

**AN APPRAISAL OF THE LEGAL REGIME FOR THE PROTECTION OF CIVILIANS
AND CIVILIAN OBJECTS IN ARMED CONFLICTS**

BY

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**BEING A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE
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APRIL, 2021

DECLARATION

I declare that the work in this dissertation entitled. “**An Appraisal of the Legal Regime for the Protection of Civilians and Civilian Objects in Armed Conflicts**” has been carried out by me in the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and a list of reference provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

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Signature

Date

CERTIFICATION

This dissertation entitled. “**An Appraisal of the Legal Regime for the Protection of Civilians and Civilian Objects in Armed Conflicts**” has been carried out by me in the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and a list of reference provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

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DEDICATION

This dissertation is dedicated to my parents Alh. Abdu Gambo and Hajiya Hafiza A. Gambo for all their unending support and love.

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I give thanks and praises to Almighty Allah for the successful completion of this dissertation. I beseech Him to continue to shower His blessings and mercy on Prophet Muhammad (PBUH).

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LIST OF ABBREVIATIONS

CPPCG	-	Convention on the Prevention and Punishment of the Crime of Genocide
ICC	-	International Criminal Court
ICJ	-	International Court of Justice
ICRC	-	International Committee of the Red Cross
ICTY	-	International Criminal Tribunal for Former Yugoslavia
ICTR	-	International Criminal Tribunal for Rwanda
IHL	-	International Humanitarian Law
ILC	-	International Labour Congress
NGO	-	Non Governmental Organizations
UK	-	United Kingdom
UN	-	United Nation
UNESCO	-	United Nations Educational, Scientific and Cultural Organization
UNGA	-	United Nations General Assembly
UNHR	-	United Nation Human Right
UNTAET	-	The United National Transitional Administration in East Timor
US	-	United States
USA	-	United States of America

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ABSTRACT

Conflicts are inevitable in our society today. Modern armed conflicts have civilians as majority of casualties despite of course, the presence of the rules of IHL seeking to protect them from the savages of war. This is because of the changing trend in warfare whereby the theatre of violence is moving closer to the people. Yet they are always the overwhelming majority of victims. Civilians and civilian objects are always vulnerable which this research seeks to address. It also seeks to address the growing trend in armed conflict and the adequacy of the existing laws in the face of the changing trend. This dissertation examines the legal regime that protect civilians and civilian objects during armed conflict with a view to examine the mechanisms established for this purpose. States must make concerted efforts to see that certain situations are considered and incorporated into the rules to strengthen the protection and curtail further gross violations.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

A Conflict occurs when people don't agree on something, it's a part of life and isn't necessarily a bad thing especially if it is dealt with in a healthy and positive fashion, addressing and resolving the issue. The benefit of conflict is that it forces you to grow and improve your relationships. Conflict happen when differences arise due to the various ideas, perceptions, motivations, and desires that a person has and which may not jive when those of another person. A problem is something that needs solving, answering or considering.

An Armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in At least 25 battle related deaths in one calendar year.

In contemporary armed conflicts, innocent civilians often constitute an overwhelming majority of victims and have at times, been deliberately targeted. The most vulnerable populations at risk include women and children who are often killed, raped and sexually abused, kidnapped and enslaved, and children who are taken and forced to become soldiers. Survivors are often displaced, by force or for lack of choice, taking refuge in camps where they are often defenseless against armed attacks and harassment. Many are marred by mines and other indiscriminate munitions. Even more die of the indirect effects of armed conflict; disease malnutrition, famine and hunger.

Protecting civilians has emerged as a central purpose of many contemporary peace operations. Both civilian and military peacekeepers increasingly recognize the moral duty and operational importance of protecting threatened civilian populations during peacekeeping operations. As peacekeeping missions have grown in number, frequency, size and mandate, the United Nations has made increasingly concerted efforts to put civilian protection at the heart of these operations. How well peacekeeping missions protect civilians is often an important benchmark for evaluating a mission's effectiveness.¹

International Humanitarian Law hereinafter referred to as IHL being the branch of International law concerned with the protection of victims of armed conflict², is a set of rules and principles which aims for humanitarian purposes to limit the effects of armed conflict by protecting persons who are not participating in the hostilities, and by restricting and regulating the means and methods of warfare available to combatants. IHL is well developed and covers a wide variety of aspects of warfare, offering protection to civilians and civilian objects. The driving force behind the development of IHL has been the ICRC, founded in 1863. It initiated the process which led to the conclusion of the Geneva Conventions for the protection of the victims of war 1864, 1906, 1929 and 1949³.

IHL has always frowned at the attitude of belligerents who wreck destruction on civilians and civilian objects, including the natural environment.⁴ As early as 1868, the Declaration of Saint Petersburg stated that “the only legitimate objective which states should endeavor to

¹ ICRC what is International Humanitarian Law?

(<http://www.ICRC.org/web/eng/siteeng.nsf/html/humanitarianlaw/factsheet>) 12-3-2016 at 12:30 pm

² Ladan M.T. (1991) *Introduction to Humanitarian Law International*. Ahmadu Bello University Press Ltd, Zaria, Kaduna State, p137

³³ *ibid*

⁴ Antoine, B. (1991) *Protection of Environment in Time of Armed Conflict*. 31 Intl Rev. Red Cross 567, p12.

accomplish during war is to weaken the military forces of the enemy”.⁵The concept of military necessity and proportionality also set definite limits on warfare; only those acts of war permitted which are proportional to the lawful objective of a military operation and are actually necessary to achieve the objective. The 1898 and 1907 Hague conventions on land also require all necessary steps to be taken during seizures and bombardments to protect civilians, cultural and historical landmarks and objects.⁶ The 1907 Hague Convention Concerning Bombardment by Naval Forces in Time of War and the 1923 Hague Rules of Air Warfare provide protection to cultural and historical objects.⁷ The 1954 International Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols provide measures of protection, against ravages of war for works of art, monuments and historic buildings,⁸ cultural and historical property is also protected by customary law against pillaging. Others are the 1925 Geneva Gas Protocol and the recent 1972 Biological Weapons Convention, the Additional Protocols, the 1980 Convention on Certain Conventional Weapons and its five Protocols, the 1993 Chemical Weapons Convention and the 1997 Ottawa Convention banning anti-personnel landmines. The four Geneva Conventions of 1949 and the two Additional Protocols of 1977 provide an extensive regime for the protection of persons who do not or no longer participate in the hostilities. It provides that civilians under the power of enemy forces must be treated humanely in all circumstances, without any adverse distinction. A very long time has passed since the existence and adoption of these treaties by the diplomatic conference. These years have

⁵ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Nov. 29, 1868

⁶ Article 27 Hague Convention Respecting the Laws and Customs of War on Land 1907

⁷ Sheindler, D. and Toman, J. (1981) *The Laws of Armed Conflict: A Collection of Conventions, Resolutions and other Documents*. Henry Dunant Institute Geneva. M. Nijhoff Publication, Dordrecht. p.63

⁸ Article 4(1) Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954

unfortunately been marked by a proliferation of armed conflicts affecting every continent. Throughout these conflicts, these treaties and in particular common article three of the Geneva Conventions applicable in non-international armed conflict together with their protocols have provided legal protection to war victims namely persons who do not or no longer participate in hostilities (the wounded, sick, shipwrecked).

Despite these provisions against attacking civilians and civilian objects, violations of the rules of IHL, which limits the right of belligerents in war still exists. Explosive weapons are used indiscriminately in populated areas. Civilians and civilian objects are deliberately targeted; innocent persons are killed, wounded, harassed and tortured, schools are attacked or used for military purposes, health care facilities are also attacked indiscriminately. Critical infrastructure on which civilians depend for their livelihood and survival like power stations, water treatment plants and hospitals are continuously and cumulatively damaged so that they cease to provide essential services to meet the people's basic needs.

It is against this backdrop that this dissertation examines or appraises these rules in order to determine the reasons for the constant and countless violations, which always results in sufferings and deaths that could have been avoided had IHL been fully adhered to. In doing so, the writer discusses the general protection of civilians and civilian objects in armed conflict situations under the Geneva Convention, the Additional Protocols, the Rome Statute and Customary IHL. It also makes an in-depth analysis of the concept of armed conflict, the laws of armed conflict (laws of war or IHL), the development of the laws of armed conflict and the meaning of civilians and civilian objects. The dissertation further considers some grave breaches of the laws of armed conflict and conclude by making some practical

recommendations that will ensure better protection of civilians and civilian objects in armed conflict situations.

1.2 Statement of the Problem

In today's armed conflicts, whether International or Internal, the vast majority of casualties are now civilians and civilian objects. Increasingly, civilians are victims of deliberate attacks and other serious violations by parties to a conflict, making them vulnerable and helpless.

In the face of the vulnerability of civilians, and the availability of laws of armed conflict, the realities of armed conflict today tend to show that there are gaps in the law. These gaps create a vacuum whenever the law is to apply to certain situations, causing severe suffering to the civilian population and damage to civilian objects (properties). This research seeks to address the issue by making meaning suggestions that will help alleviate the situation.

The trend is that armed conflict is moving from international to non-international and focusing more on lesser conflicts. In this shifting trend, the theatre of violence is moving closer and closer to the people, and civilians are becoming more and more open to attacks, because the dividing line between combatants and civilians is frequently blurred. Combatants often live or seek shelter in villages and sometimes use innocent civilians, even children, as human shield. In some cases, communities have provided logistic support to armed groups either voluntarily or under compulsion and become targeted as a consequence. The field of operation has also shifted from air to urban settlement in non-international armed conflict, bringing the hostilities closer to the people. Also, civilians are more endangered because they share same attributes with members of armed groups in terms of looks, shelter, appearance and even speech because they may speak the same language with the people. In Nigeria for

instance, you can't easily identify members of the dreaded Boko Haram group from civilians because they live within the people, dress like them and use the same amenities with them. This research will consider possible solutions to help the situation.

1.3 Aim and Objectives of the Study

The aim of this research is to appraise the legal regime for the protection of civilians and civilian objects in armed conflict with a view to achieving the following objectives:

1. To establish a case for the workability of the available laws in relation to the language of the text and the ambiguities inherent in them.
2. To examine the mechanism put in place to ensure compliance with the available laws of armed conflict.
3. To proffer workable suggestions and recommendations to fill up the missing gaps in the existing laws.

1.4 Justification of the Study

This research will be of immense help to the authorities in their effort to come up with workable policies towards ensuring adequate protection of civilians and civilian objects. It will make meaningful contribution in the efforts made at strengthening the laws to ensure maximum protection of civilians and civilian objects.

1.5 Scope of the Study

This research is limited to the laws analysis of the laws of armed conflict relating to the protection of civilians and civilian objects.

1.6 Research Methodology

The methodology used, is doctrinal which, is a library oriented research. Materials consulted include primary and secondary sources. The primary sources include: information obtained from relevant statutes and case laws, secondary sources consist of information obtained from books of both foreign and local authors, journals, articles published and unpublished, conferences and resolutions of international organizations.

1.7 Literature Review

According to Ishan-jan M.N and Haruna A.L. in their article titled ‘Civilian Protection And Humanitarian Crisis in Armed Conflict: The Paradigm of Syrian Conflict’⁹, discussed in detail the protection of civilians and civilian objects in armed conflict and how despite the rules provided under IHL, civilians are still the victims of armed conflict. They opined that the rules of IHL are adequate but that it is the general impunity on the part of those responsible for the respect, implementation and enforcement of IHL and other applicable rules are the impediments to the protection of civilians in armed conflict. However, the article’s focal point is on Syria and not the universal applicability of the rules. Armed conflicts occur everywhere and cannot be restricted to just one instance.

Ohuruogu C.C and Akpoghome T. in an article titled ‘State Responsibility To Observe Legal Restraint in Armed Conflict’¹⁰ examined state responsibility to observe legal restraint in armed conflicts and noted that under IHL, states must respect and protect the rules and have a duty of due diligence in ensuring compliance with the rules. However, this article did not

⁹ Ishan-jan M.N and Haruna A.L. (2017). Civilian Protection And Humanitarian Crisis in Armed Conflict: The Paradigm of Syrian Conflict. *International Journal of Humanitarian Law, (IJHL)* Vol:1 No:1.

¹⁰ Ohuruogu C.C and Akpoghome T. (2017) State Responsibility to Observe Legal Restraint in Armed Conflict. *ibid*

discuss individual protections accorded civilians and other protected persons alike in armed conflict which gives rise to state responsibility

Brian Sang Y.K. in 'Contemporary Conflicts and Protection Gaps in International Humanitarian Law: The Necessity and Practical Utility of Fundamental Standards of Humanity'¹¹ discussed the challenges in observing protection rules during armed conflict due to the nature of present day conflicts, which according to him differ considerably from that of yesteryears. He opined that there is lack of clear guidance regarding the rules of international law that should govern the use of armed forces and other related conduct in such exceptional conditions create an environment for arbitrary denials of elementary humanitarian guarantees of international law. This article with due respect is so restricted in scope that it focuses only on the definition of a particular situation as either an internal or international armed conflict, and the applicability or otherwise of the rules of IHL in every given situation.

Ayagi N.A in his article 'Boko Haram and The Law: An Appraisal of the Rule of Law-Based and The Security-Based Approaches to Counter Terrorism'¹² discussed the reasons in his opinion why there are constant breaches in armed conflict situations. He is of the view that since the ratification of the Geneva Conventions and their protocols, that the place of rule of law and human rights in and during armed conflict has been secured. But that contemporary international terrorism has changed the altitude of actors on the application of the set standard, which seem to be more militaristic than legalistic, with the attendant non-observance of procedure during and after conflict which in turn greatly affect civilians and civilian objects.

¹¹ Brian Sang Y.K. (2015) Contemporary Conflicts and Protection Gaps in International Humanitarian Law: The Necessity and Practical Utility of Fundamental Standards of Humanity. *African Year Book on International Humanitarian Law*, 24.

¹² Ayagi N.A. (2016) Boko Haram and The Law: An Appraisal of the Rule of Law--Based and The Security-Based Approaches to Counter Terrorism. *Ahmadu Bello University Law Journal (A.B.U.L.J)*, vol. 36 (2016)

Even though the article touches on protection guarantees in conflict situations, its main focus is on terrorism and counter terrorism as opposed to the protection of civilians in armed conflict situations.

Haruna A.L. in his article ‘Defining the Libyan Crisis: International or Non international or Internationalized Internal Armed Conflict?’¹³ Discussed the concept of armed conflict in relation to the crisis in Libya, where he made reference to the several and overwhelming civilian casualties with the attendant loss of lives, damage to the environment, sufferings, hunger and destructions of property. He further discussed the negative effects of the crisis on innocent civilians and the numerous violations of the rules of IHL. It is however not directly related to civilian protection but rather focus on armed conflict generally and to the Libyan crisis in particular.

Diram A.H and Diram B.H. in an article titled ‘Protection of Civilians in Armed Conflict: Can Boko Haram Benefit?’¹⁴ Stated that during armed conflicts, civilians often pay a heavy price. They may face daily threats of violence and death as they find themselves inadvertently caught up in the middle of conflict. That providing protection to civilian-victim of Boko Haram attacks can contribute immensely towards managing and reducing the effects of conflicts on the affected populations. For example, providing protection can help to ensure that the negative intents of armed groups (including Boko Haram fighter) are less inclined to target civilians; and that civilian victims can have access to humanitarian assistance. But that despite being provided with protection under IHL and Human Rights Law, civilians continue

¹³ Haruna A.L. (2010) Defining the Libyan Crisis: International or Non international or Internationalised Internal Armed Conflict? *Bayero University Journal of Public Law*, vol. 2, no 1 June 2010. P116

¹⁴ Diram A.H and Diram B.H. (2016) Protection Civilians in Armed Conflict: Can Boko Haram Benefit? *Unimaid Journal of Private and Property Law (UJPPL)* 2534-6181

to be victims of violence and are sometimes deliberately targeted by belligerents as can be seen in the case of Boko Haram. They are of the view that States are responsible for addressing the issue of IHL and human rights abuses in armed conflict and that parties and the international community at large are called upon to respect, protect and ensure respect of these rights by various means. In conclusion, they opined that the state cannot protect its civilians against the effect of Boko Haram but that the state is eligible to provide humanitarian assistance to victims of the conflict. This article is a beautiful piece as it addresses the plight of civilians in conflict zones, in particular the Boko Haram ridden areas. However, this article is so restrictive, as it deals with only Boko Haram which is just an aspect of armed conflict. Further, a lot of other countries are going through desperate situations and could have provided a holistic approach.

Haruna A.L. and Kwagyang G.U in ‘Tracing Humanity in Warfare: An Exposition of the Evolutionary Trend of International Humanitarian Law’¹⁵ examined the trend of development of IHL right from antiquity, and shows that application of humanitarian considerations in armed conflict was not systematic in the early society. They traced the evolution of IHL from the early society through the middle ages to the period of codification and the modern era. They believe that the protection of civilians in armed conflict has been a cornerstone of each era of the evolution of IHL and that the laws have been developed over the years, offering protection to victims of war and limiting permissible means and methods of warfare. This article did not however highlight the protections as discussed neither did it determine its

¹⁵ Haruna A.L. and Kwagyang G.U (2014) Tracing Humanity in Warfare: An Exposition of the Evolutionary Trend of International Humanitarian Law. *Global Journal of Politics and Law Research*, vol. 2, No 3, p40.

application or extent. Its more concerned with the evolution of IHL from time immemorial till the present day.

Hamid A. and Sein K.M. in ‘Main Causes of Civilian Vulnerability in Non-International Armed Conflict: An Appraisal of the Legal Factors’¹⁶ discussed the main factors that cause civilian harm in a non-international armed conflict, which according to them could be either legal or non-legal. They further examined the legal factors that contribute to the vulnerability of civilians in a civil war situation and examines each and every factor in search of possible solutions or amelioration. The article only focus on the vulnerability of civilians in a non-international armed conflict, and it is the opinion of this writer that the protection of civilians should not be limited to a particular type of situation, which is the focus of his dissertation.

