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Protecting Women Under the International Humanitarian Law: A Study of the Social, Cultural, and Political Conditions in Iraq and Palestine That Have an Adverse Affect on Women

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GOLDEN GATE UNIVERSITY

PROTECTING WOMEN UNDER THE INTERNATIONAL HUMANITARIAN LAW

A STUDY OF THE SOCIAL, CULTURAL, AND POLITICAL CONDITIONS

IN IRAQ AND PALESTINE

THAT HAVE AN ADVERSE AFFECT ON WOMEN

A DISSERTATION SUBMITTED

To

THE COMMITTEE OF INTERNATIONAL LEGAL STUDIES

IN CANDIDACY FOR THE DEGREE

Of

SCIENTIAE JURIDICAE DOCTOR (S.J.D.)

BY

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SAN FRANCISCO, CALIFORNIA

May, 2013

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TITLE

PROTECTING WOMEN UNDER THE INTERNATIONAL HUMANITARIAN LAW

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DEDICATION

I dedicate this work to my husband, Naim Jamjoum, who supported and encouraged me tremendously, during its preparation; to my family members, especially my mother, Yousra Alzaben, and my father, Mawloud Fnish; to my adorable children, Farah, Hamza and Hashem; and to everyone who assisted me during countless hours of research, contemplation, writing and re-writing. I accept responsibility for any deficiencies one may find herein.

EPIGRAPH

SAFEGUARDING THE RIGHTS OF OTHERS IS THE MOST NOBLE AND BEAUTIFUL END OF A HUMAN BEING.

--KAHLIL GIBRAN, *THE VOICE OF THE POET*

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PREFACE AND ACKNOWLEDGEMENT

No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women.

— Muhammad Ali Jinnah¹

True to Mr. Ali Jinnah's sentiments, so eloquently expressed above, it is generally believed that women as pillars in any society, women and the roles they fulfill, are very important. Although they comprise slightly more than half of the world's population, some others hold the view that the influence of women extend without limit across the whole of society because of the immense and important influence they have on shaping the behavior, and nurturing the ambitions of children, who are the standard bearers of future generations. As the nuclear family is the center of the beginning of society, women perform important central roles within the family. They are mothers by right, but also, they act as doctors, in a practical sense, as well as chauffeurs, teachers and counselors.

Drawing upon my experience of being a daughter, a sister, as well as a mother of three young children, I have come to suspect that women are often underappreciated for their extraordinary sacrifices. Therefore, I propose that all women in the world

¹ Quaid-i-Azam Muhammad Ali Jinnah, b. December 25, 1876; d. September 11, 1948; united Indian Muslims; lawyer, President of Muslim League; founder of Pakistan; first Governor General of Pakistan. <http://storyofpakistan.com/muhammad-ali-jinnah/>; (Last assessed 3/31/13).

should be appreciated, especially those who try to survive and work diligently, and put themselves in harm's way to protect their family members, during and after war and conflicts. This group of women should be really admired for their important role in keeping the hope and future of humanity alive by the positive roles they play. This doctoral dissertation presents the opportunity to examine the place and treatment of women in conflict situations around the world. In particular, I have selected the study of the situation of women in Palestine and Iraq as the focus of this study. In pursuing this study, I am deeply touched by the words of Queen Rania (Queen of Jordan), who stated,² "the voice of the heart need no translation, the way we feel is exactly the same, whatever we look like where ever we live, however we pray we respond to human suffering as human beings)."

I shall take this opportunity to thank the members of my distinguished dissertation committee: Professor Dr. Christian Nwachukwu Okeke (Chair), of my most esteemed committee, and whose encouragement and bountiful words of wisdom based on his broad and in depth experience, gave me the impetus to move ahead with this task. Further, I am deeply grateful to Professor Sophie Clavier (Member) and Professor Dr. Zakia Afrin (Member) for their guidance and support. Without their great assistance, it would have been very difficult, if not impossible for me to complete this work. I thank them for their special display of patience and encouragement.

* * *

² Queen Rania's speech at the women conference; California in 2007; <http://www.youtube.com/watch?v=q3pe>

GENERAL INTRODUCTION

This doctoral dissertation examines and studies the protection of women rights under International Humanitarian Law, (also “IHL”) within the context of the social, cultural and political and political conditions with particular reference to the women of Iraq and Palestine. Women in these two countries have suffered unparalleled difficulties that have been afflicted upon them by conditions of war. For a long period in the history of those countries, women as indispensable managers of their families have had to contend with varying challenges necessitating protection under international humanitarian law. This is even more required during periods of war and armed conflicts.

We have decided that it would serve a useful purpose to trace and discuss a number of the most important international humanitarian legal documents and instruments that are relevant to our topic; therefore, towards this objective, we shall present here an overview of this dissertation and its Chapters, of which there are six. Chapter one opens with a brief definition of International Humanitarian Law, of which there are at least a half dozen working definitions; thereafter follows, a short discussion of each of several documents that have relevance to international humanitarian law. These include one of the oldest documents known. It was actually a stone slab, into which was chiseled several hundred codes pertaining to and governing the citizens of ancient Babylon. Next we shall go to ancient India and consider a volume of her most ancient texts: the Laws of Manu, over 2500 years old; this text regulated affairs of domestic, social and religious life, among many other facets of life in India. Then, we get to the Christian era, where the most avid teachers of a new religion taught

having respect for others as if they were your sister or brother. This chapter also presents an overview of early Islamic Law, as well as, the Magna Carta, the latter being a giant step forward for humanitarian concerns in Western Europe. Chapter One concludes with a survey of the all-important Hague and Geneva Conventions, the Additional Protocols to those four Conventions, and finally the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Chapter One provides the background against which we consider the rights of women, and to some extent, civilians, whether man, woman, or child.

Chapter Two provides a brief descriptive survey of general protection of civilian women. It provides case examples of Iraqi and Palestinian women prisoners; discusses general protection of civilian women under the 1977 First Additional Protocol, principles of protection of civilian women under the Four Geneva Accords, the Additional Protocols and the United Nations, and introduces the Convention on the Elimination of all Forms of Discrimination against women, 1979, as well as the 1995 Peking Declaration and Women's Special Protocol.

Chapter Three highlights the special protection for women as prisoners of war, and during various military operations. The concerns here change depending on whether women are only civilians, or are participating in military operations, which include the very controversial suicide bombing. This chapter delves into several areas of research, among them, treatment of detained and jailed women. Chapter four continues with discussion of protecting women from capital punishment, and most

particularly, the prohibition of capital punishment against pregnant women, women with children, and children themselves.

Chapter V discusses other protections of women, including special aid and assistance rights commensurate to their needs based on their gender. This chapter discusses negative and positive provisions. The negative provisions state what not to do, such as carry out military attacks on women and other civilians, and the positive state what should be done; such as provide adequate food, water, and shelter.

Chapter Six discusses protecting women from the harms of military combat. The chapter points to the relevant international agreements that list and provide for protections against listed war crimes. Here we explore the more common convention-based remedies, which include compensation, as they pertain to those crimes, and other mis-behavior. This chapter also explores national agreements designed to help women in both Iraq and Palestine. In Chapter VII we take a look at the current conditions that women in Iraq have been enduring for the past fifty years, and more so during the past thirty years, which have been three decades of war along the Persian Gulf. We shall find that the consequences of those wars have been emotionally, psychologically and spiritually devastating upon the Iraqi women. In Chapter VIII, the final section, we re-trace our steps through the previous seven chapters, highlighting the main themes. Here, we shall set out recommendations for the International Law, and more general recommendations for the International Law, as well. Towards this end, we suggest ways in which the international community might influence the proper treatment of women, generally in the direction of greater peace despite likely constraints on the resources

available for exerting such influence. Knowing that leaders have not been able to shoulder this burden of protecting women around the world, we conclude with an appeal to all to take part in the endeavor of protecting women around the world.

* * *

CHAPTER I

INTERNATIONAL HUMANITARIAN LAW AS A MEANS OF PROTECTING WOMEN'S RIGHTS IN TIMES OF WAR

Grass

Pile the bodies high at Austerlitz and Waterloo.
Shovel them under and let me work -
I am the grass; I cover all.
And pile them high at Gettysburg
And pile them high at Ypres and Verdun.
Shovel them under and let me work.
Two years, ten years, and passengers ask the conductor:
What place is this?
Where are we now?
I am the grass.
Let me work.¹

I. Introduction

Sandburg's words here convey a solemn theme, which is that though war may be devastatingly brutal, we often recall only vague historical accounts while forgetting the brutality and suffering, which are often covered over, much in the same manner the grass covers scarred and scorched grounds of battle, along with the bones of those who

¹ "Carl Sandburg [1872—1967] reminds us that although we, as the grass, may have cleverly managed to obscure the horrid truth, the nineteenth and twentieth centuries, in terms of human blood spilt on scorched fields of battle and in the rancid gutters of urban streets, were the bloodiest in recorded history. Many accounts number the dead at one-hundred million for the twentieth century alone. That great number includes only war related fatalities and not those several million more who were victims of non-military action. Nor does that number count the wounded millions; and certainly, it offers no tally of the tens of millions who endured brief to interminable mental anguish through the tragic loss of a loved one, or of an entire extended family. . . ." B.H. Frazier, *NEW PERSPECTIVES OF HUMAN EMBRYONIC STEMCELL RESEARCH: What You Need to Know About the Legal, Moral & Ethical Issues* 250 (B.H. Frazier, ed., 2009).

fell there. As far as our oral and written histories permit us to look into the past, we take uncomfortable notice that human conflict, ranging from skirmishes among a few individuals lasting only minutes, to large scale confrontations involving massive armies and enduring for decades, have been the scourge of humanity. War has destroyed, and continues to destroy, significant numbers of the human race, while obliterating real and personal property, creating impoverishment amidst prosperity, smashing confidence and extinguishing hope. No person, no culture, over the millennia have seemed to enjoy immunity to the devastating calamity of war. Thus, as it seems such conflict is inevitable, people have realized the desperate need to create rules resting on firm foundations for the conduct of war.

These foundations have grown and developed gradually over time, and have become a part of our present day International Humanitarian Law. The main objectives of the International Humanitarian Law are to protect and save those who are suffering from the calamities of military conflicts.² The dangers of military conflicts do not only affect those involved in the military; the calamitous effects also victimize civilians. The International Humanitarian Law protects civilians, the wounded, sick and prisoners of

² This goal within itself is a noble aim; however, some scholars have indicated the probable existence of a deeper and more recondite objective. Dr. B.H. Frazier surmises, “. . . it is probable that the first Human Rights Law evolved not from purely Humanitarian motives, but from wise leaders recognizing that an offense against any individual harmed not only that one, but more importantly, that the act might also injure the larger society, *i.e.*, the State, or its ruling class. It is perhaps this recognition that shows up today in the practice of people looking to and petitioning the State for enforcement of Human Rights Law. Inherent in their plea is the notion that it is in the State’s interest to protect the rights of even the least significant individual because by protecting those seemingly lesser rights, the State is also protecting its own rights, which are the collective right of the entire group—or on a more cynical note: the interest of the State and the ruling classes.” *Supra* note 1, p. 259.

war. This study will focus on protecting women under the International Humanitarian Law, whether they are involved in international or national military conflicts, or indeed in any kinds of conflicts.

In many regions of the world, women have the right to join the military and engage equally in conflict alongside men. However, many women, who are non-combatants and not participating directly in war, have been jailed, detained and brutalized. This raises the question of whether the International Humanitarian Law actually guarantees rights for women, and if so, how best to enforce those rights, and bring to justice those who infringe upon those rights? To answer these questions, the contents and texts from the agreements and treaties drawn within the International Humanitarian Law need to be analyzed. Before going into the analysis of specific legal documents as they relate to our topic, it is necessary to describe and define the concept of international humanitarian law which we shall now undertake.

II. DEFINING INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law is a collective foundation of international conventions and agreements intended to solve societal problems, due to both domestic and international conflicts. The laws limit the use and the means of military actions, and protect the people from harm,³ by creating an international foundation protecting civilians, hospitals, doctors and religious staff from being taken as prisoners for ransom, or being otherwise harmed or killed. The terminology of the International Humanitarian

³ DR. Mohammad Tarawneh, et.al, International Humanitarian Law, p. 8. 2005.

Law has been set by the ideologists of the *Law of War and the Military Conflicts Law*. In 1948, the latter became known as the *Military Conflict Convention*, when the United Nations (UN) declared the term outdated and replaced the word “war” with the phrase “the use of force” in the charter. In the early 1970s, the Human Rights Movement had a tremendous international effect on the International Humanitarian Law, especially after the Tehran Convention in 1968. It was then that the International Humanitarian Law took effect. To provide us a sense of the origin and current direction of Humanitarian Law, the following historic documents are present. They are by no means inclusive of all that pertain to Humanitarian Law.

III. ORIGINS OF INTERNATIONAL HUMANITARIAN LAW

The following sections discuss the recognized origins of International Humanitarian Law. These beginnings may seem quite modest, and in the case of the Hammurabi Code, simplistic; however, when we recall the brutalities of the ancient world, where offenses were sometimes punished by having the same, or a parallel offense perpetuated against the accused, irrespective of that accused’s intent, the fact is that many of these offenses were put into writing, so as to warn any would-be perpetrator of accepted norms behavior, and the punishment, these efforts are arguably a leap forward in social conscience. The following documents mark early attempts to forewarn the populace, and leaders of the requirements of the law, and of the possible consequences.

A. Pre-Modern Origins of International Humanitarian Law

1. *The Law of Hammurabi* (c. 1750 BCE)

Although most ancient peoples might have had at least an oral system that laid down the law, and provided penalties for breach, recorded history teaches that the Babylonian scribes, at the behest of the great King, Hammurabi, were among the first people to produce a written code. This legal system is known to us as the *Hammurabi Code* (“Code”). As was the custom in the ancient world, after first detailing the exploits of the great King, the *Code*, which was etched into a stone stele,⁴ begins with the following preamble:

When Marduk⁵ sent me to rule over men, to give the protection of right to the land, I did right and righteousness in . . . , and brought about the well-being of the oppressed.

The *Code* lists 282 articles pertaining to offenses ranging from aiding and abetting; adultery and homicide; farming and other land usages, handling of slaves, theft crimes, judicial misconduct, real property issues, and war; a few examples are listed here:

1. If any one ensnare⁶ another, putting a ban upon him, but he cannot prove it, then he that ensnared him shall be put to death.

⁴ A “stele” is an upright stone or wooden slab, like a grave stone in shape, upon which characters are drawn, or etched.

⁵ The supreme deity of ancient Babylon.

2. If any one bring an accusation against a man, and the accused go to the river and leap into the river, if he sink in the river his accuser shall take possession of his house. But if the river prove that the accused is not guilty, and he escape unhurt, then he who had brought the accusation shall be put to death, while he who leaped into the river shall take possession of the house that had belonged to his accuser.

5. If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgment.

6. If any one steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

133. If a man is taken prisoner in war, and there is sustenance in his house, but his wife leave house and court, and go to another house: because this wife did not keep her court, and went to another house, she shall be judicially condemned and thrown into the water.

134. If any one be captured in war and there is not sustenance in his house, if then his wife go to another house this woman shall be held blameless.

135. If a man be taken prisoner in war and there be no sustenance in his house and his wife go to another house and bear children; and if later her husband

⁶ Throughout the *Code*, as translated into English, the verbs appear in “subjunctive form”; hence, the illusion of subject-verb disagreement; e.g. American English speakers prefer, “If I was him, I would buy a new car,” rather than the correct subjunctive, “If I were he, I would buy a new car.”

return and come to his home: then this wife shall return to her husband, but the children follow their father.

196. If a man put out the eye of another man, his eye shall be put out.⁷

The topic with which this work is concerned urges us to take note of the examples above extracted from the *Code*; several illustrate a feature that contemporary observers would find abhorrent; the number of offenses for which an accused can be “put to death” for violating the rights of another, apparently a matter of grave concern to the drafters. Throughout the remaining articles, there are numerous instances where capital punishment is the remedy. It is unclear whether the King or any other individual charged with enforcing the Code considered the *Mens Rea*⁸ of an accused person; i.e., the Code focused on physical cause and effect. This approach is similar to modern strict liability, which considers only that a perpetrator committed the offense, his or her reasons and intent, being not part of the legal calculus. B.H. Frazier observes that,

the *Code*, nonetheless, attempted to impose a social order upon a society that must have occasionally existed on the verge of anarchy from within, and at other times, destruction from without. Through the *Code*, individual accountability was imposed for one’s actions toward others. A probable interpretation is that the Sumerian King recognized that people were due certain rights for the betterment of all concerned, and that they could look to the King to enforce those rights.⁹

⁷ Yale Law School; Lillian Goldman Library; The Avalon Project; Documents in Law, History, and Diplomacy <http://avalon.law.yale.edu/ancient/hamframe.asp>; (Last assessed 3/12/13).

⁸ *Mens Rea* translates as “State of mind.” Considering an alleged perpetrator’s state of mind, was a large step forward in the genesis of Human Rights Doctrine. Considering the state of mind recognizes that those not guilty in mind should not be punished the same as those with a “guilty mind”; planning an offense.

⁹ *Supra* note 1, p. 261.

Another feature, most noticeable by it being absent, is that while several articles of the *Code* address war, these provide only for the affairs of one's household while he is away at war. There is no discussion of treatment of civilians during war, or of the way soldiers should conduct themselves during war. Such discussion and concerns appear in the written annals of history 1200 years later in a document called the *Laws of Manu*.

2. Laws of Manu or 'Manava Dharma Shastra': Ancient Hindu Code of Conduct for Domestic, Social, and Religious Life (c. 500 BCE)

The *Laws of Manu*, or *Manava Dharma Shastra* is considered supplemental to the great volume of Hindu literature, call the *Vedas*.¹⁰ The *Laws of Manu* consists of 2684 verses, which are divided into twelve chapters that list norms of behavior ranging from the judicial and social, to the religious, and matters of conduct in warfare. The *Laws of Manu* are said to be the standard by which gurus based their teachings upon, and as well, the basis upon which ancient Indian society is understood.¹¹ The following verses are excerpted from Chapter VII. They concern matters of civil punishment and war.

¹⁰ Internet Sacred Text Archive: The Vedas are the basic texts of Hinduism. There are four: the Rig Veda, Sama Veda, Yajur Veda and Atharva Veda. They also had a vast influence on Buddhism, Jainism, and Sikhism. Traditionally the text of the Vedas was coeval with the universe. Scholars have determined that the Rig Veda, the oldest of the four Vedas, was composed about 1500 B.C., and codified about 600 B.C. The Vedas are among the most ancient religious texts. In addition to their spiritual value, they give unique insight into everyday Indian life of 4,000 years ago. <http://www.sacred-texts.com/hin/>; (Last assessed 3/20/13).

¹¹ Laws of Manu or Manava Dharma Shastra; http://hinduism.about.com/od/scripturepics/a/laws_of_manu.htm; (Last assessed 3/10/13)

16. Having fully considered the time and the place (of the offence), the strength and the knowledge (of the offender), let him justly inflict that (punishment) on men who act unjustly.

17. Punishment is (in reality) the king (and) the male, that the manager of affairs, that the ruler, and that is called the surety for the four orders' obedience to the law.

18. Punishment alone governs all created beings, punishment alone protects them, punishment watches over them while they sleep; the wise declare punishment (to be identical with) the law.

19. If (punishment) is properly inflicted after (due) consideration, it makes all people happy; but inflicted without consideration, it destroys everything.

20. If the king did not, without tiring, inflict punishment on those worthy to be punished, the stronger would roast the weaker, like fish on a spit;

21. The crow would eat the sacrificial cake and the dog would lick the sacrificial viands, and ownership would not remain with any one, the lower ones would (usurp the place of) the higher ones.

22. The whole world is kept in order by punishment, for a guiltless man is hard to find; through fear of punishment the whole world yields the enjoyments (which it owes).

* * *

90. When he fights with his foes in battle, let him not strike with weapons concealed (in wood), nor with (such as are) barbed, poisoned, or the points of which are blazing with fire.

91. Let him not strike one who (in flight) has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hands (in supplication), nor one who (flees) with flying hair, nor one who sits down, nor one who says 'I am thine;'

92. Nor one who sleeps, nor one who has lost his coat of mail, nor one who is naked, nor one who is disarmed, nor one who looks on without taking part in the fight, nor one who is fighting with another (foe);

93. Nor one whose weapons are broken, nor one afflicted (with sorrow), nor one who has been grievously wounded, nor one who is in fear, nor one who has turned to flight; (but in all these cases let him) remember the duty (of honourable warriors).

The tenor of the first set of laws, (16–22) is that of meting out punishment for domestic offenses. In the second set (90–93), we begin to see nascent attempts to set standards for humanitarian, or perhaps merciful conduct during war. The Laws of Manu might be considered among the earliest known attempt to inject a sense of conscience into war, which the ancients seemed to realize was an interminable evil. Thousands of years after the promulgation of the *Hammurabi Code*, and the Laws of Manu, on a different continent, events gave impetus to the drafting of another document having as its focus, human rights concerns; and as well, the source of power flowed from some divine Deity and through the king.

3. *The Christian Declaration (c. 50 A.D.) i.e., The Golden Rule*

Though not formalizing a doctrine set in parchment, or etching the same in stone, during the Middle Ages, Christianity declared that all humans were sisters and brothers;

therefore, it was a crime to kill or enslave your fellow sibling.¹² These teachings were new, and shook the old society at its roots. Jesus Christ preached to love others as you love yourself, thus elevating former teachings to include love for all people, even our enemies. Some have argued that was precisely this teaching of equality that drew early converts to Christianity. The following verses, excerpted from both the *Old and New Testaments*, illustrate the humanitarian teachings of the Christian Bible:

- **Psalms 82:3:**

Give justice to the weak and the fatherless; maintain the right of the afflicted and the destitute.

- **Isaiah 1:17**

Learn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow's cause.

- **Micah 6:8**

He has told you, O man, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?

- **Peter 2:18**

Servants, be subject to your masters with all respect, not only to the good and gentle but also to the unjust.

- **Galatians 3:28**

There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus.

¹² The reader knows well that numerous exceptions abound here, like for example, Cain slaying his brother, Abel. As we shall later see, established doctrine seldom correlates with actual practice.

- **Luke 6:35-36**

But love your enemies, and do good, and lend, expecting nothing in return, and your reward will be great, and you will be sons of the Most High, for he is kind to the ungrateful and the evil. Be merciful, even as your Father is merciful.¹³

4. Early Islamic Humanitarian Law

In Islam, the only purported purpose of war is to defend one's homeland against Invaders of that homeland. The Holy Qur'an commands,¹⁴ ". . . fight them on until there is no more tumult and oppression. And there prevails justice and faith in God. But if they cease, let there be no hostility except to those who practice oppression." Over half a millennia before the *Magna Carta* and 1400 years before the Geneva resolutions were adopted, Islam had already seen the need and took steps to add to its teachings a number of injunctions that addressed human rights. Al-Shafy,¹⁵ states, "The first and the foremost basic right in Islam is the right to live and the respect of human life."¹⁶ Moreover, the Holy Qur'an offers the following injunctions on behavior during times of war and peace.

¹³ *Seventeen Bible Verses about Human Rights*; http://www.openbible.info/topics/human_rights; (Last assessed 3/15/13).

¹⁴ Qur'an in Surat Al Baqara, Verse 193.

¹⁵ Magdy Abu Al-Shafy, Supervisor and the Editor in chief of the worldwide "What is Islam."

¹⁶ *Encyclopedia of Miracles, Human Rights in Islam; The Right to Life*, by Magdy Abd Al-Shafy; <http://quran-m.com/firas/en1/index.php/fakes-about-islam/351-human-rights-in-islam-1.html>; (Last assessed 3/15/13).

- No one should be burned alive or tortured with fire.
- Wounded soldiers who are neither unfit to fight, nor actually fighting, should not be attacked.
- Prisoners of war should not be killed.
- It is prohibited to kill anyone who is tied up or in captivity.
- Residential areas should not be pillaged, plundered or destroyed, nor should the Muslims touch the property of anyone except those who are fighting against them.
- Muslims must not take anything from the . . . public of the conquered country without paying for it.
- The corpses of the enemy must not be disgraced or mutilated.
- Corpses of the enemy should be returned.
- Treaties must not be broken.

Interestingly, these injunctions have the tenor of the Geneva Conventions and Protocols that address matters of war, which we will examine below; moreover, Muslim scholars all agree that fighting an enemy in self-defense is legal, and that it is illegal to kill anyone who does not instigate a war against Muslims; further, it is illegal to fight those who do not embrace Islam. Islam also puts a great emphasis on the humane treatment of prisoners. The next document we shall examine, and again in brief, is the *Magna Carta*, which sought to limit powers of the monarchy, while protecting those subject to its nearly omnipotent powers.

5. *The Magna Carta* (c. 1215 AD)

here is a law which is above the King and which even he must not break. This reaffirmation of a supreme law and its expression. . . is the great work of Magna Carta; and this alone justifies the respect in which men have held it.

--Winston Churchill¹⁷

Disputes between the Church in Rome and King John of England, and the English baronage led to the creation of the Magna Carta¹⁸ of 1215, which was subsequently re-interpreted and revised over the following centuries. A commonly accepted interpretation, embodied in the words of Churchill above, suggests that the *Magna Carta* limits monarchical power, while affirming there is an *even* greater law to which the monarchy itself must submit. The original *Magna Carta* contained sixty-three articles, of which four appear below. The first article proclaims freedom of the Church of England and article 39 addresses due process for a freeman charged with an offense. Other articles of the *Magna Carta* address judicial, anti-corruption, fair-trade, real property, and even privacy rights, such as the right of a widow to remain unmarried.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; . . . We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.
13. And the city of London shall have all its ancient liberties and free customs, as

¹⁷ Conservative Prime Minister of Great Britain from 1940 – 1945 and 1951 – 1955; b. 1874; d. 1965; <http://www.winstonchurchill.org/> (Last assessed 3/20/13).

¹⁸ The *Magna Carta* was originally written in Latin; hence the Latin title.

well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.¹⁹

Arguably the *Hammurabi Code*, the *Laws of Manu*, and the Christian and Islamic teachings, helped prepare the jurisprudential foundation for later developments in the Human rights Law. Although they may seem “incomplete,” or perhaps draconian—in case of the *Code*, by today’s standards, it’s probable that many people would argue they are a significant beginning on the path to perfecting the human rights laws we are still struggling to perfect today. As we shall see later, though a number of documents exists that purport to protect the human rights of all individuals, particularly women in times of conflict, humanity for the most part it seems, still has quite a way to go to living up to the standards of behavior set out in said documents.²⁰

¹⁹ THE MAGNA CARTA (The Great Charter) <http://www.cs.indiana.edu/statecraft/magna-carta.html>;(Last assessed 03/09/13).

²⁰ In his discussion of the Human Rights Law, B.H. Frazier states, The *Magna Carta*, as did the Code recognized that freemen (slaves and indentured persons excluded, obviously) are entitled to certain liberties and freedoms that shall be abridged by no person, whether commoner or monarch. As revolutionary as the *Magna Carta* must have seemed in the Thirteenth Century, English history indicates that the rights and liberties proclaimed therein did not come about immediately; owing to differences in interpretation and personal and political agendas, such attempts at changing the law, though quickly implemented, seldom if ever yield instantaneous results; this is because law endeavors to change behavior, which on a psychological level means “rewiring the psyche,” which requires considerable time and patience. *Supra* note 1, pp. 263–264.

6. *Hugo Grotius and the War Convention*

Hugo Grotius,²¹ considered the founder of today's conventional International Law, based upon his observations and thoughts of ancient practices of war, set forth observations on conduct during conflict.

I. AND II. CICERO, in the first book of his offices, has finely observed, that "some duties are to be observed even towards those, from whom you have received an injury. For even vengeance and punishment have their due bounds. . . ." And at the same time he extols those ancient periods in the Roman government, when the events of war were mild, and marked with no unnecessary cruelty. . . The explanations given in the first chapter of this book will point out the cases, where the destruction of an enemy is one of the rights of lawful war, according to the principles of strict and internal justice, and where it is not so.

Cicero, in the first book of his offices, advises the sparing of those, who have committed no acts of atrocity and cruelty in war, and that wars, undertaken to maintain national honour, should be conducted upon principles of moderation. . . . Such forbearance in war is not only a tribute to justice, it is a tribute to humanity, it is a tribute to moderation, and it is a tribute to greatness of soul."

IX. After establishing these general principles, it will not be difficult to decide upon particular cases. Seneca says, that "in the calamities of war children are exempted and spared, on the score of their age, and women from respect to their sex." In the wars of the Hebrews, even after the offers of peace have been rejected, God commands the women and children to be spared.²²

²¹ "Hugo Grotius (1583–1645) . . . was a towering figure in philosophy, political theory, law and associated fields during the seventeenth century and for hundreds of years afterwards. His work ranged over a wide array of topics, . . . [He is] best known to philosophers today for his contributions to the natural law theories of normativity which emerged in the later medieval and early modern periods. . . ." Among his literary works are the following: *Pontifex Romanus*, the *Phaenomena*, the *Annales et Historiae de Rebus Belgicis*, and the better known: *De iure belli ac pacis (the Art of War and Peace)*, and *Mare Liberum (Freedom of the Seas)*. <http://plato.stanford.edu/entries/grotius/>; (Last assessed 3/15/13)

²² *De Jure Belli ac Pacis*, by Hugo Grotius, Translated by A. C. Campbell, London, 1814, Book I, Chapter 11; (Last assessed, 3/15/13).

From such provisions, and others based on the human values and religious mores of his time, Grotius designed collective rules, called the “War Convention” regarding the behavior and methods of fighters. When this law was structured, it was constituted as the new law for the country in the beginning of the Eighteenth Century. The effects of the application of these reforms arise in the methods in which wars were conducted, and the increase in the safety of hospitals, doctors, patients, and the wounded. Doctors were immune from being held captive as prisoners, or used as prisoners for ransom. The lives of all civilians were protected.

However, as the case with modern law, Grotius’s laws and Conventions were often not observed.²³ On June 24, 1859, the Solferino War,²⁴ which later came to be considered the bloodiest war in history, commenced;²⁵ the conflict involved Austria against France and Italy. Vicious fighting raged for sixteen hours. Afterwards, all of the churches and town squares were filled with forty thousand dead and wounded. Those dying from wounds did not receive any medical care or treatment, because the battling

²³ Henry Dunant, *A Memory of Solferino*, published by ICRC pp.3-38 ref.6361 1986.

²⁴ “The Battle of Solferino was fought as part of the wider battle for unification within the Italian peninsula during the nineteenth century. On the 24 June 1859, the alliance of France and Sardinia under Napoleon III met the Austrian army at the small village of Solferino in northern Italy . . . Fighting continued for fifteen hours until the Austrians retreated, leaving more than 40,000 killed or injured.” <http://www.redcross.org.uk/>; (Last assessed 3/20/13).

²⁵ The Battle of Solferino held this dubious distinction until 1914 – 1919 when nations of Europe found themselves in an even greater theater of carnage and bloodletting. This latter conflict was first called “The Great War,” but after the advent of another massive conflict, called “WWII,” the “Great War became known as, “The First World War,” or “WWI.” Though figures vary, for all participating nations, total killed in the “Great War” was approximately fifteen million, and thirty-two million wounded. http://www.pbs.org/greatwar/resources/casdeath_pop.html; (Last assessed 3/20/13).

armies were not equipped with any medical supplies. Had they been medically prepared, many lives would have been saved.

On the eve of the end of the battle, a Swiss business, Henry Dunant, arrived there on a business trip. He was shocked to see thousands of soldiers, from both sides writhing and moaning in pain without any medical services.²⁶ Acting quickly, he called on all the local citizens to help him care for the wounded. When Dunant returned to Switzerland, he had a great passion and desire to curtail the horrible experience he had lived through in Solferino. Three years later, in 1862, he published a book, the *Solferino Memoir*, where he delineated two main points of action to prevent the sufferings of Solferino from recurring:²⁷

1. Establish a voluntary relief organization during a time of peace. This concept materialized into what is now known now as the International Red Cross.²⁸
2. Adopt and approve a Holy International Principle Convention. All countries and nations will then provide the foundation and support necessary to have legal protection for all military hospitals and medical staff in relief organizations. It would also imply their acknowledgement of the principles, and therefore, grant them international recognition and protection. This concept later materialized into the Geneva Convention.

²⁶ "Swiss businessman Henry Dunant was passing through Castiglione on business and was appalled at the suffering of the wounded. He had been involved with charitable organisations in his native Switzerland and worked with local women to help the wounded. He brought in supplies to wash dressings, food, water and clean clothes. <http://www.redcross.org.uk/>" (Last assessed 3/20/13).

²⁷ ICRC, *ibid*, n. 5.

²⁸ The Red Cross, or International Committee of the Red Cross will be discussed *infra* in Chapter VII.

A man by the name of Gostaf Monieh was the chief contributor to these establishments. After reading the *Solferino Memoir*, Monieh urged all members of his organization to read the book and offered ²⁹ recommendations to reach a practical resolution. The organization then appointed five members for this purpose: Dunant, Mwanie, General Defour, and Ebia and Monwar, two doctors. Their first international meeting was held in 1863. The five-member committee established the International Relief Agency to help the wounded, which later became known as the International Red Cross Agency (IRCA). After having become a permanent establishment, it was considered the basic apparatus for the Red Cross and the basic engine for the Geneva Convention (Convention) of 1864.³⁰ One of the main principles of the Convention was to declare

²⁹ ICRC; www.ICRC.org/eng/resources/documents/misc/about; ICRC-11298.HTM.

The International Committee of the Red Cross as a Guardian of International Humanitarian law 31-12-1998, Yves Sandoz.

³⁰ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864:

Art. 1. Ambulances and military hospitals shall be recognized as neutral, and as such, protected and respected by the belligerents as long as they accommodate wounded and sick. Neutrality shall end if the said ambulances or hospitals should be held by a military force.

Art. 2. Hospital and ambulance personnel, including the quarter-master's staff, the medical, administrative and transport services, and the chaplains, shall have the benefit of the same neutrality when on duty, and while there remain any wounded to be brought in or assisted.

