

CHAPTER II

LITERATURE REVIEW

A. Definition of International Human Rights Law

The Office of the High Commission of Human Rights of United Nations explain Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.¹⁵

There are number of theories that have been used as a basis for human rights law, including those stemming from religion (i.e. the law of God which binds all humans), the law of nature which is permanent and which should be respected, positivist utilitarianism and socialist movements.¹⁶ However, most people would point to theories by influential

¹⁵ The Office of the High Commission of Human Rights of United Nations , *What are human rights?*, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>, accessed on July 22, 2013 at 10.43 am.

¹⁶ J. Shestack, " The Jurisprudence of Human Rights " in T. Meron, ed., *Human Rights in International Law* . Oxford University Press, London, 1984, Volume 1, p. 60 in Louise Doswald-

writers, such as John Locke, Thomas Paine or Jean-Jacques Rousseau, as having prompted the major developments in human rights in revolutionary constitutions of the eighteenth and nineteenth centuries. These theorists of the natural law school pondered on the relationship between the government and the individual in order to define the basis for a just society. They founded their theories on analysis of the nature of human beings and their relationships with each other and came to conclusions as to the best means of assuring mutual respect and protection.

The most commonly cited "classical" natural lawyer is Locke, whose premise is that the state of nature is one of peace, goodwill, mutual assistance and preservation. In his opinion the protection of private rights assures the protection of the common good because people have the right to protect themselves and the obligation to respect the same right of others. However, as the state of nature lacks organization, he saw government as a "social contract" according to which people confer power on the understanding that the government will retain its justification only if it protects those natural rights. He generally referred to them as "life, liberty and estate". Positivist human rights theorists, on the other hand, do not feel bound by any overriding natural law but rather base their advocacy for human rights protection on reason which shows that cooperation and mutual respect are the most advantageous behaviour for both individuals and society.

The other important factor to be taken into account in the development of human rights is the existence of various cultural traditions and advocates for social development. Although coming from different starting points, these influences stressed the importance of providing means to maintain life as well as assuring protection from economic and social exploitation. A particularly important development which influenced later human rights law was the creation of the International Labour Organization in 1919 which made major efforts, through the development of treaties and the installation of supervisory mechanisms, to improve economic and social (including health) conditions for workers.¹⁷

Another contribution to the conceptual development of international human rights law was the international law governing the treatment of aliens and national minorities. In 1927 the United States brought an international claim on behalf of a U.S. citizen against Mexico. In the *Chattin Case*¹⁸, a U.S. citizen had been arrested in Mexico for embezzlement. Under a treaty between both states establishing claims commission, the U.S. on behalf Mr. Chattin claimed that the Mexican authorities had violated several of Chattin's due process rights as

¹⁷ F. Wolf, "Human Rights and the International Labour Organization" in T. Meron, ed., *Human Rights and International Law*, op.cit., No. 16, Volume 11, p. 273 in Louise Doswald-Beck, Sylvain Vité, 1993, *International Humanitarian Law and Human Rights Law, International Review of the Red Cross*, No. 293.

¹⁸ United States of America (B.E. Chattin) v. United Mexican States, United States-Mexican Claims Commission, 4 U.N.R.I.A.A.282(1927) in) in Martin, Forrest, Francisco, 2006,

recognized under international law. The commission found for the United States (and Chattin).¹⁹

However both international human rights and humanitarian laws are two different branches of law, yet the development in international and national jurisprudence and practice have led to the recognition that these two bodies of law not only share a common humanist ideal dignity and integrity but overlap substantially practice. The most frequent examples are situations of occupation or non-international armed conflict where human rights laws complement the protection provided by humanitarian law.

B. Definition of International Humanitarian Law

Restrictions on hostile activities are to be found in many cultures and typically originate in religious values and the development of military philosophies. The extent to which these customs resemble each other is of particular interest and in general their similarities relate both to the expected behavior of combatants between themselves and to the need to spare non-combatants.²⁰ Traditional manuals of humanitarian law cite the basic principles of this law as being those of military necessity, humanity

¹⁹ Martin, Forrest, Francisco, 2006, *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*, Cambridge University Press, Cambridge, UK, p. 03.