According to Haruna A.L *et al.* in an article titled ‘IHL and Environment in Armed Conflicts: Examining the Effects of the Use of Chemical Weapons in Syria’¹⁷, IHL has set out restrictions on the means and methods of warfare to be employed by belligerents, which must not cause widespread or long term damage to the natural environment. In line with the restrictions, it further prohibits the use of chemical weapons during armed conflict. Yet several chemical attacks were experienced in the conflict in Syria. That the chemical attacks and other chemical agents that are dangerous to human beings, animals, and the natural environment were used which led to the death of thousands of civilians and the natural environment was contaminated by toxic chemicals. This article tackles an aspect of the scope of this dissertation. However, it covers only a little portion of the entire work which is the

¹⁶ Hamid A. and Sein K.M. (2013) Main Causes of Civilian Vulnerability in a Non-International Armed Conflict: An Appraisal of the Legal Factors. *Asian Journal of Social Sciences and Humanities*, 2(4), 34.

¹⁷ Haruna A.L, Magashi A.I and Sandabe A.K. (2017) IHL and Environment in Armed Conflicts: Examining the Effects of the Use of Chemical Weapons in Syria. *Unimaid Journal of Private and Property Law (UJPPL)*, 233-6181, p196

prohibition against damage to the natural environment and also just restricted to the conflict in Syria.

In Saul B.'s article 'Enhancing Civilian Protection by Engaging Non-state Armed Groups under International Humanitarian Law'¹⁸, he contended that most contemporary armed conflicts are non-international, that the application of IHL to non-state armed groups, the mechanisms for holding them accountable for violations, and international engagement with them to promote humanitarian protection of civilians remain underdeveloped. He suggested that states and international actors should enhance engagement with non-state actors to improve respect for IHL including through legal and quasi-legal tools and socialization processes of norm infusion, persuasion, and social pressure. This stand point with respect is far reaching, in that non-state armed groups cannot easily be engaged in any meaningful discussion' if engaging them possible, then it will be easier to persuade them to stop the violence nor better still get them arrested to face the law in the process of engaging them.

Hultman L. *et al* in an article titled 'United Nations Peace Keeping and Civilian Protection in Civil War'¹⁹ posed a very interesting question concerning civilian protection in non-international armed conflict, to with; Does United Nations Peacekeeping protect civilians in civil war? Answering the above poser in the negative, they stated that civilian protection is a primary purpose of UN peace keeping, yet there is little systematic evidence for whether peacekeeping prevents civilian deaths. And they proposed that UN Peacekeeping can protect civilians if missions are adequately composed of military troops and police in large numbers.

¹⁸ Saul B.(2016) Enhancing Civilian Protection by Engaging Non-state Armed Groups under International Humanitarian Law. *Journal of Conflict and Security Law*, vol22, p39

¹⁹ Hultman L., Kathman J. and Shannon M. (2013) United Nations Peacekeeping and Civil Protection in Civil War. *American Journal of Political Science* 57 (4), 875-891.

This article though very relevant to this research, is concerned only with the role of the United Nations Peace Keeping and its role in ensuring adequate civilian protection.

Wood R.M. in 'Rebel Capability and Strategic Violence against Civilians'²⁰ explores the strategic motivations for insurgent violence against civilians. It argued that violence is a function of insurgent capacity and views violence and security as selective benefits that insurgents manipulate to encourage support. That weak insurgent groups facing collective action problems have an incentive to target civilians because they lack the capacity to provide sufficient benefits to entice loyalty. This article views violence to civilians as a product of the strength or weakness of an armed group. However, this writer believes that violence to civilians is much more than that, as it is evidently clear that civilians are being attacked indiscriminately by states and armed groups regardless of their strengths

Evans G. in 'The Responsibility to Protect'²¹ lamented on the horrors of civilian casualties in several armed conflicts around the world. In his words 'Never again we said after the Holocaust. And after the Cambodian genocide in the 1970's, and again after the Rwandan genocide of 1994. And then, just a year later, after the Srebrenica massacre in Bosnia. And now we're asking ourselves yet again in the face of more mass killing and dying in Darfur, whether we really are ever going to be capable, as an International community of stopping nation states from murdering their own people. This article provided several practical examples of the horrific situation of civilians in armed conflict, but did not make practical suggestions on how the menace can be curtailed neither did it broaden its horizon to other situations of conflict not of International character.

²⁰ Wood R.M. (2010) Rebel Capability and Strategic Violence against Civilians. *Journal of Peace Research* 47 (5), 601-614.

²¹ Evans G. (2002) The Responsibility to Protect. *Harvard international Law Journal* 43,1.

Hultman L. in ‘UN Peace Operations and Protection of Civilians: Cheap Talk or Norm Implementation?’²² stated that protection of civilians is now at the forefront of responsibilities off international community. That there is a strong international norm that civilians should be protected from violence, but how committed is the United Nations to acting in line with this norm? He argued that the UN Security Council (UNSC) has an interest in demonstrating that it takes violence against civilians seriously through a broadened security agenda. This article also focuses only on the role of the UN in ensuring the protection of civilians. And as stated earlier, the issue of the civilian protection takes a wider and more holistic participation of different actors to ensure its effective and efficient implementation.

Nasu H. in ‘Operationalizing the Responsibility to Protect and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict’²³ stated that the responsibility to protect is nascent, highly contentious concept. Although a restrictive understanding of the concept was agreed upon by world leaders in 2005, the perspective of conflict prevention reveals the conceptual gap in terms of its scope, stage, and strength, failing to bridge the gap between rhetorical support for prevention and tangible commitment to international action. This article restricts the issue of civilian protection only to the concept of ‘responsibility to protect’ ignoring other aspect of international Law that specifically proscribed certain acts against them, and institutionalizing means of preventing breaches of those rules.

²² Hultman L. (2013) UN Peace Operations and Protection of Civilians: Cheap Talk or Norm Implementation? *Journal of Peace Research* 50 (1), 59-73.

²³ Nasu H. (2009) Operationalising the Responsibility to protect and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict. *Journal of Conflict and Security Law*, vol. 14, issue 2, p209.

According to Green L.C. in his book titled 'The Contemporary Law of Armed Conflict'²⁴, it has been accepted since antiquity that some restraint should be observed during armed conflict. The book examines the apparent dichotomy and introduces any study of law of armed conflict by considering the nature and legality of war. That the purpose of IHL is to reduce the horrors inherent therein to the greatest extent possible, bearing in mind the political purpose for which the war was fought, namely to achieve one's policies over one's enemies. This book is a very book text that focuses on the laws of armed conflict generally, and how hostilities are conducted, categories of protected persons, UN operations et cetera. The chapter dealing with civilian protection did not however give an elaborate situation of the civilians neither did it outline the various rules of IHL that protect them from the effect of hostilities.

According to Ladan M.T. in his book 'Introduction to International Humanitarian Law'²⁵, in situation of armed conflicts, IHL offers protection to persons who do not or no longer take part in the hostilities. The Geneva conventions prohibit certain Acts against such persons. However, the book did not give detail provisions against attacking such persons not taking part in the hostilities.

Bradley M. in 'Protecting Civilians in War; The ICRC, UNHCR, and their Limitations in Internal Armed Conflict'²⁶ discussed the principles of humanitarian action and the legal framework for protection in relation to the key legal and normative framework of protection of civilians, laws, norms, mandates and activities of the ICRC and the UNHCR. The scope of

²⁴ Green L.C. (1993) The Contemporary Law of Armed Conflict. Fifth edition, Manchester University Press, London.

²⁵ Ladan, M.T. op cit p. 81

²⁶ Bradley M. (2013) Protecting Civilians in War; The ICRC, UNHCR, and their limitations in Internal Armed Conflicts. Oxford University Press, United Kingdom.

this book s can be seen from the title is on the responsibilities of ICRC and UNHCR as agency that ensure implementation of the laws of armed conflict. This book is therefore limited in its scope because it doesn't cover other areas of serious concern.

Starke in his book 'Introduction to International Law'²⁷ stated that "the Hague Regulation of 1864 prohibited the attack or bombardment of undefended towns, villages etc by any means whatsoever. According to him, this increase the protection of the Geneva conventions in the reaffirmation and development of IHL applicable in armed conflicts. The first protocol prohibits the use of terror against civilians and constitutes launching of indiscriminate attacks affecting the civilian population in certain circumstances, a grave breach of the protocol. Starke however limited his scope to the provisions of the protocol without making reference to other relevant instruments.

Umzurike in 'Introduction to International Law'²⁸ stated that the protection of civilians is addressed by the fourth Geneva conventions. Article 27 provides that all protected persons shall be treated with this consideration by the party to the conflict in whose power they are without any adverse instruction based particularly on race, religion or political opinion. This book restricts itself to only to the fourth Geneva Convention.

According to Shaw M.N in his book 'International Law'²⁹, the principle governing the treatment of individuals in the course of war and conflicts are contained in the "laws of war". These rules are to be found in treaties and conventions. Among the most important of these instrument are the declaration of St. Petersburg 1868, the Hague convention of 1899 and

²⁷ Starke, J.G. (1989) *Introduction to International Law*. First Edition, Butterworth-Heinemann.

²⁸Umzurike, U.O. (1993) *Introduction to International Law*. Spectrum Law Publishing, Ibadan.

²⁹ Shaw, M.N. (2003) *International Law*. Fifth Edition, Cambridge University Press, London.

1907, the four Geneva conventions of 1949, namely those dealing with prisoners of wars, sick and wounded personnel, armed forces at sea and protection of civilians which effected a far reaching revision and codification of a major portion of the laws of war. This book merely listed the treaties that protect civilians and civilian objects but did not explain the extent of the protection provided by them.

Marco S. and Antoine B. in their book 'How Does Law Protect in War?'³⁰ explained in detail how International Humanitarian Law provides protection to civilians and also defined the means and methods of warfare. It however did not provide practical ways of ensuring that these laws are been respected and protected.

Kalshoren F. and Zegveld L. in their book titled 'Constraints on Waging of War'³¹ also made explicit explanations on the limitation of combatants in times of war, and the laws regulating them. This is limited to the means and methods of war and contains nothing about specific prohibitions especial on the protection of civilians.

Bailey S. in his book 'Prohibition and Restraints in war'³² discussed the issues of human rights in armed conflicts, the limitations applicable in conflicts and in its appendices, contains the full provisions of the protocols to the Geneva Conventions. Comments of the International Law Commission of the Seven Nuremberg principles. This book like the first also does not deal with specific instances of protection, prohibitions and penalties as contained in the international treaties like the Geneva Conventions.

³⁰ Marco, S. and Antonne, B.(2006) *How Does Law Protect in War?: Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*. Volume 1. ICRC, 3rd Edition p50

³¹ Frisk Kalshoren F. and Zegveld L, (2001) *Constraints on the Waging of War*. Fourth edition, ICRC Geneva.

³² Bailey, S. (1970) *Prohibition and Restraints in War*. Oxford Publishers, London p23.

The work of Brownlie I. in ‘Principles of Public International Law’³³ deals with individual responsibility for violations of the law of war as opposed to state responsibility. It does not however contain specific provisions on civilian protection in armed conflict situations.

Fritz Kalshoven in another book titled ‘Law of Warfare’³⁴ outlines the principles of ILC Draft Statute developed from the Nuremberg judgment as well as providing the host of other conventions and treaties that regulate the conduct of warfare. However, the book did not discuss other important instruments that regulate the conduct of warfare like the Hague Regulations.

Emmanuel, K. in his book ‘International Humanitarian Law in Perspective’³⁵ stated that the role of International Committee of the Red Cross is to ensure respect, through its neutral and independent humanitarian work, for the lives, dignity and physical and mental well-being of victims of armed conflict and other situations of war or violence. However, it did not outline these roles as they relate to the protection of civilians in armed conflict.

Flowing from the above views advanced by different writers, it can be seen that none of these great writers have captured the real essence of this dissertation, which is to examine the laws that protect civilians in armed conflict situations. Hence this dissertation will attempt an in depth analysis of the relevant protections as captured by International Law.

1.8 Organisation Layout

The research work is divided into the following five chapters: Chapter one is the introductory chapter. It deals with background to the study, statement of the problem, aims and objectives

³³ Brownlie, I. (1970) *Principles of Public International Law*. London, Oxford University Press London p45

³⁴ Fritz Kalshoven F.(1997) *Law of Warfare*. Oxford University Press, London p.47

³⁵ Emmanuel, K. (2004) *International Humanitarian Law in Perspective*. Spectrum Books Ltd, Jos, Nigeria. P.214

of the research, scope and limitation of the research, method of data collection, literature review, justification and organizational layout.

Chapter Two is conceptual Discourse and Development of the Laws of Armed Conflict. It explains the concept of Laws of Armed Conflict, the meaning of Civilians and Civilian Objects, Scope of the Laws of Armed Conflict, and the Development of the Laws of Armed Conflict.

Chapter Three extensively deals with the legal regime for the protection of civilians and civilian objects in armed conflicts, and the Legal Regime for Loss of Protective Right. It examines the protection as provided by the four Geneva Conventions, the two additional protocols the ICC Rome Statute and Customary IHL.

Chapter Four discusses Grave Breaches of the laws of Armed Conflicts including War Crimes, Crimes against Humanity and Genocide. It also discusses the Penalty for Breaches of the Laws of Armed Conflict. Chapter five is Summary and Conclusion.

CHAPTER TWO

CONCEPTUAL DISCOURSE AND THE DEVELOPMENT OF THE LAWS OF ARMED CONFLICT

2.1 Introduction

This chapter aims at introducing the fundamentals of this dissertation in order to have a solid foundation for proper appreciation of the subject matter. It will provide an in-depth discussion on the meaning of civilians and civilian objects. It will also give an analytical discourse on the Laws of Armed Conflict generally, the development of the Laws of Armed Conflict, the fundamental principles and an analytical discourse on the concept of Armed Conflict.

The aim of this chapter is to have a satisfactory explanation on each of the fundamental key words used in the topic. It seeks to provide the reader with an insight into the topic of discussion by directing his mind to the focus of the dissertation. It will discuss the main components of the topic expanding on the relevance or analyzing each keyword as it relates to the general conception of the topic. This will in turn make the whole dissertation very easy to comprehend.

2.2 Conflict

A Conflict occurs when people don't agree on something, it's a part of life and isn't necessarily a bad thing especially if it is dealt with in a healthy and positive fashion, addressing and resolving the issue. The benefit of conflict is that it forces you to grow and improve your relationships. Conflict happens when differences arise due to the various ideas, perceptions, motivations, and desires that a person has and which may not jive when those of another person. A problem is something that needs solving, answering or considering.

2.3 The Concept of Armed Conflict

The notion of “armed conflict” has from 1949 onwards, replaced the traditional notion of “war”. According to the commentary to the First Geneva Convention of 1949¹, the substitution of this much more general expression (armed conflict) for the word ‘war’ was deliberate. A state can always pretend when it commits a hostile act against another state, that it is not making war, but merely engaging in a police action or acting in legitimate self defence. The expression armed conflicts make such situations easy to handle. Any difference arising between two states and leading to the intervention of armed forces is an armed conflict, even if one of the parties denies the existence of state of war.²

The notion of an armed conflict itself was raised before the appeals chamber of the international tribunal on war crimes in former Yugoslavia in its decision on jurisdictional issues in the *Tadic case*³. It was claimed that no armed conflict as such existed in the former Yugoslavia with respect to the circumstance of the instant case since the concept of armed conflict covered only the precise time and place of actual hostilities and the events alleged before the tribunal did not take place during hostilities. The appeals chamber of the tribunal correctly refused to accept a narrow geographical and temporal definition of armed conflicts, whether international or internal. It was stated that:

An armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between government authorities and organised armed groups or between such groups with a state. IHL applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities

¹ Pictet, J. (2002) *Commentary on the first Geneva Convention*. ICRC, Geneva. p.50

² Green L.C. op cit, p133

³ Prosecutor vs Tadic Case No. 17-19 I-AR 72, 105 ILR p.453, at 486

until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, IHL continues to apply in the whole territory of the warring states or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes places⁴.

It is clear from the above, that armed conflict could either be Internal or International, depending of course, on the circumstances. This distinction was founded upon the difference between inter-state relations, which was the proper focus for international law, and intra-state matters which traditionally fell within the domestic jurisdiction of states and were thus, in principle impervious to international legal regulation. The two types of armed conflict are considered below.

2.6.1 International Armed Conflict: IHL relating to international armed conflict applies “to all cases of declared war or of any other conflict which may arise between two or more of the high contracting parties, even if the state of war is not recognised by one of them”⁵. It 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 resistance”⁶. In the application of a standard rule on the attribution of unlawful acts of the law of state responsibility, a conflict between governmental forces and rebel forces within a single country becomes of international character if the rebel forces are de facto agents of a third state. In this event, the latter’s behavior is attributable to the third state⁷, and governed by IHL of international armed conflicts. Thus in the *Tadic case* (supra), the Appeals chamber noted that;

⁴ Ibid p.488

⁵ Article 2 Common to the Geneva Conventions Paragraph 1

⁶ Ibid Paragraph 2

⁷ Case No. 38, ILC, Draft Articles on State responsibility (Article 8 and Commentary) p.804

It is indisputable that an armed conflict is international if it takes place between two or more states. In addition, in case of an internal armed conflict breaking out on the territory of a state, it may become international (or depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another state intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other state⁸.

The Appeal chamber concluded that until 19th May 1992 with the open involvement of the Federal Yugoslav Army, the conflict in Bosnia had been international, but the question arose as to the situation when his army was withdrawn at that date.

According to the traditional doctrine, the notion of international armed conflict was thus limited to armed contests between states. During the diplomatic conference which led to the adoption of the two Additional Protocols of 1977, the conception was challenged and it was finally recognised that “wars of national liberation”⁹ should also be ‘considered as international armed conflict.

