of war, the defect of unreality and artificiality has been raised in greater dimensions. On the one hand, states are prohibited to use force and any weapons in their relations. On the other hand, if such a rule has been violated and war has begun, they are only forbidden to resort to specially mentioned means and weapons. This strange change in legal consequences and application of different set of rules, has been construed as a "horrible situation" Herch Lauterpacht, a well-known scholar and judge ICJ observed: "if international law is, in some ways, at the vanishing point of law, the law of war is perhaps even more conspicuously at the vanishing point of international law. Inadequate mechanisms for punishing and repletion of the guilty, has rendered difficult the effort of the international community to promote a set of rules regulating the use of violence in armed conflicts Because, no legal system can function unless those who disregard the established rules are punished. Some maintain that the rules of IHL are frequently respected as a question of routine or as a result of a cost-benefit. Irrespective of whether this is the case or not, the question which arises is whether it is true that the reality of any system of law, depends on the chances of its effective enforcement and that the enforceable and effective at all. The

absence of effective international implementation and enforcement machinery should not lead to the conclusion that there is no law. In the same way the extent of law should not be measured in the extent of enforcement when it is recognized that the law does exist. Not only the test of the binding quality of law is not the presence or absence of assured enforcement of its rules, but also enforcement may be irrelevant to such a binding quality. The mere fact that the rules of law come into being in the manner accepted and recognized by states as authoritative is sufficient to qualify them as "law" and the fact of enforcement may be a reason why individuals obey the law but it is not the reason why it is actuality law. While it is not easy to exclude the law of war from such a meaning the real question of the difficulty of its enforcement is another and different matter altogether. In fact international law of which the law of war forms part has evolved its own and different mechanisms of enforcement. They are defective and often fail but that does not destroy this existence. A considerable body of international agreements recognizes the international criminal responsibility of those who perpetrate violations of the laws and customs of war. The law of war, however, lacks sufficient methods and mechanisms for its implementation and enforcement. There has never been an international court in continuous session, nor an international executive agency, comparable to that of municipal law, with the ability to enforce the court's decisions. None one can ignore or deny this gap in the present condition of development of the law of war. But it would be wrong to say that the insufficiency of sanctions detracts from the peremptory character of the law. The law is not peremptory because it has sanctions; it has sanctions because it is peremptory. Although the law of war has never been wholly dependent on a system of institutionalized and centralized enforcement the absence of "police force" or "compulsory court" does not mean that it is completely impotent. In fact, punishment of

individuals takes on special meaning with regard to the enforcement of this body of law. There are some implementation and enforcement procedures which can ensure the compliance with the law to a large extent. These means and mechanisms relevant to suppression and repression of war crimes are embodied and dealt with in that part of the law of war which can be referred to as the law of war crimes. Several sanctions have traditionally been available to enforce compliance with the law of war if a Party to an conflict resort to unlawful behavior. These include diplomatic protest and publication of the facts to influence world opinion demands for compensation reprisals and the punishment of individual offenders for war crimes. The prosecution and punishment of war criminals as the primary concern of the law of war. This practice has been recognized by general international law and the 1949 Geneva Conventions also contain provisions in this regard. In addition, the Geneva law has recently developed specific international instruments to secure both domestic and interstate enforcement. Among these are the institutions of the Protecting Powers and the International Fact-Finding Commission.

The concept of individual criminal liability for international crimes first arose with regard to the law. Besides, the only International criminal tribunals established to date, to deal with allegations of such crimes, have been for violations occurring in the context of armed conflict. Nevertheless, war crimes are committed every day, and the most numerous and most serious violations of human rights and humanitarian law are still taking place in times of armed conflicts. Meanwhile regrettably the most of these offences go unpunished and are tolerated or even are encouraged by many states on whom falls precisely the primary responsibility of respect and insurance of respect for if the norms of law increased recourse to violations of IHL and flagrant scorn of fundamental principles of humanity in the

present situation of armed conflicts demonstrates that nobody is spared, neither the armed forces themselves nor the civilians. There is often a plethora of coverage for breaches which have been the subject of publicity in a given conflict. However, there are too many situations at the same conflict or other hostilities in which the most fundamental provisions of IHL are simply flouted but they are overlooked by the media and the world community as a whole. Tremendous suffering of civilians, severe ill-treatment with captives of all sorts under despotic regimes or by un-controlled individuals and destruction of human lives and property have been the common practice of numerous armed conflicts in this century. Today, not only IHL is more often violated than in the past but also the nature of the violations has become more serious than in the past. The extent of disrespect to the moral foundations upon which the norms of law rests is inconceivable.