²⁰ Part I of International Dimensions of Humanitarian Law, UNESCO, Paris, Henry Dunant Institutè Genève. 1988 in Beck. Louise. Doswald, and Vité, Sylvian, 1993, *International*

and chivalry.²¹ The last criterion seems out of place in the modern world, but it is of importance for an understanding of the origin and nature of humanitarian law.

Based on International Committee of Red Cross, international humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.²² International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States; treaties or conventions, in customary rules, which consist of State practice considered by them as legally binding, and in general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

The first factor of importance is that humanitarian law was developed at a time when recourse to force was not illegal as an instrument of

²¹ L. Oppenheim, *International Law, Volume II, Disputes, War and Neutrality*, Seventh edition, Longmans and Green, London, 1952, pp. 226-227 in Beck, Louise, Doswald, and Vité, Sylvian, 1993, *International Humanitarian Law and Human Rights Law; International Review of the Red Cross*, No. 293.

²² ICRC: Advisory service on International Humanitarian Law, 2004, *What is International*

national policy. Although it is true that one of the influences on the development of the law in Europe was the church's just war doctrine, which also encompassed the justice of resorting to force, the foundations of international humanitarian law were laid at a time when there was no disgrace in beginning a war. The motivation for restraint in behavior during war stemmed from notions of what was considered to be honorable and, in the nineteenth century in particular, what was perceived as civilized. The law was therefore in large part based on the appropriate respect that was due to another professional army. Later, customary law of war the Lieber Code of 1863²³, as this code was used as the principal basis for the development of the Hague Conventions of 1899 and 1907 which in turn influenced later developments of international humanitarian law. Between World Wars I and II, other humanitarian treaties were adopted. The Geneva Conventions of 1929 governed the conduct of war, and the Kellogg-Briand Pact outlawed war of aggression. In 1937, the League of Nations adopted a Convention Against terrorism and optional protocol provided for the establishment of a special international

²³ Instructions for the Government of Armies in the Field, 24 April 1863, prepared by Francis Lieber during the American Civil War, and promulgated by President Lincoln as General Orders No 100. Reproduced in Schindler and Toman, eds., *The Laws of Armed Conflicts*, Martinus Nijhoff, Dordrecht; Henry Dunant Institute, Geneva, 1988 in Beck, Louise, Doswald,

criminal court to prosecute crimes of terrorism, although the convention never came into force.²⁴

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

International humanitarian law is increasingly perceived as part of human rights law applicable in armed conflict. This trend can be traced back to the United Nations Human Rights Conference held in Tehran in 1968²⁵ which not only encouraged the development of humanitarian law itself, but also marked the beginning of a growing use by the United Nations of humanitarian law during its examination of the human rights situation in certain countries or during its thematic studies. The greater awareness of the relevance of humanitarian law to the protection of people in armed conflict, coupled with the increasing use of human rights law in international affairs, means that both these areas of law now have a much greater international profile and are regularly being used together in the work of both international and non-governmental organizations.

Both international human rights and international humanitarian laws are branch of international law concern to protect the lives, person, and

²⁴ C. Oliver, *The International Legal System* 910 (4th ed 1995) in Forrest, Francisco Martin, 2006, *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*, Cambridge University Press, Cambridge, UK, p. 03.

²⁵ Resolution XXIII Human Rights in Armed Conflicts adopted by the International Conference on Human Rights, Tehran, 12 May 1968, in Louise Doswald-Beck, Sylvain Vité, 1993, *International*

dignity of human beings from different angle.²⁶ International human rights laws provide fundamental right of individual which are inherent entitlements which belong to every person as a consequence of human being. For applicability, principally international human rights law applies all the time, *i.e.* both peace and armed conflict situation. However some treaties permit national government to derogate from certain rights in situation of public emergency threatening the life of nation.²⁷

On the other side, international humanitarian law provides the protection of persons and properties which are or may be affected by an armed conflict and limit the rights of the parties to an armed conflict for using methods and means of warfare of their choice. International humanitarian law is applicable only in times of armed conflict²⁸, whether international or non-international. Since, international humanitarian law deals with an exceptional situation (armed conflict), no derogations from its provision are permitted.