Art. 3. The persons designated in the preceding Art. may, even after enemy occupation, continue to discharge their functions in the hospital or ambulance with which they serve, or may withdraw to rejoin the units to which they belong. When in these circumstances they cease from their functions, such persons shall be delivered to the enemy outposts by the occupying forces.

Art. 4. The material of military hospitals being subject to the laws of war, the persons attached to such hospitals may take with them, on withdrawing, only the Art. s which are their own personal property.

Ambulances, on the contrary, under similar circumstances, shall retain their equipment.

Art. 5. Inhabitants of the country who bring help to the wounded shall be respected and shall remain free. Generals of the belligerent Powers shall make it their duty to notify the inhabitants

neutral in wartime all medical facilities and military hospitals.³¹ This protection plan was to include all of the army medical staff, volunteers and wounded. It proposed that all nations designate a specialized logo, recognizable by all participants who serve during wars; a red cross with the white background was later approved as the logo.³²

of the appeal made to their humanity, and of the neutrality which humane conduct will confer. The presence of any wounded combatant receiving shelter and care in a house shall ensure its protection. An inhabitant who has given shelter to the wounded shall be exempted from billeting and from a portion of such war contributions as may be levied.

Art. 6. Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for. Commanders-in-Chief may hand over immediately to the enemy outposts enemy combatants wounded during an engagement, when circumstances allow and subject to the agreement of both parties.

Those who, after their recovery, are recognized as being unfit for further service, shall be repatriated.

The others may likewise be sent back, on condition that they shall not again, for the duration of hostilities, take up arms. Evacuation parties, and the personnel conducting them, shall be considered as being absolutely neutral.

Art. 7. A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag. An armlet may also be worn by personnel enjoying neutrality but its issue shall be left to the military authorities. Both flag and armlet shall bear a red cross on a white ground.

Art. 8. The implementing of the present Convention shall be arranged by the Commanders-in-Chief of the belligerent armies following the instructions of their respective Governments and in accordance with the general principles set forth in this Convention.

Art. 9. The High Contracting Parties have agreed to communicate the present Convention with an invitation to accede thereto to Governments unable to appoint Plenipotentiaries to the International Conference at Geneva. The Protocol has accordingly been left open.

* * *

³¹ *Supra* note 28, art. 1.

³² *Supra* note 28, art. 7.

B. Modern Bases of International Humanitarian Law

1. The Hague Conventions, 1899 and 1907

The Hague Conventions proposed a group of international treaties that were designed to, among other objectives, ban certain weapons of war and regulate the conduct of nations and their military forces during war. They also established the *Convention for the Pacific Settlement of International Disputes*, which gave rise to the *Permanent Court of Arbitration*. A few noteworthy provisions taken from the 1899 Hague Convention are as follows:

SECTION II: On Hostilities

CHAPTER I: On means of injuring the enemy, sieges, and bombardments:

Art. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

Art. 23. Besides the prohibitions provided by special Conventions, it is especially prohibited:

- (a) To employ poison or poisoned arms;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;

Art. 25. The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited.

Art. 26. The commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the

authorities.

Art. 27. In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes. The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

Art. 28. The pillage of a town or place, even when taken by assault is prohibited.³³

These provisions of the Hague Conventions clearly established parameters for the manner in which military forces and their commanders are to treat the vanquished of another force, as well as civilians and the property of a state. Though Chapter I, Article 23 (a) expressly prohibits poison gas, mustard and chlorine gases were used in many instances during World War I.³⁴ Thus, given the mercurial nature of men at war, it's reasonable to presume many other provisions were likewise ignored, and in fact,

³³ 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. The Hague, 29 July 1899. [http://www.icrc.org/International Humanitarian Law.nsf/FULL/150?OpenDocument](http://www.icrc.org/International%20Humanitarian%20Law.nsf/FULL/150?OpenDocument); (Last assessed 3/15/13).

³⁴ It is generally thought Germany was first to use gas, but history shows the French, in an attempt to stop an seemingly unstoppable German infantry—perhaps out of desperation—were the first to turn to chemical warfare. The chemical they used, a form of bromide, was not fatal, but more of an irritant. Yet, it violated the rules of the Hague Conventions; see text *supra* Chapter I, Art. 23, section (a). The door had been opened; six months later, in April, 1915, at the Second battle of Ypres (mentioned in Sandberg's poem at the beginning of this chapter) the Germans launched a chlorine attack against French forces, sending the French army into disarray. Several months later the British used chlorine against the Germans, but the wind reversed and blew the gas back over the British lines, causing devastation. Overall, fatalities constituted ten-percent of those affected. See http://www.historylearningsite.co.uk/poison_gas_and_world_war_one.htm; (Last assessed 3/15/13).

they were, and the “Great War” made it clear that some other means of regulating war, and the attendant behaviors likely to arise during war, was urgently needed. Though the Hague Conventions are thought of as being less than effective,³⁵ they did provide a prototype for formation establishing the League of Nations in 1919. In Chapter VI, we shall return to a more detailed study of the 1907 Hague Convention. The Geneva Conventions of 1929 and 1949 were the next effort to find an international approach to control the exigencies that arose during the First World War.

2. *The Geneva Conventions of 1929 and 1949*

Despite the provisions on the treatment of prisoners set out in the Hague Conventions of 1899 and 1907, these had little to no effect on the treatment of prisoners of war during WWI. At the behest of the ICRC, nations of the world met in Geneva, Switzerland in 1929 to draw up a convention designed ostensibly to provide for the treatment of prisoners of war. This was known as the Geneva Convention of 1929.³⁶ The Hague Conventions of 1899 and 1907, and the Geneva Conventions of 1929 initially comprised the body of the International Humanitarian Law. The Hague Convention of 1899 and 1907 had already proven less than an ideal instrument for addressing the inhumane behavior that emerges during war. As much promise as these conventions appeared to hold, exigencies cropped up during the course of World War Two (WWII) that showed

³⁵ *E.g.* The “Great War” erupted in 1916, but is now known as “World War I.” At the time it was known as the bloodiest war ever fought. Ypres and Verdun referred to in Sandburg’s, “Grass” (*supra*) are great battlefields of that war.

³⁶ The Geneva Convention of 1929 was replaced by the Third Geneva Convention, 1949.

them inadequate to address the escalating horrors that came with that global conflict; *i.e.*, millions of civilian deaths brought about intentionally. Clearly something with “more teeth” was needed.

Therefore, on August 12, 1949 in Geneva, Switzerland (a country that managed to sit out the war), countries of the world met and drafted four conventions³⁷ aimed at protecting victims of war.³⁸ Whereas the Hague Convention and Geneva Conventions of 1929 dealt with international conflict, the Geneva Conventions of 1949 endeavored to lay the ground work for establishing protocols for handling non-international armed conflicts; *i.e.*, those occurring within in the borders of a country where the country might be implicit in violating the rights of its citizens.

The Geneva Conventions of 1949 have been a common point of reference in publications relating to the International Humanitarian Law. There were two parts to the 1949 Convention; first, Conventions I, II, and III were ratified and adopted in their new form; in the second part, Convention IV was added. The fourth, which emphasized civilian protection, did not nullify nor replace any previous treaty pertaining to war.

One notable provision was that Article 154 of Convention IV, stipulates that with respect to relations between all the nations that agreed and signed the Hague Treaty that regulates war, whether it was at the convention that took place on July 29, 1899,³⁹ or the convention on October 18, 1907, both treaties are a continuance to the previous

³⁷ In this dissertation the term “accord” might sometimes be used in lieu of “Convention.”

³⁸ ICRC Website; <http://www.icrc.org/eng/who-we-are/history/since1945/overview-since-1945.htm>.

³⁹ <http://wwi.lib.byu.edu/index.php/hague-convention>.

second and third parts of the Hague Treaty. The goal of these new measures was to protect civilians during military conflicts. These four conventions are the foundations for the International Humanitarian Law, sometimes referred to as the 1949 Four Geneva Conventions, and are as follows:

1. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.⁴⁰
2. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.⁴¹
3. Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.⁴²
4. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.⁴³

To improve and develop the four Geneva Conventions, two more conventions were held in Geneva in 1974 and 1979, per courtesy of the Swiss Government. The outcome of these was the 1977 Protocols, and are as follows:

⁴⁰ Improving the conditions of the sick and wounded, Art. 64.

⁴¹ Improving the conditions of the wounded and sick military, Art. 63.

⁴² Improving the treatment of prisoners of war, Art. 143.

⁴³ Protecting civilians during war, Art. 159 .

a. First Additional Protocol:

Additional to the Geneva Conventions of 12 August 1949, and relates to the Protection of Victims of International Armed Conflicts (or Protocol I), 8 June 1977.⁴⁴

b. Second Additional Protocol:

Additional to the Geneva Conventions of 12 August 1949, and relates to the Protection of Victims of Non-International Armed Conflicts (or Protocol II), 8 June 1977.⁴⁵

3. *Fundamental Objectives of International Humanitarian Law*

The International Humanitarian Law purports to ensure the safety and protection of those who do not participate in war, such as civilians, the sick, and the wounded. These latter two may include military combatants. In addition, the conventions protect those who coordinate and prepare for war.⁴⁶ When reviewing the four Conventions and the three additional Protocols,⁴⁷ it is apparent that many of the principles basic to formulating International Humanitarian Law are within these conventions, and thus serve as the main essence of the International Humanitarian Law, which is a set of laws that all countries should abide by and respect. The most important of these principles are the following:

⁴⁴ Protecting victims of international military conflicts, Art. 102.

⁴⁵ Protecting victims of non-international Armed Conflicts, under Art. 28.

⁴⁶ ICRC (eds.13), A Hand Book of International Red Crescent Movements, Geneva,1949.

⁴⁷ Three Additional Protocols exist; here we are concerned only with the First and the Second.

(1) Caring for the wounded and sick, and protecting the medical staff⁴⁸

(2) Treat prisoners equally “without any adverse distinction based on race, nationality. . . or any other distinction based on similar criteria.”⁴⁹

(3) Differentiate between civilians and militants, this requires both sides involved in a conflict to recognize who is a militant or a civilian, with the goal in mind being to protect civilians and their property.⁵⁰

These three principles need further scrutiny. Under the first principle listed above, the Fourth Convention provides that,

Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction: a) wounded and sick combatants or non-combatants; (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.⁵¹

One apparent curiosity with this provision is the language suggesting that a Party to a conflict “[*may*] . . . propose to the adverse Party . . . neutralized zones” to shelter certain persons from the effects of war. To say it another way, the word “may” implies that combatants have the freedom to choose whether they should follow these

⁴⁸ Fourth Geneva Convention, Art. 15; [http://www.icrc.org/International Humanitarian Law.nsf/FULL/365?OpenDocument](http://www.icrc.org/International%20Humanitarian%20Law.nsf/FULL/365?OpenDocument); (Last assessed 3/16/13).

⁴⁹ Third Geneva Convention, Part II, Art. 16; <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>; (Last assessed 3/16/13).

⁵⁰ First Additional Protocol, Art. 48, 1977.

⁵¹ Fourth Geneva Convention, Art. 15.

requirements. It's quite unlikely that combatants will always, if ever, exercise the moral discretion required here, which might be one reason large segments of treaties are misunderstood, or if they are so misunderstood, those charged with interpreting them, are swayed by their own interests, and construe the terms in a manner most advantageous to those interests.

The second principle, found in the Third Convention requires,

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.⁵²

The language of this principle, which might seem clear and to the point at first blush, nonetheless has a problem in that anyone with less than honorable intentions is apt to construe the phrase "shall be treated alike by the Detaining Power," What if some individual of perverted thoughts, reads this passage, then decides that if one set of prisoners are forced to stand in the hot sun all day, then "being treated alike" means the entire prison population should be out in the sun? Where none other exists, this could be an adequate defense within some venue of justice.

The basic foundation of protecting civilians from war, mentioned in Article 48 of the First Additional Protocol, states that parties involved in the military conflict should

⁵² Third Geneva Convention, Art. 16.

differentiate between civilians and militants, in order to direct their operations against military targets only, and protect civilians and civilian targets. This provision is found in the third, and last principle, which is as follows:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.⁵³

This provision, while being clearly and succinctly stated, nevertheless might be asking the near impossible. A perennial problem during war has been the inability at times to quickly distinguish between military and civilian objects and objectives. Article 50, paragraph 1, of the First Additional Protocol defines who is a civilian;⁵⁴ for example, a civilian is anyone who does not belong to any armed or military group. This article further requires that where there is doubt an individual is a civilian, he or she should be assumed a civilian. Article 50 further states that the mere presence of suspected non-civilians within a civilian community does not cause that community to lose its civilian character.⁵⁵

⁵³ First Additional Protocol, Art. 48.

⁵⁴ Chapter II. Civilians and civilian population. Art 50. Definition of civilians and civilian population.

1. A civilian is any person who does not belong to one of the categories of persons referred to in Art. 4 (A) (1), (2), (3) and (6) of the Third Convention and in Art. 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. First Additional Protocol, Art. 50, 51, 1949

⁵⁵ First Geneva Convention, Art 50, para. 3.

In these days where many combatants may disguise themselves and their hiding places, and “melt” into the background among civilians, discerning them by appearance and ascertaining their motives quickly enough can be fatal; thus, it’s apparent why much too often we hear of civilian casualties: soldiers cannot always quickly distinguish a disguised enemy combatant from a civilian, who is not and has not ever participated in hostile actions against any force. To further complicate this matter, and as has been the case in nearly every hostile action ever fought, how are civilians to be treated who secretly collaborate with military forces? The assistance they may provide may have devastating consequences on one army, while furthering the objectives of another. Thus, while International Humanitarian Law may set out operative parameters that combatants and their superiors are expected to operate within, the vagaries of human nature render these constraints much less than effective, especially in those cases where a participant in a conflict feels it must resort to desperate measures, which may include setting up weapons on top hospitals, or arming children or women with explosives.

The treatment of women requires special mention here. Under Article 27 of the First Convention, “[w]omen shall be especially protected against any attack on their [honor], in particular against rape, enforced prostitution, or any form of indecent assault,”⁵⁶ though it was blatantly ignored in the Bosnian and Rwandan wars,⁵⁷ of the

⁵⁶ Fourth Geneva Convention, Part III: Status and Treatment of Protected Persons; Art. 27.

⁵⁷ According to the UN, between 20,000 to 50,000 Bosnian women were raped — many in special rape camps — during the war . . . African conflicts have seen even more harrowing figures: Between 250,000

1990s, and to some extent in every conflict since the promulgation of this Convention in 1949.

In summary, all civilians should enjoy the benefit of living a quiet and peaceful life without being disturbed by any military aggression. To make this agreement effective and valid, all civilians should be granted the immunity of international treaties, in addition to the protection from the other treaties that are valid. Civilians should not be persecuted or attacked by bombs or any gruesome act intended to scare them; they should not be targeted anywhere, at any time. Also, they are not to cross military boundaries, whether directly or indirectly.⁵⁸ As noted above, after the Battle of Solferino, relief agencies were established to care for the sick and wounded of war. Many of which have played a significant role in setting up the international agreements that have sought to regulate war and the weapons of war, and the treatment of those involved directly in war as combatants, or as caregivers. The following sections discuss international agreements aimed at alleviating the suffering of war.

and 500,000 were raped during the Rwandan genocide, and hundreds of thousands more in conflicts in Sierra Leone and the Democratic Republic of Congo.
<http://news.yourolivebranch.org/2013/03/13/bosnian-woman-helped-make-rape-a-war-crime/>; (Last assessed 3/17/13).

⁵⁸ See First Additional Protocol, Art 50, para 1.

4. Respecting the Red Cross and Red Crescent Signs and Materials Carried by Staff and Workers

a. First Geneva Convention Provisions

Provisions relating to the IRC are found in Article 38 of the First Geneva Convention, the international agreement that relates to care of the sick and wounded on fields of battle.⁵⁹ As a symbol of respect to the Swiss government,⁶⁰ the Red Cross symbol is to be placed on a white background as a sign of medical staff helping the military. This article also provides that out of respect for their culture, countries not desiring to use the Red Cross as their logo, may use the Red Crescent, Red Lion, or Sun symbols upon a white background. Chapter VII of the First Convention describes how these signs should be used and displayed by all experts and employees, including doctors and religious leaders; for example:

Art. 39: Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

Art. 40: The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive

⁵⁹ Art 38. Recognized Emblems:

1. "It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by this Protocol. It is also prohibited to misuse deliberately in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.

First Geneva Convention, Art. 38, 1949.

⁶⁰ The Swiss flag is represented by a white cross on a red background.

emblem, issued and stamped by the military authority.

Under the First Geneva Convention, Article 3, the following admonition is provided:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.⁶¹

b. Fourth Convention Provisions

Article 3 of the Fourth Geneva Convention, provides that those who “lay down their arms, are unable to fight due to sickness, wounds and/or detainment, and those who do not engage in military attacks, should be treated humanely under all circumstances. . . .”⁶² In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, pursuant to Article 3 of the Fourth Convention, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all

⁶¹ First Geneva Convention, Art. 3.

⁶² *Id.*

circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

The above listed provisions of the First and Second Conventions should provide at least the fundamental blueprint for drafting more direct legislation barring the inhumane treatment of women during war time. This would also include urging refraining from actions that would make it difficult to impossible for women, and their children, to find a means of surviving in a combat theater. Such is not the case, as we shall see; for example, Dr. Dajanii mentions that Israel destroyed 790 houses and closed 87 houses in red wax during the time of the Intifada⁶³ (1987-august 1989).⁶⁴

5. *International Humanitarian Law and Human Rights Law*

Both International Humanitarian Law and Human Rights Law are designed to protect people during war.⁶⁵ Each type of law is considered to be essential towards that objective, and independent of the other; however, both originate from the International Convention Law.⁶⁶ International Humanitarian Law applies for both international and

⁶³ "Intifada" is an Arabic word meaning "to shake off."

"It was a popular mobilization that drew on the organizations and institutions that had developed under occupation. The intifada involved hundreds of thousands of people, . . . including children, teenagers and women. For the first few years, it involved many forms of civil disobedience, including massive demonstrations, general strikes, refusal to pay taxes, boycotts of Israeli products, political graffiti and the establishment of underground schools (since regular schools were closed by the military as reprisals for the uprising)." http://www.merip.org/palestine-israel_primer/intifada-87-pal-isr-primer.html; (Last assessed 3/21/13).

⁶⁴Dajannii, S *The Changing Conditions of The Palestinian Family During The Intifada*, Community Centers Aman, 1995.

⁶⁵ Baktieh, John S. *Humanitarian International Law: Principles and Development*. p. 36. 1999.

⁶⁶ International Convention Law is that International Law contained in treaties, vis-à-vis that are derived from customary practices.

non-international conflicts. It provides individuals from any country the right to exercise their human rights, in and outside of their countries, without any persecution. These rights are dictated in most countries constitutions, in order to regulate and establish a relationship between the individual and her/his regime. There are three theories about this subject:

1. Both laws are individual and independent from each other
2. Both laws should be consider as one law
3. Each law complements the other⁶⁷

International Human Rights Law recognizes rights for each and every individual, whereas before 1948, only countries were recognized.⁶⁸ Since then, both women and men have the liberty of civil, political, economic, educational, and social rights. Each country⁶⁹ signed Article Seven of the Fourth Geneva Convention, which gives every individual the right to practice her or his human rights; it also preserves the right to not give up any or all rights to any authority, under any circumstances. In addition, Article Seven ensures the right to demand one's rights from any international group.

The International Humanitarian Law and the Human Rights Law intersect each other in an effort to protect human beings, even though they have their own unique and independent characters. The International Humanitarian Law is meant to be

⁶⁷ Sameer, Ahmad Mussa. Modern Talk, The Similarities and Differences Between International Humanitarian Law and HR. 2007.

⁶⁸ ICRC WEBSITE <http://www.icrc.org/eng/resources/documents/misc/5kzmuy.htm>.

⁶⁹ Estimates of how many countries are signatories to the Geneva Conventions, vary, but 188 seems to be the number many people agree with.

effective during military conflicts, as it regulates relations between countries, while the International Human Rights Law mandates all countries to apply Human Rights for individuals at all times. Even during times of peace, the latter determines the relations between a country and its population.

IV. CONCLUSION

From the *Code of Hammurabi*, the *Law of Manu* and the *Magna Carta*, to modern-day treaties, such as the *Hague* and *Geneva Conventions*, Human Rights Law has evolved and expanded as people, often in a spirit of Humanitarianism born of a higher morality, have attempted to extend its applicability. Agreements have been forged to define and ensure the rights of warring combatants; others have sought to define the rights of citizens of various States, and those of women, children, and ethnic groups. Yet the above mentioned agreements have not been sufficient to stem the relentless tide of suffering that has been too often perpetrated by a handful of individuals against their fellow human beings. Events of the latter half of the 19th Century made it necessary that other conventions be held, and other agreements enacted. These will be later discussed, but first let's divert our attention to the conditions that make it imperative that protections for women need be more specific.

* * *

CHAPTER II

PROTECTION FOR CIVILIAN WOMEN UNDER INTERNATIONAL LAW

Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.¹

I. INTRODUCTION

The question often arises asking what kind of legal protection is available to women under the International law? This is like the old question, “Have you stopped beating your dog?” Either a “Yes” or a “No,” can be problematic for one who is not wise enough to avoid the question, for the question assumes the dog is being beaten. Likewise in International Law or International Humanitarian Law, asking what kind of legal protection is available is assuming that international agreements, being legal instruments can be enforced under the penalty of some type of punishment strict enough to deter a would-be violator. As experience teaches, this is not always the case: agreements among nations are often violated at an unconscionable rate so often that as a last resort, we may appeal to an alleged violator’s sense of morality, all the while hoping his or her morality is like that of our own.

¹ Frederick Douglass, American Abolitionist, Orator, Writer. b. 1818, d. 1895. Escaped from slavery and became one of the most influential voices of reason against the injustice of slavery.

Nonetheless, it makes for more sleepful nights if we can hope for some sort of legal protection, by the way of a recognizable law, to which we can turn in the hope of dissuade certain parties from trampling on the rights of others. Therefore, we will return to the initial question: What kind of legal protection does the International Humanitarian Law give to women? It grants two kinds of protection. The first is a general protection as fighters and civilians, and when they become old and, or unable to fight and protect themselves. The second protection acknowledges that women need protection and rights are designed especially for them. The following two sections will discuss the differences and similarities between the two.

II. GENERAL PROTECTION FOR CIVILIAN WOMEN

This section will review the Fourth Geneva Convention, 1949, which is concerned with the protection of civilians in war times, and the First Geneva Protocol, 1977, which prohibits discrimination against women.

A. General Protection for Civilian Women; Fourth Geneva Convention, 1949

The Fourth Geneva Convention represents a great accomplishment in recorded Humanitarian Law. It has endeavored to protect civilians during acts of war since August 12, 1949. It proclaims respect human dignity during military conflicts, as civilians are exposed to dangers that the military faces during war. Irrespective of the provisions within the Fourth Convention that strongly discourage ill treatment of non-combatants, and fifty years after the passage of the First Convention, the women of Iraq and

Palestine have been exposed to some of the worst and most severe types of persecution and suffering.² After taking a close look at the realities within both countries, comparisons will be made based on how each should receive the protection they deserve under International Humanitarian Law.

The first draft of International Humanitarian Law, drawn under the³ First Geneva Convention, 1864, was designed to protect military personnel only, because dead and wounded civilians were considered a by part of military aggression; or as that phenomenon is now known: collateral damage. Even the 1907 Hague Treaty, which laid the foundation for the management of war and other conflicts, did not mention civilians, apart from its discussion of treatment of spies when a military occupies another land.⁴ This earliest of Conventions, Hague Convention 1907, fell short in that it

² The Fourth Convention, Art. 3. Provides, "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

³ Pictet, Jean S. 1951, "The New Geneva Conventions for the Protection of War Victims." the American Journal of International Law 45 (3):462-475.

⁴ Hague Treaty, 1907: CHAPTER II[:]Spies:

Art. 29. A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Ha

Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

only addressed generalized protection and the maintenance of order, and how the human being, family, private property, and religious practices and rituals, should be respected. It stated that under no circumstances shall there be any kind of threat, theft, or collective punishment of any sort, because of individual acts. Furthermore, if these violations occur, the parties responsible must be held accountable. Unfortunately, despite the 1864 First Geneva Convention and the 1907 Hague Convention, WWII showed the catastrophic results of the lack of international treaties drafted to protect civilians during war, especially those in occupied lands.

The United Nations, which arose in the aftermath of WWII, was a direct consequence of that conflict. As noted earlier, its primary goal was to preserve international peace and security, develop good and harmonious relations between all countries, accomplish international cooperation to solve any international disputes, and to fortify basic human rights and liberties. Moreover, people saw the need for even more protections against the evils of; therefore, the four Geneva Conventions were promulgated, and because civilians had suffered disproportionately during WWII, one of those Conventions, the Fourth, was drafted with care of civilians in mind; *i.e.*, behind the legislative history of that Convention, we can imagine there were such notions as

Art. 30. A spy taken in the act shall not be punished without previous trial.

Art. 31. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.” Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

emphasizing the eternal principles for not collapsing the social and moral foundations regarding civilians and their security. Towards this objective, the Fourth Convention also emphasizes the value and dignity of each and every human being and preserving rights and liberty, representing the essence of human existence. Thus, legislative steps were taken within the Fourth Geneva Convention to ensure the eternal principles, such as the following:

- Article 32 forbids physical assault on any human being, such as torture, defamation and harsh treatment⁵
- Articles 34 and 49 forbids taking hostages⁶
- Article 27 forbids assaults on private integrity, including slandering, humiliation and discrimination, crimes against women, and other offenses⁷

Articles 3, 66, 71-76, 117-126 and 146 forbids sentencing and conviction without a legal hearing or trial, declaring the human right to a fair and legal hearing.⁸ Article 66,

⁵ *Id.* Art. 32. The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

⁶ *Id.* Art. 34. The taking of hostages is prohibited; Art. 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

⁷ *Id.* Art. 27. "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. . ."

through 76 provide for prosecution by the Occupying Power in case of contravention of any of the prohibited acts listed within the Conventions. For example, Article 71 reads,

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial. Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible.⁹

Article 72 provides that, “Accused persons shall have the right to present evidence necessary to their defence and . . . witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.”¹⁰ This provision has the tenor and intent of the Sixth Amendment to the U.S. Constitution, which was intended to insure that those detained be given right to adequate legal representation.¹¹ In fact, a casual reading of the above mentioned articles gives the impression that those enumerated rights will, without failure, provide an impenetrable buffer against any imaginable abuse perpetrated by any government, or its agents, upon any human being so unfortunate to be at the mercy of that government; however, such

⁸ Fourth Geneva Convention, 1949. See relevant Art. contained in this Convention.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Amendment VI to U.S. Constitution: Right to a fair trial

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

<<http://www.ushistory.org/documents/amendments.htm>> .web. (Last assessed 3/20/13).

is sadly seldom the case, as is shown in the following examples.

1. Case Examples: Maltreatment of Iraqi and Palestinian Female Prisoners

As discussed above, International Humanitarian Law stipulates that all prisoners have the right to be treated respectfully, irrespective of religious beliefs and rituals, or country of origin, and they should be protected from any physical harm or threats.¹² Further, as mentioned in the Third Convention, Article 14, women should have the same right to respect as men, and they should be treated as fairly as men, despite their gender.¹³ However, due to their gender, women should have specialized treatment and protection, as mentioned in the Fourth Geneva Convention, Article 27.¹⁴ Yet despite these provisions, which seem ample enough to provide protection for women and young girls, females across the globe have suffered unspeakable horrors at the hands of not only invading armies, but have often been victimized by their own countrymen.

Following are examples of the realities faced by women prisoners in Iraq and Palestine. Taa'mim al Izzawi,¹⁵ an active Iraqi attorney working for women rights,

¹² Lindsey, Charlotte: *Women Facing War*; ICRC Study on the Impact of Armed Conflict on Women. p. 200. 2004

¹³ Third Geneva Convention, Art. 14. "Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men."

¹⁴ Fourth Geneva Convention, Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, . . . Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

¹⁵ Azzawy, Taa' Meem, *Violations against Women in Iraq*; Studies Center, Amman, Jordan. July 2005.

documented the physical abuse that women face in Iraqi prisons in a four page report.¹⁶

According to al Izzawi, women prisoners were raped in Abu Ghraib Prison, where they became pregnant, and had to give birth in their cells. When the Iraqi tribe leaders were informed of the abuse of women inside the prison, they threatened to storm and destroy the entire prison if the women were not released immediately. The threat was thought to be so grave that some of the families living next to the prison vacated their homes to escape the danger that may have followed.

Iraqi women also suffered extensive persecution and torture during the previous regime.¹⁷ For example, in 1988, the atrocious crimes at ¹⁸Al Anfal occurred, where 80,000 Kurds, including men, women, children and elderly people were killed. In

¹⁶ SEXUALIZED VIOLENCE AGAINST IRAQI WOMEN **BY U.S. OCCUPYING FORCES**,A Briefing Paper OF INTERNATIONAL EDUCATIONAL DEVELOPMENT Prepared by Kristen McNutt, Researcher, Association of Humanitarian Lawyers Presented to the United Nations Commission on Human Rights 2005 Session March, Geneva.

¹⁷ The Iraqi Woman and the Military Conflict. 2005- Review List, Studies Center, Amman, July 2005

¹⁸ The Al-Anfal campaign was an organized attempt by the Iraqi regime under Saddam Hussein to stamp out Kurdish efforts toward political independence. At the end of the Iran-Iraq war, the Kurdish region in northern Iraq was the scene of an attempt by Iranian forces allied with the Patriotic Union of Kurdistan to capture Iraqi territory. Iraq had already begun to use chemical weapons in 1987 to battle the Kurdish opposition, and this brutal repression became an organized and institutionalized genocide in 1988. Throughout the Al-Anfal campaign, the Iraqis used chemical weapons and heavy bombardments to slaughter civilian populations. The operation also involved the destruction of villages, mass executions, and deportations of civilians including women and children.

Those who sought medical attention in the urban centers for the treatment of exposure to chemical agents were rounded up and "disappeared." In all an estimated 180,000 Kurds lost their lives and/or disappeared as a result of the genocidal campaign. In addition, hundreds of thousands of Kurdish civilians were displaced from their homes as approximately 4,000 villages were destroyed. The most widely publicized incident occurred in the Kurdish town of Halabja, where on March 16, 1988 an estimated 5,000 men, women and children lost their lives. Over 10,000 were wounded and to this day suffer the effects caused by exposure to chemical agents. *The Anfal Campaign Against The Kurds*: a Middle East Watch Report: Human Rights Watch 1993.

Palestine, the Palestinian women detainees are exposed to many methods of torture. Israeli policemen and women provoke female Palestinian prisoners by every means and method. Some of the methods they employ include cursing at them, restricting visitations from family members, tearing off the women clothes, beating, and locking them in cells where only Israeli women prisoners are detained, knowing very well that the Israeli women would attack the Palestinian woman.¹⁹ They were beaten with hot iron bars, leaving scars all over their bodies, burned with cigarettes, tortured with electricity, and raped. Ablah Taha, a Palestinian woman prisoner, relates to her attorney, Valancia Langar, that when Israel was holding her prisoner,²⁰

I was locked up in a cell where Jewish prostitutes were detained. One of them attacked me and beat me severely until I was unconscious. Also, they tore off my clothes in front of the other police officers, and I was naked without any clothes for eight days in a single cell without a toilet. For three days they would not allow me out of my cell to use the bathroom. Officer Dweik kicked me and cursed at me while I was down, unconscious from the severe beatings. I was two months pregnant. I started bleeding, and I asked for a doctor to treat me. They

¹⁹ Ashmawi and Mohyeddin Ali, *Civilian Rights Under Military Occupation, Special Studies, Human Rights Violations by the Israeli Army In the Occupied Lands*. Published by Alam Almaktabat. World of Libraries, Cairo, p. 625. 1972.

²⁰ Mohammad Maher, *Humanitarian International Law Encyclopedia Treaties, 2005 Sixth Edition*. Published by the Red Cross International Community, Cairo, p. 141. 1987.

refused and threatened me that if I say anything they will take my baby out of me.²¹

Both torture and mistreatment are violations of the first paragraph of Article Three of the Fourth Geneva Convention, which orders all parties involved in a military conflict to treat all prisoners and civilians humanely.²² *The Magazine of the Palestinian Studies*²³ states that there are several problems that female Palestinian prisoners suffer from while being detained:²⁴

1. being searched naked, and the consequent humiliation
2. being beaten and attacked with tear gas
3. being medically neglected
4. there are hundreds of sick and wounded detainees, and a lack of doctors, delaying the performance of medically necessary surgery.
5. Being collectively punished; for example, prisoners are uprooted from where they live in the West Bank, and exiled to the Gaza Strip. Being served expired and unsanitary food Subjecting prisoners to a deteriorated health environment is abuse.

²¹ Prisonerunion@yahoo.com; Qawim.net/index.com/1831.

²² The Fourth Geneva Convention, Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

²³ *The Palestinian Studies Establishment, Volume 59*.

²⁴ Wahidi, Alatawneh, *Palestinian Women on Israeli Occupation*. Second Edition, Amman/1987

The accounts mentioned above are only some examples of clear violations of the International Humanitarian Law and its principals. Every case is a crime against humanity, because it violates Article Seven²⁵ of the International Criminal Court. Such practices strip women of their self-worth.

²⁵ Art. 7 (ICR), CRIMES AGAINST HUMANITY:

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder; (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

All treaties insist that the rights of women should be preserved and protected at all times. These laws and treaties must be enforced by the authorities in both Iraq and Israel. For when warring parties attack, assault and rape women, tarnishing their honor and dignity, those parties are clearly violating provisions of the Fourth Geneva

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- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Convention, as well as several other international agreements.²⁶ Of course, irrespective of the clarity of a law, people may choose not to act within its constraints; therefore, rather than continuing to write, and rewrite laws hoping people will not violate them is often a futile exercise. Something more is need; perhaps severe sanctions against anyone violating laws to which they have agreed. There will be later discussion about this possible solution.