In essence, the line between international and internal armed conflicts maybe drawn at that point at which it can be shown that a foreign state is either directly intervening within a civil conflict or exercising “overall control” over a group that is fighting in that conflict. In *Republic of Nicaragua vs United States of America*¹⁰, it was held that the conflict between the contra forces and those of the government of Nicaragua is an armed conflict which is “not of an international character”, and are therefore governed by the law applicable to conflicts of

⁸ Judgment of 15th July 1999 paragraph 84

⁹ Situation defined in Article 1 (4) of protocol 1 as “armed conflicts in which people are fighting against colonial domination and alien occupation and against racist in the exercise of their right of self determination.

¹⁰ *Republic of Nicaragua vs United States of America (1986) ICJ 1*

that character; whereas the actions of the United States in and against Nicaragua fall under the legal rules relating to international conflicts (supra).

The Appeals chamber in the *Kunarac case*¹¹ “discussed the issue of the meaning of armed conflict where the fighting is sporadic and does not extend to all of the territory of the state concerned. The chamber held that the laws of war would apply in the whole territory of the warring states, whether or not actual combat takes place there, and continues to apply until a general conclusion of peace. A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place¹².

The above also settles the long debate on whether the present insurgency in Nigeria could fit into the meaning of armed conflict. Going by the decision above, an armed conflict is in existence even when there are no actual hostilities, provided it is between an organized armed group and the Government. The nature and intensity of the armed violence, its protracted nature and the level of organization of Boko Haram as an armed group attest to the existence of an armed conflict in northern Nigeria.¹³ The ICRC in its annual report for 2013,¹⁴ and the International Criminal Court (ICC)¹⁵ have confirmed the existence of an armed conflict between the Nigerian armed forces and armed groups since May 2013

2.6.2 Non-International Armed Conflict: Traditionally, non-international armed conflicts were considered as purely internal matters for states, in which no international law provisions applied. However, this view was radically modified with the adoption of article three common

¹¹*Prosecutor vs Kunarac* (Appeal Judgment) Case No. IT 96 – 23

¹² Decision of 12th June 2002, Case No. IT – 96 – 23 and IT – 96 – 21/1, paragraph 57

¹³ Boko Haram has conducted operations and several attacks in the areas of Cameroon, Chad and the Niger that border Northern Nigeria.

¹⁴ ICRC, Annual Report 2013, ICRC Geneva, p. 183.

¹⁵ International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2013, para. 218.

to the four Geneva conventions of 1949. The article provides that in cases of non international armed conflicts occurring in the territory of one of the parties a series of minimum guarantees for protecting those not taking an active part in hostilities, including the sick and wounded. Although the court in the *Nicaragua case*¹⁶, declared that common article 3 also applied to international armed conflicts as a ‘minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts’. For the first time, the society of states agreed on a set of minimal guarantees to be respected during non-international armed conflicts.

However, it was difficult to define precisely where the article applies. It could be argued that non-international armed conflict range from full scale civil wars to relatively minor disturbances. This poses problems for the state in question which may not appreciate the political implications of the application of the Geneva conventions, and the lack of the reciprocity element due to the absence of another state adds to the problems of enforcement.

The Appeals chamber in its decision on jurisdiction in the *Tadic case (supra)* noted that international legal rules had developed to regulate internal armed conflict for a number of reasons, including the frequency of civil wars, the increasing cruelty of internal armed conflicts, the large scale nature of civil strife making third-party involvement more likely and the growth of international human rights law.

In spite of its extreme importance, it should be underlined that article three does not offer a clear definition of the notion of non-international armed conflict. It merely states that it is applicable “in the case of armed conflict not of an International character occurring on the

¹⁶ Supra

territory of one of the high contracting parties. During the diplomatic conference of 1974 – 1977, the need for a comprehensive definition of the notion was reaffirmed and dealt with accordingly in Article one of Additional Protocol II. According to that provision, it was agreed that protocol II “shall apply to all armed conflicts not covered by Article one of protocol I and which take place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised 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”.

It should be noted that this fairly restrictive definition applies only to protocol II. The definition does not apply to article three common to the four Geneva conventions. Practically, there are thus, situations of non-international armed conflict in which only article three will apply, the level of international organisation of the dissident’s groups being insufficient for protocol II to apply.

Moreover, the statute of the International Criminal Court provides an intermediary threshold of application. There is no longer a requirement for the conflict to take place between governmental forces and rebel forces, for the latter to control part of the territory, nor for there to be a responsible command¹⁷. The conflict must however be protracted and the armed group must be organized.

Combatants

combatants are those persons with a right to directly participate in hostilities between states.

The following persons are combatants in an international armed conflict;

¹⁷ *Prosecutor vs Omar* Case No15, The ICC, p.608

- a. members of the armed forces, except medical personnel and religious personnel.
- b. members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a party to the conflict, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions;
 - 1. they are commanded by a person responsible for his subordinates;
 - 2. they wear a fixed distinctive sign recognizable at a distance;
 - 3. they carry their arms openly; and
 - 4. they conduct their operations in accordance with the laws and customs of war.
- c. members of the regular armed forces who profess allegiance to a government or authority not recognized by the other party to the conflict. ¹⁸

LEVEE EN MASSE

The term applied to the inhabitants of a territory which has not been occupied, who on the approach of the enemy spontaneously take up arms to resist the invading troops without having had time to organize themselves into regular armed forces. They must be regarded as combatants if they carry arms openly and respect the laws and customs of armed conflict.

If captured, they have a right to be treated as prisoners of war. The levee en masse should not be confused with resistant movements. ¹⁹

¹⁸ ICRC , How does law protect in war? <http://casebook.icrc.org/combatants>, 14th jan, 2020

¹⁹ ibid

Direct and Indirect Participation in Hostilities

On the second part, it has been concluded that a clear and uniform definition of direct participation in hostilities has not been developed. Civilians whose activities merely support the adverse party's war or military effort or otherwise only indirectly participates in hostilities cannot on these grounds alone be considered combatants. This is because indirect participation such as selling goods to one or more of the armed parties, expressing sympathy for the cause of one of the parties or even failing to act to prevent an incursion by one of the armed parties does not involve acts of violence which pose an immediate threat to actual harm to the adverse party.²⁰

Against the background of these considerations, the following cases should be included in the definition of taking a 'direct part' in hostilities; a person who collects intelligence of the army, whether on issues regarding the hostilities or beyond those issues, a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates where the hostilities are taking place; a person who operate weapons which unlawful combatants use, or supervises their operation, or provide services to them, be the distance from the battlefield as it may. All these persons are performing the function of combatants. The function determines the directness of the part taken in hospitalities.

However, a person who sells food or machine to an unlawful combatant is not taking a direct part, rather, an indirectly part in the hostilities. The same is the case regarding a person who aids the unlawful combatants by general strategic analysis and grants them logistical, general support including monetary aid. The same is the case regarding a person who distributes

²⁰ The Third Report of the Inter-American Commission on Human Rights.

propaganda supporting those unlawful combatants. If such persons are injured, the state is likely not to be liable for it, if it falls into the framework of collateral or incidental damage.²¹

This topic is treated with more details in chapter three.

Meaning of Civilians and Civilian Objects

A civilian is a person who does not belong to the armed force and does not take part in mass take up of arms to resist the invading force²². Where there is doubt whether a person is a civilian or not, that person shall be considered as a civilian. The civilian population therefore comprises all persons who are civilians. The presence of individuals other than civilian persons within the civilian population does not deprive the population of its civilian character. A population is still considered ‘civilian’ even if there are armed police or isolated soldiers in the group²³. The population must be predominantly ‘civilian’.

Civilian objects on the other hand are objects which are not military objectives²⁴. In case of doubt whether an object which is normally dedicated to civilian population such as foodstuffs, agricultural areas for the production of foodstuffs, crop, livestock, drinking water, installations and supplies and irrigation works, are civilian or not, they shall be considered civilian.

Increasingly, civilians have become the overwhelming majority of the victims of armed conflict despite IHL, which stipulates that attacks should only be directed at combatants and military objectives, and civilians should be respected. Civilians in war need on the one hand respect by those in whose hands they are, who could arrest them, confiscate their property, ill

²¹ ICRC *ibid*

²² Article 5 Third Geneva Convention

²³ *Prosecutor vs Stanilav Galic* Case No. IT-98-29-A, Appeal Judgment, 30 Nov. 2006

²⁴ Article 35 (1) First Protocol Additional to the Geneva Convention

treat them, harass them or not provide them with food or medical; assistance. On the other hand, they need to be respected by the belligerent opposing those in whose hands they are, who could bomb their towns, attack them on the battlefield, or hinder the receipt of food supplies or family messages.²⁵

Both in international and internal armed conflict, the civilian persons and civilian populations enjoy general protection against the danger of military operations²⁶. It is therefore prohibited to make the civilian population the primary target of attack. Objects indispensable to the survival of the civilian population are also protected. Hence, it is prohibited to attack objects like foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water, installations, supplies, and irrigation works. It is prohibited to attack, destroy, or remove such objects or to render them useless for the purpose of denying them their sustenance value to the civilian population, whatever the motive, whether to starve out the civilians, to cause them to move away or for any other reason²⁷.

The prohibition against attacking the civilian population and objects was further emphasized by Amnesty international²⁸ in 2002.

Under international law, there is no justification for attacking civilians. Targeting civilians is contrary to fundamental principles of humanity enshrined in international law, which should apply in all circumstances at all times. Amnesty international unreservedly condemns attacks on civilians whatever reason the perpetrators give to their action.

²⁵ Marco, S. Antonne, B. (2006) *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* .Volume 1. 3rd Edition, ICRC Geneva. p 145-6

²⁶ Ibid, Article 35 (2)

²⁷ Ladan M.T. (2001) *Introduction to International Human Rights and Humanitarian Law* .Ahmadu Bello University Press Zaria p.51

²⁸ A U.S based human right group

Civilians should never be the focus of attack, not in the name of security and not in the name of liberty. We call on the leadership of the Palestine armed groups to cease attacking civilians immediately and unconditionally²⁹.

In addition, Amnesty International stated, in relation to civilian objects that “Israel must also end practices such as house demolition which collectively punish the Palestinian population”³⁰.

This statement of Amnesty International followed an alleged terrorist attack by the Palestinians against the Israeli civilians in the Israeli – Palestinian conflict when the Palestinian armed group offered a variety of reasons for targeting Israeli civilians, from retaliating against Israeli killing of Palestinian civilians, to fighting occupying power. Other justifications claim that Israeli settlers are not civilians, or that striking at civilians was the only way to make an impact on a powerful adversary. It was on this note that Amnesty International stated that “whatever the cause for which people are fighting, there cannot be a justification for direct attacks on civilians.

The provision for protection of civilians and civilian object under International Law cannot be deprived in any case or in any manner whatsoever, nor the benefits contained in the Geneva Convention, by any change introduced as a result of the occupation, nor by any agreement between the authorities of the occupied territory and the occupying power, nor by any annexation by the latter of the whole or part of the occupied territory³¹. In addition, the convention prohibits ‘individual or mass forcible transfers’ as well as deportations of protected persons from the occupied territory regardless of motive, while the occupying

²⁹ Amnesty International, “Amnesty International Report Calls on Palestinian Armed Groups to Stop Killing Civilians”. Al Index: Mde 15/1104/2002, Press Release 11 July 2002.

³⁰ Ibid

³¹ Article 47 Fourth Geneva Convention

power “shall not deport or transfer parts of its own civilian population into the territory it occupies”³².

Other provisions refer to the prohibition of forced work or conscription of protected persons, the destruction of real or personal property, or any alteration of the status of public or judicial officials³³. Furthermore, protected persons shall not be arrested, persecuted or convicted for act committed or opinions expressed before the occupation apart from breaches of the laws of war³⁴.

In a nutshell, civilians and civilian objects enjoy general protection from the effect of hostilities. They are to be treated humanely and with respect, and shall at no time and under no circumstance, be treated in a manner contrary to the provisions of the laws of armed conflict.

2.3 Analytical Discourse on the Laws of Armed Conflict

The law of armed conflict is the body of International Law that regulates behavior during armed conflict (*Jus in Bello*), it is the customary and treaty law applicable to the conduct of warfare on land and to relationships between belligerent and to neutral states³⁵.

It is often referred to as the Laws of War or IHL and is the legal corpus comprising of the Geneva Conventions, Hague Conventions and subsequent treaties, case laws and Customary International Law³⁶. It defines the conduct and responsibilities of belligerent nations, neutral

³² Ibid Article 49

³³ Ibid Articles 51, 53, 54

³⁴ Ibid, Article 70

³⁵ U.S Army field manual FM27-10; Law of land warfare, para 1

³⁶ ICRC, What is International Humanitarian Law

(<http://www.ICRC.org/web/eng/siteengo.nsf/html/humanitarianlaw/factsheet>), 24th January 2016, at 9.46 am

nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning civilians.

According to M.T Ladan³⁷, IHL means International rules, established by treaties or custom, which limit the right of parties to a conflict to use the methods or means of warfare of their choice, or which protect states not party to the conflict or persons and objects that are, or may be affected by the conflict.

According to Jean Pictet, IHL in the wide sense is constituted by all international legal provisions whether written or customary, ensuring respect for individual and his wellbeing³⁸. The ICRC defines IHL as ‘a set of rules which places restriction on the use of weapons and methods of warfare’³⁹.

It is therefore clear from the foregoing, that IHL is a branch of Public International Law that aims at regulating the conduct of warfare by providing a code of conduct and behavior for armed forces of a state or party to a conflict, and also prohibiting certain means of warfare.

2.4 Fundamental Principles of the Laws of Armed Conflict

The Laws of Armed Conflict (IHL) is guided by three fundamental principles namely: Restriction on the means of injuring the enemy, the principle of proportionality and the principle of distinction.

³⁷ Ladan, M.T. (2008) *Materials and Cases on public international law*. A.B.U Press, Zaria. P.200

³⁸ Pictet J.(1975) *Humanitarian law and protection of war victims*. Leydon Sythoff,) p.16 – 17

³⁹ ICRC, Op.cit p.23

2.4.1 Restriction on the means of injuring the enemy: Combatants have a right to kill the combatants of the opposing force but under this principle, they are prohibited from causing superfluous injury or unnecessary suffering⁴⁰. According to Jean Jacques Rousseau

War is in no way a relationship of a man with man, but a relationship between states, in which individuals are enemies only by accident, not as men nor even as citizens, but as soldiers... since the object of war is to destroy the enemy state, it is legitimate to kill the latter defenders as long as they are carrying arms, but as soon as they lay them down, and surrender, they cease to be enemies or agents of the enemy and again become mere men and it is no longer legitimate to take their lives⁴¹.

Once the enemy has laid down his arms, the right to kill him ends and the obligation to care for him as a prisoner of war begins⁴². This principle prohibits the use of unlawful weapons such as bullets and gas, even on the battlefield. It also prohibits the unlawful use of lawful weapons such as the use of bayonets, and the resort to perfidy, which is the use of white flag to surrender as a trick⁴³. These are confirmed by the prohibition of torture and arbitrary killing under human rights law.

2.4.2 Principle of proportionality: The underlying principle of proportionality seeks to strike a balance between two divergent interest, one directed by consideration of military need and the other by requirement of humanity when the right or prohibition are not absolute⁴⁴.

Proportionality acts as a restraining factor in the conduct of hostilities, usually invoked on account of the presence of civilians. The cardinal point here is that “loss of life and damage to

⁴⁰ Ladan M.T, Op cit p.41

⁴¹ Jean Jacques Rousseau (170) www.icrc.org/ihreny.nst 2010, 14th January, 2016

⁴² Article 4 Fourth Geneva Convention, Article 50 First Protocol Additional to the Geneva Convention

⁴³ Ibid Article 52,

⁴⁴ Ladan, M.T, Op cit p.62

property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained”⁴⁵ However, strict adherence to this rule may cause sustaining high military casualties. Under this principle, an action is said to be proportionate when it does not cause incidental civilian casualties and damage which is excessive in relation to the value of the expected result of the whole military operation. However, the rule cannot be used to justify unlimited destruction or attacks on civilians and civilian objects.⁴⁶

2.4.3 The principle of distinction: This principle requires that military operations be confined to military objectives, to prevent attacks on civilians and civilian objects.⁴⁷ The additional protocol 1 reaffirmed and elaborated on this particular principle, where it states that “parties shall at all times distinguish between civilian population and combatant, and between civilian objects and military objectives, and accordingly shall direct the operation only against military objectives”⁴⁸. According to Amnesty International whatever the cause for which people are fighting, there cannot be a justification for direct attacks on civilians⁴⁹. This however may be difficult to achieve in some instances because the battle zones may not be clearly established. The principle of distinction requires protection of civilians from direct attack. In many cases, we hear attack on what are indisputable civilian targets.

2.7 Scope of the Laws International of Armed Conflict

Basically, the laws of armed conflict cover two main areas:

- 1) The protection of those who are not, or no longer, taking part in fighting.

⁴⁵ US Army Field Manual FM27-10: Law of Land Warfare

⁴⁶ Ibid

⁴⁷ Rule 22 Customary IHL

⁴⁸ Article 48 First Protocol Additional to the Geneva Convention

⁴⁹ Amnesty International, “Amnesty International Report calls on Palestinian and groups to stop killing civilians” Al Index: Mde 15/104/2002, PRESS RELEASE 11th July 2002

- 2) Restrictions on the means of warfare, in particular weapons and methods of warfare, such as military tactics⁵⁰.

2.7.1 Protection of those who are not or no longer taking part in fighting: IHL protect those who do not take part in the fighting, such as civilians, medical personnel, and religious military personnel. It also protects those who have ceased to take part in the hostilities such as the wounded, shipwrecked and sick combatants, and prisoners of war.

These categories of persons are entitled to respect for their lives and for their physical and mental integrity. They also enjoy legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction.

More specifically, it is forbidden to kill or wound an enemy who surrenders or is unable to fight, the sick and wounded must be collected and cared for by the party in whose power they find themselves. Medical personnel, supplies, hospitals and ambulances must all be protected.

There are also detailed rules governing the conditions of detention for prisoner of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families.