All parties of to an armed conflict binds by international humanitarian law, even in international armed conflict it must be observed by the states involved, whereas in internal armed conflicts it bind the government, as well as the groups fighting against it or among themselves.

²⁶ Abdul Ghafur Hamid, 2011, *Public International Law: A Practical Approach*, Sweet and Maxwell Asia, Malaysia, p. 299.

²⁷ Mohammad Naqib Ishan Jan, *opcit* p. 298.

²⁸ Peter Malanczuk, *opcit* p. 342.

Thus, international humanitarian law lays down rules that are applicable to both States and non-States actors.

Moreover, individuals also be bound while do not have specific duties under international humanitarian law treaties. International humanitarian law also provides for individual criminal responsibility for violations that may be constitute international crime, namely, genocide, crimes against humanity and torture.²⁹ First, based on article II and III the Convention on the Prevention and Punishment of the Crime of Genocide explained what genocide is, as follow:³⁰

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in the whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

²⁹ Abdul Hamid Ghafur, *op.cit* p. 451.

Article III

The following acts shall be punishable:

- a) Genocide;
- b) Conspiracy to commit genocide;
- c) Direct and public incitement to commit genocide;
- d) Attempt to commit genocide;
- e) Complicity in genocide.

Second, crimes against humanity which strictly govern by Charter of the International Military Tribunal and Statute of the International Criminal Court, the definition is as follow:³¹

Article 6 of Charter of the International Military Tribunal:

....

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

....

- c) **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with

³¹ Forrest, Francisco Martin, *International Human Rights and Humanitarian Laws: Treaties, Cases, and Analysis*, Cambridge University Press: UK, p. 474-475.

any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Article 5 and 7 Statute of the International Criminal Court:

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

....

(b) Crimes against humanity;

....

Article 7

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) Rape, sexual slavery, enforced prostitution, forced marriage, slavery or similar practices;

(e) Persecution on religious, racial, ethnic or political grounds;

(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

(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;

(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

(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.

Third, torture, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Inter American

Convention to Prevent And Punish Torture, clearly define and govern about it, as follow:

Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment

Article 1

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Inter-American Convention to Prevent and Punish Torture

Article 2

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for

purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Article 3

The following shall be held guilty of the crime of torture:

- a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
- b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

These crimes above are also subject to universal jurisdiction. The *ad hoc* International Criminal Tribunal for the former Yugoslavia and Rwanda, as well as the International Criminal Court, has a jurisdiction over violations of both international human rights and international humanitarian laws. In an armed conflict dealing to be one to conduct the parties, although both international human rights law and international humanitarian law traditionally are two distinct branches of law.

D. Prisoners of War

1. Definition of Prisoners of War

For most of human history, depending on the culture of the victors, combatants on the losing side in a battle could expect to be either slaughtered or enslaved. The first Roman gladiators were prisoners of war and were named according to their ethnic roots such as Samnite, Thracian and the Gaul (Gallus). Greek and Trojan soldiers offering rewards of wealth to enemies who have defeated them on the battlefield in exchange for mercy, but this is not always accepted. In pre-Islamic Arabia, upon capture, those captives not executed were made to beg for their subsistence.

During the early reforms under Islam, Muhammad SAW changed this custom and made it the responsibility of the Islamic government to provide food and clothing, on a reasonable basis, to captives,

“... captives in the custody of a

person, then the responsibility was on the individual.³² He established the rule that prisoners of war must be guarded and not ill-treated, and that after the fighting was over, the prisoners were expected to be either released or ransomed.