B. General Protection for Civilian Women; the First Additional Protocol

While the four major Conventions address a various categories of person and their needs, later agreements tend to focus more on women and their specific needs; for example, the First Additional Protocol refers to the Geneva Convention of August 12, 1949, which provides for protecting victims of military conflicts. The First Protocol puts a great emphasis on the protection of women,²⁷ because the savagery of war afflicted on civilians is especially targeted towards women. The abhorrent practice of singling out women for degrading treatment is clearly shown by what has been transpiring in Iraq and Palestine, the 1990s atrocities in Rwanda and Bosnia, and a thousand places across the world, and throughout all of history. As suggested, the repugnance of this practice did not come to light overnight. It is that recent wars and greater conscientiousness has made us more aware. For instance, the total casualties from WWII exceeded fifty million

²⁶ Abu Baker, Salhobi, Awida; *Violations Against Palestinians*, p. 20 /2004

²⁷ Pictet, Jean S., Doctor of Laws and then Director for General Affairs of the International Committee of the Red Cross—the authors examine the four Conventions, Art. by Art. , and deal with questions concerning the implementation and application of international humanitarian law.

people; it is estimated that about twenty-six million were military personnel, while twenty-four million were civilians, most of whom were women.

Statistics show that in the military conflicts that have occurred after the promulgation of the Geneva Conventions in 1949, the number of men and women who have been killed surpasses the number of casualties of WWII.²⁸ Statistics also show that 90% of all war casualties since WWII have been civilians.²⁹ One reason for this sharp increase in numbers is the use of new indiscriminate and pervasive methods and means of mass destruction. Another reason is the development of complex conflicts between militaries, privatized security and militia, and local police and gang forces.

Article 50 of the First Additional Protocol grants women protection like all civilians, whether it is from persecution by higher authority from one side or attacks. It goes on to state that any person not enrolled in a military group, or if there is any doubt whether or not that person is a civilian, must be considered civilian.³⁰ The First Additional Protocol, Article 10³¹ reserves the right of protection for sick, injured,

²⁸ The total number of civilian and military deaths occurring during WWII ranges from 55 – 60 million.

²⁹ Krel, Francois. *Women Protection In The Humanitarian Law*, the Arabic translation published in the International Red Cross Magazine, Oct. Nov. Dec. 1985. P.6, 1985).

³⁰ “A civilian is any person who does not belong to one of the categories of persons referred to in Art. 4 (A) (1), (2), (3) and (6) of the Third Convention and in Art. 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” First Additional Protocol, Geneva 1949.

³¹ Art 10: Protection and care:

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, . . . with the least possible

disabled, and newborn babies.³² Nablus³³ medical reports revealed a case of a pregnant woman who died while waiting at a check point. Sources said that the pregnant woman was on her way to a Nablus hospital, when she arrived to the checkpoint on Monday night enduring medical complications, only to be detained. When the Red Crescent ambulance arrived on the scene, she was pronounced dead.³⁴ This act of neglect is a blatant violation of the norms of the International Humanitarian Law, as set out in a number of agreements. It amounts to a deliberate act of murder committed by Israeli military forces against a civilian woman.

Moreover, it is a violation of the principles of common morality; however, in this case involving two opposing sides, where it is clear that one is more powerful than the other, such violations are the likely outcome when one side enjoys military superiority. In this case, Israel is far more powerful than are the Palestinians; Israel deals from a position of power. It seems the Israelis find it easy to ignore the provisions of International and Humanitarian Law, and abuse the substantial power they have over the Palestinians. There should be little doubt that if the Palestinians were similarly

delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones. First Additional Protocol, 1949.

³² Art 8. Terminology: For the purposes of this Protocol:

a) "Wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, *new-born babies* and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility; First Additional Protocol.

³³ Nablus is a [Palestinian] city in the northern West Bank, approximately 49 kilometers north of Jerusalem, with a population of 126,132; <http://www.google.com/>; (Last assessed 3/21/13).

³⁴ Al Dostoor, *Jordanian Newspaper*, Volume 15200. 9/20/2006

armed with the right weapons—and allies, the Jewish-Palestinian conflict would have been resolved a long time ago.³⁵ Israel is not the only powerful nation that has been suspected, and accused of abusing its power; so has its greatest ally, the United States, been accused and suspect of the same.³⁶

The United States led war in Iraq has worsened the physical and mental conditions of Iraqis who were detained by the United States, aggressor and occupier for more than a decade.³⁷ This is to be expected—but not condoned—because U.S. bombs and missiles destroyed a vast part of the civilian infrastructure. Ghali Hassan offers the following:

Since 1990, the U.S. has targeted Iraq's educational system for destruction. During the 1991 U.S. war, Iraq's civilian infrastructure was systematically bombed and destroyed. U.S. aircraft bombed and strafed indiscriminately. The U.S.-imposed sanctions, which were implemented with severity and disregard to the welfare of the civilian population, destroyed Iraq's education and health systems. U.S. strategy against Iraq went beyond "strictly military targets". The aim was the complete destruction of the Iraqi society and its knowledge-based resources.³⁸

These acts by the United States, if they happened as Mr. Hassan claims, are severe violations of International Humanitarian Law, under the First Additional Protocol,

³⁵ <http://EzineArt.s.com/470422there> ; two sides not equal in power(Israel, Palestine)

³⁶ This is a common sentiment among many Arab nations.

³⁷ The numbers vary, but estimates of Iraqi civilian deaths range from 150,000 to 250,000. <http://www.informationclearinghouse.info/Art.11674.htm>; (Last assessed 3/20/13).

³⁸ Hassan, Ghali. The Destruction of Iraq's Educational System under U.S. Occupation. <http://www.globalresearch.ca/Art.s/HAS505B.html>; (Last assessed 3/20/13).

Articles 51 and 52.³⁹ The Second Protocol declares that it is forbidden to force the following individuals to surrender or hand them over to the enemy: civilians and non-militants who accompany the army (i.e. military reporters or the sailing crew), those who are drowning in sea, or those who carry arms in non-occupied territories.⁴⁰

Article 53 of the Second Protocol declares that the means or methods of war are not a choice for the parties in conflict, and it is forbidden to use bombs and other weapons that cause unnecessary pain and harm.⁴¹ Nonetheless, in violation of this provision, Mrs. Nazzal, in regards to Palestinian women, peace, and military conflict, states that six Palestinian women were subjected to a poisonous gas released into their

³⁹ First Additional Protocol, Art 51; Protection of the Civilian Population.

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances. . . 4. Indiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective;
(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; Art 52. General Protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

⁴⁰ First Additional Protocol, Art. 22, 23.

⁴¹ Palestinian Activist for Women's Rights, was published by the Center of Studies in Aman in 2004 under the International Network Information/Review list.

homes by the Israeli Defense Force (IDF). Before the IDF could make a forced entry into their homes, the women had already died of suffocation.⁴²

As noted under the ancient Islamic law, resisting the enemy and self-defense is a legal right,⁴³ and International Humanitarian Law forbids the use of harmful weapons like poisonous tear gas. Since this gas is commonly used by the IDF in Palestine, this act should be considered a war crime and criminals ought to be brought to justice. Regardless of whether the criminals are individuals, a group, if they have the privilege of immunity, or whether it happened in the past or present time, war crimes are inexcusable and there should be no discrimination in defining who is a war criminal. The International Criminal Court should pursue them and bring them to justice so they can face the international body and have justice be brought upon them. After this discussion of general principles of protection for women, we now turn to more specific principles under the major conventions.

c. Principles of Protection for Civilians, Under the Four Geneva Conventions, the Additional Protocols, and the UN Charter

There are three main principles of protection for civilian women. They are as follows:

- Protection from discrimination
- The right to humanitarian treatment
- Protection from acts of atrocity

⁴² Baker, Abu, *ibid*, n. 43

⁴³ See *supra* Chapter I, Section III, A, 4, para. 1.

1. First Principle: No Discrimination against Women

The first principle states that general protection for women includes no discrimination. The special provisions that address discrimination are also mentioned under Articles 9 and 57 of the First Additional Protocol, and Articles 2 and 4 contained the Second Additional Protocol, as well as in the Fourth Geneva Convention. The essence of International Humanitarian Law is to protect all civilians without any discrimination, and to apply this protection equally among women and men. Furthermore, that law proposes that people should be treated in a humanitarian way, without any sexual discrimination.

2. Second Principle: Treat Civilians Humanely

The second principle proclaims that International Laws protect civilians, requiring any party in a military conflict to secure that all civilians are treated humanely. This requirement is also mentioned in *Article 3 of the Fourth Geneva Convention*.⁴⁴ All of these doctrines should be applied to all people who do not participate directly or indirectly in any acts of attacks, including any military personnel who were unarmed, and those who are unable to fight. They should always be treated as civilians, without any discrimination.⁴⁵ This is why it is forbidden to physically assault and kill any civilian. Torture, defamation, harsh treatment, taking hostages, attacking personnel dignity and

⁴⁴ Title: Convention (IV) relative to the Protection of Civilian Persons in Time of War.

⁴⁵ Fourth Convention, Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

honor, humiliation, wrong convictions and sentences without a fair legal hearing, deprives a person from their local and international human rights. It is also required for both parties involved in a military conflict to care for the wounded. All of these demands should be applied whether or not the conflict is international.

The Gulf War in Iraq resulted in the destruction of the country's infrastructure, such as the electrical power plants and water supplies; the war was, therefore, a great disaster for all women and children.⁴⁶ The economic boycott that the Security Council imposed on Iraq after it invaded Kuwait on August 2, 1990, did not force Iraq to leave Kuwait (Resolution 661 (1990) which was adopted by the Security Council at its 2933rd meeting, on 6 August 1990. The Security Council, reaffirming its resolution 660 (1990) of 2 August 1990, and being deeply concerned that that resolution had not been

⁴⁶ Within hours of the invasion, Kuwait and U.S. delegations requested a meeting of the United Nations Security Council, which passed Resolution 660, condemning the invasion and demanding a withdrawal of Iraqi troops. AND ANOTHER RESOLUTION 661 REFINED Resolution 660 (1990) Adopted by the Security Council at its 2932nd meeting, on 2 August 1990 The Security Council, Alarmed by the invasion of Kuwait on 2 August 1990 by the military forces of Iraq, Determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait, Acting under Art. s 39 and 40 of the Charter of the United Nations,

1. Condemns the Iraqi invasion of Kuwait;
2. Demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;
3. Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;
4. Decides to meet again as necessary to consider further steps to ensure compliance with the present resolution.

implemented, and that the Iraqi invasion of Kuwait was continuing with further loss of human life and material destruction, was determined to end the Iraqi invasion and occupation of Kuwait.

The Council's secondary goal was to restore Kuwait's sovereignty, independence and territorial integrity. The Council also noted that the legitimate Government of Kuwait had expressed its readiness to comply with resolution 660 (1990). Therefore, being mindful of its responsibilities under the Charter of the United Nations for the maintenance of international peace and security, wishing to affirm the inherent right of a nation for collective self-defense, the Council in accordance with Article 51 of the Charter, and acting under Chapter VII of the Charter of the United Nations, determined that,

(1) that Iraq so far had failed to comply with paragraph 2 of resolution 660 (1990) and had usurped the authority of the legitimate Government of Kuwait;

(2) the Council decided that as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;

(3) decided that all States shall prevent:

(a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;

(b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;

(c) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;

(4) decided that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their

nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs;

(5) called upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;

(6) decided to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports on the progress of the implementation of the present resolution which will be submitted by the Secretary-General;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in the present resolution;

(7) called upon all States to co-operate fully with the Committee in the fulfillment of its task, including supplying such information as may be sought by the Committee in pursuance of the present resolution;

(8) requested the Secretary-General to provide all necessary assistance to the Committee and to make the necessary arrangements in the Secretariat for the purpose;

(9) decided that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:

(a) To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies; (b) Not to recognize any regime set up by the occupying Power;

(10) requested the Secretary-General to report to the Council on the progress of the implementation of the present resolution, the first report to be submitted within thirty days;

(11) decided to keep this item on its agenda and to continue its efforts to put an early end to the Iraqi invasion.⁴⁷

⁴⁷ Art. 1, section 3 provides: "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; . . . <http://www.un.org/en/documents/charter/chapter1.shtml>; (Last assessed 3/21/13).

Eventually in the Desert Storm Military Operation,⁴⁸ Iraq forces were forced out of Kuwait. Even though the Iraqi government had not cooperated with the Security Council, the U.S. continued to employ sanctions against Iraq. As a result of these sanctions, a great number of women and children and elderly died of malnutrition and poverty, in addition to warfare. In 2000 the UN chairman for human affairs, Hans Von Sponeck, as well as his predecessor Dennis J. Holliday, who resigned his post in 1998 for the same reasons (to protest UN's Iraq sanctions policy), declared that the continuation of this collective punishment was a violation of Human Rights.⁴⁹

An Iraqi pediatrician, Laila Abdel Ameer, M.D., served as head of a children's hospital in Babil. She explained her worries about the Iraqi women's health conditions in the hospital. She stated that many women were suffering from acute anemia due to malnutrition. This resulted in multiple cases of abortion, in addition to babies being born below the average weight of a healthy child. Compared to the period before the war, there was an increase in the number of abortions, premature deliveries, and births of feeble infants.⁵⁰ In the city of Najaf alone, the number of women who had an abortion during the economic sanctions against Iraq exceeded 7000. As one Iraqi women said, "I

⁴⁸The Gulf War (2 August 1990 – 28 February 1991), codenamed Operation Desert Storm (17 January 1991 – 28 February 1991) was a war waged by a U.N.-authorized Coalition force from 34 nations led by the United States, against Iraq in response to Iraq's invasion and annexation of Kuwait.

John F. Stewart Jr., *Operation Desert Storm: The Military Intelligence Story: A View from the G-2 3d U.S. Army*, April 1991. Unclassified, 44 pp.

⁴⁹ Stokke & Tostensen, *Human rights in Development*. Nordic Human Rights Publications. Oslo, p. 100. 2000.

⁵⁰ UNICEF Organization of Universal Safety Medical Treatment. Harvard University, U.S.A, p. 61. 1991.

was suffering from insomnia, because all night I was thinking, ‘where am I going to get food for my children tomorrow?’” According to a UNECEF report by Saa’eda Bani Dana, these have been a few of the many dilemmas faced by many Iraqi women.⁵¹

After reviewing many of the acts by the U.S. and Israeli occupation of both Iraq and Palestine, one is compelled to ask, how do the invading militaries and corporations commit these acts against civilians, especially women and children? By what motivation can the U.S. and Israel not observe and obey the International Humanitarian Laws and all other treaties that demand all countries to comply with treaties to which they have acceded? Many treaties, so far discussed, state clearly that all those involved in conflict should abide by the provisions of the Four Geneva Conventions and the Additional Protocols, as well as other international agreements that attempt to regulate armed conflict, and to respect the dignity and honor of civilians, and non-combatant soldiers by not humiliating or attacking them. One answer is the most obvious, and could be the most correct: unless it is convenient and in their best interests, those who hold the greatest power often feel exempt from obeying even agreements they have initiated.⁵²

The dignity and honor of the Iraqi and Palestinian women are undoubtedly attacked when they are subject to, physical and psychological abuse, harassment, humiliating searches, forced to strip naked in front of others, gang raped, and forced to

⁵¹ *Id.* p. 50, 1991.

⁵² A bit of anecdotal information: B.H. Frazier (descended from a Native American grandmother) says that “of more than 200 treaties entered into by the United States and the indigenous Americans, the U.S. observed them until the time it felt the need not to. Consequently, the U.S. broke all 200.” An Internet source puts the number at 500! “Over 500 treaties were made with American Indian tribes, primarily for land cessations, but 500 treaties were also broken, changed or nullified when it served the government’s interests.” <http://blog.nrcprograms.org/treaties-made-treaties-broken/>; (Last assessed 3/20/13).

spend long nights worrying about how they will feed themselves and their children. These realities are all grave violations of the International Humanitarian Law, and are among the most shameful acts of the Twentieth Century. What's even worse; these acts are sometimes perpetrated by those claiming moral superiority.

3. Third Principle: Protecting Women (and all Civilians) from Atrocities

The final principle declares that all women should have protection from all atrocities.⁵³ International Humanitarian Law mandates all parties in conflicts to differentiate between civilians and militants at all times, for the Humanitarian Law is prohibited to use civilians as military targets and, or human shields, whether intentional or not. It is also illegal to deprive civilians of food and water by destroying water and food facilities and/or production sites, farms, livestock, the natural environment, dams, bridges, and nuclear, electrical or energy generating power plants, as a tool of military combat. Any person or party who plans an attack on such establishments should be held accountable, because their intention is to cause more civilian casualties.

Due to the Iraqi War, the destruction of the infrastructure, including the industrial, transportation and entire telecommunication networks, coupled with sanctions, have led to the severe collapse of the economy. Women are forced to earn a living under very humiliating and challenging conditions. Simply to bring food to feed their children, they are forced to abandon their values, dignity and honor to survive.

⁵³ First Additional Protocol, Art. 48, 51 and 54 – 57. 1977.

The Iraqi women are on the streets, begging for food and money, and hide under the *abaya* or *hijab*, the Arabic words for *headdress*.⁵⁴ Isn't this a method of starvation, which forced the Iraqi women to the streets pan handling searching for food and money to survive and feed their starving children? Is this not a human disaster, degrading women by taking away their honor, dignity, and freedom of religion, denying them of money and food, and causing them poverty, sickness, homelessness and isolation? The International Humanitarian Law is meant to protect women and civilians from atrocities; therefore, all parties involved in military conflicts, such as Iraq and the U.S. and their allies, should abide by these laws to avoid such problems, as mentioned in the First Additional Protocol, Article 54.⁵⁵ International Humanitarian Law, moreover, grants an important foundation for protecting civilians who have been affected by military conflict. This foundation declares that all parties involved in a military conflict should differentiate between militants and civilians. Only militants should be targeted in order for civilians to feel safe and protected.⁵⁶

⁵⁴ (UNECEF, p. 53, 1991)

⁵⁵ Art 54. Protection of objects indispensable to the survival of the civilian population
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

⁵⁶ First Additional Protocol, Art 48. Basic rule.

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

To ensure shelter from enemy attacks or any military operations, civilians should be assigned special uniforms so they can be distinguished from militants. Within the rules of International Humanitarian Law, the military must carry their weapons openly if they are involved in any of the following situations:

- Soldiers must carry their weapons openly during any military engagement.
- Soldiers must carry their weapons openly if they can be seen and recognized by the enemy while performing military duties or preparing for an attack on the enemy.⁵⁷

Regarding civilians and the military targets, the following conduct should be observed:

1. Structures such as dams, bridges, and electric and nuclear power plants should not be attacked, even if they are considered military targets or if these targets are located near civilians. If these structures are destroyed, it could cause catastrophes among civilians. The above said rule should only be followed under one condition: that these facilities are not being used to directly or indirectly aid military operations.
2. Any of these facilities should not be used as a shield to protect the military.
3. All parties involved in conflict should avoid building their attack bases close to these facilities, unless the purpose of building such bases are for the sole purpose of defending them.

⁵⁷ First Additional Protocol, Art. 44, para. 3.

4. Treaties must be confirmed between the disputing parties in order to secure the safety of civilians from danger.
5. It is acceptable for both parties in conflict to designate a special logo (i.e. three orange circles) and place it clearly and visibly for the other party to see on certain buildings or establishments.

The general protection of civilians applies for all countries in conflict, without any bias against race, nationality, religion, or political views. This protection is to reduce the suffering caused by war.⁵⁸ Article 51 from the First Additional Protocol was more clear and effective than Article 13; for example:

Art 51. - Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities. . . .

⁵⁸ The Fourth Geneva Convention, Art. 13.

Perhaps to ensure that dishonest combatants will not use the presence of civilians as a ruse to carry out military objectives, Article 51 concludes with the following:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.⁵⁹ In conclusion, it is advised that all parties involved in a military conflict should take all precautionary measures to prepare military attacks, whether in land, sea, or air, in a manner which would avoid any civilian losses.⁶⁰

D. The UN and the Universal Declaration of Human Rights (UDHR)

The goal of the UN, as written in Article One of the UN Charter, is to preserve international peace and security, develop good and harmonious relations between all countries, accomplish international cooperation to solve any international disputes, and to fortify basic human rights and liberties.⁶¹ In 1948, the United Nations General

⁵⁹ First Additional Protocol, Art. 7.

⁶⁰ *Id.* Art. 57.

⁶¹ The purpose of the UN is found in Art. 1, reads in part: (1) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
<http://www.un.org/en/documents/charter/chapter1.shtml>; (Last assessed 3/20/13).

Assembly enacted the Universal Declaration for Human Rights (UDHR). In the first paragraph of the introduction, it states that (all members of the human family are to be recognized of their rooted dignity and their firm and equal rights, and that these are the fundamental basics for liberty, justice and peace in the world).⁶² The UDHR was promulgated the year before the⁶³ First Additional Protocol came into being.⁶⁴ Some of the provisions that are relevant to this discussion follow:

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be

(2) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; . . .

⁶² . . . **Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS:** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. Preamble to the UDHR,

<http://www.udhr.org/udhr/default.htm>

⁶³ First Additional Protocol, Art. 1.

⁶⁴ *Id.* Art. 51.

independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

International scholars should be able to agree that every Article mentioned above applies to all people of Iraq and Palestine, whether it is a declaration of war, military engagements, or occupation. Arguably, U.S. and Israeli forces select out Palestinians and Iraqis out because of their mere appearance; a violation of Article 2 above; these two groups are often considered terrorists, or terrorists sympathizers because of where they live, their religion, and the fact that they tend to be a little darker skinned than are many Americans and Israelis. Article 3 is also violated because with U.S. and Israeli planes threatening drone, or missile strikes, how can Iraqi and Palestinians feel secure? As another example of a breach of the liberty mentioned in Article 3, although the U.S. has withdrawn most of its troops from Iraq, there is still an American military presence,

which on many levels, cultural, social, and political, make many Iraqis feel “violated.” Just a few hundred kilometers away, Israel is exerting its own brand of occupation against Palestinians. The UN Charter forbids the Israeli occupation of, and war against Palestine; the same with the U.S.’s presence in Iraq. Israel and its ally the U.S., did not declare war on Palestine, nor Iraq, because doing so would violate International Law.⁶⁵ International Humanitarian Law should apply its rules to any military conflict, whether it is legal or illegal.⁶⁶

Palestinians and Iraqis are killed or wounded daily due to Israeli and U.S. military aggression. These atrocities and human rights violations are repeated against the people of Palestine and Iraq, when in fact they are entitled to the right to live in peace and harmony, without harassment or discrimination. There was for several years a complete and total occupation of Iraq by the Americans, and a few more years of partial occupation. At the same time there has been a partial occupation of Palestine, the West Bank and Gaza Strip by Israel. Despite the heroic resistance of the people of Palestine and Iraq as they fearlessly defend themselves and their land against the aggressors and foreign occupiers, Israel continues to build a wall, greater than the Berlin Wall, dividing, isolating, and imprisoning the Palestinians.⁶⁷ In addition to violation of other human rights instruments, these actions stand in direct contravention to Article 3, above, of the UDHR.

⁶⁵ Paktieh, Johns S., *Humanitarian Int, Law (Principles and Development)* p. 44. 1999

⁶⁶ *Id.* p. 45.

⁶⁷ Alwan, Abdul Kareem, *Modern International Law Position on Human Rights: Women and Their Equality with Men*, UNICEF- Jordan Office. p. 335. 1989

Dr. Alwan describes this divisive, separatist wall; “it is organized racism based on the theory of gender superiority, and the deprivation of the original inhabitants of Palestine from their basic and fundamental rights. It is a small group of racists, subjugating and controlling the lives of others.”⁶⁸ The International Court’s ruling regarding the wall will be discussed later. Let us turn now to a more specific discussion about issues women have to face.

E. Convention on Elimination of Discrimination against Women (CEDAW), 1979

The CEDAW is among the most recent agreements on human rights and it is said to be the key agreement addressing women rights on the international level. It was approved, confirmed, and presented for ratification by a resolution proposed by the United Nations General Council⁶⁹ No. 180/34, dated December 18, 1979.⁷⁰ The date of ratification was December 30, 1979, which was the date for the Secretary General⁷¹ of

⁶⁸ *Id.* p. 339, 1989).

⁶⁹ This Convention was adopted by the UN General Assembly on 18 December 1979 (Resolution 34/180) and entered into force on 3 September 1981. <http://www.hrweb.org/legal/cdw.html>; (Last assessed 4/01/13).

⁷⁰ A Brief History of CEDAW Convention on the Elimination of All Forms of Discrimination Against Women <http://womenshistory.about.com/od/laws/a/cedaw.htm>; (Last assessed 3/21/13).

⁷¹ Kurt Waldheim of Austria (Served as S.G. U.N. 1972 – 1981).

the UN to approve this convention.⁷² The CEDAW includes thirty articles in six chapters dealing with several issues about woman. The six chapters are as follows:

- Part One: Legal Planning
- Part Two: Planning for General and Political Life
- Part Three: Planning for Health, Work, Education, and Raising a Family
- Part Four: Freedom and Family Relations Planning
- Part Five: How to Execute the Agreement
- Part Six: Signing, Co-signing, Approving, Joining, and Executing the Agreement

With respect to the rights of women, the CEDAW—and the following sections are excerpted from the thirty articles, and their subsections, which are rather extensive:

The States Parties to the present Convention,

- Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

⁷² **Art. 27:** <http://www.hrweb.org/legal/cdw.html>

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

- Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,
- Noting that the States parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, . . .
- Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,
- Concerned, however, that despite these various instruments extensive discrimination against women continues to exist, [and]
- Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,
- Have agreed on the following:

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; .

..

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

Article 11

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . .

Article 15

1. States Parties shall accord to women equality with men before the law.
2. State Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. . . .⁷³

The CEDAW and other International and Humanitarian Law , as discussed here, and elsewhere, is clear in respect to the treatment of all persons, especially women; yet as we have noticed, these laws are too often ignored, or are they really? Perhaps we should not expect foot soldiers and other military fighters, many of whom are probably illiterate to actually know what these laws require. Therefore, it makes more sense to impose the duty of knowledge on their superiors first; then the superiors should be held strictly accountable for violations of these laws. It is the duty of all countries and members to respect and guarantee that both men and women enjoy all their rights, and cooler heads, those away from the heat of battle can suggest that the duty of ensuring

⁷³ Convention on the Elimination of All Forms of Discrimination against Women; <http://www.hrweb.org/legal/cdw.html>; (Last assessed 3/21/13).

that their personnel be not just told casually, as in passing, but be deeply informed of the contents of these vital international agreements that address the rights of women, and indeed all persons.

Dr. Alwan⁷⁴ stated that the CEDAW was unique because it required that all forms of discrimination against women be eliminated, regardless if the perpetrator was an individual, an organization, or an establishment.⁷⁵ As other countries have asserted, illegal and unjust discrimination against women is a violation of the principles and foundations of equality in rights and human respect. Although many countries have acknowledged that many women still face dire poverty, the goal has been to have all forms of discrimination against women completely eliminated. The CEDAW states that all countries would commit to strengthen peace and security.⁷⁶ Countries should allow women to be equal partners and share all aspects of life with men.⁷⁷ They should acknowledge the welfare of all women who sacrifice towards the raising of their family and the development of society.

There are several treaties, agreements, and resolutions meant to protect women from discrimination. Most countries have signed these declarations, and promised to eliminate all forms of discrimination against women, according to Resolution No.

⁷⁴ Alwan Abdul Kareem, Modern International Law Position on Human Rights: Women and Their Equality to Men, UNECEF, Jordan Office. p. 12.

⁷⁵ *Id.*

⁷⁶ Introduction to the Convention on the Elimination of All Forms of Discrimination against Women; Art 13/14/16

<<http://www.hrweb.org/legal/cdw.html>> Web.(Last assessed 3/21/13).

⁷⁷ *Id.*

2263/22, dated October 7, 1967. Despite this, the General Assembly expressed its disappointment stating that there remained a great deal of discriminatory practices, although there were resolutions and agreements granting women their full and equal rights.

Violating the agreements and practicing discrimination against women were considered by the General Assembly as insulting, unjust, and unfair. Upholding the rights of women was a way to secure the dignity of all human beings. However, these discriminatory practices have existed in some countries because women were viewed by others as inferior. However, all laws and practices which were considered to be discriminatory against women were to be eliminated.⁷⁸ We now turn to yet another effort to abolish discrimination against women; the Peking Declaration.

F. 1995 Peking Declaration: Women's Special Protocol

This protocol is the crown of all previous efforts made by the active participants in the Fourth Convention of Women in Peking in 1995.⁷⁹ The main goal of this convention was to draw a resolution of values and principles for humanity that dealt particularly with women's rights. The principle rule of *equality and duties* between men and women was applied. Gender roles in the past and present were considered, particularly within the aspects of public, economic, political, and social programs. Also, the goal of equality

⁷⁸ Alwan Abdul Kareem, Modern International Law Position on Human Rights: Women and Their Equality to Men, UNECEF-Jordan Office p. 4 – 5.

⁷⁹ Fourth World Conference on Women. Beijing Declaration <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>; (Last assessed 3/21/13).

would encourage learning about the experiences of women and men.⁸⁰ The main goal of Article 38 was to lay the foundation for promoting equality between human beings in this century and for future generations.⁸¹ All countries acknowledged that poverty was continuing to have adverse effect on several nations, especially on children and women nationally and internationally.⁸² Governments were preparing to do whatever they could to face these obstacles.⁸³

All participant countries reaffirmed the absolute equal rights of both men and women based on the principal rules of the UN Charter. In particular, this included the agreement to eliminate all forms of discrimination against women. Collectively, all countries agreed to the improvements suggested in previous conventions about women. These conventions include: the⁸⁴ UN in Nairobi (1985), the⁸⁵ Children's

⁸⁰ Lindsey, Charlotte: Women Facing the War, p. 263. 2004.

⁸¹ Art. 38: We hereby adopt and commit ourselves as Governments to implement the following Platform for Action, ensuring that a gender perspective is reflected in all our policies and programmes. We urge the United Nations system, regional and international financial institutions, other relevant regional and international institutions and all women and men, as well as non-governmental organizations, with full respect for their autonomy, and all sectors of civil society, in cooperation with Governments, to fully commit themselves and contribute to the implementation of this Platform for Action.

<http://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html>

⁸² Art. 6: Also recognize that this situation is exacerbated by the increasing poverty that is affecting the lives of the majority of the world's people, in particular women and children, with origins in both the national and international domains,

<http://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html>

⁸³ Dr. Jamal Alshalabi, UNICIF, Jordan, p. 23.2000

⁸⁴ <http://www.earthsummit2002.org/toolkits/women/un-doku/un-conf/nairobi-2.html>

⁸⁵ <http://www2.ohchr.org/english/law/crc.htm>

Convention in New York (1990), Development and Environment in Rio de Janeiro (1992), Human Rights in Vienna (1993),⁸⁶ Development and Population in Cairo (1994), and⁸⁷ Social Development in Copenhagen (1995). The goal of these conventions was to achieve continuous peace and development. All countries present at these conventions confirmed their strong commitment to improving and supporting women's rights by following the strategy they drafted in Nairobi.

All countries were also committed to supporting women in their liberal rights regarding religion and personal beliefs. Those present were satisfied with the Peking Declaration, Articles 13 - 21; further, all countries were determined to increase their efforts in achieving the goals and strategies ratified in the Nairobi Convention, and to support women through the end of the 20th century.⁸⁸

The care for girls and women, as described in the Peking Declaration's work plan, was carefully examined. In addition to health care and physical, mental and social issues, the work plan also included the improvement of social standards for woman and girls; these provisions provided the foundation for improving the social and economic standards of life for women and girls.⁸⁹ By focusing on the importance of equal participation in all aspects of life, women can become a part of the decision-making

⁸⁶ Report of the International Conference on Population and Development UNFPA. 1995

⁸⁷ World Summit for Social Development Copenhagen, 1995; <<http://www.un.org/esa/socdev/wssd/text-version/index.html>> Web. (Last assessed 3/15/13).

⁸⁸ Peking Declaration, Art. 22-34). 1995.

⁸⁹ *Id.* Art. s 31 – 34.

process on a political level, increase the positive understanding of gender issues, and promote comprehensive equality without discrimination. Discrimination was apparent in an area such as employment, since certain jobs were offered only to men, i.e. diplomatic and political positions. The special convention on women held in Peking provided a turning point. It gave countries increased encouragement to work locally and internationally in order to improve the standards for women living in Arab nations. All international efforts were focused on the follow-up strategy to implement the Peking work plan, and to continue the process of eliminating all forms of discrimination against women.⁹⁰ Now that we have reviewed a number of International and Human Rights agreements, let us consider how certain types of these have been used to remedy those issues peculiar to the Palestinians.

G. Applicability of International and Human Rights Law to Palestine

One question that has arisen is whether International Humanitarian Law and the Law of Human Rights apply to the Palestinian case? To answer this question we will review all the resolutions orders by the International Security Council, and the International Tribunal about the wall⁹¹ that separates sections of Israel from the West Bank. All resolutions and orders passed in the General Security Council are mandated should be

⁹⁰ Arabic Human Development Report, p. 199, 2005.

⁹¹ The wall, which separates parts of Israel from the West Bank, was begun in 2002. It is twenty-five high, and is expected to eventually be over 400 miles long. It is sometimes called "Apartheid Wall," by Palestinians. Israel's official purpose is to control the entry of Palestinians into Israel; http://www.btselem.org/separation_barrier; (Last assessed 3/26/13).

executed because it is an International apparatus that enforces and mandates orders to keep peace and stability for all countries.

Since 1967, the year the Israeli army began to occupy Palestinian lands, in addition to occupying other Arab lands, the General Security Council (GSC) passed Resolution 237.⁹² In 1969 the GSC passed Resolution 271, demanding Israel to abide by the Geneva Convention and the International Law, with respect to its military occupation. In 1979, with the passing of Resolution 446, the GSC confirmed again that the Geneva Convention that deals with the safety of civilians during war⁹³ shall be observed and complied with in all the lands that Israel has occupied since 1967, including Jerusalem, and the Council called on Israel to respect and abide by the resolution.