The law sets out a number of clearly recognisable symbols which can be used to identify protected people, places and objects. The main emblems are the Red Cross, the Red Crescent and the symbols identifying cultural property and civil defence facilities.

⁵⁰ ICRC (2004) *What is International Humanitarian Law?* ICRC Geneva p.3

2.7.2 Restrictions on the means and methods of warfare: The right of parties to an armed conflict to choose methods of warfare is not unconstrained. The Hague conventions points out that the ‘right of belligerents to adopt means of injuring the enemy is not unlimited’⁵¹. Similar provisions are contained in the Protocol Additional to the Hague Regulations⁵². The Hague Regulations further stipulate that it is especially prohibited to ‘employ arms, projectiles or material calculated to cause unnecessary suffering’⁵³. How such weapons are defined is rather controversial, and can only be determined in the light of the actual state practice⁵⁴. The balance between military necessity and humanitarian considerations is relevant here. The international court in its advisory opinion on the legality of the threat or use of Nuclear weapons summarised the situation in the following authoritative way:

The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; states must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilians and military targets. According to the second principle, it is prohibited to cause unnecessary suffering to combatants; it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, states do not have unlimited freedom of choice of means in the weapons they use.⁵⁵

⁵¹ Article 22 Hague Convention 1899

⁵² Article 35 First Protocol Additional to the Hague Regulations

⁵³ Ibid, Article 35 (2)

⁵⁴ E.g the US department of the army, Field Marshal, the Law of Land Warfare, FM 27-10, 1956 P18

⁵⁵ ICJ Reports, 1996, p226, 257; 110 ILR p.163

The court emphasized that the fundamental rules flowing from these principles binds all states, whether or not they had ratified The Hague and Geneva Conventions, since they constituted intransgressible principles of international customary law⁵⁶.

The International court has emphasized that, in examining the legality of any particular situation, the principles regulating the resort to force, including the right to self defence; need to be coupled with the requirement to consider also the norms governing the means and methods of warfare itself. Accordingly, the weapons used and the way in which they are used are also part of the legal equation in analysing the legitimacy of any use of force in international law. Further, the court has emphasized that a use of force that is proportionate under the law of self defence, must in order to be lawful, also meet the requirements of the law applicable in armed conflict⁵⁷.

A number of specific bans on particular weapons have been imposed⁵⁸. Examples includes small projectiles under the St. Petersburg formula of 1868, dum-dum bullets under the Hague Declaration of 1899 and asphyxiating and deleterious gases under the Hague Declaration of 1899 and the 1925 Geneva protocols under the 1980 conventional weapons treaty⁵⁹. Protocol one, prohibits the use of weapons that cannot be detected by x-rays, while protocol II prohibits the use of mines and booby-traps against civilians, protocol III the use of incendiary devices against civilians or against military objectives located within a concentration of

⁵⁶ Ibid

⁵⁷ ICJ Reports, 1996 pp. 226, 245

⁵⁸ Green L.C (1993) *The Contemporary Laws of Armed Conflict*. (5th edition), Manchester University press, London. p.133

⁵⁹ Shaw M.N. (1981) *Prohibition or Restrictions on the Use of Certain Conventional Weapons*. Cambridge University Press. p.40

civilians where the attack is by air-delivered incendiary weapons, and protocol IV the use of blinding laser weapons.

It is therefore clear, that IHL cover the whole spectrum of protection of individuals not taking part in the hostilities, like the non-combatants and those no longer participating like sick and wounded soldiers, prisoners of war.

2.5 Development of the Laws of Armed Conflict

The massacre of civilians in most armed conflict has a long and dark history. Selected examples include; Moses, speaking for the God of Israelite, ordering the killing of all Midianite women and male children, the massacre of the Kaliga in India, the massacre of Hindus, to name a few examples drawn from a long list of history. Fritz Munch, sums up historical practices before 1800: “the essential point seem to be these; in battle and in towns taken by force, combatants and non-combatants were killed and property was destroyed and looted⁶⁰.

However, even in the midst of the carnage of history, there were expressions of humanitarian norms to protect the victims of armed conflicts i.e. the wounded, the shipwrecked which date back to ancient times⁶¹.

The codification of humanitarian norms was not until the second half of the 18th century when more systematic approach was initiated. A German immigrant, Francis Lieber, drew up a code of conduct in 1863, the Lieber code, for the northern army which included the humane treatment of civilian population in the areas of conflict. It also forbade the executions of

⁶⁰ Munch F. (2000) *History of the Laws of War*. In: Bernhard R. *Encyclopedia of Public International Law*. George Allen and Unwin, London. p. 1386

⁶¹ Rudolf, B. (1992) *Encyclopedia of Public International Law*. Amsterdam, North Holland pp. 933-936

prisoners of war. The involvement of Henry Dunant, a Gevenese businessman who had worked with wounded soldiers at the battle of Solferino, led to more systematic efforts at preventing the suffering of war victims. Dunat wrote a book, ‘A memory of Solferino’ which described the horrors he witnessed. His reports led to the founding of the International Committee of the Red Cross and the convening of a conference in Geneva in 1864 which drew up the first Geneva Convention for the amelioration of the condition of the wounded soldiers in the battle field.⁶²

The development of the laws of armed conflict can best be discussed under two headings:

- a) The Geneva and Hague Conventions
- b) The Additional Protocols to the Geneva Convention

2.5.1 The Geneva and Hague Conventions: The law of Geneva (Geneva Conventions) is directly inspired by the principle of humanity. It relates to those who are not participating in the conflict as well as military personnel hors de combat. It provides the legal basis for protection and humanitarian assistance carried out by impartial humanitarian organisations such as the ICRC. The First Geneva Convention shows that certain humanitarian rules could be imposed on combatants – even in wartime. While the Geneva Convention regulated the treatment of the wounded, the nations of the world at the same time began to negotiate a second component of IHL that regulated the means and methods of warfare. In 1868, they adopted the St. Petersburg declaration which asserted that “the employment of such arms as would uselessly aggravate the suffering of disabled men, or render their death inevitable”

⁶²ICRC <http://www.icrc.org/eng/resourse/documents/misc/57> accessed 23rdjuly 2018

would be contrary to the laws of humanity. To this end, the declaration outlawed certain fragmenting, explosive and incendiary ammunition⁶³.

The International Community convened two conventions at the Hague and Netherlands, in 1899 and 1907⁶⁴, which resulted in the Hague Conventions that banned a number of other weapons and methods of war⁶⁵, and set out rules for the humane treatment of prisoners of war, occupied territories, and neutral parties. They also took many of the principles of the 1864 Geneva Convention and adapted them to maritime warfare.⁶⁶

The experiences of the ICRC during World War 1, working on behalf of victims of war, led to the preparation of another international treaty to further define the status of prisoners of war. A diplomatic conference convened in 1929 and another Geneva convention was adopted which specifically governs the treatment of prisoners of war. The Red Crescent and red lion and sun emblems were also recognised by nations at this conference⁶⁷.

During World War II, heavy civilian casualties resulted from bombardment as well as policies of genocide. The deportation and mass murder of civilians, as well as the taking and killing of hostages, focused the attention of international community on the need for civilian protection. Following World War II, an international effort was made to evaluate the wartime experience and update the existing rules when hostilities ceased, the ICRC submitted a draft revision of the conventions to governments.

⁶³ ibid

⁶⁴ At the urging of Tsar Nicholas II of Russia

⁶⁵ Including 'dum-dum' bullets which expand in the body, poison weapons and attacks from hot air balloons

⁶⁶ ICRC ibid

⁶⁷ Although the "red lion and sun" is no longer in use

In 1949, the Diplomatic Conference for the establishment of International Conventions for the Protection of Victims of War ratified a Fourth Geneva Convention on civilians and incorporated it and the previous treaties into the Geneva conventions of August 12, 1949, with 429 articles. The Geneva conventions have been universally adopted by all nations in the world.

2.5.2 The Additional Protocols to the Geneva Convention: The appearance of new forms of conflict such as guerrilla warfare and widespread non-international conflicts led the ICRC to propose new laws to meet these challenges. In 1956, rules were drafted for the protection of the civilian population from the dangers of indiscriminate warfare. The 1968 United Nations Conference on Human Rights provided further backing to increase the scope of IHL. As a result, the ICRC organized meetings of government legal advisers paving the way for a diplomatic conference. In 1977, two additional protocols to the Geneva Conventions were adopted⁶⁸.

The Additional Protocols supplement the protections under the Geneva Conventions. Protocol I expands protection for the civilian population and military and civilian medical workers in international armed conflicts. Protocol II extends similar protections during non-international armed conflict. As of 2011, 170 nations have ratified protocol 1 and 165 have ratified protocol II. In December 2005, governments adopted a third additional protocol, creating an optional emblem, known as the red crystal. It is equal in status to the Red Cross and Red Crescent emblems.

⁶⁸<https://blogs.icrc.org/cross-files/diplomatic-conference>

Conclusion

After a careful examination of the fundamental key terms that make up this dissertation, it is believed that a solid foundation has been laid for the proper appreciation of this research. It is also believed that the reader will benefit from the concepts of armed conflict, laws of armed conflict and the meaning of civilians and civilian objects.

CHAPTER THREE

THE LEGAL REGIME FOR THE PROTECTION OF CIVILIANS AND CIVIL OBJECTS IN INTERNATIONAL ARMED CONFLICT SITUATION

3.1 Introduction

Over the years, IHL has established a comprehensive legal framework for the protection of civilians and civilian objects in armed conflict situations. There is broad consensus that these laws afford non-combatants significant protection from the effects of military operations- provided they are carefully implemented by all parties to the conflict. Notwithstanding these measures, on a daily basis civilians are directly affected through death, injury, rape and forcible displacement as a direct consequence of war, or indirectly through conflict induced increase in disease, hunger, and malnutrition.

The aim of this chapter is to have a comprehensive analysis and appraisal of the laws that protect civilians and civilian objects in armed conflict. This chapter aims at appraising the laws protecting civilians and civilian objects during armed conflict. These laws are contained in different international instruments which the writer will discuss in relation to what is obtainable today in some states experiencing armed conflict. The chapter will therefore consider and discuss provisions relating to civilian protection from the Four Geneva Conventions of 1949, the two Additional Protocols of 1977, the ICC Rome Statute and customary IHL.

3.2 Legal Regime for the Protection of Civilians in Armed Conflict Situations

IHL protects a wide range of people during armed conflict. However, this research will focus mainly on the examination of the 1947 Geneva Conventions (excluding the third convention

for the protection of refugees), the two Additional Protocols, the ICC Rome Statute and customary IHL. Reference will also be made to other subsidiary legislations and manuals that protect civilians and civilian objects. Further, reference will be made to the roles of the United Nations (UN) Security Council and the International Committee of the Red Cross (ICRC).

3.2.1 First Geneva Convention⁶⁹: The First Geneva Convention is for the amelioration of the condition of the wounded and sick armed forces in the field. It contains provision for the protection of sick and wounded soldiers, who can no longer participate in the hostilities. Protected persons according to the convention include:

- (1) Members of the armed forces of a party to the conflict as well as members of the militias or volunteer corps forming part of such armed forces.
- (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements belonging to a party to the conflict.
- (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 civil members of military aircraft crews, war correspondents, supply contractors.
- (5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft to the parties to the conflict.⁷⁰

⁶⁹ Geneva Convention for the Amelioration of the Condition of The Wounded and Sick in Armed Forces in The Field of August 12, 1949

⁷⁰ Article 13 First Geneva Convention

These persons are to be respected and protected in all circumstances. They shall be treated humanely and cared for by the party to the conflict in whose power they may be without any adverse distinction founded on sex, race, nationality, religion, political opinion or any other similar criteria. Attempts on their lives, or violence to their person is strictly prohibited. In particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments, they shall not be willfully left without medical assistance and care or exposed to contagions or infection. Only urgent medical reasons will authorize priority in the order of treatment to be administered.⁷¹ Women shall be treated with all consideration due to their sex,⁷² and shall receive to the fullest extent practicable and with the least delay, the medical care and attention required by their conditions.

Critically, under IHL, civilians must not only be protected from attacks and impact of conflict but also be able to go about their daily lives. But we see too often the fabric of communities is eroded; kids cannot attend school, the sick cannot reach hospitals and livelihoods are interrupted or cease entirely. When people live in fear and cannot safely continue their activities, they risk becoming marginalised, destitute and reliant on humanitarian aid.⁷³ However, it has been reported that Boko Haram has used stones, machetes, knives, sophisticated and high-calibre weapons, improvised explosive devices, landmines guns mounted on pickup trucks, military helicopters, armoured vehicles and motorcycles to perpetrate killings. Men and boys who refused to adopt the beliefs professed by Boko Haram were specifically targeted in killings, as were law enforcement officials, teachers, health-care workers and members of civilian self-defence groups. In Nigeria, Boko Haram intentionally

⁷¹ Article 12 Ibid

⁷² Ibid

⁷³ Baldon, M. (2017) *Protection of Civilians in Armed Conflict*. ICRC, Geneva, p162.

killed and maimed civilians in attacks throughout the State of Borno and in parts of the States of Adamawa and Yobe. Many witnesses reported that Boko Haram shot civilians that tried to escape during attacks in Askira Uba, Baga, Bama, Damasak, Gombi, Gwoza, Kwajafa, Madagali, Maiduguri, Michika and Mubi. The killings were often preceded by death threats or an invitation from Boko Haram, inviting men and boys to join them in the work of Allah. Those who refused to join were killed, and their bodies often left to rot in the streets, in wells or river beds.⁷⁴ In Syria, a huge of civilians were reportedly killed, with several civilian buildings that have not been used for military purpose were attacked and destroyed by either parties to the conflict. This has rendered millions of civilians homeless and displaced within their fatherland. Several others forced to cross border to seek refuge in the neighbouring countries such as Turkey, Jordan, and Lebanon.⁷⁵

Medical personnel exclusively engaged in the search for and collection, transport or treatments of the wounded or sick are also to be respected and protected in all circumstances.⁷⁶ They are also enjoined to wear identity disc bearing the distinctive emblem, issued and stamped by the military authority.⁷⁷ The medical personnel enjoy the most extensive protection under IHL. They may not be attacked, harmed or taken as prisoners of war, and that their humanitarian work may not be inhibited⁷⁸. Marco Baldon, a war surgeon said in relation to attacks on medical personnel and facilities ‘We are not only seeing health workers killed or threatened, hospitals destroyed, and ambulances obstructed, but entire

⁷⁴ United Nations General Assembly (2005) Violations and Abuses by Boko Haram and the Impact on Human Rights in Countries Affected; A Report Submitted to the Human Rights Council Pursuant to Council Resolution s-23/1

⁷⁵ UN: ‘Syria death toll rises above 100,000’ Aljazeera Middle East, 25 July 2013 available at <http://www.aljazeera.com/news/middleeast/2013/07/20137217450141.html> accessed 31st October 2013

⁷⁶ Article 24 First Geneva Convention

⁷⁷ Ibid Article 40

⁷⁸ ICRC, (2006) Persons Protected Under IHL Geneva

public health systems collapse. Communities are exposed to revivals of epidemics, compounding already existing humanitarian catastrophes, and causing long-term setbacks in public health and development. It happens in many places, in Syria for example, there were cases of cross contamination of medical assistants due to the use of poisonous by parties to the conflict⁷⁹, but recently in Yemen we have seen a deadly cholera outbreak which has taken the lives of hundreds of people just in the past few weeks.⁸⁰

In today's conflicts, healthcare facilities are consistently coming under attack, with devastating consequences for medical personnel and the populations they serve⁸¹. In the words of Medecins Sans Frontieres (MSF), International President Joanne Lui and ICRC President Peter Maurer, "A dangerous complacency is developing whereby such attacks are starting to be regarded as the norm. They are part of the tapestry of today's armed conflicts where civilians and civilian infrastructure are targeted"⁸². They stated further "the doctor of your enemy is not your enemy". Indeed, medical neutrality – a foundational principle of the rules of war – ensures that sick and wounded soldiers and civilians may receive medical care in conflict settings regardless of their political or other affiliations. Under IHL, medical personnel are required to treat all patients without distinction based on race, ethnicity, religion, political affiliation or participation in hostilities⁸³. Lastly, parties to the conflict are to take all possible measures to search for and collect the wounded and sick, to protect them

⁷⁹ Syria/Syrian Chemical Programme – National Executive Summary Of Declassified Intelligence, op citt..

⁸⁰ Baldon M. op cit 14

⁸¹ Brooks J.(2016) *Not a Target: Protecting Healthcare in Conflict* atha.se/blog/not-a-target-protecting-healthcare-conflict. Accessed on 11th May 2017 at 2.00pm

⁸² Ibid

⁸³ Ibid

against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.⁸⁴

3.2.2 Second Geneva Convention⁸⁵: The second Geneva Convention is for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea. This Convention is applicable only to forces on board ship.⁸⁶It contains similar provisions with the First Geneva Convention especially as it relates to the protection of civilians and other protected persons. However, this Convention failed to clarify matters concerning the conduct of hostilities at sea. During the Falklands/Malvinas war of 1982 for example, problems arose with the use of exclusion zones by the warring parties, and the Second Convention's prohibition of the use of secret codes by hospital ships.⁸⁷Moreover, the armed conflict between the Islamic Republic of Iran and Iraq in 1980-1988 saw frequent attacks on neutral civilian ships and the use of underwater mines.⁸⁸

However, the convention constitute no obstacle to the humanitarian activities which the ICRC or any other impartial humanitarian organization may, subject to the consent of the parties of the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, for their relief.⁸⁹

⁸⁴ Ibid, Article 15

⁸⁵ Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of August 12, 1949

⁸⁶ Ibid Article 4

⁸⁷ Ibid Article 34(2)

⁸⁸ ICRC, How Does Law Protect in War? <https://casebook.icrc.org/law/naval-warfare> accessed 16th November 2017 at 12pm

⁸⁹ Ibid, Article 9

3.2.3 Fourth Geneva Convention⁹⁰:The fourth Geneva Convention relative to the protection of civilian persons in time of war contain certain minimum rules of protection that are applicable to all persons affected by armed conflict notwithstanding their nationality and the territory in which they live.