The freeing of prisoners in particular was highly recommended as a charitable act. Mecca was the first city to have the benevolent code applied. It is misunderstood that the leader of the Muslim force capturing non-Muslim prisoners could choose whether to kill prisoners, to ransom them, to enslave them, or to cut off their hands and feet on alternate sides because this law is applied not to the of wars but instead to people (either Muslims or non-Muslims) who do mischief in the land, gangsters, killers of the people for robbery or raping of women or children. However, Christians who were captured in the Crusades, combatants and noncombatants alike, were sold into slavery if they could not pay a ransom.³³

During the 19th century, there were increased efforts to improve the treatment and processing of prisoners. The extensive period of conflict during the American Revolutionary War (or American War of Independence) and Napoleonic Wars (1793–1815), followed by the Anglo-American War of 1812, led to the emergence of a cartel system for the exchange of prisoners, even while the belligerents were at war.

³² Maududi, 1967, *Introduction of Ad-Dahr: "Period of Revelation"*, p. 159.

³³ Neeson, S. A. 2004. *Islam: It's History, Teaching, and Practices*. Bloomington: Indiana

A cartel was usually arranged by the respective armed service for the exchange of like-ranked personnel. The aim was to achieve a reduction in the number of prisoners held, while at the same time alleviating shortages of skilled personnel in the home country.

Later, as a result of these emerging conventions a number of international conferences were held, starting with the Brussels Conference of 1874, with nations agreeing that it was necessary to prevent inhumane treatment of prisoners and the use of weapons causing unnecessary harm. Although no agreements were immediately ratified by the participating nations, work was continued that resulted in new conventions being adopted and becoming recognized as international law that specified that prisoners of war be treated humanely and diplomatically.

A prisoner of war (POW, PoW, PW, P/W, WP, PsW) or enemy prisoner of war (EPW) is a person, whether civilian or combatant, who is held in custody by an enemy power during or immediately after an armed conflict. All of the victims of armed conflict, prisoners of war are perhaps the most vulnerable. Not all persons captured in the course of armed conflict are entitled to the status of prisoners of war and the legal protection associated therewith. Persons who captured in an armed conflict and entitled to be treated as prisoners basically have to be recognized as combatants entitled to combatant's privilege which

gives them immunity from punishment for crimes constituting lawful acts of war such as killing enemy troops.

To qualify under the Third Geneva Convention, a combatant must have conducted military operations according to the laws and customs of war, be part of a chain of command, wear a fixed distinctive marking, visible from a distance and bear arms openly. Thus, uniforms and/or badges are important in determining prisoner-of-war status. In practice, these criteria are rarely interpreted strictly. Guerrillas, for example, usually do not wear a uniform or carry arms openly, but captured guerrillas are often granted POW status.

Based on article 4A of the 1949 Geneva Convention (III) related to the Protection of Prisoners of Wars provides definition as follow:³⁴

Prisoner of war in the sense of the present convention, are persons belonging to one of the following categories, who have fallen into the power of enemy:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed conflict.
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or

³⁴ Geneva Convention III of 1949.

outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following condition:

- a. that of being commanded by a person responsible for his subordinates;
 - b. that of having a fixed distinctive sign recognizable at a distance;
 - c. that of carrying arms openly;
 - d. that of conducting their operations in accordance with the laws and customs of war.
3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity

5. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

2. The Treatment of Prisoners of War

A central feature of the laws of armed conflict ever since the eighteenth century has been the distinction between combatants and civilians. The distinction is important for two reasons. First, combatants are legitimate targets, civilians are not. Secondly, lawful combatants are entitled to participate in hostilities and, if captured, to be treated as prisoners of war. The treatment of prisoners of war is the subject of a detailed regime in the Geneva POW Convention, 1949, and is one of the most developed areas of the laws of armed conflict. The general principle on which the convention is based is that a

has been detained following capture solely for the purpose of preventing him from rejoining the enemy's armed forces.³⁵

The prisoner of war shall be protected against all acts of violence and reprisals, and shall be respected, treated humanely with no adverse discrimination.³⁶ Any unlawful act or omission by the detaining power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as "serious breach" of the convention.³⁷

Remember how important and sensitive the issues on the prisoner of war the international community try to answer the problem by a convention. General Protection of Prisoner of Wars provision on The Geneva Convention III provides the treatment of the prisoner of war answer the problem by clearly explained in part of, as follows:

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of

³⁵ Michael D. Evans, 2006, *International Law*, Oxford University Press, Great Britain p. 801

the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

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.