In 1990, the GSC passed Resolution 681 urging the government of Israel to comply carefully with the Fourth Geneva Convention. In two Resolutions, 799, and 904, the GSC affirmed its position with respect to the applicability of Fourth Geneva Convention. All the Resolutions that the GSC has issued, affirm the application of the International Humanitarian Law to the occupied Palestinian territories; therefore, with all these resolutions in place, the reasonable inquiry many Palestinians have is this: “How can Israel be convinced to comply with these measures, and not ignore them?”

⁹² All articles in the Geneva Convention shall be mandated in regard to all prisoners of war, all sides in this conflict shall respect and abide by the Conventions.

⁹³ See *e.g.* Fourth Geneva Convention. Articles 13 – 45.

Because of Israel's blatant disregard for these resolutions, and other measures discussed here, should the Palestinians resist the occupier, Israel, under UN Article 51 for self-defense,⁹⁴ which is a legitimate right mentioned in all the international treaties and Conventions? Resistance is questionable because lacking statehood, Palestinians do not qualify as belonging to a "Member State."⁹⁵ However, under the First Additional Protocol, which allows resistance to a foreign invader and occupier, Palestinian resistance to Israeli occupation should not be considered an act of terrorism. Article 1 of the First Protocol makes clear:

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.⁹⁶

⁹⁴ Article 51 of the UN Charter reads: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. <http://www.un.org/en/documents/charter/chapter7.shtml>; (Last assessed 3/27/13).

See also, First Additional Protocol, Art. 1 Para. 3, 4.

⁹⁵ On 29 November 2012, "the General Assembly voted to grant Palestine non-member observer State status at the United Nations, while expressing the urgent need for the resumption of negotiations between Israel and the Palestinians leading to a permanent two-State solution."

⁹⁶ Art. 2. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

In regards to Human Rights, the first paragraph of the Second Article of the ICCPR, provides,⁹⁷ “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁹⁸

The term “within its territory includes,” in addition to the members inside the borders of the country, also those who live outside the region, even if they live under the laws of that country. In this case the International Court recognizes that *States Rule*⁹⁹ is a regional rule that can be expanded outside the national regions at some

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

⁹⁷ The International Covenant for Civil and Political Rights (ICCPR), 1976.

⁹⁸ *Id.* Art. 2, para. 1

⁹⁹ Explain “States Rule.”

point. That is why the Courts find that the International Treaty for Human Political and Civil rights, even if the sovereignty of a nation is local, sometimes can extend outside the region, which is why the Court deals directly with the political and civilian rights and apply to all principals outside the region international tribunal.¹⁰⁰ The Court acknowledged that the territories under the Israeli occupation had been under its control for more than twenty-seven years, and that since Israel exerted rights to this land, then Israel had the obligation to comply with all the international treaties in regard to all the economic, social, cultural rights, and Israel should not use any obstacles to block the rights which was transferred to the Palestinian Authority.

But another interesting observation is the nomenclature used in so many of the international humanitarian agreements. These terms are “High Contracting Parties,” “State Party,” “Member State,” and so on. For instance, just above we note the following language, the first paragraph of the Second Article of the ICCPR, provides, “Each State Party to the present Covenant undertakes to respect and to ensure . . .”

In other words, may any State, who is a recognized party to an agreement, argue as in a case against the Palestinian quest for justice under international agreements, that the Palestinians have no “State Hood,” and therefore, the Palestinians should not be considered as being protected by the agreement, because they haven’t signed onto it. In other words, in the brutal world of sometimes “half-to-no-justice,” those without a state, or homeland, cannot enjoy the rights such recognition brings.

¹⁰⁰ ICR paragraph 108 and paragraph 112.

For the reason just mentioned, and the author admits to some cynicism here, it could be to an occupier's advantage if the occupied territory is not recognized as having some internationally recognized legal status. The above observation notwithstanding, even absent a legal obligation, Israel is seen and experienced as an occupying force, and should therefore, out of moral decency, comply with all the treaties and Conventions to protect civilians—especially women—under occupation, and to guarantee all human rights and international human laws special protection for them. However, some observers have claimed that the Israelis have often hindered pregnant Palestinian women trying to get to hospitals by making them wait at the military check points. This is an obvious attempt to ensure their own security, on the part of Israel, but detaining these women has allegedly caused many pregnancies to end in miscarriage, or even death.

In addition to these detentions and other alleged transgressions by the Israelis, the larger picture is that the conflict between Israel and the Palestinians still rages; meanwhile, the world stands as witness to the consistent and repetitive Israeli invasions of the Gaza Strip and Israel's destruction of Palestinian homes, and the harassment of the civilians in Gaza, all accompanied by a terrifying international and Arabic silence. This causes wonder as to whether the world believes International and Humanitarian are applicable to the Palestinian case. In addition the United Nations General Council, in its inquiry to the International Court of Justice on the legal consequences of the wall, has shown its concerns about Israel's intention of building the wall, about the wall's

effect on the Palestinians, about the Israeli and Palestinian struggle, and its hopes of bringing peace to the region.

According to the report of the secretary General, Israel is an occupying authority that is building a wall on occupied Palestinian land, including the east of Jerusalem and its suburbs. The International Court made it clear that 16.6% of the occupied territories on the west bank is between the Green Line¹⁰¹ and the separation wall. The Israeli authority considered the region closed in 2003, for people who reside there, so it is not legal for them to live or enter the territory without a permit from Israeli authorities.

This closed territories situation limits the movement and freedom of the population living in occupied Palestinian land, and has had a great effect on agricultural products. for example there is approximately 100 thousand (donem) of fertile land that has been confiscated and ruined by the occupying Israeli forces. The Israelis have also separated the Palestinian people from their lands, and it has become impossible for the people to receive medical services, to go to school and get water because Israel is trying to control all the water resources. By building the wall, Israel will force the Palestinians to relocate, which will change the demographic map within the Palestinian lands.¹⁰²

All these actions and practices by the Israeli occupation is a clear violation of the International treaties and international Humanitarian laws. When the GSC determined

¹⁰¹ The Green Line refers to the boundary set between Israel and her Arab neighbors after the 1948 Arab-Israeli War.

¹⁰² The International Court of Justice, the legal implications of the wall 84, 85, 133

that the International Court had to issue the required resolution by the Security, the Court issued the following:¹⁰³

- Israel building the separation wall on Palestinian occupied land, including the East of Jerusalem, is a violation of the International Law.
- Israel must stop its international law violations, and must stop immediately erecting the wall in the occupied Palestinian lands, including the east of Jerusalem, and shall abort and nullify immediately all the legislated laws and regulations related to it.
- Israel is obligated to pay all losses resulted from erecting the wall on occupied Palestinian lands,
- Nations shall not recognize the illegal erection of the wall, nor help funding or assistance to continue the erecting of the wall; all participant countries in the 1949 Fourth Geneva Convention shall coerce Israel to comply with the International Humanitarian law.
- The United Nations, in particular the General Security Council, shall do whatever is necessary to stop erecting the illegal wall.¹⁰⁴

The fact that Israel is still constructing the separation wall, as of this writing, suggests that the GSC's finding has not deterred Israel from its objective of building this artificial border that in many cases, separates Palestinian families from each other, and

¹⁰³ *Id.* para.163

¹⁰⁴ *Id.*

even deprives many of them of medical care. If International Humanitarian Law applies to all the occupied Palestinian lands, as occupation is considered a military conflict, then the Palestinians have a legal right to use whatever means to liberate themselves, as long as those means are within the purview of the law—even if that means using suicidal operations, which is not expressly by any treaty, as a method of resistance.¹⁰⁵

III. CONCLUSION

At the present time, commenting on the matter of the discrimination against women in Palestine and Iraq is a very complex matter, since the human rights of all people in these countries have been violated by the Israeli occupation of Palestine and the American occupation of Iraq. These are two nations that one might say would know better than to violate the very agreements they are signatories to. But even if they were, or are not signatories, the sense of democracy and morality they project upon the world make the actions of which they are often accused, incomprehensible. People living in the occupied territories suffer daily from torture, killings, the destruction of their homes and schools, and the continuous assassinations of their leaders in resistance groups. All of these atrocities, in addition to their daily responsibilities concerning their own families, have brought a burden upon women; a burden which these and other agreements can hopefully help alleviate someday.

* * *

¹⁰⁵Rohan, Guaratra, R, Suicide Terrorism: a Global Threat, p. 52, 53. April 2000

CHAPTER III

PROTECTION FOR WOMEN AS PRISONERS OF WAR

AND

DURING GENERAL MILITARY OPERATIONS

I. INTRODUCTION

The International Humanitarian Law grants special provisions in relation to prisoners of war, where women become prisoners of war because they have participated in military activities. In this case the International law provides that female prisoners of war “shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men.”¹ Special provisions explain how to execute these provisions practically. For example, in the barracks where both men and women are held, women should have separate sleeping and restrooms areas from men, and they should be supervised by women, and should be searched by women only.²

This special treatment for women is because of their special physiological and physical nature; for example, Article 16 of the Fourth Geneva Convention emphasizes

¹ Third Geneva Convention Art. 14, 1949.

² *Id.* Art. 25, 29, 108.

that pregnant women shall be the “object of particular protection and respect,” and elsewhere this Fourth Convention maintains that expectant women should be offered special nutritional elements that are appropriate for their special needs.³ The Fourth Convention declares that the parties in the conflict shall transfer women in confinement from the areas under siege, and never attack hospitals where women are treated, or attack their transportation, whether by land, air, or sea.⁴ Parties involved in a conflict must take special measures to insure the delivery and transportation of the necessary nutrition, clothes, vitamins for pregnant and confinement women, and not to delay or prevent any of these elements from reaching those who need it, and to provide special care for deliveries. The Convention also requires the release of women who are breast feeding their children, or return them to their home country, or to a neutral country.⁵ This Convention requires that pregnant women and the mothers of young children, as agreed by parties involve in the conflict, be moved to a secure and safe place.⁶

This third chapter discusses the special protection that the International Humanitarian Law provides for women who are participating in military conflict, and protection for women during general military operations in which they are not involved as combatants.

³ Fourth Geneva Convention, Art. 16, 89, 38; First Additional Protocol, Art. 76/2

⁴ *Id.* Art. 17, 18, 21, 22.

⁵ *Id.* Art. 23, 50, 91, 132.

⁶ *Id.* Art. 14

II. PROTECTION OF WOMEN DURING VARIOUS TYPES OF CONFLICT

Women themselves have the right to live in dignity, in freedom from want and freedom from fear. . . ⁷

A. Women Participation in Military Conflict

As we have noted earlier in this work, conflict has been a way of life for humankind from our most early days on the planet; nothing we have done seems to cure, at least some of us for yearning for exerting physical and violent force against our human kindred. Therefore, it's appropriate that the International Humanitarian Law includes several hundred provisions, it seems, to protect humans during military conflict. These represent the center and focus of the International Humanitarian Law goal. The International Humanitarian Law must be recognized and applied during international and non-international military conflict, and ideally, all countries and parties should abide by it, no exceptions. Now we shall take a quick look at both international military conflict, and non-International conflicts (Internal wars), and try to determine if the provisions of the International Humanitarian Law in these two types of conflicts apply in the case of Palestine and Iraq.

1. International Military Conflict

All four of the Geneva Conventions, in the Second Article of each Convention, stipulated to apply the provisions in this Convention (Declared war, or any armed conflict between two or more agreed parties, whether they recognize each other or not during war):

⁷ Kofi Annan, b. 4/8/1938; Secretary General on United Nations, 1 January 1997 – 31 December 2006.

In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them;. . . The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance; . . . although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.⁸

This text makes it clear that if the conflict is international, and the conflict is between two or more of the agreed parties, the agreeing parties should abide by their agreement to uphold the provisions of the Convention, even if one party might see the conflict as something other than a state of war. These principles also apply where a country has been partly or fully occupied by an aggressor. In other words, the Geneva Conventions allow no excuse for mistreating people, irrespective of what one consider his role to be in any kind of conflict.⁹

Article 1 of the First Additional Protocol, 1977, by referring to Article 2 of each of the Four Geneva Conventions, requires that participants in international conflict, whether or not signatories to the Protocol, abide by its provisions concerning use of force, in addition to the occupation provisions. Furthermore, the fourth paragraph of Article 1, contains a special provision in relation to military conflicts where people fight

⁸ Art. 2 of Geneva Conventions I, II, III, and IV.

⁹ Atlam et.al, p. 34. Al Zammali, Lat, p.8. 2005

against persecution and foreign occupation, and against racist regimes.¹⁰ That is why when the Palestinians declared Intifada, and rose up against the Israeli occupation in the West Bank and the Gaza, their action was considered part of a struggle. The International Humanitarian Law had permitted Israel to occupy the West Bank and Gaza since 1976. There Israel committed barbaric and non-humanitarian actions against civilians, in ways that can only be termed as racist. None the less, the Palestinians were bound by provisions of the Geneva Conventions and the First Protocol to contain their actions within the legal boundaries set out by International and Humanitarian Law.

2. Internal Conflicts

The term, "Internal conflicts," refers to conflicts that take place within the borders of a country. They are as follows: conflicts between political forces within the country, such as rigging an election, staging public demonstrations, strikes, and sit downs, all without the use of force. The country does not use any harsh measures against the opposition, and these conflicts can be dealt with through general international laws.

In contrast, the main international conflicts involve armed militias that are well organized, and they aim to take over and control the country, or seize part of a certain region. To complicate this issue, in most cases civil wars have outside supporters; that's why most of the time they are resolved by their neighbor countries, or the countries

¹⁰ "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." First Protocol, Article 1, para. 4.

that are supporting them. If the conflict is between, or among countries that are part of a federal union or confederate states, some of these conflicts can be resolved by the International Law.¹¹

These kinds of non-international conflicts come under the purview of the four Geneva Conventions. Because of the increase of these conflicts, we can see that in the Third Article, then in the First Article, of the Second Additional Protocol 1977 concerns about non-International military conflict.¹²In defining these type of conflicts, Dr. Sabarini states, "One of the non-International military conflicts, which I mean civil wars, . . .takes place within the country between civilians and the government, or between a group of people and another, or between some forces and others when military disobedience and rebellious takes place."¹³

3. Non-International Military Conflicts

The loose definition of non-international military conflicts is a military conflict taking place within the borders of a country. Pursuant to Article I of the Second Additional Protocol, non-international conflict is defined as follows:

Art 1. Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article

¹¹ Dr. Suhail Al Fatlawi, Prof. General International Law. P. 439-442./2002

¹² Dr. Ghazi Sabarini. Prof. General International Law, Dar Al Thakafa Library p.225,1992

¹³ Michael AKehurst. A Modern Press, Introduction to International Law.P. 335/ NY1970

1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

As provided in the fourth paragraph of the Third Geneva Convention, those attempting to resolve internal conflict, may refer to that country's internal laws.¹⁴ This is confirmed in the fourth paragraph from the Third Article of the Geneva Four Articles. It is up to the country where the conflict is occurring to apply its own rules to resolve the conflict. The Geneva Conventions cannot cover every instance of conflict in all countries of the world and that is why the Second Additional Protocol was drafted in 1977. Article 1 of that Protocol applies to military conflicts, and applies to all agreed parties. That is why the Second Protocol is considered to be a complement¹⁵ to Article 3 of each of the four Geneva Conventions,¹⁶ without changing its rules and applications.

¹⁴ Atalam and others ,p.35/ 2005

¹⁵ Second Additional Protocol, Art. 1, para. 1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of

Through the centuries, and throughout the world, women have had an active part during several armed conflicts. In the early centuries their role was to serve food and drink to the soldiers. Many of them were stationed behind the lines to help the wounded soldiers. Women continue playing that limited role until the beginning of World War One. Their role became more clear and organized in war operations by organizing the military warehouses and supply ammunition to the soldiers. Examples are the German, English and Russian Armies. Also at the beginning of the Second World War, women became more active in military operations. In addition to their role in

application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

¹⁶ Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Geneva Conventions I, II, III, and IV.

supplies and communications, and working in the military factories, they joined in fighting with the armies, air forces and navies. There were almost 9% in the German and the English army, and 8% in the Russian army.¹⁷

4. Women Participating in Suicide Missions

For the past decade, women have participated in carrying out suicidal missions as a weapon of war. These missions have concerned the world lately, and there is a great deal of support and opposition to women carrying out suicide missions. If carried out against civilians, suicidal operations don't have much protection from the International Humanitarian Law.¹⁸ These operations take place in most troubled countries around the world like Iraq, Palestine, and Cheeshan. In 2003 to topple the regime of Saddam Hussein,¹⁹ who was accused of stocking mass destructive weapons, Iraq was invaded by American forces and their allies, Britain, Australia, Canada, and other countries. These forces subsequently, mainly the United States, occupied Iraq for nearly a decade. In trying to drive the occupying forces out, groups of insurgents in Iraq have been using many fighting techniques, which include people tying bombs to their bodies, and going into crowded places and blowing themselves up. Their victims have included soldiers of the occupying forces and people from rival political or religious groups.

Women took, and continue to have an active part in the suicidal operations against these occupying forces; however, in Palestine, in April 1994, women start

¹⁷ Krill review of the Red Cross p.s NO 249-P.S 337-363./1985

¹⁸ Additional Protocol Art. 51 paragraph 6.

¹⁹ Saddam Hussein was executed on 12 Dec 2006.

participating in suicidal operations when a woman, from the Palestinian city of Affola, carried out mission by blowing herself to bits. Also, in January of 2002, another Palestinian woman, Waa' Edris, launched a suicide mission against the Israeli army in Jerusalem.

Katherine Standish did a study about human ethnicity and the safety of humans in Chechen and Palestine, wrote, "women in these . . . countries they did not become suicide bombers because they are Muslims; they did not sacrifice themselves to kill others for the sake of suicide, or mental illness; they sacrificed themselves as suicide bombers because there is a sharp and acute lack for human safety. They did not try to tip the balance of forces violently, or devote themselves to any form of national intellectualism, or to religious differences to achieve a certain goal, or because they were driven by prejudice. They sacrifice themselves in these countries because of lack of justice brought against humanity for a long period of time."²⁰

Standish suggests that these women were left without any other choice but to get support from organizations that understood their cause and supported them in their fundamental social needs where they could exercise their rights to have a job and a normal and healthy life.²¹ Standish focused on the motive behind the suicidal missions carried out by women. She especially did not want to characterize them as simply suicidal, or mentally disturbed, or chaotic, but she attributed their acts to a lack of stability during the long struggle.

²⁰ Standish, 1999. Human Security and Gender: Female suicide bomber (on-line) available www.review.upeace.org/pdf.cfm.)

²¹ Standish, *ibid*, p.es1-18-/1999

a. Palestinian Thought Regarding Women Suicide Bombers

A symbol of a different national resistance has been forged by the nature of the existing struggle, and the great cultural difference and the political gap between the two sides and their military capability. From the Palestinian point of view, Israel is a strong, occupier country that is supported militarily and politically, by one of the strongest countries in the world, the United States of America. The Israelis might believe they are forever under threat from Palestinian rebels who want to destroy Israel; however, the Palestinians believe that through no fault of their own, they have to live under the Iron fist of the Israelis, and are under siege from all sides. They point out that their skies are open to Israeli jet fighters that can kill from the air very easily. Often they can just stand and watch as Israeli soldiers, who are maybe equally afraid, roll through their tanks, and other armored vehicles and destroy any cluster of homes, for any reason, or even for no reason, it seems.

Considering these aggressive and frightening actions by Israel, it is reasonable for the Palestinians to think they must oppose Israel by any means necessary, which includes using suicide bombers. Attaching a bomb to the body, and walking into a crowd and blowing yourself up, along with dozens of other people may seem insane to an American, but the Palestinian culture and religion makes this seem a rational thing to do. The Palestinian thinking is that they must do anything possible to regain their homeland, and Islam does permit one to take up arms against an invader and

occupier.²² Dr. Rohan notes, women do not cause suspicion when they go about a mission, so choosing women for suicide attacks work because of the following reasons:

- There is hesitation to search women
- Women can hide suicidal equipment under clothing making them look pregnant

The next section explores Shari'ah thought regarding women as suicide bombers.

b. Shari'ah Thought Regarding Women Suicide Bombers

Palestinian people as the rest in the world are entitled to live with a spirit of national pride, even under occupation by a foreign power; another of the motives when using suicide bombers as a method of resistance against an occupying power, is to reclaim that spirit; furthermore, there is another motive, which is a holy one under the Islamic Shari'ah. This is to be a martyr to defend their homeland, customs and way of life. The majority of the Arabic countries and society are Muslims, and they know the act of suicide bombing as one of martyrdom.

Martyrdom in Islam is an act of Jihad, and Jihad is defending the nation, and a way of life as Allah has willed it. Therefore, Martyrdom is a holy duty. As God said in the Holy Qur'an, "[They are] those who have been evicted from their homes without right – only because they say, "Our Lord is Allah ." And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will

²² See *supra* Chapter I, section III, A, 4, para. 1.

surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might.”²³

In this holy verse, Allah gives permission to believers to fight the tyrants who have expelled them from their homes without a right; is there any other fact of eviction more clear than the occupation of Palestine by the Zionists in 1948 with the assistance of British Colonization, and then these outsiders expelling most of the population, who then became refugees trying to make a life in neighboring countries?²⁴ Therefore, under the Islamic and Palestinian views, any kind of resistance against a foreign occupier is legitimate.²⁵ Whether it is a partial or complete occupation of a country or region, Jihad as a principle of defense, is one of the principles upon which the International Humanitarian law is founded. Resistance against foreign occupation, colonization, and regimes is considered appropriate for a people’s right to self-determination, as is stated in the governing Convention,²⁶ and the holy verses quoted above, as well as many of the Noble Hadiths²⁷ by the Prophet, provide sufficient proof that Islam is not terrorism as it has been labeled in modern international legal definition by those in the West who try to blasphemy Islam; however, it should be repeated that Islam does encourage jihad in its broadest meaning, which is to resist and fight those who attack and fight Muslims.²⁸

²³ Holy Qur’an; Surat Alhaj; Verse 40.

²⁴ The word “Jihad” in the Qur’an means “Resistance and Struggle.” Al Forkan, *Jordanian Magazine*, Second year, Volume 59, Dec. 2006, p. 18.

²⁵ *Id.*

²⁶ Fourth Geneva Convention, Art. 3; First Additional Protocol, Art. 1.

²⁷ “Noble Hadiths,” means “Noble Sayings,” attributed to the Prophet, Mohammed.

²⁸ Mohyieddin, *ibid/pp* 714-717. 1973.

Therefore with respect to those having a western mindset, who see suicide bombing as a forbidden weapon of war, and men or women, as deranged fanatics, we can say they have a poor understanding of the culture and motivations of those living under siege. After they believe that diplomacy has failed them, these individuals, a few of whom are women, might think that to draw the international community's attention to their struggle, they have no recourse but to resort to self-sacrifice. Thus, the best way to protect women, and men, from engaging in suicide missions is to remove the social and political conditions that lead them to think the only way to resolve an issue is by resorting to suicide bombing as a weapon of war. Aside from suicide bombing, there are other weapons that the international community has deemed forbidden weapons of war. We shall now take a look at those weapons and the attempts to eliminate, or at least, monitor them.

5. Forbidden Weaponry and Fighting Methods

International Humanitarian Law provisions explain the different methods of fighting, such as, for example, banning and restricting use of certain weapons; for instance, the Treaty of 1993,²⁹ which prohibits and restricts the use and storage of chemical weapons, and the 1997 Treaty³⁰ that ban mines against individuals. The main principle of the International Humanitarian Law does not give participants in a conflict the right to

²⁹ Chemical Weapons Convention, (CWC), 1993; or "CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION"; <http://www.fas.harvard.edu/~hsp/cwc/cwc.html>; (Last assessed 3/27/13).

³⁰ CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION; http://www.un.org/Depts/mine/UNDocs/ban_trty.htm; (Last assessed 3/27/13).

choose the methods and style of fighting, meaning no one has an absolute right to use whatever weapon he pleases. Not much of a surprise then is that one of the fundamental bases of the International Humanitarian Law is the restriction of the use of weapons, bombs, and arms that can cause unnecessary pain and suffering, or that can inflict harm on the environment causing widespread and long term damage.

Also of the basic and fundamental foundations of the International Humanitarian Law forces the participant countries to study and research all advanced and new weapons before they develop them to make sure that they are not prohibited by the International Humanitarian Law.³¹ International Humanitarian Law does protect the rights of combatants, whether men or women, and warns against killing, wounding or taking the enemy as a prisoner by deception; for example, pretending to meet for negotiation under the United Nation's provisions for ceasefire, or using a neutral and peaceful banner for the united Nations and Red Cross, or threatening or killing a un-armed civilian, or a soldier who is unable to fight , or if he is unconscious, or if his parachute has landed after his plane crashed.³²

6. Gender Considerations in Humane Treatment

Women, and men, according to the first three of the four Geneva Conventions must be treated humanely. Countries in conflict shall care for and protect all persons without any discrimination on the basis of race, gender, nationality, religion or political opinions. International Humanitarian Law bans the use of violence or aggression against them, or

³¹ First Additional Protocol Art. 35, 36.

³² *Id.* Art. 37, 40 – 42 .

the use of torture or annihilation, or intentional negligence if they are sick, or exposing them for danger or contamination on purpose, or not treating their wounds, provisions of the International Humanitarian Law dictates all women shall receive a special treatment because of their gender, while they shall be treated equally as men.³³

The International Humanitarian Law provisions also include other, and more specific protections for women; one of these is the requirement of special sleeping areas separate from those of men, and separate and clean restrooms. If women were to go under special punishment, they shall be taken to separate places from men, and at all times shall be supervised by women. At the same time all the provisions prohibits women being punished, or subjected to harsh treatment because of their military participation.³⁴

B. Special Protection for Women During Military Operations

International Humanitarian Law guarantees the rights of women and men equally, if they participate in the military operations or as civilians. However the International Humanitarian Law does reserve a special treatment for women, based on the several principles mentioned in this study, as we have indicated in Articles 12 from both the First and Second Geneva Conventions, and Article 14 of the Third Geneva Convention, which declares that women shall have special treatment due to their gender, and due to

³³ First Geneva Convention, Art. 12; Second Geneva Convention Art. 12; Third Geneva Convention Art. 14.

³⁴ Third Geneva Convention, Art. 25, 29, 97, 88, 108, and the First Additional Protocol, Art. 75, Second Additional Protocol, Art. 5.

their propensity for pregnancy, and special needs associated with that condition. By analyzing and reviewing the Four Geneva Conventions and the Additional protocols, we can summarize the special protection for women as follows:

(1) In addition to the general protection for women, the Fourth Geneva Convention declares certain treaty provisions shall be enforced during armed conflict. These include the safety of civilians, including the wounded and sick, the disabled, pregnant women, elderly people and children. These individuals should be put under special care and protection. Countries in conflict shall make all arrangements to transport all wounded, sick, disabled, elderly men and women, children and confined women from territories under siege. Also the Fourth Convention declares it is forbidden and against the law to attack civilian hospitals that care for confined women, and that all countries in conflict shall respect and honor all the treaties at all times. The Convention also protects the hospital employees who care for the wounded civilians, elderly, and women in confinement, transporting and caring for them. Whether the transportation takes place by land or by air, it should never be attacked by military forces.³⁵

The definition of Sick and Wounded, in Article 8 of the First Additional Protocol, includes the newborn, which need very special care and treatment, or pregnant women who need urgent and special medical treatment. Article

³⁵ Fourth Geneva Convention, Articles 16,18,20,22.

8 of the First Additional Protocol is clear in its definition of the sick and wounded, on one hand, and pregnant women on the other. It is not enough to secure safety and protection for women only during pregnancy and delivery, and the protection of children; they should have special protection without any conditions.

The main focus of the International Humanitarian Law is to secure the safety and protection for civilians during military operations, especially women who are most often members of the civilian population. That's why the laws should be pointed directly and independently at women protection in general, and the pregnant and confined women in particular.

- (2) The designation of a special secure and safe area are for civilians who do not participate in fighting operations. Due to the fighting operations especially for women who might be exposed to revenge actions from the enemy because their husbands are participating in the fighting operations, or because their participation involves supplying the men food and water; this exposes them to military attack.

International Humanitarian Law guarantees the safe and security of civilians from the military attacks. The International Humanitarian Law dictates to militants to treat all people humanely without any discrimination, and that

law bans the use of attacks on the life of others, hostage arrests, attack on people's dignity, and sentencing without trials. There are many other provisions that give fundamental guarantees to secure humanitarian treatment, especially for women.³⁶ International Humanitarian Law demands the safe and security of all civilians including the residence where they live; all precautionary measures should be taken to protect civilians and their personal belongings.³⁷

The occupier, during a partial or complete evacuation to secure the safety and security of the residence, shall maintain safe places for civilians to live, and make sure family members are not separated.³⁸ Even during times of peace, the International Humanitarian Law demands the participating countries, after the hostilities, to build on the occupied and non-occupied lands hospitals and safe places for the sick, wounded, elderly, and children under fifteen, pregnant women and women with children under seven years old. The International Humanitarian Law does allow both parties in the conflict to consult with the other party, and establish neutral zones within the hostile territories to protect the sick and wounded from military action, and those civilians who do not participate in the military conflict.³⁹

³⁶ Common Art. no. 3 of Geneva Conventions, Art. s 4, 5, of the Second Additional Protocol

³⁷ First Additional Protocol, Art. 52; Fourth Geneva Convention, Art. 33.

³⁸ Fourth Geneva Convention, Art. 49.

³⁹ Fourth Geneva Convention, Art. 14, 15.

(3) The safe transportation of clothes, food, and medicine, which civilians need during military conflict, and ensure the distribution of food and medicine. Women in particular are the most exposed to harm, if they do not receive enough food and nutrition. For pregnant women, and breast-feeding women, if these nutrition elements are not available, will face an increased danger of infant deaths.⁴⁰ The causes of shortage of food, medicine and clothes, includes the use of economic sanctions as a tool by the International Security Council to maintain international peace and security.⁴¹

The use of economic sanctions is a tool used by the Security Council Convention Article 14. Sanctions are among the options to exercise instead of the military actions, and are more effective if they can convince all members of the United Nations to enforce the sanctions. The economic sanctions are considered a legal and constitutional method by the Security Council. Sanctions, however, can have unintended effects; i.e., they can hurt the people they are intended to help, although indirectly, civilians. For example, the economic sanctions against Iraq, food was the Iraqi Women's main concern. In 1990, the Iraqi government issued special food cards to cover a family's needs for 10 - 15 days every month, and the family was

⁴⁰ Lindsey, p. 87.

⁴¹ United Nations Charter, 1945, Art. 41.

required to go to markets to buy what they need. Food products prices went up 15 - 20%, and flour prices went up 50 times.

The economic sanctions against Iraq caused the spread of diseases like diarrhea and typhoid. Women were complaining of disease due to physical and mental illnesses. The lack of medicine added more stress for women who had chronic illnesses, like diabetes, high blood pressure and rheumatoid arthritis.⁴² In addition, the siege forced against the Palestinian people by Israel on the Gaza Strip and the West bank cause undue hardship. Hamas won the elections in 2006, which caused the situation to deteriorate in all aspects of life for the Palestinian people. This contradicts all that was declared in the International Humanitarian Law, which demands from all participant countries to comply and allow and permit the transportation of medicine, and medical equipment to the citizens of the region, and to allow the transportation of all food , clothing and vitamin supplies for pregnant and confined women and children under fifteen. Article 23 of the Fourth Geneva Convention mandated that this shall be done as soon as possible.⁴³

⁴² Paktei, et.al, 1991, p. 58

⁴³ Art. 23. Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious

(4) The law provides fundamental guarantees against violence against women during war. When life becomes chaotic, security deteriorates, due to the failure of the police and the legal system. During these times, barbarism spreads; at the same time, many people may take advantage of the war for revenge and punishment. This gives many the opportunity to commit sexual abuse.⁴⁴

That's why women need this special protection from the threat of sexual abuse. That is why the International Humanitarian Law does demand all countries, without discrimination, in conflict to secure the best humane treatment for those who do not participate in a military operations, and for the combatants who surrender and give up their arms, and those unable to fight.⁴⁵

In addition to all we mentioned so far, is the causing of a person long agonizing suffering, or bodily injury, or inhumane treatment; all these are

reasons
for fearing:

(a) that the consignments may be diverted from their destination,
(b) that the control may not be effective, or
(c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods. Fourth Geneva Convention, Art. 23.

⁴⁴ Askin, *ibid*, p. 296-1997

⁴⁵ Fourth Geneva Convention, Art. 3.

considered violations of the Four Geneva Conventions,⁴⁶ and violations of the acts of wars.

There are many of these general acts advising how to treat and protect people, and which do not exclude the treatment of women; in addition, the International Humanitarian Law does protect for people, their honor and dignity, and provide that they should be treated humanely, and shall be protected from all acts of violence and atrocities, and insult. Women do benefit from the good treatment and respect. Being neutral, they do not participate in military conflict or hostilities, or they are unable to fight; however, the International Humanitarian Law does give women special attention for treatment and care, thus, its resolution to protect women, especially their honor, and protect them against rape and other abuses.⁴⁷

International Humanitarian Law places women in two protection categories. The first category includes keeping civilians and women under one of the categories of the International Humanitarian Law for protection.⁴⁸ The second category addresses sexual abuse against women. The International Humanitarian Law requires that all persons within an occupied territory shall be treated humanely; furthermore, they have the right to life to live in peace and harmony without any discrimination with respect to race, color, gender,

⁴⁶ Fourth Geneva Convention, Art. 50, 51, 130, 147.

⁴⁷ *Id.* Art. 27

⁴⁸ First Additional Protocol, Art. 1.

and language; that all parties in a conflict shall respect people and their honor, and not insult their dignity, and not force women into prostitution.⁴⁹

With Article 27 of the Fourth Geneva Convention requiring all countries to take responsibility to prevent all sexual abuse, the First Additional Protocol, Article 75, clearly prohibits abuse of personal dignity and forcing women into prostitution; it recommends punishment of all those who commit such atrocities against women. Also the International Humanitarian Law in relation to the victims of the international military conflicts commits to secure to women protection from all sexual abuse against them.⁵⁰

Even though victims' protection in non-international military conflict is affirmed in International Humanitarian Law, article 4 of the Second Additional Protocol provides that all people who do not participate in military actions, should respect and honor the others, and shall be treated humanely in every aspect without discrimination, or humiliation, or not suffer any action that could insult their dignity, such as being forced into prostitution.⁵¹

All provisions of the International Humanitarian Law, are provisions that should be applied and respected during international or non-international military conflict. In addition to these clear provisions that are designed to protect women from sexual abuse, there are special provisions in

⁴⁹ *Id.* Art. 75, para. 2.