The Convention defined protected persons as those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals.⁹¹ It provides for the general protection of the wounded and sick soldiers, expectant mother and the infirm, they shall be the object of particular protection and respect. Parties to the conflict have been enjoined to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.⁹²

Furthermore, persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.⁹³

The Convention further contains special provision on measures relating to child welfare. It provides as follows:

The parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise

⁹⁰ Geneva Convention relative to the Protection of Civilian Persons In Time of War of August 12, 1949.

⁹¹ Ibid, Article 4

⁹² Ibid, Article 16

⁹³ Ibid, Article 20

of their religion and their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the protecting power, if any, and under the safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.⁹⁴

Generally, 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 time be treated humanely, and shall be protected against all acts of violence or threats thereof and against insults and public curiosity.⁹⁵ Protected persons are entitled to these treatments without discrimination based either on age, sex or health; they shall be treated with the same consideration.

They are also protected against murder, torture, corporal punishment, mutilation, medical or scientific experiments not necessitated by the medical treatment and any measure of brutality whether applied by civilian or military agents.⁹⁶

In Nigeria for example, Boko Haram intentionally killed and maimed civilians in attacks throughout the State of Borno and in parts of the States of Adamawa and Yobe. Many witnesses reported that Boko Haram shot civilians that tried to escape during attacks in Askira Uba, Baga, Bama, Damasak, Gombi, Gwoza, Kwajafa, Madagali, Maiduguri, Michika and Mubi. The killings were often preceded by death threats or an invitation from Boko Haram “inviting” men and boys to join them in “the work of Allah”. Those who refused to join were

⁹⁴ Ibid, Article 24

⁹⁵ Ibid, Article 27

⁹⁶ Ibid, Article 32

killed, and their bodies often left to rot in the streets, in wells or river beds. There was equally a video footage of a massacre of civilians after Boko Haram captured Bama, in October 2014. It depicted several men with their arms bound, driven in a truck to a bridge where they were shot, one after the other, in the back of the head and thrown into a river. It also showed civilians held in a room and shot; Boko Haram fighters then trampled on bodies to check that the victims were dead. The footage is consistent with information documented by the office of the United Nations High Commissioner for Human Rights (OHCHR) on the attack in Bama. Information was received that, in Madagali (State of Adamawa) in November 2014, Boko Haram assembled some 1,000 male villagers at the local school and shot them. Witnesses interviewed in the States of Adamawa, Borno and Yobe recalled numerous cases of men and boys being shot, hanged, hacked to death, stoned and, in some cases, their bodies piled up in the street, and their relatives forced to identify them.⁹⁷

It is also prohibited to punish any protected person for an offence not personally committed by them. Collective penalties and all measures of intimidation or of terrorism are equally prohibited;⁹⁸ Amnesty international believes that the massive destruction in Rafah refugee camp and elsewhere in the Gaza strip cannot be justified on the grounds of “absolute necessity”, as the Israeli authorizes claim, and constitutes a form of collective punishment against the tens of thousands of Palestinians who have been affected⁹⁹. The taking of hostages is also prohibited.¹⁰⁰

⁹⁷ United Nations General Assembly op cit

⁹⁸ Ibid, Article 33

⁹⁹ *Sakhwil et al vs Commander of the Judea and Samaria Region*. Case No. III, Israel, House Demolitions in Occupied Palestinian Territory.

¹⁰⁰ Article 34 Fourth Geneva Convention

Women in particular shall be specially protected against any attack on their honour in particular against rape, enforced prostitution, or any form of indecent assault.¹⁰¹ Conflict-related sexual violence remains an acute protection concern, in particular among displaced populations. For example, there were allegations of mass rapes in the eastern Democratic Republic of the Congo, South Sudan and the Sudan, widespread and systematic sexual violence in Iraq and the Syrian Arab Republic and sexual assaults on women affiliated with the political opposition in Burundi. The Security Council, Member States and other relevant actors were encouraged to redouble their efforts to prevent and respond to conflict-related sexual violence, including by ensuring accountability for perpetrators and helping survivors to heal and rebuild their lives¹⁰². Similarly, It has been reported by the United Nations High Commission for Human Right¹⁰³ that Boko Haram has subjected women and girls to widespread and severe forms of abuse, including sexual slavery, sexual violence, forced marriages, forced pregnancies and forced conversions. The group justifies such practices by its conception of the role of women and girls in society. In one video message in which the group claimed responsibility for the abduction of the Chibok girls, Shekau¹⁰⁴ declared that “God instructed me to sell them, they are his property and I will carry out his instructions”. In another message, he spoke of abducted girls as “spoils of war”. One woman interviewed stated that she had been coerced into marriage when Boko Haram attacked her village, adding that “they came back after killing the men and boys and told me that an Imam in their group

¹⁰¹ Ibid, Article 33

¹⁰² United Nations Security Council Report of the Secretary General on the Protection of Civilians in Armed Conflict

¹⁰³ UNGA Violations and Abuses Committed by Boko Haram and the Impact on Human Rights in the Countries Affected. A Report submitted to the Human Rights council, July 2015.

¹⁰⁴ The Leader of the Boko Haram Terrorist Group.

would preside over the marriage ceremony. It has been reported that younger girls are being married off to fighters and older women forced to work as cooks and cleaners.

The convention cover the whole of the populations of the countries in conflict, without any adverse distinction based in particular on race, nationality, religion or political opinion and are intended to alleviate the sufferings caused by war.¹⁰⁵

3.2.4 First Protocol Additional to the Geneva Convention¹⁰⁶: The First Protocol Additional to the Geneva Convention contains special provisions regarding the protection of the civilian population against hostilities.

The foundation of this protocol is the principle that persons not actively engaged in warfare should be treated humanely. It provides that “in case not covered by the protocol or by other international agreements, civilian and combatants remain under the protection and authority of the principles of international law derived from established customs, from the principles of humanity and from the dictates of public conscience¹⁰⁷.”

The basic rule as contained in Part IV of the Protocol provides that “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 objects and military objectives and accordingly shall direct their operations only against military objectives.¹⁰⁸”

The principle of distinction protects civilians from the effect of military operations. It requires parties to an armed conflict to distinguish at all times, and under all circumstance between

¹⁰⁵ Article 13 Fourth Geneva Convention

¹⁰⁶ Protocol additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (protocol 1) of 8 July 1977

¹⁰⁷ Article 1 (2) First Protocol Additional to the Geneva Convention

¹⁰⁸ Ibid Article 48

combatants and non-combatants, and to only target the latter. The principle of distinction has also been found by the ICRC to be reflected in the state practice. It is therefore, an established norm of customary international law in both international and non-international armed conflict.¹⁰⁹ Indiscriminate attacks are those that strike legitimate targets and civilians without distinction.¹¹⁰

The civilian population and individual civilians enjoy general protection against dangers arising from military operations.¹¹¹ 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. “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”.¹¹²

Indiscriminate attacks are also prohibited, that is, those attacks not directed to a specific military objective,¹¹³ or those which employ a method or means of combat which cannot be directed to a specific military objective, and those which may be expected to cause incidental loss of civilian life, injury to civilians and also excessive in relation to the concrete and direct military advantage anticipated.¹¹⁴ Attacks against the civilian population by way of reprisals are also prohibited.¹¹⁵

The protocol further provides for protection of works and installations containing dangerous forces. It provides as follows:

¹⁰⁹ ICRC, *Essentials of the Laws of War*. Vol. 7, (2005) p.3

¹¹⁰ Dill J, (2014) *Legitimate Target?* Cambridge University Press, London p23

¹¹¹ Article 51 (1) Protocol I.

¹¹² *Ibid*, Article 51 (2)

¹¹³ *Ibid*, Article 51 (4)

¹¹⁴ *Ibid*, Article 51 (5) b

¹¹⁵ *Ibid*, Article 51 (6)

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause release of dangerous forces and consequent severe losses among the civilians population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.¹¹⁶

Also, certain precautionary measures are provided in order to avoid incidental loss of civilian life. With respect to attacks, combatants are to do everything feasible to verify that the objectives to be attacked are not civilians and are not subject to special protection,¹¹⁷ they should also take all precautions in the choice of means and methods of attack with a view to avoiding and minimizing incidental loss of civilian life or injury to civilians,¹¹⁸ and lastly, refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life or injury to civilian.¹¹⁹The UN Security Council provided in relation to this, that the deliberate firing of missiles by Iraq in the 1991 Gulf War constituted an act of aggression against a state not party to the conflict i.e. Israeli and Saudi Arabian cities¹²⁰. These precautions were further buttressed in the case of *Prosecutor vs Kupreskic et al*¹²¹. The European Union condemned the excessive, disproportionate and indiscriminate attacks perpetrated by the Syrian regime against its own people and called for an immediate end to all forms of willful or indiscriminate attack that affected civilian areas and structures including the use of barrel bombs and chemical weapons.¹²²It is worthy to mention the use of sarin

¹¹⁶ Ibid, Article 56 (1)

¹¹⁷ Ibid, Article 57 (2) (a) (i)

¹¹⁸ Ibid, Article 57 (2) (a) (ii)

¹¹⁹ Ibid, Article 57 (2) (a) (iii)

¹²⁰ UN Security Council Resolution 540 (1983)

¹²¹ Case No.184, ICTY Trial Chamber, Judgment of 14th January 2000

¹²² Dill J, op cit p.17

agents on several occasions by the Assad forces, which caused the desired result expected of a nerve agent.¹²³ The sarin has destroyed the nervous system of several civilians in the affected areas and it causes overstimulation of muscles.¹²⁴ The symptoms on the victims includes nausea, weakness, convulsion, and spasms. The victims lost muscle control, nervous system irregularities and subsequently led to the death of several civilians¹²⁵. Reports also showed that poisonous gas was used against civilians which was evident from the side effects on the victims such as difficulties in breathing, relaxed muscles, nausea, and hazy vision.¹²⁶

Further, an attack shall be cancelled or suspended if it becomes apparent that the object is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life or injury to civilians, which would be excessive in relation to the concrete and direct military advantage anticipated.¹²⁷ Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.¹²⁸

In addition, the protocol provides for precautions against the effects of attacks. It states that parties to the conflict shall, to the maximum extent feasible:

- (a) Without prejudice to article 49 of the fourth Geneva Convention, endeavour to remove the civilian population and individual civilian under their control from the vicinity of military objectives;

¹²³¹²³ Robinson J.P. Categories of Challenge Now Facing the Chemical Weapons Convention, at 7-9

¹²⁴ Dana A. Chemical Weapons: A Summary Report of Characteristics and Effects, at 2.

¹²⁵ 'Syria/Syrian Chemical Programme - National Executive Summary of Declassified Intelligence'

¹²⁶ Robinson J.P. Alleged Use of Chemical Weapons in Syria. Harvard Sussex Program Occasional Paper, issue 04, 26 June 2013, at 12.

¹²⁷ Ibid, Article 57 (2) (b)

¹²⁸ Ibid, Article 57 (2) (c)

- (b) Avoid locating military objectives within or near densely populated areas;
- (c) Take the other necessary precautions to protect the civilian population under their control against the dangers resulting from military operations.

With regards to women and children, the First protocol contains detailed measures in favour of women and children and even journalists. The protocol provides as follows in relation to women.

- (1) Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.
- (2) Pregnant women and mothers having dependant infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

To the maximum extent feasible, the parties to the conflict shall endeavor to avoid the pronouncement of the death penalty on pregnant women and mothers having dependant infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.¹²⁹

As regards children, it provides that:

- (1) Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

¹²⁹ Ibid, Article 76

- (2) The parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and in particular, they shall refrain from recruiting them into their armed forces.
- (3) If arrested, detained or interned for reasons related to the armed conflict, children shall be in quarters separate from the quarters of adults, except when accommodated as family units.
- (4) The death penalty for an offence related to the armed conflict shall not be executed on person who had not attained the age of 18 years at the time the offence was committed.¹³⁰

The UN urge states to Condemn and prevent violence against women and children in conflict situations, and ensure that survivors receive adequate support, affordable and accessible health care services, including sexual and reproductive health.¹³¹ The pervasive lack of compliance with IHL is having a particularly devastating impact on children. In several conflicts, including in Afghanistan, the Central African Republic, Somalia, South Sudan and Yemen, grave violations against children increased significantly in 2015. The Security Council, Member States and other relevant actors were urged to take specific measures to protect children affected by armed conflict and ensure accountability for grave violations. The military use of schools further jeopardizes the safety of children. In the Democratic Republic of the Congo, for example, 30 incidents of such use were recorded in 2015, compared with 9 in 2014. A total of 20 incidents were recorded in Afghanistan, 40 in South Sudan, 34 in Ukraine and 51 in Yemen. All parties to conflict are obliged to take precautions

¹³⁰ Ibid, Article 77

¹³¹ Resolution 283 on the Situation of Women and Children Armed Conflict

to protect civilians against the effects of military operations. Since the Oslo Conference on Safe Schools, in May 2015, more than 50 States have endorsed the Safe Schools Declaration and committed themselves to better protecting educational facilities, pupils and teachers from attack, including by incorporating the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict into national legal and operational frameworks. Member States are encouraged to endorse the Declaration.¹³² In Nigeria, the terrorist group Boko Haram has kidnapped and abused more than 2 000 women and girls, recruited children and used them as suicide bombers or human shields. The national security forces and those of neighboring countries taking part in the counter-insurgency efforts have also been accused of crimes and serious human rights violations.¹³³

Special measures of protection for journalists are also contained in the protocol. Journalists all over the world are given some privileges because of the nature of their jobs. The following provisions are for the protection of journalists.

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians.
2. They shall be protected as such under the conventions and this protocol, provided that they take no action adversely affecting their status as civilians and without prejudice to the right of war correspondents accredited to the armed forces.

¹³² Ibid

¹³³ Cirliq C.C. (2016) *Protecting Civilians in Armed Conflict International Framework and Challenges*. European Parliament Research Service Briefing, London, p140.

3. They may obtain an identity card, which shall be issued by the government of the state to which the journalist is a national or in whose territory he resides or in which the new medium employing him is located, shall attest to his status as a journalist.¹³⁴

Captured journalists are to be treated as civilians and so, should be treated humanely and protected as much as possible. They should be removed from combat areas and any act of violence against their person is regarded as war crime. Journalists play a key role in promoting the flow of information, exposing violations and ensuring accountability. Nevertheless, journalists are killed and injured in conflicts throughout the world, often deliberately. In 2015, the United Nations Educational, Scientific and Cultural Organization (UNESCO) condemned the killing of 52 journalists in armed conflict. Member States should take measures to reinforce the safety of journalists in armed conflict and prevent impunity. The UN Security Council strongly condemned impunity for attacks on journalists, which greatly increased globally, and called on parties to the conflict and all member states to create a safe environment in law and practice for media professionals to do their important work. The council unanimously adopted resolution 2222 (2015)¹³⁵ where the council expressed deep concern at the growing threat to journalists and associated media personnel, including killings, kidnapping and hostage taking by terrorist groups.¹³⁶

3.2.5 Second Protocol Additional to the Geneva Convention¹³⁷: The Second Protocol Additional to the Geneva Convention cover all civilians as long as they are not taking direct

¹³⁴ Ibid, Article 79

¹³⁵ Security Council Resolution 2222 (2015) On the Protection of Journalists and the issue of impunity.

¹³⁶ UN Security Council, (2016) Report of the Secretary General on the Protection of Civilians in Armed Conflict.

¹³⁷ Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (protocol II) of 8 June 1977

part in the hostilities, and in most current conflicts, the great majority of civilians take no such part.

The basic rule of Protocol II is principally to ensure that in the event of armed conflict, the parties conduct themselves in such a way that the minimum standard of IHL is observed, especially with regards to civilians. Part II deals with the civilian population in general, where it provides thus:

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

Furthermore, the protocol prohibits the forced movement of civilians during conflicts, where it provides that:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.¹³⁸ Civilians shall not be

¹³⁸ Article 13 Second Protocol Additional to the Geneva Convention

compelled to leave their own territory for reasons connected with the conflict.¹³⁹

This provision is also contained in customary IHL, where it was provided that ‘parties to a non international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilian is involved or imperative military reasons so demand.¹⁴⁰The prohibition of forcible transfers found in IHL applies solely to transfers for reasons relating to the conflict. Displacement may be necessary in certain situations such as natural disasters or epidemics which may likely occur during a situation of armed conflict for reasons such as breakdown in local infrastructure leading to breakouts of water borne diseases.¹⁴¹ At the end of 2014, displacement had reached record levels since the Second World War, as wars, conflicts and persecution forced 59.5 million people to flee their homes, the majority of them women and children.¹⁴²The conflict in Syria has also displaced about 10 million civilians. Out of the number, about 3 million are internally displaced within their country, while more than 5 million have been forced to take off the shores of their country in order to seek refuge in neighboring countries.¹⁴³

The Protocol further contains special provisions for the protection of sick, wounded and ship wrecked person whether military or civilians. These are people whom misfortune befalls during armed conflict. It maybe a bomb or other explosives dropped on or close to the place where they are situated, thereby wrecking the place and leaving some wounded and others dead. There are also situations where a ship capsizes due to high current of waves in water

¹³⁹ Ibid, Article 17

¹⁴⁰ Rule 129 Customary IHL.

¹⁴¹ United Nations Human Rights (2017) Transfer of Civilian Population in International Law.