Nevertheless if that Power fails to carry out the provisions of the

Convention in any important respect, the Detaining Power shall be

prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honors. Women 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.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Article 16

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

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.

E. The Relationship between International Human Rights Law, International Humanitarian Law and Treatment of Gaddafi as Prisoner of War

Muammar Gaddafi became the de-facto ruler of Libya after he led a military coup that overthrew King Idris I in 1969.³⁸ Under Gaddafi, Libya was theoretically a decentralized, direct democracy³⁹ state run according to the philosophy of Gaddafi's The Green Book, with Gaddafi retaining a ceremonial position. Libya was officially run by a system of people's committees which served as local governments for the country's subdivisions, an indirectly-elected General People's Congress as the legislature, and the General People's Committee, led by a Secretary-General, as the executive branch. According to Freedom House, however, these structures were often manipulated to ensure the dominance of

³⁸ Viscus, Gregory, 2011. *Qaddafi-Is No Mubarak Overthrow May Mean "Descent to Chaos"*, <http://www.bloomberg.com/news/2011-02-23/qaddafi-is-no-mubarak-overthrow-may-mean-descent-to-chaos-.html> accessed on April 12, 2012 at 07.12 pm.

³⁹ Robbins, James, 2007. *Eyewitness: Dialogue in the Desert*, <http://news.bbc.co.uk/2/hi/africa/6425873.stm> accessed on April 12, 2012 at 07.47 pm.

Gaddafi, who reportedly continued to dominate all aspects of government.⁴⁰

According to several Western media sources, Gaddafi feared a military coup against his government and deliberately kept Libya's military relatively weak. The Libyan Army consisted of about 50,000 personnel. It's most powerful units were four crack brigades of highly equipped and trained soldiers, composed of members of Gaddafi's tribe or members of other tribes loyal to him. One, the Khamis Brigade, was led by his son Khamis. Local militias and Revolutionary Committees across the country were also kept well-armed. By contrast, regular military units were poorly armed and trained, and were armed with largely outdated military equipment.⁴¹

The facts above explain about style how Gaddafi led Libya, and finally the war happened. The focus discussion is on the end of war; died of Gaddafi during arrestment, is Gaddafi proved did human rights violation or other criminal act will be different discussion topic. In August, rebel forces began a coastal offensive, taking back territory lost weeks

⁴⁰ <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7862> accessed on April 12, 2012 at 08.07 pm.

⁴¹ "Qaddafi Survival Means Weak Army, Co-Opted Tribes". *KFMB-TV*. 2011, <http://www.cbs8.com/story/14084125/clampdown-in-libyan-capital-as-protests-close-in?redirected=true>. accessed on April 12, 2012 at 08.13 pm, and "Gadhafi's Military Muscle Concentrated In Elite Units". *NPR*. 2011. <http://www.npr.org/2011/03/10/134404618/gadhafis-military-muscle-concentrated-in-elite-units>. accessed on April 12, 2012 at 08.17 pm, and

"Video Libyan Leader Muammar Gaddafi's Forces Facing Modern Firepower From RAF". *Sky*

before and ultimately capturing the capital city of Tripoli, while Gaddafi evaded capture and loyalists engaged in a rearguard campaign. On 16 September 2011, the National Transitional Council was recognized by the United Nations as the legal representative of Libya, replacing the Gaddafi government. Muammar Gaddafi remained at large until 20 October 2011, when he was captured and killed attempting to escape from Sirte. The National Transitional Council "declared the liberation of Libya" and the official end of the war on 23 October 2011.⁴²

⁴² *Ibid.* p. 7.