⁵⁰ *Id.* Art. 76, para. 1 .

⁵¹ Second Additional Protocol, Art. 2, 4, 5.

the International Humanitarian Law that prohibits the practice of violence against all people.⁵²

(5) This section discusses preferred treatment.⁵³ Women who do not participate in hostilities are included in the provisions of the International Humanitarian Law provisions that aim to protect all civilian residents, and all disabled members who are unable to fight.⁵⁴ Also all the International Humanitarian Law provisions conform in spirit with the sentiment of the International Humanitarian Law that suggests each person has the right for himself and his family to secure all the necessary needs, from clothing, food, medicine, and shelter for his family in order to secure a better life for them.⁵⁵ In addition the International Humanitarian Law laid the foundation for preferred women treatment, and that they may benefit from this, the Fourth Geneva Convention⁵⁶ bans all occupier countries from delaying, or jeopardizing any necessary treatment in relation to protection and nutrition for women and children during a conflict. In this case there are two groups of women who benefit from this preferred treatment.

⁵² First Additional Protocol, Art. 75, para. 2; Second Additional Protocol, Art. 4, para. 2(a)

⁵³ Women get special and preferred treatment.

⁵⁴ See, "Protection of Women During Various Types of Conflict," this chapter, section II, *supra*.

⁵⁵ International Economical and Social and Cultural Treaty, Art. 11.

⁵⁶ Articles 38 and 50 of the Fourth Geneva Convention is considered among the most important in providing for special protection for women during hostilities.

(a) Group One

Group One includes women of foreign origin, who benefit from this preferred treatment. According to the Humanitarian Law, participants in a conflict shall secure protective areas for these women. All foreigners shall receive medical care and treatment, and shall receive continuous supplies of relief, unless there is a special treatment offered for women by one of these countries in conflict. International Humanitarian Law provides that children under fifteen, and women with children under seven, and pregnant and breast feeding women require special nutritional needs.⁵⁷

(a) Group Two

The second group of women who benefit from the preferred treatment offered by the International Humanitarian Law during war, are those women living under occupation, as is the case in Iraq and Palestine. The International Humanitarian Law provisions order that all occupier countries shall respect and comply with all orders in relation with care, nutrition, medical treatment for all children under the age of fifteen, pregnant women, and women with children under seven years old.⁵⁸

“Preferred treatment” means these mentioned individuals shall benefit

⁵⁷ Fourth Geneva Convention, Art. 38.

⁵⁸ *Id.*, Art. 50.

from this program, by the help of one of the participating countries in a conflict, or an occupier, as the case in Iraq and Palestine.

C. Treatment of Detained and Jailed Women

The International Humanitarian Law includes general provisions to offer detained and jailed women special protection.⁵⁹ The law requires that all detained women shall be treated according to their gender. This means in reference to their special needs due to their physiological nature as we mentioned earlier. At the beginning of the discussion we talked about detained or imprisoned individuals and their protection; for instance, whether they are civilians or in the military, or if they have become incapacitated and are unable to fight, the provisions in the International Humanitarian Law demand that they be accorded the same legal rights as men.⁶⁰ Additionally, as mandated within the Fourth Geneva Convention, women are placed within specific categories of protected people in any international conflict, as well as under the protections described in the First Additional Protocol.⁶¹

Women shall also benefit from these circumstances that mention the fundamental reasons for humanitarian treatment, including respect for the safety and the dignity of the human being, and bans and prohibits attacking, mutilating, harsh

⁵⁹ Third Geneva Convention, Art. 14

⁶⁰ *Id.*

⁶¹ E.g., The First Additional Protocol, Art. 75, para 5 provides: Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

treatment, torture, taking them hostage or killing them; in addition to this, if any of these crimes are committed during the conflict, according the extant law, women have the right to appear in an independent court and present their grievance.

The basic fundamental foundation of the International Humanitarian Law is to offer internationally agreed upon provisions that provide for protection of certain classes of individuals, and without any discrimination. Among those persons included in this protection are women, who should be treated humanely, and without any discrimination in regards to their gender.⁶² For all people protected in non-international conflict, women enjoy the right to be respected due to their religion and beliefs and their religious rituals, and they shall be treated humanely at all times without any discrimination.⁶³ The Human rights provisions include the law of nondiscrimination, which means that every human being has the right to enjoy all available rights and freedoms, without any discrimination against gender or color, and without any discrimination that is based on gender.⁶⁴

One of the most important provisions included in the International Humanitarian Law, in regard of the treatment of prisoners of war, is the article in the Third Geneva Convention that applies to both men and women, which shall be taken into consideration from the beginning. Some of these provisions are:

⁶² First Additional Protocol, Art. 9; First and Second Geneva Conventions, Art. 12.

⁶³ Second Additional Protocol, Art. 2 & 4

⁶⁴ Universal Declaration of Human Rights, Art. 2.

1. under no circumstances shall a prisoner give up, or waive partially or totally, the rights, given to him according to the Third Geneva Convention, because these rights are given to the prisoners by the General International System. If it is agreed not to violate the International System on the national level, then we cannot violate the Laws of the General International System, which were approved by international laws, and the fundamentals of the General Law.⁶⁵

2. The country that holds the prisoners is responsible for the treatment of those prisoners. The International Humanitarian Law bans and prohibits the mistreatment of all prisoners. The country holding the prisoners is responsible for their well-being, and not the individuals or the military units that captured them. It is the holding country's responsibility to secure protection against mistreatment by others; i.e., prisoners shall not be exposed to danger, mutilation, harsh treatment, torture, or sexual violence. Furthermore, "Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody."⁶⁶

⁶⁵ Third Geneva Convention, Art. 7

⁶⁶ *Id.* Art. 12.

3. Under the Law of Equality of Treatment, the International Humanitarian Law requires all countries holding prisoners to treat them equally without any discrimination, whether nationality, gender, religion, political opinions. This is ordered by the International Humanitarian Law provisions which declares that all humans are born free and equal in dignity and rights, all people are equal under the law, and they have equal rights without any discrimination, and they shall enjoy equal protection.⁶⁷

Notwithstanding the declaration about equal treatment, there are discriminatory practices, we found both acceptable and encouraged. For example, the Humanitarian Law, requires all parties participating in a conflict to differentiate between civilians and fighters, on one hand, and military targets and civilian institutions on the other.⁶⁸ Furthermore, the provisions of the International Humanitarian Law permit different treatment for different prisoners due to a special circumstances;⁶⁹ those groups are the following:

- a. Lieutenant's prisoners, for example. Lieutenant's prisoners of war are treated according to their rank and age. The provisions of the International Humanitarian Law permits the country holding the prisoners to provide those who are able to work, jobs, and to consider the ranks of the lieutenants, who may work only as supervisors, or these

⁶⁷ International Declaration for Human Rights, Art. 1, 7.

⁶⁸ First Additional Protocol, Art. 48, 51.

⁶⁹ Third Geneva Convention, Art. 16.

prisoners can request a job to fit their abilities; however, they are never obligated to do any work if they do not wish to.⁷⁰

- b. Women prisoners. Women prisoners, when they are asked to work, must be considered on the basis on their gender and their physical ability; especially if they are pregnant or breast feeding.
- c. Prisoners with communicable diseases. The International Humanitarian Law provides for transporting prisoners with communicable diseases, who require special treatment, or need surgery or special care, to a military or civilian clinic for treatment. Where possible, prisoners should be attended by medical personnel of their own nationality. Furthermore, “the costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.”⁷¹
- d. Medical and religious members. If the prisoners are a group of doctors dentists or surgeons, or nurses, International Humanitarian Law provisions demand that the country holding them assign them directly to their medical profession, and where possible to care for the prisoners of

⁷⁰ *Id.* Art. 44, 49.

⁷¹ Third Geneva Convention, Art. 30.

that country. They shall be excused from performing any other duties. The same applies if the prisoners are a group of religious people; they can perform their services freely with members of their group, irrespective of their belief or religion, and shall not be forced to perform any other job contrary to, or contradicting their religious belief, and should not be forced to perform any other job.⁷²

4. Never torture prisoners to gain any information. Many times prisoners face torture by the holding country to gain important information that the holding country hopes might help them during war against an enemy. In this case, the provisions of the International Humanitarian Law prohibit the holding country from practicing any torture methods physical or mental, or by force on the prisoners to gather any kind of information. It is also illegal to threaten, curse, and insult a prisoner of war who refuses to give answers during interrogations.⁷³ At the same time the Human Rights provisions also declare that it is forbidden by any country holding prisoners to practice torture, harsh treatment, or mutilation against any prisoners.⁷⁴

⁷² See e.g., Third Geneva Convention, Art. 51 – 55.

⁷³ *Id.* Art. 17.

⁷⁴ Universal Declaration of Human Rights.

5. Do not deprive them of their freedom. The provisions of the International Humanitarian Law declares not to detain any protected prisoners or force them under house arrest, unless it is necessary to for the safety of the country who detains the prisoners.⁷⁵ People's freedom is one of the basic foundations of the International Humanitarian Law; people are born free, and it is forbidden to take this freedom away from any person.⁷⁶

There could be many reasons to lose this freedom; some could be detained in relation to the conflict directly, like some military fighters belonging to one or another participating country in the conflict, or some others detained for security reasons, or some detainees being kept in a reserved prison, for reasons not related to any conflict, but because they have committed social crimes. Now we can shed some light on the special preferred treatment and provisions to protect detained women.

a. All pregnant and breastfeeding women shall be released and given Special Priority. Some of the provisions of the International Humanitarian Law demand the occupier country to release all persons detained when reasons for detention is resolved; detained women and others can benefit from this provision.⁷⁷

⁷⁵ Third Geneva Convention, Art. 42.

⁷⁶ Universal Declaration of Human Rights, Art. 1, 9.

⁷⁷ Article 132, Fourth Geneva Convention provides the Following: "Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist. The

b. In addition, participants during the conflict shall draw up Agreements to release some groups of detainees, and return them to their home countries, or return them to their homes, or transfer the detainees to a neutral country. This is especially true for children, pregnant women and mothers.⁷⁸

These requirements above, especially those from the Fourth Geneva Conventions that require the release, and or special accommodations for women, have become even more important now a days as war has become more deadly, and potentially more wide spread than it was in the time of the First and Second War Wars. We saw that millions of civilian casualties occurred during both those conflicts, and many millions of those have been women and children, who are as mentioned above, the true standard bearers of the future. Although it does not seem humanity can avoid war for very long, the next best thing is to make it less unbearable by protecting those who are most vulnerable to its devastation. The one question that often comes to mind, is do we ever try hard enough? Have we run out of options to ensure that the side effects of war, which is wrecking suffering on innocent civilians, are ameliorated? The best answer could be that considering the dark side of human nature, we might be

Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

⁷⁸ *Id.*

doing the best we can. After all, there is a sentiment heard from time to time that humanity is less warlike than it was a couple of thousand years ago. If that is true, then it could be because the agreements we have are doing some work, and towards that end, participants are encouraged to ensure that they, and the opposing party, observe those agreements.

Therefore, referring to section 5 (b) above, this provision suggests it is equally important for the occupier country and the participant countries in the conflict. All participant countries are obligated to fulfill this recommendation. Also pregnant and breast feeding women can benefit from the additional protection treaties offer, such as the First Additional protocol, which provides the maximum priority protection for pregnant and breast feeding women with dependent children under seven years old, who are detained or imprisoned for reasons related to military conflict; it shall be taken into consideration that for breast-feeding women, the two Additional Protocols do not specify the age of children, while there are different texts in the Four Geneva Convention that mention special protections for women and children under seven. Then we can consider the age of seven as the age where Articles 76, paragraph 2 of the Fourth Geneva Convention should apply.

- separate places for detained women and shall be supervised by women only , the provisions of the International Humanitarian Law mandates the necessarily to designate separate residence for women which guarantees them the maximum privacy and protection, this is considered a principal provision and shall be applied especially detained pregnant women with young children as a shelter, During an international military conflict , the International Humanitarian Law declares that women

prisoners of war, in all military barracks shall have private and separate places to sleep.

Some provisions of the protocol points to the treatment so detained women; *i.e.*, detained women shall be kept in separate places other than men, and shall be supervised directly by women.⁷⁹ Also the First Additional Protocol, Article 75, paragraph 5, under fundamental guarantees, state that all detained women due to military shall be supervised by women and during non-International military conflict the Second Additional Protocol Article 5 paragraph 2, states women shall be detained and supervised in a separate places from men.

In regards to sanitation and health codes, the provisions of the International Humanitarian Law demand that the occupier country take all the necessary and possible measures to designate places where all health and safety codes are available for the detainees, all buildings shall be humidity proof, comfortable and have enough sun light. In certain and exceptional cases, some detained women who do not belong to a family unit, can be put into the same prisons as men,⁸⁰ and there shall be special designated sleeping and sanitized areas for them.⁸¹ With regards to disciplinary punishment, women can face disciplinary punishment for community violations during their detention. For all women subject to punishment, International Humanitarian Law

⁷⁹ Fourth Geneva Convention, Art. 76, 85.

⁸⁰ Fourth Geneva Convention, Art. 85, "Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

⁸¹ Fourth Geneva Convention Art. 85.

prohibits group punishment, and physical punishment, or being punished by being confined in a place without sunlight, or any kind of torture or harsh treatment.⁸²

The occupier country, holding prisoners, should provide enough nutritional supplies for pregnant and breast feeding women, and all without payment in return from the prisoners. This includes balanced and nutritious daily meals.⁸³ Charlotte Lindsey said that pregnant and breast feeding women need additional nutritional meals to maintain their health and theirs and their infant's health, and that they should also be provided with yogurt and powder milk, clean drinking water, enough vitamins, calcium, protein and rare elements, and that their meals should have more nutritional value than those of other detainees.⁸⁴ The provisions of the International Humanitarian Law require that additional special nutrition shall also be supplied to children less than fifteen years of age, and as well, all detainees should be provided meals sufficient in nutrition, and well balanced.⁸⁵

The same provisions demand that, unless the reason is related to safety measures, no detained pregnant women shall be transferred from one place to another. If it is the case, the occupier country shall provide them with water and good quality and enough quantity of food to maintain good health;⁸⁶ moreover, another provision stipulates that,

⁸² Third Geneva Convention Art., 108.

⁸³ Third Geneva Convention Art. 15; Fourth Geneva Convention Art. 81.

⁸⁴ Lindsey, *ibid*, p. 211. 2004

⁸⁵ Fourth Geneva Convention Art. 89, **91**.

⁸⁶ *Id.* Art. 127.

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein. The premises in which disciplinary punishments are undergone shall conform to sanitary requirements: they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness, . . . and that “[w]omen internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.”⁸⁷

Searching a person’s body can be a very sensitive issue, especially where the person being searched is female, and the searcher is male. Such an activity can lead to embarrassment, loss of dignity, insult to the self-esteem, and potential rape, or some other type of sexual battery. Commentators, among other observers have discussed this sensitive issue; for example, Charlotte Lindsay, states, The Conventions attempt to cover this matter:

if the detainees will undergo search by the authority of the occupier country, which does take place in most countries around the world, this search shall be conducted only for safety reasons, not for medical reasons, it should not be performed by doctors, sometimes in certain circumstances it is necessary to search the abdominal cavities, and it shall be done by professional people who have the medical and surgical experience to conduct the search safely; also the occupier country must take into consideration all the private and dignity for the individual.⁸⁸

There should be no disagreement among cultures, or nations, that conducting search on women shall be carried out by women only, with no men present, and the search should not be done on camera, or otherwise recorded. It is one of the basic and

⁸⁷ *Id.* Art. 124.

⁸⁸ Lindsey, *ibid.* p. 218. 2004

important foundations to comply with. According to the General Principal, Article 27, paragraph 2 of the Fourth Geneva Convention, honor and dignity shall be preserved for all persons under the international law , and women shall have a very special and preferred treatment and their honor and dignity shall not be attacked; all provisions shall be applied during the process of the search when it has to do with the female gender; and it's worth repeating here, all the rules regarding searching an individual should be respected. Women and young girls, if the detainer's protocol justifies it, should be searched only by women, since, if women are searched by men, it is to be considered an attack on their honor and personal dignity, and cause shame due to their cultural and social traditional practices.

6. Gender Consideration. Gender consideration is considered an important part of preferred protection for women.⁸⁹The General Principle of the provisions of the International Humanitarian Law in regards to women detainees, and in consideration to their gender, and their rights for self-respect, honor and dignity under all circumstances, is that detained women shall have more special treatment, and they shall not be treated any less than the detained men.⁹⁰ Also the Third Geneva Article mentions in general to treat all prisoners humanely, without exposing them to any torture, harsh treatment, or physical mutilation,

⁸⁹ Durham, Helen is critical of International Humanitarian law , which she says, "Generally women are valued in INTERNATIONAL HUMANITARIAN LAW in terms of sexual and reproductive aspect in their lives."

⁹⁰ Third Geneva Convention, Art. 14

or subjecting them to any medical or scientific experiments, and not expose them to any danger while being transferred from the hostile area. But above all, with the exception of those who are spies, or terrorists,⁹¹ non-militant prisoners shall benefit from the Geneva Conventions.⁹²

Women detainees should not receive harsh and severe punishment, and should not be punished more severely than men, which said punishment would violate the Third Geneva Convention, Articles 49 and 88. While the principle punishment for the detainees shall not exceed what the provisions allow, like (50 % fine of the salary of the violating officer, cancel all benefits, hard labor two hours daily, and imprisonment). All the disciplinary punishments shall not be brutal, shall not be non-humane, or cause any danger for the detainees, with total consideration for their age, gender and their physical conditions, and the punishment shall not exceed a thirty continuous days.⁹³ Therefore, gender consideration is considered part of the mandated provisions of the International Humanitarian Law and shall be complied with by the occupier countries who detain prisoners.

7. The right to keep the family united. Family separation is considered one of the consequences of national and non-national military conflicts, and this is why there are many provisions included in the International Humanitarian Law to

⁹¹ Even in these two cases those individuals shall be treated humanely and shall be protected by all the provisions of the International. *See supra* n. and accompanying text, which refers to treatment of spies.

⁹² Humanitarian law and the First Additional Protocol Art. 75.

⁹³ Fourth Geneva Convention Art. 119.

protect the family unity. Many precautionary measures shall be taken into consideration which contribute to family unity and preventing the family being separated. These measures are some of the special protections for women, so we can mention some of these now:

- a) The International Humanitarian Law allows an occupier country to conduct partial or complete evacuation for a certain territory if needed due to a military or retreating reasons. All expelled persons shall be protected, and it shall be within the borders of the occupied territory, and they shall be returned to their country when the conflict is over. In this matter the International Humanitarian Law requires that the occupier country shall carry on all the transportation or evacuation and try their best not to separate a united family.

- b) Further, the occupier country shall unite all family members, especially the parents and children in the same place. These provisions also give the detainees the right to demand their children to join and be with them.⁹⁴ All family members shall be kept and detained in a special place prepared for them. They shall receive all family needs. The International Humanitarian Law provisions contain a list of necessary guarantees for the special safety for women and uniting the family. The text provides that in case of detention or family imprisonment, to the best of their

⁹⁴ *Id.*, Art. 49, 82.

ability, the occupying force shall secure a safe and secure place for the detained family.⁹⁵ These requirements are considered a vital component of family rights, which we mentioned earlier under the General Foundation.

This provision requiring safety is completely ignored in all Iraq and Palestine by the American and Israeli occupying authorities who are supposed to comply and respect all International Humanitarian Law. In Iraq the international reports and other sources report that the status of the detained women in Iraq coincides with the reports issued by the United Political Prisoners in Iraq. This organization confirms of ten thousand detained women since the American invasion. Many women and their young children are packed in rooms much too small to contain the number of people crammed into them, and moreover, there is inadequate ventilation and lightening. Restrooms are set up in one corner of the same rooms where everyone sleeps. These conditions can conceivably lead to the easy spread of common colds and flu, but even more tragic, all the reports warns of a possible human disaster because of the spread of AIDs, cholera and scabies at some of the places of detention.⁹⁶

In Palestine, six-hundred women were detainees in 2003. At the time of that report, these prisoners were experiencing various kinds of physical and mental torture, as well as non-humane and disgraceful treatment without consideration for their special needs. When they entered their rooms without permission, they were exposed to the

⁹⁵ First Additional Protocol, Art. 5, 75.

⁹⁶ www.prisonersunion@yahoo.com, Iraqi women detainees in the occupied prisons.

worst torture and non-humane treatment. Pregnant women suffered before, during and after delivery while being shackled to a bed. Newborns were treated as prisoners; the infants did not enjoy their right to a healthy meal. They could only receive milk twice a week. Here is the story of Fatima Al Zap, a citizen of Gaza. She was at time of this incident, forty-years old, and had been detained at Bait Hanson Entrance beginning on May 20 2007. Until this day, she is still being held in prison without a trial. She had her baby while she was shackled to her bed. The Israeli authorities ordered that the infant should be released immediately, or had to stay at the prison for two years.

This is what happened to the prisoner, Itaf Alian, where her daughter was separated from her to join her father. The father had been detained by the Israeli forces, while her mother was in jail.⁹⁷ The occupier authority in both Iraq and Palestine does not supply detained pregnant women and their children the proper care and treatment they require for even a moderately comfortable existence; nor even do they receive the proper shelter and conditions that are required to keep a family united. The occupying authority has violated one of the basic provisions of the International Humanitarian Law; the provision that deals with family unity and the treatment of women with respect to their gender. The following chapter will example two other aspects; that of protecting women from capital punishment, and aid and assistance to women.

⁹⁷ Quest Palestinian Women in Israeli Prisons QAWIM/INDEX.COM 1831

III. CONCLUSION

This chapter has considered many of the special provisions that have been adopted and promulgated over the years in favor of treatment of women who become prisoners of war, either by their own decision to take part in military combat, or where they as civilians, have been victimized and have fallen under rule by an occupying power. In either of these unfortunate circumstances, the International Law and International Humanitarian Law provides guide lines that all parties to a conflict, and perhaps even those that are “stand by” and whose only function is receiving refugees into their territory, should realize that female prisoners of war “shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men.”

Special provisions explain how to execute these provisions in a manner that is not too burdensome to the women, especially pregnant women and those with young children. The provisions require that, except for the most exigent circumstances, women should be housed separately from men. But where they must be held under the same roof, women should have separate sleeping, bathing and toilet facilities. Women should furthermore, never be searched by men, and wherever possible, they should have female guards. The legal provisions, particularly the Fourth Geneva Convention holds that female prisoners should be transferred from areas of hot conflict, and that warring parties should never attach hospitals, buildings, or any other facility where women are being held. The purpose of the Fourth Convention and others is clear: in the aftermath of the horrible consequences of the First and Second World Wars, women, especially

non-combatants and their children, should be spared the devastation of war. The following chapter goes a step further and discusses one of the most morally devastating remedies against crime known to humanity: capital punishment.

* * *

CHAPTER IV

OTHER PROTECTIONS FOR WOMEN

VIS-À-VIS

CAPITAL PUNISHMENT

Do not be too eager to deal out death in judgment;
for even the very wise cannot see all ends.¹

I. INTRODUCTION

The International Humanitarian Law, and the Human Rights provisions intersect with respect to several common matters. However, in order to enforce respect for the rights and liberty and freedom of all human beings, and to further encourage those rights, freedom, and liberty, without any discrimination with regards to race, color, national origin, language, religion, or gender, both sources of law emphasize care and security for the dignity and the human side of the individual.² In the view of many, nothing imposes on that care, security and dignity more than the State, the ultimate protector, engages in putting to death its own citizens, or in many cases, those of another State. If this moralistic view is not enough to force even some of the most ardent supporters of

¹ J. R. R. TOLKIEN, *The Fellowship of the Ring*.

² UN Charter, Art. 1, 3, 55. 1945.

the death penalty to re-consider their position, then the fact that even in those countries that boast of the most democratic and fair systems, nearly every year, someone is released from death row after zealous advocates on his behalf have found, through DNA evidence, he was wrongfully convicted.³ Over the centuries, it is impossible to say how many people have been convicted on the basis of weak, or falsified evidence. Considering the hysteria that takes place in social unrest or wartime, that number could be in the hundreds of thousands, and include men, women, and children. However, even in the worst of times, many people of conscience believe the notion of putting women and young people under eighteen to death, even more reprehensible than the general practice of capital punishment. The following sections examines laws and views on capital punishment as it applies to women in particular, and general populations in general.

³ To illustrate this point, “There have been 305 post-conviction DNA exonerations in United States history. These stories are becoming more familiar as more innocent people gain their freedom through post conviction testing. . .The common themes that run through these cases — from global problems like poverty and racial issues to criminal justice issues like eyewitness misidentification, invalid or improper forensic science, overzealous police and prosecutors and inept defense counsel — cannot be ignored and continue to plague our criminal justice system.” Courtesy of the *Innocence Project*; <http://www.innocenceproject.org/know/>; (Last assessed 3/31/13).

If this is the case in the U.S., who knows what number of innocents have been executed in the past 250 years worldwide in countries that don't claim a comparable system of justice?

II. PROTECTING WOMEN FROM CAPITAL PUNISHMENT

One of the main provisions of Human rights is the right to life.⁴ Dr. Mohammed Alwan said the right of a human being to life is a natural right, and without any argument, it is one of the simplest and highest rights for the human being to have. Protecting this precious right is a fundamental and imperative duty, for the Soul is the property of God; hence, we have no right to waste it since we do not have rightful possession of it. As a reminder, the Ten Commandments of the Old Testament admonishes, “Thou shalt not kill.”⁵ A more secular source, the preamble to the American Declaration of Independence reads, “. . . We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness. And yet another source, Article 3 of the Universal Declaration of Human Rights, proclaims, that each individual “has the right to liberty and security of person.”⁶ Moreover, the International Covenant on Civil and Political Rights, (ICCPR) Article 6 paragraph 1, declares that the right to life is the right of every human, and the law shall protect this right. These provisions were set out in Chapter One, but because its provisions have extraordinary relevance here, partial text of the most relevant Article 6 follows:

⁴ Alwan, *ibid*, p. 360.

⁵ *Id.*

⁶ UDHR: Article 3. Everyone has the right to life, liberty and security of person.

Article 6

- 1.** Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- 2.** In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
- 3.** When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
- 4.** Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- 5.** A sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.⁷

⁷ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

All participant countries agreeing to the ICCPR should, from the bottommost part of their beings, feel the burning obligation to guarantee the fulfillment of all laws that protect the right to life, liberty and happiness, irrespective of personal or national agenda that very often run contrary to those rights.

Of the main topics that comes up when the discussion centers on the right to life is capital punishment; the legal right a State may confer upon itself to deprive a person of his or her life. Capital punishment, for whatever the reason, and by whatever method, strips an individual of his or her life, which is a sacred quality no human being can produce yet that individual finds it within himself to deprive another of that life. The intellectual argument about capital punishment still rages on, from legislative chambers to back alley bars, and in the lunch rooms of college campuses. As to be expected, many voices rise in favor of, and many more against this unique and ultimate form of punishment.

Each side of the debate has its reasons and views, and to make the matter more confusing, advocates on either side may change their position from for, to against, or from against to, for—and may even reverse their position again. Irrespective of where one stands on the issue of capital punishment, the courts that orders State sanctioned execution should be placed in the same moral category as the person who allegedly committed the offense. Some consider capital punishment an act of revenge, or a criminal approach.⁸ The courts should have a higher moral conscience than the

⁸ “The main objection to killing people as a punishment...it that killing people is wrong.”
— Auberon Waugh; <http://www.goodreads.com/quotes/>; (Last assessed 3/31/13).

individual who has allegedly committed a crime. For one thing, as a matter for having to think twice, and then thrice before passing this sentence, what if the witnesses, the lawyers, and the judges are wrong in assessing the evidence? More particularly, what if they are wrong, and even suspect they might be wrong? Someone once said, and the name is not available at this moment, but the comment was that any society that practices capital punishment, is setting a standard whereby its own citizens will think homicide for some reason, or another is justifiable. Capital punishment should be found contradictory to our modern ideas of humanitarianism.

Therefore, after nations become more civilized and technologically advanced, they shall abolish capital punishment, or reduce it significantly. As nations decline, or when they are still in the emerging or developmental stages, we find that capital punishment usually increases. This is another indication that capital punishment should not be considered commiserate with the aspirations of an advanced human civilization. For this very reason, it's perhaps why we have heard that capital punishment has been abolished in the European countries.

The European parliament in 1983 issued an order banning capital punishment, or the return to it in time of peace,⁹ while most Arabic countries still practice that punishment, even though the *ICCPR* confirms the right to live as a right for every human being. The four Geneva Conventions do not contain the term capital punishment. However, Convention I, and III make reference to executions, and the conditions under

⁹ Alwan, *ibid* p. 365. 1989.

which they can be allowed. Let's start with Article 100 of the First Convention, which provides the following:

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power. Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

* * *

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Here in the first paragraph of Article 100, the law is requiring that a prisoner and his or her 'Protecting Powers' be put on notice as to what crimes are punishable by death. Aside from being captured behind enemy lines for engaging in "illegal" acts of war, one can only imagine what other crimes might be deemed worthy of capital punishment; such crimes might include murdering another prisoner, a prison guard of the detaining power, or perhaps escape. An interesting provision of the second paragraph above is the language, "since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of

circumstances independent of his own will.” This suggests, under international law that not only does a detaining power might lack jurisdiction to impose capital punishment—like for example—where the prisoner was captured outside of the detaining power’s jurisdiction, but a prisoner has engaged in activity not of his or her own volition; i.e., was being a “good soldier,” and it’s a universal axiom that good soldiers follow the orders of their commanders. Thus, for doing what everyone would expect, that soldier should not be subject to capital punishment.

With respect to the detaining country, it is illegal to issue capital punishment on prisoners of war, until a court finds that the accused is not a citizen of the holding country. If there is an order of execution, it shall not be carried out until the protecting country is notified six months in advance.¹⁰ The Fourth Geneva Convention, Article 68, in relation to civilian protection during war, contains more details about capital punishment. This provision limits the use of capital punishment, without abolishing it, and certain protected individuals, including women benefit therefrom:

- It is illegal for the occupier country to issue execution orders on those protected people.
- Capital punishment is not recommended unless the defendant is a convicted spy, or a terrorist that has engaged in operations against military institutions.
- Defendant has engaged in intentional violations that caused the death of one or more persons.

¹⁰ *Id.* Art. 100, 101

- An order of execution cannot be issued on a protected person until the court gives notice that the defendant is not a resident of the occupying country.

The International Covenant on Civil and Political Rights (ICCPR), Article 6, is the basis of banning the capital punishment of pregnant women. Further, this Convention holds that it is illegal to carry out capital punishment upon those who are under eighteen years old. In relation to pregnant women, there can be an order from the special court, but this order can be stopped if the reason is pregnancy; in other words non-pregnant women can be executed. The Humanitarian International Law, recommends avoiding any sentence of execution.

The First Additional Protocol, Article 76, paragraph 3, recommends that all participating countries in the conflict try their best to avoid issuing execution orders against pregnant women, or mothers with young children who depend on her. Even if these women have committed a crime related to a military conflict, their execution is forbidden.¹¹ This Article added two more matters to the International Convention for the Political and civilian rights.

(1) First order:

Even if it is a recommendation without obligation to carry out an order, all participating countries in a conflict should try their best to avoid the issuance of an execution order. However, this Protocol does demand that the participating countries apply this recommendation with the spirit of forgiveness and respect

¹¹ First Additional Protocol, Art. 76, para. 3.

for the right of all people to life as it has been set out in the UDHR, many other documents, several of which are mentioned at the beginning of this section.

(2) Second Order:

With respect to pregnant women, and women with young, dependent children, it is recommended that all participant countries commit their best efforts not to issue an execution order against these two groups of women. Or if there is an execution order against them, then not to carry out the order. Part of the reason being the unborn infant did not commit any crime; nor did the young children commit any crime, so it would be morally wrong to deprive them of their mothers. The Second Additional Protocol confirms the protection of victims of military conflicts in Article 6, paragraph 4. In addition, this Protocol requires that no execution orders are to be carried out on pregnant women, or women with young children.¹²

As Françoise Krill has said, those who drafted the two Protocols could not, during an international military conflict, ban completely the execution orders against pregnant women and women with young children, because such a ban, would run counter to the national laws in several countries. Yet those countries still have to consider the Protocol provisions.¹³ If we try to shed some light on the plight of Iraqi and Palestinian women,

¹² Art 6. Penal prosecutions. Paragraph 4. "The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children."

¹³ Krill, Françoise: The protection of women in International Humanitarian Law, extract from the International Review of the Red Cross; November-December p. 25 1985

we notice that the occupying authorities in Iraq and Palestine did not issue any execution order, on neither women, nor men.

What is the legal attitude of the American and Israeli laws in regards to capital punishment? The International Amnesty Organization reports that the United States did perform sixty executions in 2005, and this is even after most modern and civilized countries have many years ago banned capital punishment. Since the establishment of the New World Order, the United States continued the practice of capital punishment until 1972 when the United States Supreme Court declared that if a law allows capital punishment, then the law is unconstitutional under the U.S. Constitution.¹⁴ Four years later, this ruling changed to include the punishment in the American constitution. Since then capital punishment has been permitted in most of the American states. Amnesty International reports there are thirty-eight states out of the fifty American states that practice capital punishment.¹⁵

Even though many American states allow capital punishment, the American occupiers in Iraq do not apply the punishment in its military courts, but rather do so against the Iraqi people by the use direct killing and destruction in every region in Iraq, and with the assistance of the local authorities. In Israel there is no written constitution, but a set of "Basic Laws."¹⁶ In the opinion of some, that is why Israel's laws are whatever they desire, and what fits their interest best. Their interests do fluctuate, and

¹⁴ Amnesty International [Citation from the S.Ct?]