¹⁴² Cirlig C.C. op cit p.20

¹⁴³ Helping the vulnerable in Syria’s conflict available at http://jrsusa.org/campaigns_focus?T=PROMO-201209.

and those who survive by swimming to dry land usually sick and can no longer act in hostilities. Military commanders may appeal to the National Red Cross and Red Crescent societies, and to commanders of neutral merchant vessels, yacht and other craft to collect and care for wounded and shipwrecked persons and to collect and identify the dead. The protocol makes provisions on their protection as follows:

- (1) All the wounded sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.
- (2) In all circumstances, they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible 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.¹⁴⁴

It further states that:

Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.¹⁴⁵

With regards to the protection of medical and religious personnel, the protocol provides that they shall be respected and protected, and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission. Also the medical personnel may not be required to give priority to any person except on medical grounds.¹⁴⁶ Humanitarian access to people in need has constantly been impeded – almost 78 million people worldwide were in urgent need of assistance and protection (from conflict and natural disasters) at the end of 2014, while

¹⁴⁴ Ibid Article 7

¹⁴⁵ Ibid, Article 8

¹⁴⁶ Ibid, Article 9

attacks continue to be perpetrated against humanitarian and relief personnel and facilities, in violation of international law.¹⁴⁷

In addition, the protocol contains special provisions of fundamental guarantees in relation to humane treatment generally. Part II provides as follows, with respect to fundamental guarantees.

- (1) All persons who do not take direct part or who have ceased to take part in hostilities, whether or not, their liberty has been restricted, and entities to respect for their person, honour and convictions, and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
- (2) Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I, are and shall remain prohibited at anytime and in any place whatsoever:
 - a. Violence to life, health and physical or mental well being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment
 - b. Collective punishment
 - c. Taking of hostages
 - d. Acts of terrorism
 - e. Outrages upon personal dignity, in particular humiliating and degrading treatment.

¹⁴⁷ Cristina Cirlig op cit p.25

- f. Rape, Enforced prostitution and any form of indecent assault.
- g. Slavery and the slave trade in all forms
- h. Pillage
- i. Threats to commit any of the foregoing acts.¹⁴⁸

The same article contains special protection for children. The protection of children during armed conflict cannot be overemphasized because it has devastating effect on them. This is the reason IHL has provided explicitly for their protection during armed conflict. Article 4 provides, among other things that children shall receive education, including religious and moral education, in keeping with the wishes of their parents or guardians.¹⁴⁹ It further prohibits the recruitment of children under the age of 15 years into the armed forces or groups. This protection subsists even when such children under the age of 15 years take a direct part in hostilities and are captured.¹⁵⁰ Measures shall also be taken, if necessary, and whenever possible with the consent of their parents or guardians to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that these are accompanied by persons responsible for their safety and well-being.¹⁵¹

On the whole, the second Geneva Convention contains specific provisions on Humane treatment, wounded, sick and shipwrecked, and the Civilian population, among other things.

¹⁴⁸ Ibid, Article 4 (1) (2)

¹⁴⁹ Ibid, Article 4 (3) (a)

¹⁵⁰ Ibid, Article 4 (3) (d)

¹⁵¹ Ibid, Article 4 (3) (e)

3.2.6 The ICC Rome Statute¹⁵²: The Rome Statute of the International Criminal Court defines attacking the civilian populations as a war crime. Article eight provides that intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities is a serious violation of the laws and customs of armed conflict.¹⁵³ It also prohibits intentionally direction attacks against personnel involved in humanitarian assistance or peacekeeping mission,¹⁵⁴ intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians.¹⁵⁵ This prohibition is borne out of Rule 14 of customary IHL and was further buttressed by Article 20 (b) (ii) of the 1996 ILC Draft Code of Crimes against the Peace and Security of Mankind “launching an indiscriminate attack affecting the civilian population in the knowledge that such attack will cause excessive loss of life and injury to civilians is a war crime.¹⁵⁶ The transfer, directly or indirectly by the occupying power of parts of its own civilian population into the territory it occupies¹⁵⁷ is also prohibited. Killing or wounding a combatant who have laid down his arms or having no longer means of defence, has surrendered at discretion is also a war crime.¹⁵⁸

3.2.7 Customary IHL: Customary IHL imposes two fundamental obligations applicable both in international and internal conflicts on belligerents, to ensure that attacks on places or areas where both civilians and combatant are found do not jeopardize civilians.

¹⁵² A Court established to exercise jurisdiction over persons for the most serious crimes of international concern.

¹⁵³ Article 8 (2) (b) (I) ICC Statute

¹⁵⁴ Article 8 (2) (b) (iii) Ibid

¹⁵⁵ Article 8 (2) (b) (iv)

¹⁵⁶ Draft Code of Offences Against the Peace and Security of Mankind, Adopted by the International Law Convention, reprinted in report of the ILC on the work of its sixth session, UN DOC.A/2693, 1954

¹⁵⁷ Article 8 (2) (b) (viii)

¹⁵⁸ Article 8 (2) (b) (vi)

The first obligation is to take precautions for the purpose of sparing civilians as much as possible¹⁵⁹. Such precautions, laid down in customary international law, are as follows:

- i. Do everything feasible to verify that the objectives to be attacked are not civilian in character.
- ii. Take all feasible precautions in the choice of means and methods of combat, with a view to avoiding or at least minimizing incidental injury to civilians or civilian objects.
- iii. Refrain from launching attacks which maybe expected to cause incidental loss of civilian life or injury to civilians.
- iv. Give effective advance warning of attacks which may affect the civilian population, except in cases of assault or where circumstances do not permit¹⁶⁰.

Numerous military manuals restate the duty of parties to the conflict to take all feasible precautions to protect the civilian population under their control against the effect of attacks¹⁶¹. This obligation is supported by official statements and reported practice¹⁶²

The second fundamental obligation incumbent on any party to an International or Internal armed conflict is to respect the principle of proportionality when conducting attacks on military objectives that may entail civilian losses¹⁶³. Under this principle, a belligerent, when attacking a military objective, shall not cause incidental injury to civilians disproportionate to

¹⁵⁹ Rule 22 customary IHL

¹⁶⁰ <https://ihl-database.icrc.org/customary-ihl/eng/docs/v1-rul-rule22>, accessed 16th November 2017 at 9.00am

¹⁶¹ For example the military manuals of Argentina, Cameroon, Canada, Croatia, Germany, Italy, Nigeria, New Zealand .

¹⁶² For example the statements of Germany, Iraq, United States, Malaysia.

¹⁶³ Rule 14 Customary IHL

the concrete and direct military advantage anticipated. In *Zoran Kupreskic and others* (supra), the ICTY trial chamber held in 2000 that “even if it can be proved that the Muslim population of Ahmici (a village in Bosnia and Herzegovina) was not entirely civilians but comprised some armed elements; still no justification would exist for widespread indiscriminate attacks against civilians. Also, in 2002, the British government pointed out in the House of Lords that with regards to civil war in Chenchnya, it had stated to the Russian government that military operations must be proportionate and in strict adherence to the rule of law¹⁶⁴.

The international committee of the Red Cross sums up the treatment of civilian persons in the following words “respects them, treat those in your power humanely, protects them against ill-treatment, vengeance and taking of hostages are prohibited”.¹⁶⁵ Parties to a conflict are required to always distinguish between combatants and civilians and to refrain from attacking civilians.

3.3 Legal Regime for the Protection of Civilian Objects in Armed Conflict Situations

This segment will focus mainly on the examination of the 1947 Geneva Conventions (excluding the third convention for the protection of refugees), the two Additional Protocols, the ICC Rome Statute and customary IHL. Reference will also be made to other subsidiary legislations and manuals that protect civilian objects. Further, reference will be made to the roles of the United Nations (UN) Security Council and the International Committee of the Red Cross (ICRC).

¹⁶⁴ In 73 British Year Book of International Law 2002, at p.955

¹⁶⁵ ICRC, (2010) *Essentials of the Law of War*. ICRC, Geneva. p.1

3.3.1 First Geneva Convention¹⁶⁶ : The first Geneva Convention is for the amelioration of the condition of the wounded and sick. It makes explicit provisions for the protection of civilian objects especially medical units and establishments.

The Convention states that fixed establishments and mobile medical units of the medical service may in no circumstances be attacked, but shall at all times be respected and protected by the parties to the conflict.¹⁶⁷ In addition, hospital ships entitled to the protection of the Geneva Convention for the amelioration of the wounded, sick and shipwrecked members of the armed forces at sea shall not be attacked from the land.¹⁶⁸

The prohibition against attacks on hospitals, medical units, and medical establishments during armed conflicts is very paramount in protecting civilians and is applicable in both internal and international armed conflict. The scope of this rule has been expanded in Additional Protocol 1 to cover civilian medical units.

The term medical unit refers to establishments and other units, whether military or civilian, organized for medical purposes, be they fixed or mobile, permanent or temporary. The term includes for example, hospitals and other similar units, blood transfusion centers, preventive centers and institutes, medical depot and the medical and pharmaceutical stores of such units.¹⁶⁹

With regards to the meaning of respect and protection as used in the article, state practice contain the following specifications; the military manuals of Nigeria, Benin, Togo and

¹⁶⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949

¹⁶⁷ Ibid, Article 19

¹⁶⁸ Ibid, Article 20

¹⁶⁹ ICRC, Customary IHL Database, <https://ihl-database.icrc.org/customary-ihl/eng/docs/citation>, accessed on 23th May, 2017. At 10:28am

Senegal for example state that medical units must remain untouched and that armed persons may not enter them, but that their contents and actual use maybe checked through an inspection.¹⁷⁰

However, the protection for medical units ceases when they are being used, outside their humanitarian function, to commit acts harmful to the enemy.¹⁷¹ According to the commentary on the first Geneva Convention, examples of acts harmful to the enemy includes the use of medical unit to shelter able bodied combatants, to store arms or munitions, as a military observation post or as a shield for military action¹⁷²

In spite of these prohibitions, healthcare facilities are constantly coming under attack in today's conflicts, with devastating consequences. For example the Quds hospital in Aleppo Syria, the Ma'arDFat Al-Numan hospital in Idlib, Syria, the MSF Kunduz trauma center in northern Afghanistan, the shiara hospital in Razeh district northern yemen, to mention but a few.¹⁷³

In response to the growing concern over attacks on healthcare units, and just after the airstrikes destroyed the MSF and al quds hospital in Syria, killing at least 55 people, the UN Security council unanimously adopted resolution 2286(2016), strongly condemning attacks on medical facilities and personnel. The resolution reaffirms the responsibility of all conflicting parties to respect IHL, demands an end to impunity for those responsible for such attacks, and strongly urges states to conduct independent investigation into violations of IHL related to the

¹⁷⁰ See the military manuals of Benin Section 398, Nigeria Section 433, Senegal Section 438 and Togo Section 443.

¹⁷¹ Article 21, First Geneva convention

¹⁷² Pictet, J. (ed), Commentary on the first Geneva Convention, ICRC, Geneva, 1952, p200-201

¹⁷³ Brooks J. Not a Target: Protecting Healthcare in Conflict (2016) atha.se/blog/not-a-target-protecting-healthcare-conflict. accessed on 11th May 2017.

protection of medical units and to “take action against those responsible In accordance with domestic and international law, with a view to reinforce preventive measures, ensuring accountability and addressing the grievances of victims.”¹⁷⁴

3.3.2 Second Geneva Convention¹⁷⁵: The Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea contain provisions similar to those in the first convention, particularly as regards protection of hospital ships, medical units and establishments, medical aircraft exclusively employed for the removal of wounded, sick and shipwrecked, and for the transport of medical personnel and equipment they may not be the object of attack, but shall be respected by the parties to the conflict.¹⁷⁶ A good example is the use of hospital ships in the Falklands conflict¹⁷⁷. In addition, the emblem of the Red Cross on a white background shall be displayed on all equipments employed in the medical service.¹⁷⁸ Furthermore, the distinctive flag of the convention shall be hoisted over such medical units and establishments with the consent of the military authorities.¹⁷⁹

IHL affords special protection to medical property and personnel whose mission is to save lives and provide health care for civilians and combatants alike. Its rules and provisions obligate fighting parties to take all necessary measures to protect and respect medical missions in all circumstances.

¹⁷⁴ Ibid

¹⁷⁵ Geneva Convention for the Amelioration of The Condition of Wounded, Sick And Shipwrecked Members of the Armed Forces at Sea of August 12, 1949

¹⁷⁶ Ibid, Article 2

¹⁷⁷ Levie H. (1985) The Falklands Crisis and the Laws of War in the Falklands War (eds. A.R Coll and A.C. Arend), Boston, pp. 64, 67, 68.

¹⁷⁸ Article 41, Second Geneva Convention

¹⁷⁹ Ibid, Article 42

3.3.3 Fourth Geneva Convention¹⁸⁰: The fourth Geneva Convention is relative to the protection of civilians in time of war.

Part II focuses mainly on the protection of hospitals and medical convoy. It also made provisions for the creation of neutralized zones for general protection for objects which are not military objectives. It states:

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the parties to the conflict. States which are parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for purpose which would deprive these hospitals of protection...¹⁸¹

This convention provides for the possibility of setting up safety zones and neutralized zones.

Both zones are intended to shelter the wounded, the sick and civilians from the effect of conflict, but the hospitals and safety zones are meant to be far removed from military operations, whereas the neutralized zones are intended for areas in which military operations are taking place. These provisions are incorporated in many military manuals, which emphasize that the zones must be respected.¹⁸² Under the legislation of several states, it's an offence to attack such zones.¹⁸³ In a resolution adopted in 1970 on basic principles for the protection of civilian populations in armed conflict, the UN General assembly stated that 'places or areas designated for the sole protection of civilians, such as safety zones and neutralized zones or other similar refuges, should not be the object of military operations'.¹⁸⁴

¹⁸⁰ Geneva Convention relative to the protection of civilian persons in time of war of august 12, 1949.

¹⁸¹ Ibid, Article 18

¹⁸² For example, the Military Manuals of Argentina section 6-7, Australia section 8, Cameroon section 9, Canada section 10, Ecuador section 11, France section 12-13, Germany section 14, Nigeria section 22.

¹⁸³ For example, the legislation of Colombia section 36, Italy section 37, Poland section 40, Spain section 41.

¹⁸⁴ UN General Assembly, resolution 2675 (xxv) adopted by 109 votes in favor, none against and 8 abstentions.

In addition, each contracting party is to allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another contracting party, even if the latter is its adversary.¹⁸⁵

With regards to destruction, the convention prohibits any destruction of real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities or to social or co-operative organizations, except where such destruction is absolutely necessary by military operations.¹⁸⁶ According to the commentary published by the ICRC on article 53, destruction of property is illegal if the occupier does not try to keep a sense of proportion on comparing the military advantage to be gained with the damage done. This prohibition applies even in a situation of military necessity. In the case of *Sakwil et al vs Commander of the Judea and Samaria Region*, it was observed that an examination of the circumstances in which Israel implemented its policy – the extreme magnitude of the house demolitions, the uprooting of trees, the destruction of agricultural fields, clearly indicates excessive injury to civilian objects.¹⁸⁷

To this end, it has been reported by the United Nations High Commissioner for human Rights,¹⁸⁸ that Boko Haram has destroyed civilian objects protected under IHL including schools, mosques, churches, prisons, hospitals, and markets. The education authorities reported that 338 schools had been damaged or destroyed between 2012 and 2014 in the

¹⁸⁵ Article 23, fourth Geneva Convention

¹⁸⁶ Ibid, Article 53

¹⁸⁷ *Sakwil Et Al vs. Commander of the Judea and Samaria Region*. Case No. 111, Israel House Demolition in Occupied Palestinians' Territory

¹⁸⁸ United Nations General Assembly, Violations and Abuses by Boko Haram and the Impact on Human Rights in Countries Affected; (2005) A Report Submitted to the Human Rights Council Pursuant to Council Resolution s-23/1

states of Adamawa, Borno, and Yobe¹⁸⁹. In some areas, Boko Haram destroyed bridges linking villages, such as in Kubroshosh in Borno state. On 6th of April 2015, Boko Haram set fire to a local mosque in Kwajafa Village of Borno state. In June 2015, Boko Haram used improvised explosive device and attacked a church in Potiskum, Yobe state. Similarly, in July, two separate bomb attacks on a restaurant and a mosque in Jos, plateau state.¹⁹⁰ These are clear cases of destruction of property belonging collectively to the civilian population, and violations of the rules of IHL. The occupying power also has the duty of ensuring the food and medical supplies of the population are brought in, if the resources of the occupied territory are inadequate.¹⁹¹ Also, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.¹⁹²

3.3.4 First Protocol Additional to the Geneva Convention¹⁹³: The first protocol additional to the Geneva Convention contains detailed provisions on the protection of civilian objects, where it states, among other things that civilian objects shall not be the object of attack or of reprisals.¹⁹⁴ For the protection of cultural objects and places of worship, the protocol prohibits any act of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural heritage of people; the use of such objects in support of military effort; and making them objects of reprisals.¹⁹⁵ The obligation to take special care to avoid damage to buildings dedicated to religion, art, or charitable purposes and historic monuments, provided they are not used for military

¹⁸⁹ Article 53, Fourth Geneva Convention

¹⁹⁰ Ibid

¹⁹¹ Ibid, Article 55

¹⁹² Ibid, Article 62

¹⁹³ Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (protocol 1) of 8 July 1977

¹⁹⁴ Ibid, Article 52 (1)

¹⁹⁵ Ibid, Article 54 (2)

purposes, is set out in many military manuals¹⁹⁶, it is also restated in the legislation of numerous states, under which it is a punishable offence to attack such objects. Attacks against such objects have been condemned by states, the United Nations and other international organizations especially with respect to the conflicts in Afghanistan and Korea, between the Islamic Republic of Iran and Iraq and in the Middle East and former Yugoslavia.¹⁹⁷

While in every attack against a military objective, all feasible precautions must be taken to avoid, and in any event, to minimize incidental damage to civilian objects, special care is required to avoid damage to some of the most precious civilian objects. This requirement was already recognized in the Lieber Code, the Brussels Declaration and the Oxford manual and was codified in the Hague regulations¹⁹⁸ The Hague regulations also restrict the powers of the military with respect to enemy property falling into its hands during or following combat. It is especially forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure are imperatively demanded by the necessities of war”¹⁹⁹. This was further elucidated by Shamgar J.P in *Al Nawar vs Minister of Defence*²⁰⁰ that the provision does not accord protection to property used for hostile purposes. The report of the commission on Responsibility set up after the First World War identified the ‘wanton destruction of religious

¹⁹⁶ E.g the Military Manuals of Australia, Belgium, Nigeria, Cameroon, etc

¹⁹⁷ See the Practice of Islamic Republic of Iran, Pakistan, Yugoslavia,; UN General Assembly Resolution 47/147, 49/196 and 50/193; UN Security Council resolution 1265.