Experiences of recent conflicts have led some scholars to the conclusion that there is any loophole in the Enforcement. Because, all unacceptable types of behavior by any standard of human decency are already prohibited by IHL. Accordingly most of honors of war could have been avoided if this regulation had been respected by belligerents. These norms of law of war of those who do not essentially take part in hostilities such as civilians or those who no longer have any role in military action (military personnel hors de combat). But the gap between what there is (the reality of violence) and what there must be (the rule of law) in armed conflicts is very wide and the danger is all the more serious as such interval is to be tolerated by the world community.

In these circumstances and in default of an international authority superior to states the question as to what steps could be taken how and by whom to prosecute and to punish these horrors and grave

violations is becoming more urgent and significant with every passing day. True authority of a legal system is dependent upon its practical implementation and enforcement and observing how in fact it is administered. The trial and punishment of war criminals not only may deter further atrocities but also will reassure victims that the international community will hear them and never forget them.

For the purpose of prevention and control of violations of IHL, the Geneva Conventions of 1949 and Additional Protocol I of 1977 provide for several precautionary, supervisory and fact-finding institutions. These instruments also give jurisdiction to States to act, through their domestic administrative and judicial criminal law against individuals accused of committing such violations. Further, they require states to co-operate in dealing with war crimes at the international level. But negligence or lack of political will by States to implement the obligations which they have voluntarily undertaken under these instruments has frustrated all of these institutions or mechanisms. The intensification of violations of IHL in recent conflicts and the urgent need for a global enforcement and prosecution strategy has shifted the attitude of the international community to the question of punishing these violations. The increasing resort by governments to national war crimes legislation and prosecutions on the one hand and international approaches to war crimes on the other hand have brought about a unique opportunity for combating war crimes and for bringing to trial individuals suspected of them. The reaction and response of the United Nations to the policy of 'ethnic cleansing' in Bosnia-Herzegovina and to the 'genocide' in Rwanda resulted in the establishment of two ad hoc international criminal tribunals for dealing with these atrocities. Plans for the repression of violations of IHL which were on the agenda of bodies within the United Nations system for a long time led to the successful Conference of Rome (June-July 1998) for creation of a direct

enforcement system. These are clear signals of the seriousness of the situation and the real concern of the world community of what have been going on. Meanwhile these developments of greatest importance and the activities of other international bodies regional organizations and individual governments are explicit messages to actual and probable war criminals that there are no safe havens for them around the world any more.

The present study provides an opportunity to address the responses known to the international law of war to issues related to effective suppression and repression of egregious violations of its rules with a view to preventing the repetition of such violations. The attitude of the individual states and the international community as a whole in dealing with violations of the laws and customs of war in particular in the light of the most recent developments will be given special attention. In addition, the substantive and procedural law of war criminality will be examined and the legal problems as well as practical obstacles in the way of implementation will be clarified. Meanwhile, solutions for strengthening the law of war and its enforcement mechanisms will be suggested where appropriate.

In order to achieve the aims and purposes of the study, the thesis is consisted of eleven chapters. **In Chapter-I** entitled, History of The Law of War contains the process of unifying the themes of law of war; the historical periods. **In Chapter- II** entitled Framework of the Law of War discussion goes on the language of the law of war; the process of triggering of law of war and the classification of conflicts. **Chapter- III** entitled the Legal Basis for Enforcing War Law discusses the overview of United Nations Charter, Use of force, Maintaining international peace and security; Self defense and other uses of force. **Chapter- IV** entitled Geneva Convention I is dealing

with the wounded and sick in the field, their categories the procedures for handling of the wounded and sick; the status and protection of person aiding wounded and sick under the law, the standards of Medical units and establishments, Medical transportation, and the status of the Distinctive emblems under the law. **Chapter- V** is dealing with the Geneva Convention III especially with the prisoners of war and the enemy prisoners of war, their status under the law; the administration and discipline of the Camp for the enemy prisoners of war and the Code of conduct for the prisoners of war. **Chapter- VI** entitled Protection of Civilian during armed conflict defines the term civilian and also describes the benefits available to the civilians during armed conflict, status and treatment for protected person, situations of grave breaches of laws of war, the position of law for the benefit of civilian . **Chapter- VII** entitled Means and method of warfare describes the principles to be followed during framing the strategy of war; objectives of legitimate targets; weapons for mass destruction and it's types and the tactics of warfare.

Chapter- VIII entitled War crimes and Command responsibility

Defines war crime describes the development of war crime and it's prosecution Command responsibility for the criminal acts of subordinates and the Forums for the prosecution of war crimes.

Chapter- IX entitled Application of the law of war in operations other than war deals with the Impacts on the nature of operation of war, Military operation other than war and targeting issues, Military operation other than war and captured personnel, Military operation other than war and the treatment of civilians, Military operation other than war and obligation towards women and sick.

Chapter- X entitled Human Rights , Customary international law and human rights vis a vis laws of war; Punishments on violation of laws of war.

Finally in last Chapter- XI is Conclusion and Suggestions based upon the study have been made.