¹⁵ Washington Report, Volume 57 2006; www.tagrir.org/show Art. 348.

¹⁶ Basic Laws provide, for example, for governance for land, economy, and the military. http://www.knesset.gov.il/description/eng/eng_mimshal_yesod1.htm; (Last assessed 3/28/13).

the same is true of its border, which is subject to change whenever Israelis demand more land. The Basic Laws do not provide for capital punishment, not because Israel respects the International Humanitarian Law, or International Law, but to show off to the world that it is a civilized and advanced country amidst a number of Arab nations. After the 1967 occupation of the West Bank, Golan heights, and Gaza Strip, the Egyptian government abolished and banned the capital punishment in 1936. At that time, Gaza was under Egyptian rule, and the West Bank was under Jordanian rule until 1960.

The Israeli military courts have not issued any capital punishment order since 1967; however, many Palestinians could claim that Israel has continued to murder Palestinian civilians outside the purview of any judicial system. Israel performed many non-judicial murders against the Palestinians in the occupied lands from 2000—2006. During this period, the number of assassinations reached two-hundred and fifty-two. These assassinations by the Israeli government against the Palestinian people is a clear and gross violation of the Fourth Geneva Convention Articles 33, paragraph 3, which bans and prohibit an occupier country any physical assault and killing of civilians, or any physical attack on any human life in all conditions.¹⁷

III. CONCLUSION

As noted at the beginning of this chapter, International Humanitarian Law, and the Human Rights provisions have considerable overlap where one complements the other, or reinforces the other. One important area we have emphasized here is the stance on

¹⁷ Palestinian Center for Human Rights, Capital Punishment; www.pchrgaza.org/files.

capital punishment, or the penalty of death levied by the State against one of its own, or another not its own, but perhaps unfortunate enough to find him or herself subject to that State's jurisdiction. The International Law, in general, and the Humanitarian Law, more specifically, has taken a positive step forward by recognizing and emphasizing the unfairness and uncivil nature of capital punishment.

This the law did by issuing orders never to carry out capital punishment on pregnant women, women with young children, or women at all. The law's main goal is to achieve and fulfill the goals of the UN and Human Rights laws that call for respect for all, and the right to life for all individuals. The right to life is one of the holiest foundation for human rights and must be recognized and respected, as has been suggested in many documents going back several hundred years. The improvement of all possible conditions for the safety, welfare and social improvement, and economic development for all human beings, and the right to life are the essential rights of the most fundamental human rights, and these rights should not be infringed upon, nor even casually breached by any person or government. In the next chapter, we now turn to another issue that affect women during conflicts; that being aid and assistance.

* * *

Chapter V

OTHER PROTECTIONS FOR WOMEN

SPECIAL AID

AND

ASSISTANCE RIGHTS

I. Introduction

One of the commendable goals of the provisions of the International Humanitarian Law is the treatment of women. As noted several times throughout this work, all women should be treated according to the special requirements that their gender entails. In any case, they should be treated under all conditions and circumstances as well as, or in the case with pregnant women, and those with young children, better than men. The International Humanitarian Law calls for the protection of people who don't participate in military conflict (enemy operations) or those who have ceased participating in military operations. These provisions do guarantee the protection for both men and women.¹

¹ First Additional Protocol, Art. 52 et. Seq.

The provisions and orders mentioned in the International Humanitarian Law for the rights for aid and assistance for women, are listed as *negative or positive provisions*. We shall discuss and elaborate on these consecutively. We shall also study some of the provisions related to the orders mentioned in the Human Rights Law because of their correlation with the provisions of the International Humanitarian Law.

A. Negative Provisions

These provisions require all participant powers in an international military conflict or non-international conflict, to comply avoid actions that harm people, especially women; these provisions are as follows:

- a) Never attack civilian positions, civilians shall not be used as targets for attack or defense; civilians means all civilians, and not military target; military targets as defined by the First Additional Protocol, are those targets with active contribution in a military operation which by its location or how it is used, also whether it requires a partial or total destruction; it has to have a military classification or identification.²

- b) Never attack engineering or dangerous establishments; participants in military conflict shall not attack dams,³ bridges, or nuclear facilities that generate

² First Additional Protocol, Art. 52, para. 1 and 2.

³ First Additional Protocol, Art. 56, para. 1; Second Additional Protocol, Art. 15.

electricity, even if they are used by the military, and the purpose of the attack is to cause damage or a devastating loss for civilians.⁴

- c) Never attack food supplies, warehouses and drinking water resources; it is important to be able to get a good quantity of quality water for drinking and cooking and washing for citizens to stay in a healthy condition during military conflicts; it becomes very difficult to get enough water because if it becomes a target for attacks by the enemy, there will usually be a shortage of protected water resources; drinking water shortage can cause poor food quality, then poverty and then diseases will result and spread. Women usually are the most affected by this phenomena in particular; they have the responsibility to carry the water; this will expose them to more danger and violence.⁵ Water and food supplies in case of military conflict, usually cause civilians a great deal of difficulty having enough food (nutrition) while women need a balanced and quality nutritious meals to stay healthy, especially during pregnancy, and when caring for young children. International Humanitarian Law bans attacks and destruction of the supplies and assistance for civilians, like food supplies and agriculture lands, crops and livestock, and the network of irrigation, any attacks by any participant country in conflicts targeting or destroying any of these resources considered a violation of the provisions of the International Humanitarian Law.⁶

⁴ First Additional Protocol, Art. 56; Second Additional Protocol, Art. 15.

⁵ Lindsey, *ibid*, p. 103. 2004.

⁶ First Additional Protocol, Art. 54 para. 2; Second Additional Protocol, Art. 14.

- d) Never attempt to use civilian starvation as a tool of war. This admonition bans destruction of food supplies, food storage houses, agriculture lands, crops, livestock, water plants and resources and irrigation networks, all these are essential and vital resources for civilians.⁷

Consider d) above, the Israeli siege of the West Bank and Gaza Strip in 2006 is a violation of the International Humanitarian Law. Israel's purpose was to starve the civilians in both the West Bank and Gaza Strip, and Israel's act was considered a war crime under the International Humanitarian Law, as well as the principles of the International Criminal Court. Mr. John Dotard, United Nations Special Envoy for Human Rights in the occupied Palestinian land, reported that the "Palestinian suffering was a test of preparation for the International society for human rights protection, and that Gaza is like a prison that Israel has locked and thrown away the key. And that the West Bank is facing a human catastrophe, but not as severe as the case in the Gaza Strip."

Mr. Dotard also noted that, "Palestinians living between the Separation Wall and the Green Line that set new borders between Israel and Arab lands in 1967, are unable to go to school, or commute back and forth to work freely. He further says that most of the inhabitants have fled their farms. He observes that "if these conditions were to happen in another country, they would be considered *ethnic cleansing*, but the political caution is being very careful to use the term when Israel is the subject

⁷ First Additional Protocol, Art. 54; Second Additional Protocol, Art. 14. Para. 1.

country.”⁸ Mr. Dotard reported many previous Israeli violations against the International Humanitarian law by Israel using harsh security measures and practices. By using group punishment, Israel imposes very harsh measures against people and the delivery of goods to and from Gaza Strip coasts. Finally, Mr. Dotard described the Palestinian life as totally intolerable, miserable and terrifying.⁹

e) Never to harm the natural environment. The natural environment consists, in part, of the following elements (air, water, and soil). One of the main international concerns today is the environment, which is everything that people need to survive. The environment has a direct affect on human life. The environment is the fundamental foundation for all human life, and all other life forms; all life depends on the environment for survival; therefore, no one should do it any harm.¹⁰

The International Humanitarian Law realizes that harming and polluting the environment can indirectly cause shortages of water, food and other nutrients needed to support life. This is one reason the law forbids attacks on buildings that contain hazardous materials.¹¹ Hazardous materials, if they are released into the air, soil, or the waterways, can contribute directly or indirectly to a great loss of live. As the

⁸ Al-raie News Paper (Jordanian) Volume 13150, Wednesday, September 27, 2006.

⁹ *Id.*

¹⁰ Dajani, *Ibid.*, p. 11

¹¹ First Additional Protocol, Art. 15.

International Humanitarian Law bans the use of any war methods that could cause long term and severe harm, it also bans actions that could do harm to the environment.¹²

- f) Limitation of fighting methods. Whether the military conflict is an International one or not, participants are not free to use whatever methods and weapons. This means using weapons and bombs for the purpose of causing unnecessary pain or suffering, or the use of weapons that can cause severe harm to the environment. There are many international treaties that ban the use of certain weapons like chemical and biological weapons. Participant countries have pledged under no circumstances would they use, or produce, store or possess any chemical weapons directly or indirectly; also they have pledged to destroy all chemical and biological weapons in their possession, or that they have stored in other countries, and have promised to destroy all access to such weapons.¹³

The Ban Treaty proposes the limitation use of conventional weapons considered harmful and causing unnecessary harm.¹⁴ The International Humanitarian Law stipulates

¹² *Id.*, Art. 35, para 3.

¹⁴ The full name is Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Or Chemical Weapons Convention; also CWC. "The CWC aims to eliminate [certain] weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. States Parties, in turn, must take the steps necessary to enforce that prohibition in respect of persons (natural or legal) within their jurisdiction.

All States Parties have agreed to chemically disarm by destroying any stockpiles of chemical weapons they may hold and any facilities which produced them, . . . States Parties have also agreed to create a

that parties involved in a military conflict have no right to choose the methods and styles of (means of war) because this right is unlimited, also it points and demand from the participants of forbidding the use of bombs and weapons, or the use of military methods that cause a long term lasting harm. There are a lot of International Treaties and Protocols which bans the use of several weapons such as, biological weapons, poison gas, Blind laser weapons. (Mines and barbed wire fences etc. All the Treaties and protocols were drafted to make sure that no country has the right to use any method of war or any weapons without limitation, countries who are bound to comply with the treaties not to use such weapons, because they realize the great danger and threat of the environment, also the effect of the direct or indirect harm to the human race due to the pollution of the environment.

B. Positive Provisions

Considering responsibility as a duty, the provisions demand that the powers fulfill and carry out International Humanitarian Law provisions as set out in the relevant agreements, and take responsible steps to protect the detainees and civilians. Furthermore, the detaining country has the responsibility to aid and assist all women,

verification regime for certain toxic chemicals and their precursors . . . to ensure that such chemicals are only used for purposes not prohibited.

A unique feature of the CWC is its incorporation of the 'challenge inspection', whereby any State Party in doubt about another State Party's compliance can request the Director-General to send an inspection team. Under the CWC's 'challenge inspection' procedure, States Parties have committed themselves to the principle of 'anytime, anywhere' inspections with no right of refusal. . .”;

<http://www.opcw.org/chemical-weapons-convention/>; (Last assessed 3/31/13).

especially pregnant women, and women with young children, by supplying them with food supplies, clothing, nutritious meals, and drinking water for both civilians, and detainees: these provisions are:

- a) Medical and food supplies are the main essential elements for survival, and especially so for detained pregnant women.

- b) In regards to populations and residents, the Fourth Geneva Convention, Article 55, in regards to food and food supplies for residents, makes clear that it is the duty of the occupier country to apply its best efforts to supply detainees and residents of occupied territories with enough food and medical supplies. If there are not enough supplies in the occupied land, it is the duty of the occupier country to import whatever is needed, in addition to the necessary medical and food supplies.

Also the occupier country shall not confiscate the food storage warehouses, medicine and medical supplies in the occupied lands, unless it is used for the administrative members and the occupier forces. In case any of the occupier parties does confiscate the medical and food supplies, the occupier country shall consider the following:

- (1) the need of the civilian residents;
- (2) the international provisions and treaties
- (3) and the occupier country shall compensate fairly to all confiscated items removed or used.

- c) Detainees whether they are prisoners of war or protected persons, the detainee country shall provide free medical treatment¹⁵ the International Humanitarian Law guarantees to supply enough and additional nutrition products for nursing women, women with young children ages under 15 if they are detained women.¹⁶
- d) Residents and citizens shall receive enough clothing and shelter, the International Humanitarian Law demands that the occupier authority in addition to supply medical and food supplies and food products for the citizens during a military conflict, it shall secure and provide whatever they possess without any prejudice all clothing, sleeping materials shelter and other necessary supplies to allow citizens under occupation a healthy survival and existence, also they should allow all detainees and protected civilians in the occupied territories to receive mail and packages mailed to them.¹⁷
- e) Detainees shall, when captured by the occupier country, be supplied with clothes, shoes, and if captured persons do not have the proper clothing or not enough clothes due to the weather and cannot obtain it, the detaining country shall supply them all their needs freely; also they shall receive their individual and group packages that contain food, clothing, medicine ,all packages shall be delivered and offered to the detainees by

¹⁵ Third Geneva Convention Art. 15; Fourth Geneva Convention Art. 81.

¹⁶ Fourth Geneva Convention Art. 89.

¹⁷ First Additional Protocol Art. 69; Fourth Geneva Convention Art. 62.

the detaining power free of charge.¹⁸ In addition to these humanitarian provisions, the First Additional protocol includes a wide and extensive program for the humanitarian assistance. All citizens, especially women may call on the relief program for food, medicine, clothing and shelter, without any prejudice be cast against them, and the priority shall be given to the children, pregnant women, and nursing women; these latter individuals shall enjoy a preferred treatment.¹⁹

- f) Detainees shall receive adequate and clean water supply as mentioned in the two previous Articles. The occupier country shall supply enough food and drinking water to the detainees. Potable water was not clearly mentioned in the Fourth Geneva Convention; . . .²⁰
- g) It is the duty of the detaining country to give all the detainees and wounded persons maximum medical treatment and care according to the provisions or the International Humanitarian Law, and the occupier shall also protect the medical institutions, facilities and hospitals in all occupied lands. The occupier shall not attack or destroy any hospital that cares for the sick and wounded, elderly and disable, women and children.
- h) All occupier, and participant countries, shall respect and protect such institutions at all times. However, the occupier country shall take all measures necessary and all precautions to secure a safe and healthy

¹⁸ Fourth Geneva Convention, Art. 90, 108.

¹⁹ First Additional Protocol, Art. 70, para. 1.

²⁰ Fourth Geneva Convention, Art. 89.

shelter for all detainees. such places shall be safe and healthy and protected from harsh weather and war. All buildings shall be adequately heated or conditioned, have enough daily sunlight, and be moisture free and have adequate sun light.²¹

- i) The wounded and sick shall be treated humanely and shall receive proper medical care and attention. The occupier country shall secure continuous medical care for citizens and residents in occupied lands and shall not destroy any food supplies or nutritional products on purpose, nor shall it obstruct the delivery of food and medical supplies.
- j) Occupier country shall not take or seize any civilians medical units as long as these units are used for the medical care of the citizens, unless for the following reasons:
 - 1) The occupier country has an urgent need and use for it
 - 2) The siege continues only for a limited time
 - 3) To take urgent and immediate measures to secure all citizens needs who have been harmed by the siege.²²
- k) First Additional protocol, Article 70, paragraph 2 confirms the provisions of the Geneva Fourth Convention; i.e., all contracted countries shall permit and allow easy access to transportation of food

²¹ Fourth Geneva Convention Art. 56,58/1949

²² First Additional Protocol Art. 10, 14.

supplies and relief, all medical supplies without any delay or obstruction, even if the recipient is an enemy citizen.

- l) Finally the compliance and adherence of the proffered treatment for women, as all the provisions of the International Humanitarian Law about women in the occupied territories, requires that the occupier shall not obstruct any preferred measures for medical and nutritional supplies and the protection from war. These measures shall be provided by the occupier for all children under the age of fifteen, and pregnant women, and women with children under seven-years-old. International Humanitarian Law acknowledges the need of detained women and the guarantees for additional supplies of nutrition to pregnant and nursing women, and women with children .

- m) According to the provisions of the treatment for foreigners during peace time, since they are foreigners and parties in an alien land, shall receive medical treatment and hospitalization, if necessary because they are considered a protected population.²³

- n) The right of relief and assistance in the Humanitarian Rights law discusses the agreement deal, particularly with the human rights, the right to offer women the rights to receive assistance, in addition to

²³ Geneva Fourth Convention Art. 38,50,89.

the fair and equal treatment of the principal provisions that benefits both men and women, most of these provisions have focused on women rights.

II. CONCLUSION

As the International Law and International Humanitarian Law have evolved over the past sixty years, it has recognized the unusual hardship women are subjected to in times of war, or civil unrest. To alleviate those conditions, many of the provisions contained within the International and Humanitarian have been specially tailored to meet the needs of women, and in many cases, young children in their care. In fact, the law goes a step further and provides for the protection all civilians not participating, or who might have participated, but have abstained from combat, for reason of injury, or perhaps disinterest. Furthermore, the law provides protection for family units, by requiring that families be allowed to remain together, especially after they have had to remove themselves, or be removed from hostile areas.

In this section on Aid and Assistance, we noted there are “Negative Provisions,” which say what not to do, and “Positive Provisions,” which state what shall be done to make life more comfortable for women, children, and perhaps non-combatant men, as they endure the stress of military conflict. As a brief reminder, negative provisions require never attacking civilians or destroying their means of sustenance, such as water and food supplies. Never use starvation as a tool of war against any civilian. Positive provisions include requiring the detaining country to render aid to and assist all women and any underage children by supplying them with sufficient food for nourishment,

potable water, and medical supplies, and never attack hospitals, or any other place that house women and children, as well as non-combatant men. Finally, the detaining country is required to keep all women and children out of harm's way by removing to safe and secure places. The next chapter takes a look at protecting women during military conflict.

* * *

CHAPTER VI

PROTECTING WOMEN DURING MILITARY CONFLICT

I. INTRODUCTION

We have found out that the International Human Rights sets out a sequence of provisions and laws to protect all citizens who do not participate in military conflict or those who have stopped participating in military conflict. These individuals include the injured, the sick, the disable, and prisoners of war. This protection is achieved in part, by provisions and laws that aim to regulate methods and means of fighting; for instance, several declaration and agreements and international protocols bans the use of biological weapons, poisonous gas, mines, blinding lasers weapons, and chemical weapons; in addition some declarations ban the use of conventional weapons that are considered very harmful to people and the environment.¹

The Geneva Fourth Convention, and the two additional Protocols of 1977, as discussed throughout this work, have set the basic foundations for the International Humanitarian Law. For the sake of discouraging war—an ideal proposition at best—and for the more realistic purpose of mitigating the brutal consequences of war, the international community considers it is a must for all participant countries, and military groups, during an international, or non-international military conflict, to adhere to all

¹ Atlam Sharif and Abedel Waheed Mohammad Maher, published Volume 6 Red Cross Envoy in Cairo Egypt 2005.

provisions of such laws. The International Humanitarian Law have drafted, adopted, and propagated dozens of provisions to protect civilians, and reduce overall casualties and social disruption caused by military conflict. As we have seen, a good number of these provisions limit the methods of fighting; others prohibit the use of certain weapons; i.e., chemical and biological ordinances; others strongly discourage deliberate attacks on civilians and civilian objects; others require that occupier forces ensure that women under their detainment have equal—or in the case of pregnant women, or those with children—access as men to comfort, nutrition, and shelter. Above all IHL require that women and girls be not violated sexually. If these provisions are breached, or ignored by any party, the International Law, and the International Humanitarian Law provide certain penalties suitable to the alleged violation.² The following section lists a number of offenses that those under arms should abstain from, and further, it discusses international agreements that provide penalties and, or punishment for breaching the said offenses.

II. GENERAL PROVISIONS

The provision of the International Humanitarian Laws list the following as punishable offenses:³

- Intentional killing
- Torture and in humanitarian treatment through the use of biological experiments on humans

² Third Geneva Convention Art. 14.

³ Geneva Fourth Convention Art. 50, 51, 130, 147.

- Intentional cause of physical harm or dangerous and painful
- Destruction or the seizure of property without any military excuses and the use of illegal or barbaric methods
- To force a prisoner of war to serve in the military forces with the enemy countries
- The deprivation of the prisoner of war of his rights for a fair trial without any discrimination
- The exile or illegal deportation or detention
- Taking hostages

The First Additional Protocol, Article 85. Adopted all the above mentioned provisions and it also considered as vicious violations, the following:

1. Amputation surgeries to those detained under the enemy authorities
2. Removal of organs or parts of the body
3. The use of civilians as targets
4. To wage a haphazard attacks on civilians or civilian targets that cause human fatalities.
5. To wage attacks on hazardous storage facilities
6. To wage attacks on demilitarized areas
7. To wage attacks on ancient ruins, worship places, which represent the spiritual and cultural heritage for the people
8. Intentionally targeting people, knowing that they are unable to fight

9. The use of deceived signs and logos like the Red Cross, or the Red Crescent, or any logos belongs to the United Nations
10. Any delay without a reason to return the prisoners of war or citizens to their countries.
11. The practice of discrimination and other methods of racism.

The First Additional Protocol considered the violations mentioned in the Geneva Fourth Convention as war crimes, which come under the purview of the International Criminal Courts. The International Criminal Court, which will be discussed immediately below, specializes in the most dangerous crimes as a priority of the International Society, these crimes according to Article 5 of the standard structure of courts:

- Mass murder
- Crimes against humanity
- War crimes
- Antagonistic crimes

Article 85 of the First Additional Protocol has defined war crimes⁴ as violations of the Geneva Fourth Convention. This article specifically mentions eight violations of the

⁴ Paragraph 3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed willfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

- (a) making the civilian population or individual civilians the object of attack;
- (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

International Law, with respect to military conflict. The First Additional Protocol, in Article 91, states as follows, “party in military conflict shall request from those who violates the provisions of the protocols to pay compensation if necessary, and shall be responsible for all the damages committed by any of the military force members. All laws and provisions mentioned in the previous Conventions and Declarations are bases and firm provisions for all participant countries; violators shall be prosecuted according to the ICC, discussed below, and tried according to crimes committed.

A. The Hague Agreement 1907⁵

Compensations for the victims are among the priorities endorsed by the International Humanitarian Law. Compensation provisions are founded in the Lahai Agreement of 1907. This agreement provides as follows:

Article 1. The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention.

-
- (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);
 - (d) making non-defended localities and demilitarized zones the object of attack;
 - (e) making a person the object of attack in the knowledge that he is hors de combat;
 - (f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol. . . .

Paragraph 5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes. First Protocol, Article 85.

⁵ Also “The Lahai Agreement.”

Art. 2. The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting powers, and then only if all the belligerents are parties to the Convention.

Art. 3. A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

The provision stated in Art. 2 *supra* should not escape our attention; it reads,

“The

provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting powers . . .” As previously discussed in this work,⁶ this species of language appears to give a violator a way to “excuse” or rationalize illegal or immoral behavior; his defense could simply be: “Yes, we might have done those things, but those people are not parties to the agreement that says we cannot do those things.” The answer to such a defense may be found in the embodiment of the following agreement, the Rome Statute.

⁶ See *supra*, Chpt II, 3, G. “. . .any State, who is a recognized party to an agreement, argue as in a case against the Palestinian quest for justice under international agreements, that the Palestinians have no “State Hood,” and therefore, the Palestinians should not be considered as being protected by the agreement, because they haven’t signed onto it. In other words, in the brutal world of sometimes “half-to-no-justice,” those without a state, or homeland, cannot enjoy the rights such recognition brings.

B. Rome Statute of the International Criminal Court (ICC)

The ICC is one of the main judicial tools that has surfaced from the International Humanitarian Law. Recognizing that during years from 1900 to 2000, “millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,” and further acknowledging the frailty of human culture and that it can be “shattered at any time, among other tasks, the ICC pledges the protection of people, including women and children during military conflict, and further promise to bring the perpetrators of outrageous acts to justice, if their acts bear any relation to violations of the International Humanitarian Law.

If they are found responsible for the alleged crimes, they shall face punishment without any immunity or special treatment. For measures that have an official relation, if they are parliament members, or government elected officials, and no matter what kind of immunity they might have under the rubric of the International humanitarian Law, they will not be relieved of criminal liability; neither will there be reason or excuse for a reduced sentence and punishment; nor shall they receive any immunity from the International Criminal Courts; nor will the charges be dropped.⁷ In particular, the ICC have a number of provisions that address war crimes, and crimes against humanity, genocide, and crimes of aggression. The ICC enforces the IHL provisions that require compensation for all victims and their families. The compensation is paid from a fund, which is established by all participant countries, to the victims.⁸ As of the date of this

⁷ Rome Statute to the ICC, Art. 25, 27, 29.

⁸ Article 75: Reparations to victims:

work, 122 States have ratified the ICC; this number includes all of South America, but not the United States.⁹

C. Protecting Women Via International Declarations, Conventions and National Statues

This section describes the major elements of the rules of law as applied to the protection of women and children in time of international conflict. It deals first with international declarations and conventions, and then with national statutes. International declarations and agreements are considered a clear sign of improved and civilized progress for humanity. Countries agree to these declaration either because they

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

⁹ “During negotiations, the U.S. argued that its soldiers might be the subject of politically motivated or frivolous prosecutions. Various safeguards were introduced, and Bill Clinton did eventually sign the treaty in one of his last acts as president but it was never ratified by Congress. However, the Bush administration was adamantly opposed to the court and to any dilution of U.S. sovereignty in criminal justice. The U.S. threatened to pull its troops out of the UN force in Bosnia unless they were given immunity from prosecution by the ICC.

In a much-criticized decision, the UN Security Council voted on 12 July 2002 on a compromise that gave U.S. troops a 12-month exemption from prosecution - renewed annually. But the Security Council - prompted by then UN Secretary General Kofi Annan - refused to renew the exemption in June 2004, two months after pictures of U.S. troops abusing Iraqi prisoners shocked the world.”

<http://www.bbc.co.uk/news/world-11809908>; (Last assessed 4/2/13).

predict such danger may arise, and they attempt to avoid such danger, or because they desire to improve all economic, political, social, and cultural relations among nations.

In both cases International declarations play an important role in organizing and stabilizing better relations between all contracted countries through their obligations and commitments to the declarations. Despite the terrible wars and calamities that have occurred in the past Twentieth century, that 100 year span has witnessed many declarations, conventions, and other type of agreements aimed at the betterment of humanity. Still these declarations, while imperfect in attaining their objectives, have played an important role in stabilizing and improving relations among nations, and between governments and their subjects. Women, in particular, have gained recognition in the international community through agreements that recognized the integrity and respect for women and were designed to give women equal opportunity and rights. In addition to the agreements and declarations, signed and approved by contracted countries, women's rights have become a part of the national laws to implement and support the international declarations and agreements.

D. Protecting Women Via International Declarations

As discussed throughout this work, there are a number of international agreements that purport to limit the extent of violence during war, and which also pay particular attention to civilians, specifically women. We shall list those already discussed elsewhere.

1. The Hague Conventions of 1899 and 1907

As a reminder, the Hague Conventions proposed a group of international treaties that were designed to, among other objectives, ban certain weapons of war and regulate the conduct of nations and their military forces during war. They also established the Convention for the Pacific Settlement of International Disputes, which gave rise to the Permanent Court of Arbitration. The Convention of 1907 also adopted the concept of compensation victims for their war or conflict related losses.¹⁰

2. The four Geneva Conventions of 1949

The provisions of three of the four Geneva Conventions of 1949 have been discussed Throughout this work, and will only be listed in this section.

- First Geneva Convention: Relating to the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Second Geneva Convention: To improve the Conditions for Sick and injured During Conditions at Sea.
- Third Geneva Convention: Relative to Treatment of Prisoners of War.
- Fourth Geneva Convention: Relative to Protection of Civilians During War.

3. The Protocols of 1977

- Protocol I: Relating to the Protection of Victims of International Armed Conflicts.

¹⁰ See *supra*, this chapter section II, A and notes.

- Protocol II: relating to the Protection of Victims of Non-International Armed Conflicts.

4. Universal Declaration of Human Rights, (UDHR)

The UDHR proposes that all people are to be recognized for their dignity and their firm and equal rights, and that these are the fundamental basics for liberty, justice and peace in the world.

5. International Covenant on Civil and Political Rights, (ICCPR)

The ICCPR in its preamble, recognizes that the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and its Article 4 emphasizes that “anyone sentenced to death shall the right to seek pardon or commutation of the sentence. . . .”

6. International Covenant on Economic, Social, Cultural Rights, (ICESCR)

The ICESCR, in Article 1, recognizes that “all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

7. Convention to Eliminate all Forms of Discrimination against Women, (CEDAW)

The agreement to abolish discrimination against women is considered one of the major accomplishments among the International declarations which guarantee fundamental rights of equality. The CEDAW is among the most recent agreements on human rights and it is said to be the key agreement addressing women rights on the international

level. It was approved, confirmed, and presented for ratification by a resolution proposed by the United Nations General Council No. 180/34, dated December 18, 1979. As discussed in Chapter II, the CEDAW emphasizes the significance and equality of each individual, whether male or female, and states that all people are born free and equal in all respects.¹¹ A fundamental purpose of the CEDAW is to ensure the structuring of a new international economical political system, based on fairness and equality. This in turn will contribute to equality for women, as they share equally their duties with men.

8. 1995 Peking Declaration

As mentioned earlier, this protocol is the crown of all previous efforts made by the active participants in the Fourth Convention of Women in Peking in 1995.¹² The main goal of this convention was to draw a resolution of values and principles for humanity that dealt particularly with women's rights. The principle rule of *equality and duties* between men and women was applied. Gender roles in the past and present were considered, particularly within the aspects of public, economic, political, and social programs.

The Peking Declaration was adopted on the 50th anniversary of the establishing of the United Nations Organization, and it was a very important turning point in women's life.¹³ This document confirmed the determination of the UN to accomplish

¹¹ See CEDAW, Art. 1 – 15, and accompanying text for fuller discussion.

¹² Fourth World Conference on Women. Beijing Declaration
<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>; (Last assessed 3/21/13).

¹³ CEDAW; (www.un.org.womenwatch/daw/cedaw/beijin/fwc)

among other goals equality and peace for women anywhere, for the sake and benefit of all human kind. It also had goals of elements poverty locally and internationally.

E. Implementation Processes for Compensation

Beginning from the Hague Convention of 1907, to¹⁴ Rome Statue of The International Criminal Court 1998, the Geneva Conventions of 1929 and 1949, and the two Additional Protocols, in particular, all agreed, at least in principle, to bring to justice all criminals; several required the payment of compensation to all victims or their relatives, including and not limited to any loss occurred, during military conflict, personal property, humiliation, mistreatment, assault, and physical or mental distress. A compensation order shall force the enactment of a judgment for restitution through the International Monetary fund, which will be introduced by an order from all of the participated countries.¹⁵ The Rome Statue of The International Criminal Court in 1998, provided to reimburse victims and their families for the crimes committed by any transgressor. All countries that are party to such agreements are expected to contribute

¹⁴<http://www.un.org/law/icc/index.html> **Website of the International Criminal Court**

¹⁵ Art. 79 Trust Fund by ICC WEBSITE

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

their share, and the ICC can order the transfer of confiscated funds or properties, to pay compensation for victims and their families.

F. International Committees for Fact Findings

According to the First Additional Protocol, Article 90¹⁶ International committees for fact finding shall consist of fifteen members, each with a neutral and high standard of dignity and ethics. The committees work independently; their objective is to work with cases that deal handle serious violations, as defined by the Geneva Conventions, and the two Protocols. The committees' job is to enforce the provisions of these Declarations and Conventions through diligent efforts by the participating countries joined in military conflict. Once the chairman of the committee receives a request for investigation, he or she will establish a chamber for investigation. This chamber is composed of seven members, five of them being not from the participating countries; the other two will be selected by the parties engaged in the conflict; i.e., one member from each country, on the condition that none of these members is one of their citizens.

The chamber will ask countries in the conflict to present their evidence and prove their case. Also a committee has the right to search and bring its own evidence and proof as necessary. A committee can have its own investigation, and present evidence and proof for both countries, and may also introduce its findings and recommendations to the parties involved. The parties may object or comment on the findings and recommendations. If a committee cannot reach a solution because of not

¹⁶ <http://www.scribd.com/doc/49452878/Protocols-Additional-to-The-Geneva-Conventions>

enough evidence presented in the case, the committee shall announce that it is unable to reach a resolution. A committee shall not announce the results openly, unless requested and permitted by all countries in the conflict.

G. National Legislation to Protect Women

Through the common intersection of both International Humanitarian laws and the Human rights provisions, for the protection and preservation of the human integrity and equal rights during both peace and war, most countries in the world have adopted the international agreements. In many, or most cases, they have become incorporated into each country's legal system. We shall shed some light on the general situation for women in both Iraq and Palestine, through the general principles of those entities national legislation.

In Iraq, we have found that the conditions for women have deteriorated drastically since 1968, and those conditions are still deteriorating, especially after the second gulf war in 1991.¹⁷ The 1970 Iraqi temporarily constitution, Article 19 states, "All citizens are equal without any discrimination due to gender, language, origin, social, or religious Equal employment opportunities pertain to all citizens within the limitations of law."¹⁸ Thus, equal rights of employment and equality between men and women are of

¹⁷ Also the "Persian Gulf War."

¹⁸ Kamrava, Mehran, *The Middle East: A Political History Since The First World War*. 22 (Univ. of California Press 2005).

the embedded in the Iraqi constitution.¹⁹ This was confirmed in the 1990 constitution when the word temporarily was removed from the constitution. In practice all these provisions and laws have been violated continuously as little political, economic, and social equality between the genders have been realized. We shall not turn to a discussion of these violations of women rights in Iraq.

1. Iraq's Law of Personal Status

Throughout the Middle East, and in most countries where Islam is practiced, family matters, such as marriage, divorce, child custody, and other matters that are considered most private in the United States, and therefore beyond the regulation of religion and government; these privacy issues, are however, regulated by Islamic Shari'ah Law.²⁰ In 1959, however, in 1959, Iraq went its separate way, and replaced the Shari'ah tradition with a codified state law, called "Law of Personal Status."²¹ The Iraqi was at its passage, more radical than that of the former Islamic based Shari'ah law; for one example, it restricted, or in many cases eliminated child marriage by setting the legal age of

¹⁹ Chapter III Fundamental Rights and Duties

Article 19 [Equality]

(a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.