¹⁹⁸ Article 35 Lieber Code, Article 17 Brussels Declaration, Article 27 Hague Regulations, Article 34 Oxford Manual.

¹⁹⁹ Article 23 (g) Hague Regulations

²⁰⁰ Domb, F. “Judgement of the Supreme Court of Israel” in Israel year book on Human Rights, Vol.16 1986, P 321 - 328

charitable educational and historic buildings and monuments' as a violation of the laws and customs of war subject to criminal prosecution.²⁰¹

In the *Naulilaa* dispute²⁰² between Portugal and Germany, the tribunal in discussing the Portuguese claim for compensation, emphasized that before reprisals could be undertaken, there had to be sufficient justification in the form of a previous act contrary to international law. The German claim that it had acted lawfully was rejected on all grounds. The protocol further provides for the protection of objects indispensable to the survival of the civilian population:

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural area for the production of foodstuffs, crops, livestock, drinking water, installations and supplies and irrigation works, for the specific purpose of denying them of their sustenance value to the civilian population or to adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.²⁰³

According to the report of the UN High Commission on the violations and abuses by Boko Haram in Nigeria victims consistently reported that Boko Haram systematically destroyed, appropriated and looted homes during attacks²⁰⁴. These practices were widespread and part of the group's fighting tactics to gain control over territory and to prevent escapees from returning. Entire villages, such as Lassa, in State of Borno, Nigeria, were burned down during attacks in December 2014. The extent of such destruction was recounted by numerous witnesses who had escaped and returned after attacks. Many described how Boko

²⁰¹ Report of the Commission on Responsibility.

²⁰² *Portugal v. Germany* (1928) Cambridge Law Report (Special Arbitral Tribunal)

²⁰³ Article 54 (2) first protocol additional to the Geneva Convention

²⁰⁴ Report of the UN High Commissioner for Human Rights on the Violations and Abuses by Boko Haram in affected states, July 2015

Haram fighters had appropriated and resided in their homes and stole their possessions and food. Thousands were rendered homeless and fled overnight because of the attacks.²⁰⁵

With regards to the protection of natural environments, the first protocol provides as follows:

1. Care shall be taken in warfare to protect the natural environment against wide spread, long term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population;
2. Attack against the natural environment by way of reprisals is prohibited.²⁰⁶

IHL establishes specific provisions for the protection of the natural environment. Thus, it is prohibited to employ methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment and that may threaten the health or survival of the population, like the deliberate spillage of vast quantities of oil into the Persian Gulf by Iraq during the 1991 Gulf war. This comes from the principle that establishes that hostilities must not destroy objects that are indispensable to the survival of the civilian population.²⁰⁷

The Convention on the Prohibition of Military or Any Hostile use of Environmental Modification Techniques, adopted under the aegis of the United Nations on 10 December 1976 and ratified by seventy-six States, also gives some specific provisions with regard to the protection of the environment in time of conflict. Article 1 reads as follows: “Each State Party to this Convention undertakes not to engage in military or any other hostile use of

²⁰⁵ Article 54 First Protocol Additional to the Geneva Convention

²⁰⁶ Ibid, Article 55

²⁰⁷ Ladan M.T. Ibid

environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.” This Convention was drafted after the Vietnam War, during which the use of Napalm by the U.S. Army led to the destruction of a great part of Vietnam’s natural environment.²⁰⁸

The protection of the natural environment in time of conflict is also codified in Customary International Humanitarian law. Rule 43 of the customary IHL study gives the general principles on the conduct of hostilities that shall apply to the natural environment:

1. No part of the natural environment may be attacked, unless it is a military objective.
2. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
3. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited²⁰⁹.

This rule is applicable in international and non-international armed conflicts. Rule 44 prescribes that methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions²¹⁰, while Rule 45 states that the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to

²⁰⁸ *ibid*

²⁰⁹ Henckaerts v J.M. and Doswald-Beck L. (2005) Customary International Humanitarian Law (vol.1). Cambridge University Press U.K. p143

²¹⁰ *Ibid* p147

the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon²¹¹. Those two latter rules are applicable in international armed conflicts. Their customary character has not yet been established in non-international armed conflicts.²¹²

The protection of the environment is intimately linked with the protection of water resources and water installations. Indeed, water is often used as a target in armed conflicts, in order to displace or starve the civilian population. This is why water supply and repair of water conveyance systems are often one of the primary tasks undertaken by humanitarian organizations during armed conflicts, notably in refugee camps and IDP camps. As to the protection of water in armed conflicts, humanitarian law does not provide a specific regime of protection. Nonetheless, water is a protected civilian object, as it is indispensable for the survival of the civilian population. As such, attacks against water resources and water installations are prohibited²¹³.

Furthermore, the protocol provides for the precautionary measures to be taken with regards to civilian objects. In the conduct of military operations, constant care shall be taken to spare the civilian objects,²¹⁴ combatants shall do everything feasible to verify that the objectives to be attacked are not civilian objects and are not subject of special protection.²¹⁵ They shall also take all feasible precautions in the choice of means and methods of attack, with the view of avoiding, and in any event to minimize incidental damage to civilian object;²¹⁶ they

²¹¹ Ibid p151

²¹² Ladan M.T. *ibid*

²¹³ Saulnier F.B. (2013) *The Practical Guide to Humanitarian Law*. Rowman and Littlefield Publishers p523

²¹⁴ Article 57 (1) First Protocol Additional to the Geneva Convention

²¹⁵ *Ibid* Article 57 (1) (a) (i)

²¹⁶ *Ibid*, Article 57 (2) (a) (ii)

shall also refrain from deciding to launch any attack which may cause damage to the civilian objects.²¹⁷ Further, attacks shall be cancelled or suspended if it becomes apparent that the objective is not a military one or that it will cause damage to civilian objects.²¹⁸ Lastly, effective advance warning shall be given of attacks which may affect the civilian object.²¹⁹

The protocol in addition, provides for localities and zones under special protection. It prohibits parties to the conflict from attacking non-defended localities.²²⁰ It further defines what a non-defended locality is, stating that any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse party. Such a locality shall fulfill the following conditions:

- a) All combatants, as well as mobile weapons and mobile military equipments must have been evacuated.
- b) No hostile use shall be made of fixed military installations or establishments;
- c) No acts of hostility shall be committed by the authorities or by the population; and
- d) No activities in supports of military operations shall be undertaken.²²¹

The presence of persons specially protected under the convention and this protocol and of police forces retained for the sole purpose of maintaining law and order within the locality is not contrary to the conditions laid down above.²²²

In the same vain, it is prohibited for parties to the conflict to extend their military operations to zones declared as demilitarized zone.²²³ The agreement to declare a zone demilitarized

²¹⁷ Ibid, Article 57 (2) (a) (iii)

²¹⁸ Ibid, Article 57 (2) (b)

²¹⁹ Ibid, Article 57 (2) (c)

²²⁰ Ibid, Article 59 (11)

²²¹ Ibid, Article 59 (2)

²²² Ibid, Article 59 (3)

²²³ Ibid, Article 60 (1)

zone shall be expressed, either verbally or in writing, either directly or through a protecting power or any impartial humanitarian organizations, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe the limits of the demilitarized zone, and if necessary, lay down the methods of supervision.²²⁴

3.3.5 Second Protocol Additional to the Geneva Convention²²⁵: The Second Protocol Additional to the Geneva Convention has special provisions regarding the protection of civilian objects. Article II exclusively discuss the protection of medical units and transports. It provides that “medical units and transports shall be respected and protected at all times and shall not be the object of attack”.²²⁶ Objects indispensable to the survival of the civilian population are to be protected:

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population. Such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water, installations and supplies and irrigation works.²²⁷

Food products, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works are considered by IHL as goods that are essential to the survival of the civilian population and are protected as such. This is tied to the fact that IHL strictly prohibits the starvation of civilians as a method of warfare as well as any use of terror against them²²⁸.

²²⁴ Ibid, Article 60 (2)

²²⁵ Protocol Additional to the Geneva Convention of 12 August 1949, and Relating To The Protection Of Victims of Non-International Armed Conflicts (protocol II) of 8 June 1977

²²⁶ Ibid, Article II (i)

²²⁷ Ibid, Article 14

²²⁸ IHL <https://ihl-database.icrc.org/eng/docs/protection> accessed 11th July 2016.

It is therefore, prohibited to attack, destroy, remove, or render such goods useless, for the specific purpose of depriving the civilian population of these objects. This prohibition does not apply if the objects are used by a party to the conflict as sustenance solely for the members of its armed forces, or in the case of imperative military necessity. If the objects are used in direct support of military action, they may be attacked, provided that in no event shall such actions result in the starvation of the civilian population or force its displacement. It is equally forbidden to prevent such goods from being supplied or to hinder relief operations delivering such supplies. Furthermore, these objects must not be made the object of reprisals. IHL establishes that, if the civilian population is suffering undue hardship owing to a lack of supplies essential to its survival, such as foodstuffs and medical supplies, relief societies are entitled to undertake relief actions for the civilian population. The fact of intentionally depriving civilians of such goods is a war crime in International armed conflict.²²⁹ Cultural objects and places of worship are accorded special protection. It is therefore prohibited to commit any act of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of people, and to use them in support of the military effort.²³⁰

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted under the aegis of the UN Educational, Scientific, and Cultural Organization (UNESCO) on 14 May 1954, specifically for this purpose. The Convention establishes precise rules for the protection of such objects and for the role to be played by UNESCO in this realm. This Convention was complemented by a Protocol for the Protection of Cultural

²²⁹ ICRC. (2013) Annual Report, ICRC, Geneva.

²³⁰ Ibid, Article 16

Property in the Event of Armed Conflict adopted in The Hague on 14 May 1954. A Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict was adopted in The Hague on 26 March 1999.²³¹

In cases of armed conflict, these cultural objects and places of worship must be respected and safeguarded from the possible effects of war and their intentional attack constitutes a war crime.

Lastly, the distinctive emblems of the Red Cross, Red Crescent, or Red Lion and sun on a white background shall be displayed on medical units and medical transports. It shall be respected in all circumstances. It shall not be used improperly.

3.3.6 The ICC Rome Statute²³²: Under the ICC Rome Statute, attacks against civilian objects are war crimes. Article 8 provides that intentionally directing attacks against civilian objects, that is objects which are not military objectives is a violation of the laws and customs of armed conflicts.²³³ It also prohibits intentionally directing attacks against installations, medical units or vehicles involved in humanitarian assistance or peacekeeping,²³⁴ intentionally launching an attack in the knowledge that such attack will cause damage to civilian objects or widespread, long term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated,²³⁵ attacking or bombarding, by whatever means, town,

²³¹ Okeefe R.(2014) Protection of Cultural Property. In: Clapham, A (ed) *The Oxford Handbook of International Law in Armed Conflict*. Oxford University Press

²³² Rome Statute of the International Criminal Court, 1998.

²³³ Article 8 (2) (b) (i) ICC Rome Statute

²³⁴ Ibid, 8 (2) (b) (iii)

²³⁵ Ibid, 8 (2) (b) (iv)

villages, dwellings or building which are undefended and which are not military objectives.²³⁶

The statute further prohibits intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives,²³⁷ intentionally directing attacks against buildings, materials, medical units and transport using the distinctive emblem of the Geneva Conventions.²³⁸

Finally, it is totally prohibited to intentionally launch an attack in the knowledge that such attack will cause damage to civilian objects in general.

The ICRC provides in relation to the protection of civilian objects that “objects marked with or bearing the distinctive emblem shall be respected, let them perform their tasks, unless ordered otherwise, do not attack the buildings, establishments, monuments, vehicles, ships and aircrafts”.²³⁹ According to Marco and Antonne, objects accorded special protection are hospital ships, other protected vessels, including vessels quarantined safe conduct by agreement between belligerents, vessels on humanitarian missions carrying goods necessary for the survival of the civilian population, passenger on scientific or philanthropic missions, vessels transporting cultural property, small coastal fishing vessels and small boat engaged in local trade, ships which have surrounded life boats and vessels belonging to a neutral state.²⁴⁰

²³⁶ Ibid, 8 (2) (b) (v)

²³⁷ Ibid, 8 (2) (b) (ix)

²³⁸ Ibid, 8 (2) (b) (xxiv)

²³⁹ ICRC, *The Basics of International Humanitarian Law* (2010) p5.

²⁴⁰ Marco S, Antonne B.(2006) *How Does Law Protect in War?: Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law Volume 1*. ICRC , 3rd Edition, p50

3.3.7 Customary IHL: The rules of customary IHL provide that the parties to the conflict must at all times distinguish between civilian objects (protected objects) and combatants. It also recalls that attacks may only be directed against combatants and that they must not be directed against civilian objects.²⁴¹ This rule of customary law is applicable in both international and non-international armed conflicts.

In addition, the rules provide that “each party to the conflict must respect cultural property:

- a) Special care must be taken in military operations to avoid damage to buildings dedicated to religion art, science, education or charitable purposes and historical monuments unless they are military objectives.
- b) Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity²⁴².

The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.²⁴³ Each party to the conflict must protect cultural property.

- a) All seizure of or destruction or willful damage done to institutions dedicated to religion, charity, education, the arts and science, historic monuments and works of art and science is prohibited.
- b) Any form of theft, pillage or misappropriation of and any acts of vandalism directed against property of great importance to the cultural heritage of every people is prohibited²⁴⁴.

²⁴¹ Rule 1 customary IHL

²⁴² Ibid, Rule 38

²⁴³ Ibid, Rule 39

²⁴⁴ Ibid, Rule 40

Finally, the occupying power must prevent the illicit export of cultural property from occupied territory and return illicitly exported property to the competent authorities of the occupied territory.²⁴⁵

3.4 Legal Regime for Loss of Protective Rights

As a general rule, all civilians are protected from attacks during armed conflicts. Intentionally directing attacks against civilians or civilians' objects is a war crime.²⁴⁶ Article 3 common to the Geneva Convention protects persons not taking active part in the hostilities against violence to life and person, in particular, murder of all kinds. Additional protocol I²⁴⁷ provides that civilians shall enjoy protection against the danger arising from military operations "unless and for such time as they take a direct part in hostilities. The additional protocol II also contains a similar provision, where it states that civilians shall enjoy protection against the dangers arising from military operations" unless and for such time as they take direct part in hostilities."

The import of these provisions is that direct participation of civilians in hostilities leads to loss of protective right from attack. Therefore, there is a consensus that a civilian can be targeted at such time as he is taking a direct part in hostilities, as he becomes an unlawful combatant.

The provision for loss of protection contains three main parts. The first part is the requirement that civilians take part in "hostilities," the second part is the requirement that civilians take a "direct" part in hostilities, the third part in the provision by which civilians are not protected from attack "for such time" as they take a direct part in hostilities.

²⁴⁵ Henckaerts J.M and Doswald-Beck L. op cit p3

²⁴⁶ Article 8(2)(b)(i)-(ii) Rome Statute

²⁴⁷ Article 51(3)

On the first part, it is clear that civilians lose their protection of customary international law if they “take part in hostilities.” The meaning of hostilities, according to the accepted view is that “hostilities” are acts which by nature and objective are intended to cause damage to the army; “Hostile acts should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces” ...²⁴⁸

Regarding taking part in hostilities, there is no condition that the civilian use his weapon, nor is there a condition that he bears arms (openly or concealed). It is possible to take part in hostilities without using weapons at all. “It seems that the word “hostilities” covers not only the time that the civilian actually makes use of a weapon, but also, for example, the time that he is carrying it, as well as situation in which he undertakes hostile acts without using weapons”.²⁴⁹

Also, the approach is not limited merely to the issue of hostilities towards the army or the state. It applies also to hostilities against civilian population.

On the second part, it has been concluded that a clear and uniform definition of direct participation in hostilities has not been developed. Civilians whose activities merely support the adverse party’s war or military effort or otherwise only indirectly participates in hostilities cannot on these grounds alone be considered combatants. This is because indirect participation such as selling goods to one or more of the armed parties, expressing sympathy for the cause of one of the parties or even failing to act to prevent an incursion by one of the

²⁴⁸ ICRC, (1981) Commentary on the Additional Protocol. ICRC Geneva.

²⁴⁹ Ibid p. 618-619

armed parties does not involve acts of violence which pose an immediate threat to actual harm to the adverse party.²⁵⁰

Against the background of these considerations, the following cases should be included in the definition of taking a ‘direct part’ in hostilities; a person who collects intelligence of the army, whether on issues regarding the hostilities or beyond those issues, a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates where the hostilities are taking place; a person who operate weapons which unlawful combatants use, or supervises their operation, or provide services to them, be the distance from the battlefield as it may. All these persons are performing the function of combatants. The function determines the directness of the part taken in hospitalities.

However, a person who sells food or machine to an unlawful combatant is not taking a direct part, rather, an indirectly part in the hostilities. The same is the case regarding a person who aids the unlawful combatants by general strategic analysis and grants them logistical, general support including monetary aid. The same is the case regarding a person who distributes propaganda supporting those unlawful combatants. If such persons are injured, the state is likely not to be liable for it, if it falls into the framework of collateral or incidental damage.

On the third part, ‘for such time,’ Additional Protocol 1²⁵¹ states that civilians enjoy protection from the dangers stemming from military acts and that they are not targets for attack, unless “and for such time” as they are taking a direct part in hostilities. This provision presents a time requirement. A civilian taking a part in hostilities loses the protection from

²⁵⁰ The Third Report of the Inter-American Commission on Human Rights.

²⁵¹ Article 51(c)

attack “for such time” as he is taking part in those hostilities if such time has passed, the protection granted to the civilian returns.