(b) Equal opportunities are guaranteed to all citizens, according to the law. See Iraqi Interim Constitution of 1970.; available at <http://www.mallat.com/imag/pdf/InterimConst1970.pdf>; (Last assessed 4/3/13).

²⁰ Dr. Katrin Michael, states, "Under sharia, or Islamic law, women are considered inferior to men and have less rights and duties. With regard to blood-money, evidence, and inheritance, a woman is counted as half a man." *Shari'a Law and Women's Rights in Iraq*. 5/27/2009; (Assessed 4/3/13).

²¹ *Law No. (188) of 1959, Personal Status Law (as amended)* [Iraq], No. (188) of 1959, 30 December 1959, available at: <http://www.unhcr.org/refworld/docid/469cdf3011.html> [Accessed 3 April 2013]. This document is a translation done by the American Bar Association Iraq Legal Development Project. It is not an officially sanctioned translation.

marriage at eighteen;²² the new law also banned forced marriage (known as “shotgun” marriages in the U.S.) and restricted polygamy. Men saw their traditionally sweeping rights in divorce, curtailed, and women gained more rights, including exclusive rights to the children. As with many things that look great and sound good, however, the Iraqi Law of Personal Status has been subject to modification, contradiction, and of course, being outright ignored. Despite the apparent liberality just mentioned with respect to women, there are codes limiting the role of women; for example, provisions of the law prohibits Iraqi women from marrying non-Muslims,²³ while no such restriction applies to men.²⁴ After the Second Gulf War, many sources claim that Iraq passed a new law prohibiting a woman to travel alone without her husband.²⁵ Though the legislators

²² *Id.* Article 7

1- In order for the marriage to be valid, the two parties to the contract should be sane and have reached 18 years of age.

²³ *Id.* Article 17

For a Muslim man, marriage is permissible with an individual who practices one of the religions of the Book, while a Muslim woman may not marry a non-Muslim man. Author’s comment: There are several reasons commonly given for this one-sided prohibition; the first is that women are in control of the children, and are expected to raise the children as Muslims; another reason is that a Non-Muslim man might exert too much control over a Muslim woman, detracting her from her faith.

²⁴ *Id.* Article 12

In order for the marriage to be sound, the woman must not be lawfully forbidden to the man who wants to marry her.

²⁵ Information on restrictions applied to women who want to leave Iraq can be found on the U.S. Department of State Consular Information Sheet: Women under the age of 45 must travel with an escort, such as her husband, father or a close male member of the family who has the permission of the husband or the father to be an escort for his wife or daughter. The authorities may apply this law to women traveling on foreign passports. Otherwise, when in Iraq, a woman married to an Iraqi and traveling on her foreign passport may be required to produce evidence of her husband's permission to leave the country (14 Sept. 1999). This information is corroborated by *Country Reports 1999*: "Women are not allowed to travel outside the country alone; male relatives must escort them" (2000, Sect. 2d). Information on whether these restrictions are followed vigorously could not be found among the sources consulted. <http://www.unhcr.org/>; (Last assessed 4/03/13).

might have argued the purpose of the law was to protect women in a society that had become near lawless under current post war conditions, from other points of view, this law can be seen as considering women unable and unqualified to fend for themselves. Another limitation for women relates to divorce.²⁶ The Iraqi justice department issued a decree in 2002 confirming the fact that physical and verbal assault and abuse do not give women a good reason to ask for divorce. We shall next take a very brief look at Penal Laws and their affect on women.

2. Penal laws

The Iraqi Penal Code contains violations against women rights. For instance, Article 409 has been amended from the Penal Law No. 111 for the year 1969. Code No. 111 for the year 1990,²⁷ allows and give the right to kill a women, without any punishment to the killer, if the act of killing is in retaliation for the women dishonoring the family (honor killing).²⁸ Another new code passed in the year 2001 allow capital punishment against women with suspicious behaviors. This law gives more protection for men against women; that is, women cannot complain or commit an act of revenge against her

²⁶ *Id.* Article 37

- 1- The husband performs the divorce by pronouncing three repudiations.
- 2- Three verbal or gestural repudiations pronounced at once will count as only one divorce.

²⁷ Article 111 (409) of the Iraqi Penal Code (1969)

Any person who surprises his wife or close female relative in the act of adultery and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him. http://iraq.alterinter.org/IMG/pdf/Final_Policya116.pdf; (Assessed 4/03/13).

²⁸ Barbaric 'honour killings' Become the Weapon to Subjugate Women in Iraq. Thursday 10 January 2013 INDEPENDENT newspaper; www.independent.co.uk/news/world/middle-east/barbaric

husband if he commits adultery. If women committed such an act, she is considered guilty of murder for intentional murder.

On the other hand if this crime is committed by the husband, his punishment is six months in jail, with a right to appeal. This is considered a great violation of justice and equality between men and women. A husband disciplining his wife is a legal right, but not for a wife disciplining her husband. The husband has the right to beat his wife as a part of disciplining her. This contradicts all human values, beating is harsh and mistreatment of humans, no one of either gender shall practice it or use for any reason. The next sections consider some Palestinian laws that relate to the treatment of women.

3. Independence Declaration

In Palestine, the legislation situation in regard for women protection in the national legislation seems more favorable than for women in Iraq, even though they live in similar environments and conditions, and both live under foreign occupation. The Palestinian Authority (PA) is a new entity, with a limited independent status. The Pa is still struggling to accomplish a complete independence of Palestinian land. Meanwhile, the legislative situation in Palestine in regards to women rights, is improving gradually.²⁹The Independence Declaration was issued by the Palestinian National Council in 1988 in Algiers, before the Palestinian authority existence.

²⁹ The Country of Palestine is for Palestinians wher ever they are; there they can improve their national and cultural identity; enjoy equal rights, preserve their rights of political and religious practices, and preserve their dignity within a democratic parliament based on freedom of thought; moreover, they can enjoy the freedom to form political parties, and ensure for rights of minorities. . . We render special

It is clear in this Declaration of Independence that the legislature has passed an important resolution to guarantee women equal rights with men, and has confirmed that the Declaration is based on equal rights for women. Also this Declaration is an international announcement of basic foundations, since it is considered a presentation of international human values.³⁰

In October 2003, women affairs department was established. Its primary duties are to improve conditions for women in all fields, socially politically, and in education. The Women's affairs Department reviews all laws and declarations to monitor any discrimination practices and rights violations,³¹ in order to resolve and overcome any negative results. The main goal of this department is to create and build equal opportunities for men and women within the law to avoid any discrimination based on gender, color, or religion, and to strengthen the ability and presence of the Palestinian women.

tribute to that brave Palestinian Woman, guardian of sustenance and Life, keeper of our people's perennial flame. To the souls of our sainted martyrs, the whole of our Palestinian Arab people that our struggle shall be continued until the occupation ends, and the foundation of our sovereignty and independence shall be fortified accordingly. This Declaration also confirms social justice and equality without any discrimination against gender, color or religion, under a constitution based law and independent justice. Palestinian National Council Declaration of Independence (November 14, 1988)

³⁰ violence, nonviolence and the Palestinian national movement
library of congress cataloging in publication data pearlman,wendy/published in ny,usa,2011

³¹ The Palestinian Basic Law provides in Art. 9 that all Palestinians are equal under the law and judiciary, without discrimination because of race, sex, colour, religion, political views or disability.

4.The Palestinian Basic Law

This law became effective on 07/07/2002³² and is considered as the Palestinian Constitution in this interim period, until the establishment of an independent Palestinian state, with Jerusalem as its capital. The Basic Law addresses such concerns as Struggle for Independence, Occupation, Dispossession, Expulsion and Organized Terror, Right of Return and Independence, and among others, the Palestinian Liberation Organization (PLO), and Peaceful Co-existence among States. The Preamble to the Palestinian Basic Law is as follows:

In the name of God, the Compassionate, the Merciful,
Palestine, the land of the three monotheistic faiths, is where the Palestinian Arab people was born, on which it grew, developed and excelled. Thus the Palestinian Arab people ensured for itself an everlasting union between itself, its land, and its history. Resolute throughout that history, the Palestinian Arab people forged its national identity, raising even to unimagined levels in its defense, as invasion, the design of others, and the appeal special to Palestine's ancient and luminous place on the eminence where powers and civilizations are joined. All this intervened thereby to deprive the people of its political independence. Yet the undying connection between Palestine and its people secured for the land its character, and for the people its national genius.

Even when translated into English, the words above convey a spirited determination vented through a powerful eloquence. We sense an interminable nationalistic fervor, and a commitment to preserve all that is Palestinian, and noble; however, how does this constitution represent women? Article 10 of the Constitution answers this question:

- All basic and fundamental human rights are preserved and respected.

³² <http://www.Palestinianbasiclaw.org/basic-law/2002-basic-law>

- The Palestinian authority shall work without any delay to join and adopt all international laws and declarations that protect and preserve the human rights, and does not contradict the Islamic Shari'ah Law.
- Article 6 proclaims Law is the foundation of governing in Palestine, all agencies, establishments, and authorities shall abide and obey the law.
- Article 26 confirms the right of all Palestinians to share in the political practice, as individuals or groups; the right to form political parties, or to join political parties, the right to form unions, clubs, organizations; the right to vote in election, the right to run and nominate for an office; the right to apply for any job or employment based on equal qualifications; the right to hold meetings without the presence of police.³³
- Rights for women are based on law which applies to employment, based on equal qualifications.
- Women have the right of representation in all local all international jobs, including election and nomination for local positions no.

This constitution has been amended and changed after some objections from women organizations and civil social entities, to protect women's positions in local municipalities. It was amended and ratified to give a positive result and allows women two seats in each council. The amendment did allow women running for election, whether for chairman or as a member in the council, not to be subject to conditions,

³³ <http://www.Palestinianbasiclaw.org/basic-law/2002-basic-law>

and to be accepted unless there is proof of a criminal record, with her, or within her family; however, family wrong doing is unfair for women rights. Why should a woman be punished if she is running for an office because of a relative's misconduct?

Women's participation in general and public elections are protected by Election Law No. 13 for the year 1995. Women can participate in elections and vote without any discrimination (Article 6). This is a right for any Palestinian, male or female in the west Bank, including the Gaza Strip and Holy Jerusalem.³⁴ Article No.7 for the qualifications for elections, require that nominees be of Palestinian origin and eighteen years of age, without any discrimination or prejudice against religion, gender, or political orientation, or social, economic or educational reference. There was no mention of any reservation or qualification for women.

The Election Law Article No. 9 requires that any one nominated for Chairman of the Authority must be Palestinian, and thirty-five years old, or above. Women can run for this position since there is no mention of gender. Article 12, addresses Rules and Conditions to run for membership in the legislature, and states that any Palestinian, male or female, and thirty years or older with his/her name listed and on the ballot, and meeting all qualification for the position, has the right to run for the office.

Even though the legislation gives women the right for nomination and election in the process, it does not guarantee women any positive right, considering that positive discrimination is deemed important to give women minimum guarantees of participation and representation in the political process. This law has how been

³⁴ *Id.*

modified.³⁵ The Palestinian legislation provides for a mixed system (50% listed-50% represented). This system in fact, does give a minimum protection for women, and small political parties. There shall be a women included in a list of three nominees, and a women in the second list of four. Every list of five names, should have a woman. This situation does constitute a positive discrimination practice which guarantees women a minimum number of seats, according to the list. Participating in the electoral process is better enhanced if one knows and understand that political system, and the recurring social, economic, and cultural issues. This reality brings up the question of having the proper education to facilitate that understanding. Therefore, we next set our sights on a Palestinian woman right to avail herself of that education that would enable her to participate in the political process.

a. Palestinian Women's Right to Education.

Under the Education Law, declared 1998, it is mandatory for women to receive education free until the tenth grade.³⁶ This law has contributed a great deal to women's education, giving women a chance to compete in education with men, and removing illiteracy from the Palestinian society. This law was also a great step for the improvement and expansion of higher education. According to the Palestinian Center for Consensus, there is a clear relation in the increase of number of women in the graduates of universities and special academic education, and the participation of women in all academic fields, which presents great opportunities for women to enter

³⁵ <http://www.Palestinianbasiclaw.org/basic-law/2002-basic-law>

³⁶ Palestinian Studies Magazine, Vol.59, Beirut. 2004

and continue education, and move on to other careers, including politics where they can give a voice to other Palestinians, especially women.

b. Special International Rights for Palestinian women.

This law still needs some clarification for execution, to assist in professional experience, low minimum wages, health care and safety.³⁷ This law does treat Palestinian women as being totally equal to men, in all aspects of life, including but not limited to social, economic, and political rights. At the same time this law does not protect working women with respect to their rights to maternity considerations, family bonuses, and retirement and social security benefits. This law will not make it any different for laws in other Arabic countries; yet it is still considered an improvement, and is quite advanced in regards to labor discrimination. To emphasize, this law by Article(100) does prohibit the practice of discrimination between men and women.

With respect to personal matters, until now there has been no Palestinian law that directly addressed personal rights, such as marriage, divorce, child-rearing, and so on. This means most laws as practiced in the Gaza Strip are Egyptian laws, in the West Bank, Jordanian laws. Even in 1998 there was a proposal for a Palestinian law for Personal Affairs, as there is in Iraq, but the proposal for such a Law of Personal Status stirred up a much debate, and this resulted in the termination of that endeavor. A movement towards such a law has not been resumed on account of the extremist

³⁷ Women and Law, Palestinian Human Rights; www.ahewar.org

Muslim point of view concerning women; this view considers a Personal Status Law would surely be an attack on the traditional role of women in Muslim society.

c. Civil Law for Employment

Finally, in regards to guarantees for Palestinian women employment.

The civil law for employment,³⁸Article(88), offers pregnant women a paid maternity leave for ten consecutive weeks, before delivery and after their pregnancy. Nursing mothers can leave work one hour before their work shift ends, up until one year after delivery; she is actually entitled to an extra one year leave without pay to take care of the new born.

H. International Organizations Role in Women's Protection

At the beginning we shall introduce and define International Organizations, explain what they are they and what their duties entail. They are defined by the international community as independent entities. All countries agree to the establishment of Conventions to take charge and operate within their special area of expertise, including the entity Convention.³⁹ From this definition, we can understand that these agreements are designed for countries and not individual. Countries assign the delegates among each other to execute the duties limited to them. The International Organizations are general organizations with an international focus, much like the United Nations, or like

³⁸ <http://www.Palestinianbasiclaw.org/basic-law/2002-basic-law>

³⁹ Dar Al Jamieyah, Beirut, p.,102,1980

local organizations with a local focus, like the Arabic Countries Council, or they can be a special organization with an international direction like the International Monetary Fund, or localized, like the European Common Market,⁴⁰ which strengthen the provisions and foundations of the United Nations and are dedicated to fundamental human rights, individual ability and dignity, for both men and women, or small or large nations with equal rights; and furthermore, for justice for all nations and peoples, and for respect for all Conventions and provisions established by the International Law.⁴¹

When Member or non-Member Countries approve the treaty, and become a partner country, they are obligated to abide by legal commitment to the treaty, and all participant and contracted countries should respect and the provisions as enumerated. When a country approves, or signs onto any treaty, it becomes responsible to the international community and the rest of the world, or any nation that might have also signed the treaties, as well as to any country's citizens and residents, where a country has signed onto a treaty. The international Human Rights legitimacy is the foundation of all different United Nations treaties designed to enforce and respect human rights, protect fundamental liberties. Following are three treaties drafted under the auspices of the United Nations General Assembly. They have already been discussed in earlier chapters, and are repeated here.

- Universal Declaration of Human Rights (UDHR)⁴²

⁴⁰ Shalaby, *ibid*, p. 102. 1980

⁴¹ United Nations Convention, Introduction. 1945

⁴² For fuller discussion, see *supra*, Chapter I, III, B, 3a.

- International Covenant on Civil and Political Rights (ICCPR)⁴³
- International Covenant on Economical, Social, Cultural Rights (ICESCR)⁴⁴

The three international agreements, above, are the source for the establishment of over fifty treaties propagated to enforce international human rights; moreover, they help form the bases of many of international treaties including women rights and protection.⁴⁵

Out of the International treaties and conventions signed and approved by countries, members or not, emerges delegates, envoys and committees, whose duty is to enforce and execute the orders and resolutions issued by these treaties. Treaties that support government organizations in protecting women and their interests, include the Universal Declaration on Human Rights, 1966, which is mentioned above; the Treaty to Abolish Discrimination, 1965; the Treaty against Torture and Mistreatment and Harsh Punishment and Humiliating Treatment against Humans, 1948; the 1979 Treaty to Abolish all Discriminations against Women;

⁴³ For fuller discussion, see supra, Id. at 3b.

⁴⁴ For fuller discussion, see supra, Id at 3c.

⁴⁵ Cultural, Social, Economic Human Rights, p. 3; Waqae.a newspaper, Vol. 16, Human Rights Center, UN Office, Geneva, Switzerland.

1. International Convention on Elimination of All Forms of Racial Discrimination (ICEFRD)⁴⁶

The Committee on the Elimination of Racial Discrimination (CERD) was established by the United Nations to observe and monitor measures and compliance to the ICEFRD.⁴⁷ The ICEFRD includes three steps to allow the execution of legal and judicial administrative measures. The first step requires all participant and contracted countries to submit periodical reports. The second step requires the addressing of a complaint from one country to the other. The third step allows individuals or groups to complain to the committee against their country that they have been victims of discrimination. An individual of a country, not a member of the ICEFRD cannot file a complaint, unless the country is a participant one, and recognizes the committee's right to accept a complaint. The ICEFRD can present its own opinions and recommendations for complaints presented to them by individuals or groups to the United Nations.

The committee can also present its own ideas and recommendations in regards to reports presented about judicial, legal and administrative measures. International Humanitarian Law goals and objectives are intercrossing with the objectives of Human Rights, especially for the human dignity and integrity, whether during peace or war. Equality is for both men and women, and each human has the right to live in peace and

⁴⁶ Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965; entry into force 4 Jan 1969, in accordance with Article 19; www.ohchr.org/EN; (Last assessed 4/05/13).

⁴⁷ Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems. Id.

enjoy freedom and liberty. These principles are within the universal system of humanitarian rights, and all political, civil, economic, social, and cultural rights, without any exception. The CERD, as a UN committee, has been instrumental in ensuring that concerned parties adhere to the provisions and principles of the ICEFRD; we now turn to another committee, that came into existence twenty years after the CERD; this is the UN Committee on Cultural, Social, Economic Human Rights Committee, 1985,⁴⁸ it has a broader scope of application than the CERD, and shall be our next topic of discussion.

2. UN Committee on Social, Economic and Cultural Rights (CSECR)

The CSECR is one of the most important committees to have emerged out of the Social, Economic Council (SEC), which was established by the Ninth Chapter of the United Nations Convention. One of the main duties of the SEC is to conduct research and study, and review reports in relation to health, education, cultural, and social issues, and offer recommendations to the Security Council, and Member States of the United Nations, and other agencies in connection with, and related to the International Human Rights and political liberties. The SEC may also present agreement proposals to the Security Council, and may also call for a special meeting for the Security Council if necessary. At this point, the SEC can take the precautionary and necessary measures needed to get the proper and needed reports from the designated delegates and envoys. The SEC may

⁴⁸ Waqae'a Newspaper Volume 16, p. 1

also give its recommendations and notes on the reports received; furthermore, the SEC can enforce and execute all recommendations proposed by the CSECR.⁴⁹

The CSECR meets twice annually in the United Nations Office in Geneva, and is composed of eighteen qualified members, who are experienced and experts in human rights.⁵⁰ Their duties are to monitor all signatories of a treaty through an open dialogue between all members, and help other members adhere to their treaty commitments by giving advice and recommendations on all general and political legislation in order to enhance the CSEC's human rights guarantees.

Every five years, all participant members have to provide reports about progress, steps and measures taken to preserve or improve the human rights of their citizens. Also participant countries should supply detailed reports about enforcement difficulties facing when trying to apply treaty provisions. When the CSECR receives the reports, it forwards it to a council that consists of five members, who meet every six months. This council discusses the written questions submitted. All participant members shall respond to all questions in writing before appearing in front of the committee. Reports shall be presented and discussed in presence of participated countries, and at the end of

⁴⁹ UN Convention, Art. 62 ,66. 1945

⁵⁰ The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". Website: www2.ohchr.org/english/bodies/cescr/; (Assessed on 4/04/13).

discussion, the committee will draft its notes and recommendations in regards to the treaty and the participating member.

These recommendations will include, in addition to the introduction and the positive notes, difficulties and obstacles that Members might face when executing the oath and commitment, and will also include suggestions and other recommendations. Even the final notes might not be legally mandatory, but negligence and ignorance of the treaty by participant countries could mean bad intentions, since all Members had promised to comply with all treaties with good intention. In addition to the final notes, the chairman can draft letters to participant countries. These letters may list the CSECR's concerns about a countries acts with respect to any treaty. The CSECR can also adopt proposals and programs recommended by the SEC. This concludes our brief study of the UN Committees, such as the ICEFRD and the CSECR, that act as monitors of important humanitarian agreements, and in the case of the CSECR, may even recommend modifications and other adjustments. We now turn to discussion of organizations that are profoundly instrumental in monitoring and enforcing women rights, both internationally and nationally.

I. International Organizations and Their Role in Enforcing Women Rights

International organizations have played an important and valuable role in enforcing women human rights in all fields. Ensuring protection and special treatment for women during peace time, and during international or non-international military conflict, is the general role of the international organizations. We shall discuss these government

organizations as the First Demand, and non-government organizations as the Second Demand.

1. First Demand

Government organizations as permanent and independent establishments, execute special roles in encouraging the enforcement of provisions that are contained in both national and international agreements.⁵¹ These organizations are called International Governments Organizations, (IGOs), which means governments of States are the representatives of these organizations.⁵² International organizations based on this definition are entities between governments and not individuals.

The United Nations (UN) is considered one of the most important IGOs. It has had a universal direction. Since its founding in 1945, the UN has focused on establishing equality between men and women. It confirms the fundamental rights and integrity, of every human, including men and women, young or old, and further affirms the UN's power to enforce the respect of all these rights, which include, freedom for all people, and encouraging unconditionally the rights for all without any preference as to religion, race, language, or gender.⁵³

IGOs have an important and fundamental role, which is to protect the rights and interests of women. These organizations focus on political, economic, social, cultural, and health issues; in addition to communication and transportation issues, membership

⁵¹ Shalaby Ibrahim Ahmad, *International Regulation: Study of the General Theory and the International Organization*, 1984.

⁵² Thus, IGOs are recognized differently from Non-Government International Organizations (NGOs).

⁵³ United Nations Convention, Art. 1/3.55G, 1945

in these organizations is limited to few countries. To qualify for membership in these organizations, a country should have the qualifying conditions, meet the social, economic, cultural, language and geographic requirements, and have common interest; for example, the Arabic Countries Conference, the United States Organization, and the African Unity Organization.

From within these IGOs can emerge small regional entities that have special common interests, but may still work within the local and regional government organizations; for example, the Moroccan Unity, or Gulf Countries, or Cooperation Council. Finally we can say that these government organizations have the Right of Representation, like a United Nations representative, for instance.

In 1960, Mr. Dag Hammarskjöld⁵⁴ sent Mr. Abdel Chalk Hassounah, Secretary General of the Arabic Countries Conference, a letter about communication and cooperation between the United Nations, and the Arabic Countries Conference. This would include the direct negotiations and common interest work, including economical, social, and humanitarian goals,⁵⁵ to help the progress and development of the Arabic people, and to share information. That letter also contained a recommendation that the Secretary General for the Arabic Council be present during United Nations Sessions as

⁵⁴ Second United Nations Secretary-General (1953-1961) Dag Hammarskjöld was unanimously elected to two terms as secretary-general and served until September 18, 1961, when he died in a plane crash en route to a peace mission in the Congo. Mr. Hammarskjöld's most significant contributions to the United Nations' mission include promotion of Armistice Agreements between Israel and the Arab States; the 1956 establishment of the UN Emergency Force (UNEF); www.crf.org; (Last assessed 4/4/13).

⁵⁵ <http://www.un.org/Overview/SG/sg2bio.html> /DAG HAMMARSKJÖLD (SWEDEN)

an observer, and vice versa.⁵⁶ We now take a brief look at the counterpart to IGOs; the NGOs in the next section.

2. Second Demand⁵⁷

Not beholden to government, Non-Governmental Organizations (NGOs) have special roles in women protection. On February 27, 1950, the SEC, discussed supra, issued a resolution that any international organization established without the approval of the contracted countries would be considered a non-government international organization. Based on this definition, the NGOs are, in effect, active before the government international organizations on the international level. NGOs focus their attention and concerns on social, economical and humanitarian issues, away from the political affairs. The NGOs have introduced great services in the previous fields. In addition, many have become role-model organizations, such as the ⁵⁸ Young Men's Christian Association(YMCA), founded 1855,⁵⁹ and the International law Institution, founded 1873; also the International United Parliament, 1988, the International Peace Corps, the International Olympic Committee, and the International Organization against Women and Child Slavery.⁶⁰

⁵⁶ Shalaby Ibrahim Ahmad,international regulation, study of the general theory and the international organization, p.s 520-530, 1980.

⁵⁷ Shalaby Ibrahim Ahmad,international regulation, study of the general theory and the international organization, 1980.

⁵⁸ Laurance Locke Dogget, History of the Young Men's Christian Association p.e (143-179),1909

⁵⁹ Institute of International Law,<http://www.britannica.com/EBchecked/topic/291060/Institute-of-International-Law>

⁶⁰ Amnesty ,international human rights

Two of the largest and most important NGOs are the Red Cross and the Red Crescent; ⁶¹these are the fundamental bases for the Red Cross and Red Crescent movement, and consist of three independent committees:

- Red Cross International Committee
- Red Cross, Red Crescent International Committee
- Red Cross, Red Crescent International Union Committee

Each one of these three committees has its own basic foundation; none has any authority over the other, unless for its specialty in military conflicts or national disasters. The Representative Councils of the three Institutions meet every two years, and once every four years with the country's member's representatives of the Geneva Conventions, and also within the Red Cross and Red Crescent international convention.

a. International Committee of the Red Cross (ICRC) ⁶²

Most commonly known as the *Red Cross*, or *International Red Cross*, the International Committee of the Red Cross (ICRC) was established in 1863, and is headquartered in Geneva, Switzerland. It is a non-government neutral, independent, non-biased, humanitarian Swiss organization.⁶³ All countries assigned to it, promise a mission of protection and assistance for the victims of military conflict by way of the Geneva four

⁶¹ Tarawneh Mohammad, +or ed p.s (174-200),2005

⁶² ICRC; <http://www.icrc.org/eng/resources>

⁶³ Recall the ICRC had its genesis in the aftermath of the bloody battle of Solferino, after Henry Dunant saw for himself the horrific consequences of war. See supra Chapter I, Section III, A, 6.

Conventions of 1949, and the two Additional Protocols of 1977. Key facts about the ICRC are the following:

- The man whose vision led to the ICRC's creation, Henry Dunant, became the joint first recipient of the Nobel Peace Prize in 1901.
- Dunant's plea after the battle of Solferino in 1859 brought about the adoption of the Geneva Convention and the creation of Red Cross / Red Crescent societies.
- The ICRC has been active for the victims of most major conflicts since 1863, from classical conflicts to civil wars, guerrilla campaigns to the "War on Terror".
- From helping wounded soldiers, the ICRC's mission has grown to cover all aspects of humanitarian work in conflicts.
- The ICRC works to reunite families separated by conflict and disaster and establish the fate of those who are missing.

The ICRC includes between fifteen to twenty-five members of Swiss origin, who serve four-year terms. Even though this committee is an NGO, it has the power to draft agreements between governments, and work within their infrastructures. The ICRC further has immunity and priorities that are offered only to the IGOs; this immunity protects the committee from judicial and administrative pressure.

The ICRC represents the declaration, of national organizations, to perform all missions required through the Geneva Conventions; to ensure the application of the Humanitarian International Law; to guarantee the safety and assistance to all victims of international and non-international conflicts; to prepare and qualify all employees in the medical field; and to spread and educate the international community about

Humanitarian International Law. The ICRC can offer its mediation to members in a military conflict as per the protocols set out in the Geneva conventions.

b. Red Cross, Red Crescent International Committee (RCICRC)

In cooperation with military medical services, the RCICRC is an institution formerly established to treat wounded and sick soldiers.⁶⁴ Today it performs its duties during peacetime or war. Its goal is to reduce and prevent any suffering without any discrimination based on race, nationality, religion, gender, or political ideology. During military conflict, the RCICRC may be considered a support unit for the medical services belonging to the national army. It may also perform its duties in case of natural disasters during peace time, and organize relief emergency services that are needed for the general public health.

As part of its goal to serve the civilian population, the RCICRC prepares programs. Other aspects of its mission include improving the general health, preventing

⁶⁴ Several fundamental principles of the RCICRC are as follows:

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and ... peace amongst all peoples.

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature. www.icrc.org; (Last assessed 4/04/13).

disease, and in spirit with the International Humanitarian Law, it endeavors to advocate for peace, respect and understanding among individuals and nations.

c. Red Cross, Red Crescent International Union Committee

The RCRCIUC was established in 1919 under the Red Cross and the Red Crescent organizations. In 1991 its name was changed to the International Union for the Red Cross and the Red Crescent Organizations (IURCRC), with its headquarters in Geneva, Switzerland.⁶⁵ The IURCRC is considered the official representative for the national organizations on the international level. Representative members of the national organizations meet at the IURCRC once every two years at least. Considered one of the international union catalysts for the Red Cross or the Red Crescent, the goal of the IURCRC is to encourage and support all humanitarian relief that is performed by the national organizations to prevent human suffering, and to maintain international peace.

The IURCRC performs the following:

- Maintains direct and continuous communications, research and cooperation among all the national organizations and supplies them with relief and assistance.
- Provides relief for all calamity victims, and coordinates and organizes all international relief.

⁶⁵ History of the Red Cross Red Crescent International Union Committee; <http://www.icrc.org>

- Spreads the principles of the movement and the Humanitarian International Law; also the IURCRC will cooperate with all international, or no international government organizations, as it finds required and appropriate.

III. CONCLUSION

In an effort to protect women, and other non-combatants, both during and after martial engagements on both national and international levels, we've considered the ways that the International Human Rights Law attempts to remedy the unfortunate and disasters that result from those engagements, by providing and encouraging participants, or mere witnesses to the same to be aware and practice behavior that will mitigate the effects of those disasters. This behavior is codified into sets of provisions contained in a number of international agreements; agreements that if abided by would ideally give some protection not only to those who must participate under arms in the conflict, but most importantly, to those who have stopped participating in military conflict. These individuals include women, as well as all injured, the sick, the disable, and prisoners of war.

This protection is achieved in part, by provisions and laws that aim to regulate methods and means of fighting; for instance, several declaration and agreements and international protocols bans the use of biological weapons, poisonous gas, mines, blinding lasers weapons, and chemical weapons; in addition some declarations ban the use of conventional weapons that are considered very harmful to people and the environment. The Geneva Conventions of 1949, and the Additional Protocols of 1977

provide the workable paradigms for these endeavors. Pursuant to provisions contained in the Protocols, however, there are categories of offenses that those at war, or some lesser national conflict, should be aware of, and, under threat of punishment, never commit.

These offenses include, torture and inhumane treatment; destruction and seizure of property, intentionally targeting people, generally civilians, knowing they pose no danger, mass murder, genocide, crimes against humanity, rape in general, rape as a weapon of war. For these and a few dozen other offenses, those individuals, or nations who would intentionally, or inadvertently commit any of those offenses listed above, or any of those not listed here, but found in the international treaties, the First Additional Protocol, in Article 91, proclaims that, “a party in military conflict shall request from those who violates the provisions of the protocols to pay compensation if necessary, and shall be responsible for all the damages committed by any of the military force members.” The Hague Agreement of 1907 also provides for compensation. Other agreements provide for criminal penalties that may include imprisonment, or capital punishment.

This chapter has paid considerable attention to the international agreements that aim to protect women; agreements such as the ICCPR, and UDHR. Also, the chapter has surveyed national legislation, such as the Personal Status Laws of Iraq, and the Palestinian national laws. While the former have been seen as draconian by some, as far as respecting the rights of women, the latter, even as it has proclaimed that Palestinians

have a right to self-determination, through peaceful means, has also been more liberal towards endorsing women rights to education and economic opportunity.

We also discussed the role that international government organizations have in protecting women rights. Throughout this work, we have discussed the role that Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economical, Social, and Cultural Rights (ICESCR) have in human, and women rights. We noted that these three treaties are the prototype for dozens of similar agreements, all of which purport to raise the global consciousness of the need for human rights in general, and women rights in particular. Yet, some may justifiably argue that all these agreements amount to not much more than ink on paper; *i.e.*, that which they were imagined to achieve has not yet materialized to the satisfaction of many. Protesting otherwise can be difficult; for we need look no further than the recent crimes against humanity, particularly women, in Bosnia and Rwanda, and most recently in Iraq and other locations not at war, but having cultural “norms” that relegate women to sub-human status, as in the case of brutal rapes in India and South Africa, those conditions make it clear that that enough is being done to protect women from the very creatures who should be their biological complements: men with a lust for brutality. The seventh and final chapter, Chapter VII, turns to a study of the current conditions in Iraq, which is ironically the home of the ancient code of Hammurabi, one of the first attempts at putting a code of humanitarian conduct into writing.

* * *

CHAPTER VII

CONDITIONS CURRENTLY AFFECTING

WOMEN IN IRAQ

I. INTRODUCTION

Babylon represents one of the most important archaeological sites in the world. Babylon's fame extends beyond the fact that the site dates to a time more than 4,000 years ago. Babylon achieved military fame, was the capital of a vast ancient empire, and contributed greatly to our knowledge of the ancient world through the study of the Code of Hammurabi, . . .¹

The ancient Greeks called the land to the South, Mesopotamia, meaning "Land Between The Rivers." Among the pre-Egyptian civilizations,² or nation states, now known to be part of Mesopotamia, were Assyria, Arkadia, Sumeria, and Babylon. The latter is famed for one of the Seven Wonders of the ancient world,³ and of course, the Hammurabi Code, one of the first written systems of ethics and morals, and Humanitarian Law, if we dare make that reasonable stretch. The above quote speaks of a glorious and splendid

¹ Search Quotes; <http://www.searchquotes.com/search/Babylon/2/>; (Last assessed 4/05/13).

² Humans began establishing viable civilizations in the Mesopotamian region at least by 10,000 B.C.E.

³ The Hanging Gardens of Babylon

civilization; however, even as with the once all powerful Roman Empire,⁴ great civilizations come and go.

Though Mesopotamia was assaulted by one marauding army after another, much of its cultures have remained intact until today, and are found as the basis of one of what until a couple of decades ago, one of the most vibrant nations in the Middle-East; that is Iraq, which sets atop the ground those ancient nation states used to occupy. Yes, again Iraq has been knocked to her knees, and no one suffers more than those who can least afford the mental anguish that comes with suffering; these ones are the women and the children. To put the plight of women in Iraq into military jargon, Iraqi women are today, “between a rock and a hard place.” The world watched in awe as the United States and its allies first set the skies of Bagdad ablaze with fiery rockets, and pounded its buildings with clusters of bombs, all followed by armored vehicles storming across the desert and into the heart of the capital. The upshot of that “pigeon shoot” was the toppling of Saddam’s statue. A few days later, American President, George W. Bush was seen on T.V., on board an American battleship. A banner behind the President showed in gigantic lettering: Mission Accomplished. The President seemed to be saying that the United States had accomplished its goals, which were getting rid of a bad man, and that from then on life for the world, but especially the Iraqi people would be immediately better; after all, the tyrant had fallen.

But things turned out not as the American President had indicated. The war would drag on another ten years, Iraq would be under foreign occupation, and it would have to contend with armed groups from neighboring countries, suicide bombers detonating

⁴ “If Rome can fall, what can be permanent?” Attributed to Frederick Douglass, American Abolitionist, uttered upon standing on the Patine Hill in Rome and observing the ancient ruins.

bombs in any place that would cause mass death and mayhem, and unspeakable horrors perpetrated against civilians, especially women. In the following sections, we will look at some of the social, economic, and political conditions, and the events that arise from them.

II. THE ORDEAL OF THIRTY YEARS OF WAR AND DEVASTATION

With respect to war, reasonable people can agree to at least one thing: throughout recorded history, it has been the one thing that, which perhaps next to natural disasters, has rendered to any society, whether progressive, or not, the coup d'état. As mentioned above, armies have come, looked upon the valley between the rivers, then pillaged, wracked destruction, and after a time, have left. That land has always recovered. But in the aftermath of the most recent conflict, imposed both from within by a merciless dictator, and from without by a group foreign invaders, the land of Iraq has entered a new cycle of suffering, whose end lies far beyond even the boundless horizons of the vast deserts that touches upon its borders. In the following sections, we take a cursory look at several wars that have impacted the Iraqi over the past thirty years. The first two allegedly being of an Iraqi leader's own design.

A. Iraq - Iran war, 1980

The Iraq – Iran War began when Iraq entered Iran, launching a simultaneous invasion by air and land into Iranian territory.⁵ Despite the carnage in such a small area of the Earth's surface, it was a war that was probably under-published in the West, and

⁵ Efraim Karsh, *Iran-Iraq War* p. 13-19. 1980-1988 published (2002).

perhaps for good reason: Iran's supporters included arch enemy Israel, and Iraq's supporters included, well, the United States, who just a decade later would be leading an operation against Iraq called Desert Storm. While U.S. leaders might have been telling the U.S. public that their tax dollars were going to Iraq to support Democracy in the area (a tale American leaders find the public usually fall for) the average man, woman or 5th grader in the Muslim world thought otherwise: they figured that the West was there to protect their interest in the oil fields.

As is usually the case in war, no one knows for sure how many died or suffered wounds. Some estimates put the numbers at "one and a half million war and war-related casualties -- perhaps as many as a million people died, many more were wounded, and millions were made refugees. Iran acknowledged that nearly 300,000 people died in the war; estimates of the Iraqi dead range from 160,000 to 240,000." Aside from these numbers, the war created millions of refugees in both Iraq and Iran, created tens of thousands of widows, and orphans, and plunged both sides into heavy debt.⁶ This debt was a factor leading to the next war in the Persian Gulf region; only a couple of years after the UN brokered a ceasefire between Iraq and Iran, Saddam Hussein perhaps embolden by his modest success against the much larger Iran, and acting on the mistaken belief that the U.S. would stand by him, set his ambitions on his tiny neighbor to the south of the Iraqi border.

⁶ Among the causes of the war was a long-standing border dispute between Iraq and Iran. At the end of the war in 1988, the initial causes of the war had remained unchanged. Web. See <www.globalsecurity.org> (Assessed 4/07/13).

B. 1990 Gulf War: Iraq Invades Its Neighbor to the South

The 1990 Gulf War began on August 2, 1990, when Saddam Hussein sent his military forces across the border into oil-rich Kuwait.⁷ The immediate result was that Iraq annexed Kuwait. We may recall that Saddam Hussein, much like another dictator in history, invaded Kuwait partly under the pretext that Kuwait was historically a part of Iraq; however, and this is partly speculation on the part of the author of this dissertation, Hussein's motives might have had more to do with the fact that Iraq owed Kuwait billions of dollars after the latter had given him loans to finance Iraq's costly war with Iran.⁸

After Iraq's forced annexation of Kuwait, the UN launched diplomatic efforts to convince Saddam Hussein to withdraw his forces from Kuwait; sanctions were imposed on Iraq, but to no avail. Therefore, in January, 1991, a U.S. led force invaded⁹ southern Iraq (Kuwait lies to the south of Iraq), and after a month and a half of war, Saddam's forces collapsed, and Kuwait regained its sovereignty. The short war was, however, costly for Iraq: over a quarter of a million of its soldiers were killed wounded or captured; several thousand civilians died; many more thousands suffered wounds of various degree; Iraq's infrastructure suffered heavy damage, or obliteration; i.e. sewage and water treatment plants were destroyed or damaged; and we might recalled the

⁷ The map shows that Iraq's land mass appears to be at least twenty times that of Kuwait.

⁸ Political Economy Research Institute; Modern Conflicts, Conflict Profile <http://www.peri.umass.edu/fileadmin/pdf/Iraq3.pdf>; (Assessed 4/6/13).

⁹ This invasion was called, "Operation Desert Storm."

grave environmental damage that ensued when Hussein ordered dozens of Kuwaiti oil refineries set afire, and ordered millions of barrels of crude oil released into the Persian Gulf.¹⁰

Though the United States and its allies would claim victory at ousting Hussein from Kuwait, in war there are always losers, and these are the ones that are often ignored by the victors as they bask in glory. Here the real loser was not the tyrant, Hussein, as he retreated to one of his many palaces to plan more mischief; the losers here were the Iraqi soldiers who were cut down by the tens of thousands, and the Iraqi civilians, many of them women and children.

Fortunately for Hussein, but not so for some of his subjects in the north and southeast of Iraq, the Bush Administration decided not to forcefully remove him from power. And in retaliation for the Kurds and Shiite¹¹ Muslims rebelling against Iraq during this First Gulf War, Hussein launched an ethnic cleansing campaign against the Kurds in northern Iraq,¹² and the Shiites in southeastern Iraq; according to reports, thousands of civilians were massacred. These any other aggressive acts by Hussein held the world's, particularly the UN's, attention for several years, until apparently the perfect ruse¹³—as

¹⁰ About one-third of Kuwait borders the Persian Gulf, and another third—to the north, borders Iraq.

¹¹ Also known as “Marsh Arabs.” They live in southeast Iraq.

¹² The Kurds, who are not Arabs, have lived for centuries in northern Iraq, along the Iranian border.

¹³ “Ruse” refers to the Bush Administration claim that Saddam Hussein had stockpiles of Weapons of Mass Destruction (WMD), which he planned to use, or sell. UN inspectors visited Iraq several times, but failed to find WMDs; nor has the U.S. found any after a ten-year presence in Iraq. This is not say Hussein never had any.

some now claim—was concocted to finished off Hussein and his nefarious regime for good. That would be the Second Gulf War.

C. The Second Gulf War, 2003¹⁴

The Second Persian Gulf War can be considered a continuation of the First because the conditions that gave rise to the first, namely Saddam Hussein and his dark ambitions, had never gone away. We recall that even after his ambitions to make Kuwait a part of Iraq ended in his ouster, he turned his sights on the ethnic Kurds and Shiites who were Iraqi citizens. In the eyes of the West, at least, Hussein, who had been a former “ally” of the West, was now seen as a cancer so much so that in early 2002, President George W. Bush, named Iraq as part of the axis of evil that threatened world peace.¹⁵ The focus on Mr. Bush’s argument was that in a highly unstable region of the world, the Middle East, a man, who had already shown imperialistic tendencies by invading and annexing a neighbor, was harboring Weapons of Mass Destruction. This might seem at first a contravention of the CWC,¹⁶ whose provisions included not only limiting such weapons, but provisions allowing UN inspectors to visit a suspected harbinger of such weapons;

¹⁴ Also called “The Iraqi War 2003,” and “Operation Iraqi Freedom.”

¹⁵ The other two at the time, and perhaps still in the view of many, were North Korea and Iran.

¹⁶ The full name is Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Or Chemical Weapons Convention; also CWC. “The CWC aims to eliminate [certain] weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of these weapons.

A unique feature of the CWC is its incorporation of the 'challenge inspection', whereby any State Party in doubt about another State Party's compliance can request the Director-General to send an inspection team. Under the CWC's 'challenge inspection' procedure, States Parties have committed themselves to the principle of 'anytime, anywhere' inspections with no right of refusal. . .”; <http://www.opcw.org/chemical-weapons-convention/>; (Last assessed 3/31/13).

however, Iraq didn't become a State Party to the CWC until 02 December, 2009. However, Iraq was in violation of another agreement; the one which attempted to regulate its post-condition ouster from Kuwait. This is UN Resolution 687 and crucial excerpts appear below.¹⁷ Acting under the purview of Resolution 687, therefore, UN

¹⁷ **RESOLUTION 687 (1991)**

Adopted by the Security Council at its 2981st meeting,
on 3 April 1991

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991),

* * *

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and of its prior use of chemical weapons and affirming that grave consequences would follow any further use by Iraq of such weapons,

Recalling that Iraq has subscribed to the Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989, establishing the objective of universal elimination of chemical and biological weapons,

Recalling also that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,

* * *

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,
Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,

Conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons, Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region,

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets
Bearing in mind its objective of restoring international peace and security in the area as set out in recent resolutions of the Security Council,

Conscious of the need to take the following measures acting under Chapter VII of the Charter,
1. Affirms all thirteen resolutions noted above, except as expressly changed below to achieve the goals of this resolution, including a formal cease-fire;

* * *

inspectors made a number visits to sites in Iraq. Someone has said this search was akin to searching the entire state of California for what could amount to a truck load of turnips; no weapons were found, and, as many people in the Arab world, and as well, the U.S., have noted, the Bush Administration became “creative.” The result was that the U.S. was convinced that Iraq had WMDs that it persuaded the UN Security Council to adopt Resolution 144 in October 2002, justifying war with Iraq. Now that the U.S. had the blessings of the UN, it had to take another step; it had to make its decision to invade Iraq acceptable.

C

8. Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(b) All ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities;

9. Decides, for the implementation of paragraph 8 above, the following:

(a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration of the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

- (i) The forming of a Special Commission, which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself;

10. . . . Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 above and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with this paragraph, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of this resolution;

11. Invites Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968;

34. Decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.

Therefore, a few months later, on February 6, 2003, the highly respectable General Colin Powell, U.S. Secretary of State came on national television, and made a case to the American people, and to U.S. allies, for the existence of WMDs in Iraq. After which the U.S., and its allies, requested something of Saddam Hussein, which they should have known he would never do: they requested that he leave Iraq. He refused, and March 19, 2003, the U.S. and her allies began the assault on Iraq. The war that many seemed to have thought would be over as quickly as the First Gulf War, kept U.S. forces engaged there for eight years before the situation became stable enough for the U.S. to withdraw most of its forces.

The Second Gulf War, rather than “freeing Iraq,” led to occupation by Western powers, and insurgent activities by local groups, such as Al Qaeda. These outsiders, showing very little concern for the people of Iraq, came with their own agendas. This influx of destructive forces, have given the Iraqi people no time to recover from the three wars in thirty years, and before that the oppressive actions of Saddam Hussein. The irony is that Saddam Hussein once claimed it was his desire to recapture the former glory of Iraq, as it was in the days of King Hammurabi, but instead, the fruits of his actions have led to social, economic, and cultural devastation of a once proud nation. These issues we shall next discuss.

III. CONSEQUENCES OF THREE WARS WITHIN THIRTY YEARS

In the aftermath of war comes glory for the victors, and bruised egos for the vanquished, but those are the fighters on the battlefield; the brunt of the misery is too often carried by those who just happened to be “in the way.” The Americans have

coined a few terms to describe these hapless souls: Collateral damage, and the “Displaced.” For those who escape death, they might have to cope with being displaced far from home; hence, we have seen that provisions of the Geneva and other agreements that discourage occupying armies from separating families, and requiring the occupiers to ensure that displaced people are returned home as quickly as possible. However, wherever home is, these people might be subject to miseries brought on by occupation, by the lawlessness that often comes with being occupied, and a host of related evils, which we shall take a look at in the following sections.

A. Occupation

At first thought, “occupation” suggests a rigid order imposed on a nation from the outside, where all events are predictable, and nothing goes awry . History, however shows this isn’t always, if ever the case. It quickly became clear that in the days after the U.S., and its Coalition forces occupied Iraq, anarchy broke loose. Not only because much of the infra-structure in the larger cities had been destroyed by those “liberating forces,” but also because the security forces, like police and other militia units thought loyal to Saddam Hussein, or even thought a threat to Coalition forces, were disbanded. Therefore, it’s a safe guess that with the occupiers being much less in number than the original security forces, and being ignorant of the locals and their ways, cities like Bagdad were laid open to looting¹⁸ and arson, and generally widespread criminal

¹⁸ There have been stories out of Iraq of museums being looted of their priceless artifacts, and libraries being torched.

conduct, which included crimes against women. We shall return to this latter issue later, and see that young women and girls have become items of barter in present day Iraq, while the U.S. supported government sits on its hands, choosing to do little to nothing.

This is not to say that the occupying Coalition has not attempted to detain certain Iraqis; it has, but for reasons of its own. For instance, reports coming out of Iraq, claim that the U.S. has taken thousands of Iraqis into detention, for security reasons, and have held many for as long as a year. Many of these individuals, might be threats to the Coalition forces, but we have to remember that many of them, like the Palestinians, might believe they have a right to oust the occupying Coalition forces from their homeland.

Many Iraqis have reportedly said that while Saddam Hussein was brutal in many ways, at least the violent and uncivilized behavior that has been happening on the Coalition's watch was much less widespread.¹⁹ For years, reports out of Iraq claimed that under Saddam Hussein, many Iraqis who had "offended" Hussein in some way had disappeared, and never to be seen again; therefore, it's reasonable to suppose that as long as one didn't fall out of favor with Hussein, his or her chances of surviving were not in danger; but with war and the civil unrest that has afflicted Iraq over the past twenty years comes random attacks and killings, such that no one, most of civilians can ever feel safe.

¹⁹ GPF: War and Occupation in Iraq; Chapter I, English. <http://www.globalpolicy.org/empire/37145.html>; (Assessed 4/6/13).

B. Civilian Deaths

There is no question that despite the best efforts to limit civilian casualties during conflict, it is inevitable that civilians will be injured, killed, and at the very least, be stripped of the basic necessities needed to sustain themselves. Iraqi civilians, being caught between the warring might of a dozen adversaries have likewise suffered unspeakable horrors. One of a dozen sobering facts that have come out of the recent wars in Iraq is that death has no shortage of opportunity there; one can be killed by bombs or missiles from above; foreign soldiers might go on a rampage; fellow Iraqis themselves, in a bid to even some score, might turn upon their own countrymen; death might be at the next checkpoint; or even at a wedding where a suicide bomber might strike. All these scenarios are not just flowing from this author's imagination; they have been broadcasted to us from afar. There's not agreement as to the correct number of Iraqi civilian homicides, due to war, since 2003, but one source sets the number at close to 115,000.²⁰ Although people might try to find some solace at arguing the number of deaths should be lower, they need to be reminded that every single life is precious to someone, and in such a case, one death can be significant. Since the wounded always greatly outnumber the dead, we can expect the number of wounded to be much higher. One consequence of these wars, is that hundreds of thousands of men serving have either been killed or severely disabled. This tragic number hides another unsettling outcome: hundreds of thousands of women have been widowed by war. In a society

²⁰ Iraqi Body Count (IBC); www.iraqibodycount.org; (Assessed 4/07/13).

where women don't have the same access to education, and therefore, employment as men, widowhood has unimaginable consequences; these may include such phenomena as impoverishment, which produces other evils, such as human trafficking and prostitution; and mental illness; the next section discusses several of the most common problems plaguing Iraqi women today.

C. Problems Affecting Iraqi Civilians, Particularly Women

1. Mental Health

In the aftermath of three wars on their soil, Iraqis have suffered not only physically, but mentally. Alissa J. Rubin informs us that,

Two studies being released this weekend, one on mental health and the other on the status of women, paint a sobering portrait of the enormous difficulties that lie ahead as the country tries to recover from years of war and state-sponsored terrorism under Saddam Hussein and the more recent sectarian and ethnic strife that followed the American invasion. In the mental health study, released Saturday, the Iraqi government and the World Health Organization surveyed 4,332 Iraqis over 18 years old nationwide and found that 17 percent suffered from mental disorders of some kind, with depression, phobias, post-traumatic stress disorder and anxiety among the most common.²¹

Other studies corroborate Rubin's findings; the results presented here are not surprising, nor perhaps, narrowly confined to just the Iraqi Wars of the past decades. The U.S., itself has seen thousands of veterans, whose exposure to combat might have

²¹ Rubin, Alissa J. March 7, 2009

been only several months,²² yet U.S. clinics have seen thousands of cases of Post-Traumatic Stress Disorder (PTSD).²³ It therefore makes sense that for those who have had years of exposure to war, and maybe having lost family members, sometimes entire families, or who might have suffered the indignities of rape, could be traumatized to the point of incurring mental disease.

The study of which Rubin speaks reports that of the Iraqi civilians studied, fourteen percent of those suffering mental disorders were men, and nineteen percent were women. Clearly, women²⁴ have been more impacted by men by thirty years of war, and a number of years before that under a dictator. To make this matter worse, Iraqis, as many other peoples, tend to find shame in mental illness; therefore, they

²² For example, the following report is typical of others, we have researched: "According to a 2005 VA study of 168,528 Iraqi veterans, 20 percent were diagnosed with psychological disorders, including 1,641 with PTSD.

-- In an earlier VA study this year, almost 12,500 of nearly 245,000 veterans visited VA counseling centers for readjustment problems and symptoms of PTSD.

-- The Marines and Army were nearly four times more likely to report PTSD than Navy or Air Force because of their greater exposure to combat situations.

-- Enlisted men were twice as likely as officers to report PTSD.

-- 8 percent to 10 percent of active-duty women and retired military women who served in Iraq suffer from PTSD.

-- Studies show that U.S. women serving in Iraq suffer from more pronounced and debilitating forms of PTSD than their male counterparts." <http://www.sfgate.com/health/article/U-S-wars-and-post-traumatic-stress-disorder-2627010.php#ixzz2PjFNIPQE>; (Assessed 4/06/13).

²³ **Posttraumatic stress disorder (PTSD)** can occur after someone goes through a traumatic event like combat, assault, or disaster. Most people have some stress reactions after a trauma. <http://www.ptsd.va.gov/public/index.asp>

²⁴ Many of the women had developed phobias, anxiety disorders and depression.

might not seek treatment, or talk about it even with close friends and neighbors. Nonetheless, even without ever setting foot in Iraq, we can guess that such conditions and realities have certain social consequences; for example, being unable to take care of oneself and family, in many cases, or adopting behavior that is anti-social and counter to one's best interests. Another reason is that because of the decimation of its health care system, Iraq has a shortage of psychiatrists and other mental health professionals.

2. Worsening Economic Conditions

On account of the constrictions of Iraqi culture, the economic climate for women has never been to their advantage. Reports are that thirty years of war have made widows of 740,000 women.²⁵ Many others have no fathers or other male relatives to look after them. This might seem to be a patronizing notion in modern day Western societies, but in the Muslim world women have, for thousands of years occupied a status similar to that of a second-class citizen, not having the same personal rights as men. It is well known that in many Muslim countries women are not allowed to drive; in other places, they have no political rights; in others, they are not allowed to initiate divorce proceedings; and in yet others, they cannot marry anyone, unless he is a Muslim. We hear of American women complaining of the "glass ceiling," which they rightly should; however, in many Muslim countries, women cannot get as far as the reception area, unless they are accompanied by a man; and it had better be her husband, or a relative. With these cultural realities, it is no surprise that a large number of women just don't

²⁵ Iraqi Surveys Start to Unveil the Mental Scars of War, Especially Among Women
<http://www.nytimes.com/2009/03/08/world/middleeast/08iraq.html?> (Assessed 4/07/13).

have the financial wherewithal to sustain themselves independently of a man's assistance.

A Westerner might wonder about State-based welfare, or a pension system that could provide assistance to these women, and in many cases; however, one survey discovered that only a quarter of those 740,000 widows mentioned above are receiving pensions. For those receiving pensions, not only might they have to "take . . . care of their children, but often of their extended family so they are bearing a heavy burden, . . ." ²⁶ Clearly, then economic Conditions in Iraq are dire; this produces an atmosphere of desperation. And where there is desperation, there is a threat to survival; this in turn can lead some people to resort to strategies that might not have ever dreamed of.

3. Prostitution

It can be difficult to believe that prostitution could exist in any form in a land where those applying Shari'ah Law can sentence to death by stoning those engaging in the "profession." But while prostitution in some form has no doubt existed in Iraq since the time of King Hammurabi, in recent decades, it has probably been more discrete than now. In these times of desperation, prostitution in Iraq has become a viable commodity.

Consider the following report:

On Saturday, Time also reported that women's rights in Iraq have actually regressed since the fall of Saddam Hussein and sex trafficking is now rampant in the country. Women's rights advocates in the country estimate that tens of thousands of Iraqi women and children have been sold into sex slavery since 2003. Trafficking takes place within the country

²⁶ Iraqi Surveys Start to Unveil the Mental Scars of War, Especially Among Women
http://www.nytimes.com/2009/03/08/world/middleeast/08iraq.html?_r=3&

and internationally, mostly to Syria, Jordan, and the United Arab Emirates. Women can easily be taken across the border with forged passports or by being forced to marry and then divorced and put to work when they reach their destination.²⁷

To know that these Iraqi women are being sold into sex slavery is shocking enough, but when we consider that Iraq is an oil-rich country that once had a viable infra-structure, which in many ways would have enabled it to abolish much of the common poverty, as has other oil-rich nations in the area, we can scarcely find the words to convey our disappointment at the depth of suffering that humans inflict on one another. Here three senseless, and preventable wars have plunged Iraq into a cultural, economic and moral disaster. Even more dismaying, and greatly disturbing, "it's often impoverished mothers who sell their daughters into slavery. Girls as young as 11 and 12 are sold for anywhere from \$2,000 to \$30,000."²⁸ In other instances, mothers are choosing to prostitute themselves in order to provide the basic necessities for themselves and their families. Consider the following report from CNN:

there is a population of women who have to sell their bodies in order to keep their children alive, . . . It's a taboo that no one is speaking about. . . . There is a huge population of women who were the victims of war who had to sell their bodies, their souls and they lost it all. It crushes us to see them, but we have to work on it and that's why we started our team of women activists. . . . Most of the women that we find at hospitals [who] have tried to commit suicide" have been involved in prostitution, . . . most of the women . . . say they are driven to

²⁷ Margaret Hartmann. Women at War: Women In Iraq Are Suffering A "Silent Emergency. Jezebel.com

²⁸ *Id.*

prostitution by a desperate desire for survival in the dangerously violent and unforgiving circumstances in Iraq.²⁹

According to a 2008 U.S. State Department Trafficking in Persons Report,³⁰ the Iraqi government isn't doing anything to solve this problem. As the world continues in a global recession, which could turn to a financial depression, we can only hope for the elimination of the causes that bring about these desperate conditions. In the next section, we'll explore any recourse that might offer some relief to the people of Iraq in general, and more specifically, the women of Iraq.

IV. CONCLUSION

As mentioned, the post-war-post-dictatorial situation in Iraq is ³¹ fairly described as dismal and this has affected social, economic, cultural and political conditions. In the daily life of many Iraqis, these conditions impact their sense of personal security, housing, health and welfare. Most unfortunately, these conditions create problems that affect mainly women and children. Women, children, and indeed all Iraqis must now face a host of severe challenges that have forced them into a mode desperation, but perhaps not utter hopelessness; for as long as there is a sliver of hope, a person can arise in the morning and try to make a living, even if that means engaging herself in the oldest profession in the world, if doing so means she can feed herself and her children.

²⁹ Damon, Arwa. "Iraqi women: Prostituting Ourselves To Feed Our Children." *CNN.Com.World*. 2007. Web. (Assessed 4/07/13). <<http://edition.cnn.com/2007/WORLD/meast/08/15/iraq.prostitution/>>

³⁰ *Id.*

³¹ Human rights Watch Annual Report, 2010- 2011

We shall just mention a few of those other challenges here; political inequality, and instability; daily uncertainty with respect to food and fresh water, cultural challenges as they adjust to a highly decimated population where so many men have been killed in the past thirty years; a restless, and maybe confused generation that might have fewer educational opportunities than their parents' generation; and of course, with foreign instigators in their midst, there is the issue of personal and national security. These concerns beg the question: does the International Humanitarian Law offer any remedy? Of course it does; however, any offer requires and acceptance; otherwise, there is no deal. But for the sake of argument here, let's review several provisions International Humanitarian agreements we have previously discussed:

A. The Fourth Geneva Convention

In Part II, Fourth Geneva Convention: General Protection of the Civilian Population against Certain Consequences of War, Article 14 provides, "In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven."

B. The First Protocol

Art 54 of the First Protocol explains as follows:

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

C. The Universal Declaration of Human Rights

Article 7 of the UDHR makes the following “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

D. The Convention on The Elimination of all Forms of Discrimination against Women (CEDAW)

The CEDAW, in Article 10, states that, “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: . . . In Article 11, the CEDAW states, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . .

The above provisions are just a sample of what the International Humanitarian Law has adopted and propagated within the international community. At some time or another at least 180 of the 192 countries of the world have either ratified or acceded to these agreements. At this moment, even if it hasn't yet, something should tug at our sleeve; maybe it's just a thought trying to take form beneath our consciousness; or maybe it's a question: with all these agreements in place, and no doubt there are others under consideration, why do many of us keep up the same ungodly behavior that has afflicted humanity for tens of thousands of years?

One answer could lie in basic selfishness that forces us to think of only our own well-being. A solution to that could be constant reminders to us, and others to practice the "Golden Rule" of do unto others as you want them to do unto you.

* * *

CHAPTER VIII

CONCLUSION & SUMMARY

We have examined the protection of women rights under International Humanitarian Law within the context of the social, cultural and political and political conditions with particular focus on the women of Iraq and Palestine. Women in these two countries have suffered unparalleled difficulties that have been inflicted upon them by, in the case of Iraq, thirty years of war, and tyranny; and as for the Palestinians, fifty-five years of being denied statehood, while enduring a continual occupation. A less than optimistic view of the plight of these women living there is that they have had to keep the social fabric from being rendered asunder while their male counterparts have gone about the business ripping that garment to shreds. But as unfair and foolish as this analogy may seem, the fact remains that women as biologically and socially indispensable managers of their families, and thus their countries, have had to contend with those challenges ever since the first human looked upon the Euphrates and built a hut along its fertile banks. In these urgent times, the challenges that come to women, include not only those domestic-social chores suggested above, but even more than before, they may find weapons of war turned upon them, and their biological counterparts treating them like rubbish upon which they masturbate, then discard to the buzzards. These actions then have prompted the adaptation of laws, both national and international aimed at protecting women, and their children.

To provide a foundation from which to launch our inquiry into this matter protecting women under the International Humanitarian Law, we opened Chapter One with a brief definition of International Humanitarian Law; thereafter followed, a short discussion of each of several documents that elucidate the provisions of International Humanitarian Law. These include one of the oldest documents known to humanity: the Code of Hammurabi, an ancient King, who seemed to have known, or advised, that the “Golden Rule” doesn’t just happen; it has to be encouraged. Ironically, the Code of Hammurabi had its genesis perhaps not more than several hundred miles from where one of the most notorious dictators of modern times live in posh and extravagance, but died at the end of a rope.

Chapter One ended with a survey of the all-important Hague and Geneva Conventions, the Additional Protocols to those four Conventions, and finally the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Chapter One provided the background against which we consider the rights of women, and to some extent, civilians, whether man, woman, or child.

Chapter Two provided a descriptive survey of general protection of civilian women. It provided case examples of Iraqi and Palestinian women prisoners; discussed general protection of civilian women under the 1077 First Additional Protocol, principles of protection of civilian women under the Four Geneva Accords, the Additional Protocols and the United Nations, and introduced the Convention on the Elimination of all Forms of Discrimination against women, 1979, as well as the 1995 Peking Declaration and Women’s Special Protocol.

Chapter Three highlighted special protection for women during military operations. This chapter delved into several areas of research, among them, treatment of detained and jailed women. Chapter Four continued with a discussion of protecting women from capital punishment, and Chapter V discussed and a survey of their aid and assistance rights; while Chapter VI was a discussion of protection of women during military conflicts. There we saw a more in-depth study of the relevant treaties that purport to outline the protections for women under the International Humanitarian Law; such as Conventions, and more specifically, many of the agreements we explored in earlier chapters, as well as national legislation that aims to protect women. Particularly, we spent time surveying the International Criminal Court (ICC), which is one of the main judicial tools that are available to International Humanitarian Law in enforcing its provisions. The ICC pledges the protection of people, including women and children during military conflict, and further promise to bring criminals to justice.

Finally, in Chapter Seven, we survey the current state of affairs in Iraq. As should be expected, the country is still reeling in shock and dismay after thirty years of war and perhaps fifty of brutal dictatorship, and insurgent actions. A few international corporations, no doubt made their shareholders' happy, but at the awful expense of Iraqi culture, social and technological infra-structure, and most of all, its people. We found that women, who are expected to bear the brunt of taking care of the family—in any society—are suffering from mental illness in greater proportions than are men, and that because of war, perhaps several million women, have no husband or male relative

to help sustain. In desperation, many of these women have turned to prostituting either themselves, or in a few, hopefully rare instances, their young daughters.

I. GENERAL RECOMMENDATIONS

- (1) While woman may be considered the backbone of society, and may be exposed to killing and persecution, she is greatly affected by the changes around her more than any other member of society. The death of a husband, leaves her as a widow; killing her son is the destruction of her life; destroying her home means she will live without shelter, and sustenance: this is why we should have a complete program to protect women

- (2) The international community through the United Nations should continue to work to follow up on the Military conflicts between countries. There should be observers to accompany the military forces when they occupy a certain country, to ensure that those forces comply with the rules of the Humanitarian Law completely, and to issue reports of non-humanitarian behaviors, if any are exercised by American forces in Iraq, Israeli forces in Palestine, or any occupying anywhere. The UN Security Council, and General Assembly should review those reports promptly, and take corrective actions.

- (3) Non-government organizations, like the Red Cross and Red Crescent, Human Rights Watch, and Amnesty International, should be permitted to enter the occupied territories, and the prisons, and get reports about the conditions.

- (4) The League of Arab Countries shall take the necessary measures to eliminate the presence of any foreign forces in any Arab country, and to assist all citizens, especially women directly, and open the Arabic nations' borders for all those who suffer persecution, killing, and destruction, and offer humanitarian relief.
- (5) The international community should compensate all persecuted, tortured, and raped women, and all women who have lost their husbands and children, and to aid women, the international community should establish a monetary fund that would be funded by the wealthy countries.
- (6) The basic system for the International Criminal Court year 1998, should be modified to give it the authority to interfere in international and internal conflicts in order to observe events as they transpire, and protect citizens from military operations.

II. RECOMMENDATIONS FOR HUMANITARIAN ORGANIZATIONS¹

- (1) Humanitarian organizations should put the women issue as first priority in emergency situations because the emergency may lead women to engage in risky behaviors such as selling sex.
- (2) Humanitarian organizations should do more before and after the emergency situation to sure that their services are available and up to date.
- (3) Humanitarian organizations should have a well-prepared and well-trained staff.
- (4) Humanitarian organizations should educate survivors of an emergency situation of their services, and inform them of the access to their services. The women are not only victims, or survivors, they are also instrumental in the country's recovery.

¹ Lina Abirafeh, red cross-red crescent magazine issue 1-2011 .

III. CLOSING REMARKS

[A] woman should have every honorable motive to exertion which is enjoyed by man, to the full extent of her capacities and endowments. The case is too plain for argument. Nature has given woman the same powers, and subjected her to the same earth, breathes the same air, subsists on the same food, physical, moral, mental and spiritual. She has, therefore, an equal right with man, in all efforts to obtain and maintain a perfect existence.

— Frederick Douglass

As never before, we need the humanitarian intervention of the international community, and guided by the well-thought out principles of International Humanitarian Law, we all can work towards a viable remedy to the crushing problems in Iraq, Palestine, and elsewhere around the world. This is an important step: humanitarian intervention. It doesn't matter how many laws are written, or how well thought out they are; we have to make people aware that these laws are intended for the most noble purposes. Nor can we depend on world leaders, a few of whom can be morally bankrupt, to enforce the same. What we need are the common people to be ever on guard against "Man's inhumanity to Man, and his disregard for his biological complement: Woman." We need to rebuke those who breach the "Golden Rule," when they step out of line, not gently, but firmly.

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