This means that a civilian taking part in hostilities one single time, or sporadically, who later detaches himself from that activity, as a civilian who starting from the time he detached himself from that activity is entitled to protection from attack. He is not to be attacked for the hostilities which he committed in the past. On the other hand, a civilian who has joined a terrorist organization which has become his ‘home’ and in the framework of his role in that organization he commits a chain of hostilities, with short periods of rest between them, loses his immunity from attack ‘for such time’ as he is committing the chain of acts. Indeed, regarding such a civilian, the rest between hostilities is nothing other than preparations for the next hostility.

Another instance where civilians lose their protective right is when they (civilians) voluntarily allow themselves to be used as ‘human shields’ to protect combatants or military objectives. To this end, the Geneva Convention²⁵² provides that the presence of protected persons may not be used to render certain points or areas immune from military operations. Similarly, Additional Protocol I²⁵³ reads in part that “the presence or movement of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempt to shield military objectives from attacks or to shield, favour or impede military operations. Irrefutably, the prohibition for using civilian as human shield mirrors customary international law.²⁵⁴ Utilizing the presence of civilians or

²⁵² Article 28 Fourth Geneva Convention

²⁵³ Article 51(7) Additional Protocol I

²⁵⁴ Henkaerts J. and Doswald L. op cit, p.337.

other protected persons to render certain points, areas or military forces immune from military operation is recognized as a war crime.²⁵⁵

It is incontrovertible that when combatants (including civilians directly participating in hostilities) surround themselves by civilians, this is a breach of the law of international armed conflict, and accordingly, they lose their protective right. However, it is necessary to distinguish between voluntary and involuntary human shields, as it has been held²⁵⁶ that whereas involuntary human shields are victims, voluntary human shields are to be deemed civilians who take a direct part in hostilities. Therefore, voluntary human shields are targetable and, of course they are excluded in the estimation of incidental injury when assessing proportionality.²⁵⁷

The first protocol presuppose a situation where involuntary human shields are actually compelled to screen military objectives, where it states that a violation of the prohibition of shielding military objectives with civilians does not release a belligerent party from its legal obligations towards the civilians.²⁵⁸ This simply means that the principle of proportionality in attack remains in effect.

Conclusion

This chapter has succeeded in giving a comprehensible analysis of the protection of civilians in armed conflict as contained in the Geneva conventions, the additional protocols, the ICRC

²⁵⁵ Article 8(2)(b)(xxiii) Rome Statute

²⁵⁶ In the Targeted Killings Case

²⁵⁷ Smith, M (2008) Technology Change, Rule Change, and the Law of Armed Conflict. In: A Beattie & A Lang (eds), *Rethinking the Rules: War and Terrorism in the 21st Century*. Routledge, p111

²⁵⁸ Article 51(8)

Rome Status and customary IHL. It went ahead to discuss the legal regime for the loss of protective rights.

CHAPTER FOUR

GRAVE BREACHES AND PENALTIES FOR BREACHES OF THE LAWS OF ARMED CONFLICT

4.1 Introduction

This chapter discusses some grave breaches of the Laws of armed conflict particularly War Crimes, Crimes against Humanity and Genocide. This chapter is necessary considering the fact that not all violations of the laws of war are sanctioned in the same manner. The Geneva Conventions and the First Additional Protocol identify a limited set of violations – the Grave breaches- which are particularly serious violations that give rise to specific obligations of repression for states. Grave breaches must be prosecuted by High Contracting parties on the basis of the principle of universal jurisdiction. Together with other serious violations of IHL, grave breaches constitute War Crimes, Crime Against Humanity and Genocide. The topic further discusses the penal sanctions for the breaches. When violations of IHL occur, victims often suffer serious consequences including infringement upon their human dignity. In the wake of such violations, attention turns to accountability as states are under obligation to prosecute alleged offenders. Domestic courts therefore play an important role in the enforcement of IHL and limiting impunity. In addition to national jurisdiction, violations can also be prosecuted by various international criminal tribunals.

4.2 War Crimes

A war crime is an act that constitutes a serious violation of the law of war that gives rise to individual criminal responsibility.¹ According to customary IHL, serious violations of IHL

¹ Cassess, Antonio (2013) Cassese's International Criminal law (3rd ed.) Oxford University Press pp. 63-66

constitutes war crimes.² The ICC Rome statute define war crimes as inter alia serious violations of the laws and customs applicable in international armed conflict and ‘serious violations of the laws and customs applicable in an armed conflict not of an international character.’³ The statute of the International Criminal Tribunal of the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) and the special court for Sierra Leone and The United National Transitional Administration in East Timor (UNTAET) Regulations No..2000/15 for East Timor also provide jurisdiction over ‘serious’ violations of IHL⁴. The principle of individual criminal responsibility for war crimes is a long standing rule of customary IHL already recognized by the Lieber Code and the Oxford manual and repeated in many treaties of IHL since then⁵. Individual responsibility for war crimes committed in international Armed Conflict was the basis for prosecutions under the Charter of International Military Tribunals at the Nuremberg and at Tokyo, as it is under the Statute of International Criminal Tribunal for the former Yugoslavia and the Statute of the ICC.⁶

The concept of war crimes began to emerge during the end of the 19th century and the beginning of the 20th century when the body of Customary International Law applicable to warfare between sovereign states was codified, such codification occurred at the national level, such as with the publication of the Lieber code in the United States, and at the International level with the adoption of the treaties during The Hague Conventions of 1899

² Rule 156 Customary IHL.

³ Article 8 ICC Rome Statute

⁴ Article 1 ICTY Statute, Article 1 ICTR Statute, Article 1 Statute of the Special Court for Sierra Leone, Section 6(1) UNTAET Regulation No.2000/15.

⁵ Article 44 and 47 Lieber Code, Article 48 Oxford Manual, Article 49 First Geneva Convention, Article 50 Second Geneva Convention, Article 129 Third Geneva Convention, Article 28 Hague Convention for the Protection of Cultural Property.

⁶ Article 6 IMT Charter (Nuremberg), Article 5 IMT Charter (Tokyo), Article 2-3 ICTY Statute, Article 5 and 25 ICC Statute.

and 1907. Moreover, trials in national courts during this period further helped clarify the law.⁷ Following the end of World War II, major developments in the law occurred. Numerous trials of axis are criminals established the Nuremberg principles, such as notion that war crime constituted crimes defined by International Law. Additionally, the Geneva conventions in 1949 defined new era crimes and established that states could exercise universal jurisdiction over such crimes.⁸

War crimes are serious violations of the rules of customary and treaty law, it includes violations of established protections of laws of war, but also include failures to adhere to norms of procedure and rules of battle, such as attacking those displaying a peaceful flag of truce or using that same flag as a ruse to mount on attack on enemy troops. The use of chemical and biological weapons in warfare is also prohibited by numerous chemical and arms control agreements and the biological weapons convention. Wearing enemy uniforms or civilian clothes to infiltrate enemy lines for espionage or sabotage mission is a legitimate ruse of war, though fighting in combat or assassinating individuals, even if they are military targets, behind enemy lines while so disguised is not, as it constitutes unlawful perfidy.⁹ Attacking enemy troops while they are being deployed by war of a parachute is not a war crime.¹⁰ However, the Geneva Convention¹¹ explicitly forbade attacking parachutists who eject from disabled aircraft and surrendering parachutists once landed. The Hague Convention¹² explicitly prohibits belligerents to punish enemy spies without previous trial.

⁷ Cassess, Antonio op cit p.30

⁸ Ibid

⁹ USA practice relating to Rule 62. Improper use of flags or military emblems, insignia and uniforms of the adversary.

¹⁰ From the library of congress, military legal resources

¹¹ Article 42 of the Protocol Additional to the Geneva Convention

¹² Article 30 of The 1907 Hague Convention IV- the laws and customs of war on land

War crimes also include deliberate attacks on citizens and property of neutral states as they fall under the category of non-combatants.

Examples of prominent war crime indictees are: Former Liberian president Charles G. Taylor who was brought to the Hague charged with war crimes; his trials stretched from 2007 to March, 2009. He was convicted in April 2012.¹³ Omar Al-Bashir, current head of state of Sudan, for his action in Darfur, Former Libyan leader Muammar Gaddafi was indicted for allegedly ordering the killings of protesters and civilians during the 2011 Libyan civil war, however, he was killed before he could stand trial in October 2011. Former Serbian president Slobodan Miloseric was brought to trial for alleged war crimes, but died in custody in 2006 before the trial could be concluded after more than 4 years of proceedings.

4.3 Crimes Against Humanity

Crimes against humanity are certain acts which are committed as part of a widespread or systematic attack directed against any civilian population or an identifiable part of a population.¹⁴ The first prosecution for Crimes Against Humanity took place at the Nuremberg trials. Crimes Against Humanity have since been prosecuted by other International courts such as the International Criminal Tribunal for the former Yugoslavia and International Criminal Court, as well as in domestic prosecutions. The law of crimes against humanity has primarily developed through the evolution of customary international law. Unlike war crimes and genocide, crimes against humanity are not codified in an international convention,

¹³ “Trial of Charles Taylor ends – Europe.” Al Jazeera English, <http://www.aljazeera.com/amp/news/europe> retrieved 2012-05-02

¹⁴ Article 7 ICC Rome Statute

although there is currently an international effort to establish such a treaty, led by crimes against humanity initiative.

Unlike war crimes, crimes against humanity can be committed during peace or war.¹⁵ They are not isolated or sporadic events, but are part either of government policy (although, the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government of a de facto authority. Murder, massacres, dehumanization, extermination, human experimentation extrajudicial punishments, dead squads, forced disappearances, military use of children, torture, rape, political, racial or religious persecution that may include the use of blasphemy laws or laws against determination of religion or other similar wordings, or inappropriate hate speech laws, and other inhumane acts that may reach the threshold of crimes against humanity if they are part of the widespread or systematic practices.

As stated earlier, unlike genocide and war crimes, which have been mildly recognized and prohibited in international criminal law since the establishment of the Nuremberg principle, there have never been a comprehensive convention on crimes against humanity, even though such crimes are continually perpetrated worldwide in numerous conflicts and crises.¹⁶ There are eleven international text defining crimes against humanity, but they all differ slightly as to their definition of that crime and its legal elements.¹⁷

¹⁵ DeGuzman M.M. (2011) “*Crimes against humanity*” Research Handbook on International Criminal law, Bartram S. Brown ed., Edger Elgar publishing, p35

¹⁶ Goldstone R. (2014) *Moving Forward: A Reflection on Current Issues Facing International Criminal Justice* with Richard Goldstone. Human Rights Brief 21, no 2

¹⁷ Cherif B. M. (1992) “Crimes against Humanity in International Criminal Law”. Martinus Nijhoff Publishers, London. p.13

In 2008, the crimes against humanity initiative were launched to address this gap in international law. The initiative represents the first concerted effort to address the gap that exists in international criminal law by enumerating a comprehensive international convention on crime against humanity.¹⁸

The United Nations has been primarily responsible for the prosecution of crimes against humanity since it was chartered in 1948. After Nuremberg, there was no international court with jurisdiction over crimes against humanity for almost fifteen years. However, efforts continued on developing the definition of crimes against humanity at the UN. In response to atrocities committed in the 1990s, multiple ad hoc tribunals were established with jurisdictions over crimes against humanity like the International Criminal Tribunal for Yugoslavia (ICTY) established in 1993 by the UN Security Council, with jurisdiction to investigate and prosecute three international crimes namely: genocide, crime against humanity and war crime.¹⁹

In 1944, the UN Security Council established the International Criminal Tribunal for Rwanda under the ICTR Statutes. The International Criminal Court (ICC) was established in Hague in 2002 and the Rome Statute provides for the ICC to have jurisdiction over crimes against humanity, war crimes and genocide. The definition of crimes against humanity for ICC proceedings has significantly broadened from its original legal definition or that used by the

¹⁸ Evans G. Crimes against Humanity and the responsibility to protect. Address delivered to the Crimes Against Humanity Initiative, Hague Intercessional Experts Meeting Dinner, The Hague, 11 June 2009.

¹⁹ Article 5 ICTY Statutes

UN.²⁰ In addition, the Rome Statute definition offers the most expansive list of specific criminal acts that may constitute crimes against humanity to date.²¹

4.4 Genocide

Genocide is the intent to systematically eliminate a racial, ethnic, religious, linguistic, cultural or natural group.²² Raphael Lemkin²³, coined the term Genocide by combining Greek Genos “race, people” and Latin caedere “to kill.” He defined genocide as follows:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan to different actions aiming at the destruction of essential foundation of the life of national groups, with the aim of annihilating the groups themselves...

The preamble to the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)²⁴ notes that instances of Genocide have taken place throughout history.²⁵ But it was not until Lemkin coined the term and the prosecution of perpetrators of the Holocaust at the Nuremberg trials that the United Nations defined the crime of Genocide under International Law in the Genocide Convention.

All signatories to the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) are required to prevent and punish all acts of Genocide, both in peace and wartime, though some barriers make this enforcement difficult. In particular, some of the signatories signed with the proviso that no claim of Genocide could be brought against them at the

²⁰ Cherif B. M. Op cit p.18

²¹ Article 7, Rome Statute

²² Article 6 ibid

²³ Lemkin R (2005) *Axis Rule in Occupied Europe*. The Law Book Exchange Ltd, Clark, New Jersey, p17

²⁴ Office of the High Commissioner for Human Rights Convention on the Prevention and Punishment of Crime of Genocide.

²⁵ Ibid

International Court of Justice (ICJ) without their consent. Despite official protests from other signatories, notably Cyprus and Norway on the ethics and legal standing of these reservations, the immunity from prosecution they grant has been invoked from time to time, as when the United State refused to allow a change of Genocide brought against it by former Yugoslavia following 1999 Kosovo War.

It is commonly accepted that, at least since World War II, Genocide has been illegal under Customary International Law, as well as under Conventional International Law. Acts of Genocide are generally difficult to establish for prosecution, because a chain of accountability must be established. International Criminal Courts and Tribunals function primarily because the states involved are incapable or unwilling to prosecute crimes of this magnitude themselves.

In 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) which defined the crime of Genocide for the first time.²⁶

The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) came into effect in 1951 and it contains internationally recognized definition of Genocide which has been incorporated into the national criminal legislation of many countries, and was also adopted by the Rome Statute of the International Criminal Court, which established the International Criminal Court. The convention defines genocide as:

... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

²⁶ Rubinstein, W.D. (2004) *Genocide: A History*. Edinburg Gate: Pearson Education p. 308

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of a group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part;
- (d) Imposing measures intended to prevent births within the group.
- (e) Forcibly transferring children of the group to another group.²⁷

Genocide is a crime under International Law regardless of whether committed in time of peace or war time.²⁸ Thus irrespective of the context in which it occurs (peace time, internal strife, international armed conflict or whatever the situation) Genocide is a punishable International crime. The preamble to the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), states that Genocide is a crime under International law contrary to the spirit and aims of the United Nation and condemned by the civilized world; and that at all periods of history, Genocide has inflicted great losses on humanity.

For Genocide to happen there must be certain preconditions. Foremost among them is a national culture that does not place a high value on human life. A totalitarian society, with its assumed superior ideology, is also a precondition for generic acts. In addition, members of the dominant society must perceive their potential victims as less than fully human; as ‘pagans,’ ‘savages,’ ‘uncouth barbarians,’ ‘unbelievers,’ ‘ritual outlaws,’ racial inferiors,’ ‘class antagonists,’ etc.²⁹ in themselves, these conditions are not enough for the perpetrators to commit Genocide. To commit Genocide, the perpetrators need a strong, centralized authority and bureaucratic organization as well as pathological individuals and criminals. Also required

²⁷ Article II Convention on the Prevention and Punishment of the Crime of Genocide

²⁸ Ibid, Article I

²⁹ Kakar M. (1997) Afghanistan: The Soviet Invasion and the Afghan Response, 1979-1982 Chapter 4. *The Story of Genocide in Afghanistan*. University of California Press, U.S.A., p114

is a campaign of vilification and dehumanization of the victims by the perpetrators, who are usually new states or new regimes attempting to impose conformity to a new ideology and model of society.³⁰

In 1996, Gregory Stanton, the president of Genocide Watch,³¹ presented a briefing paper called “The 8 stages of Genocide” at the United States Department of state, where he suggested that Genocide develops in eight stages that are “predictable but not inexorable”, as shown in the table below:

³⁰ Ibid

³¹ An NGO for the prevention and prosecution of Genocide.

Stages	Characteristics	Preventive Measures
1 Classification	People are divided into ‘us’ and ‘them’	The main preventive measure at this early stage is to develop universalistic institution that transcends divisions
2 Symbolization	When combined with hatred, symbols may be forced upon unwilling members of pariah groups	To combatant symbolization, hate symbols can be legally forbidden as an hate speech
3 Dehumanization	One group denies the humanity of the other members of it are regulated with animals, vermin, insects or diseases	Local and international leaders should condemn the use of hate speech and make it culturally unacceptable. Leaders who incite genocide should be banned from international travel and have their foreign finances frozen
4 Organization	Genocide is always organized.... Special army units or militias are often trained and armed	The UN should impose arm embargoes on governments and citizens of courtiers involved in genocidal massacres, and create commission to investigate violations.
5 Polarization	Hate groups broadcast polarizing propaganda	Prevention may mean securing protection for moderate leaders of human right groups... coups detat by extremists should be opposed by international sanctions.
6 Preparation	Victims are identified and separated out because of their ethnic or religious identity.	At this point, a genocide emergency must be declared.
7 Extermination	It is extermination to the killers because e they do not believe their victims to be fully human	At this stage, only rapid and overwhelm armed intervention can stop genocide real safe areas or refugee escape corridors should be established with heavily armed international protection.
8 Denial	The perpetrators deny that they committed any crimes	The response to denial is punishment by an international tribunal or national courts.

Source: Gregory Stanton. *The Genocide Education Project: The 8 stages of Genocide, Genocide watch. A briefing paper presented at the United States Department of State in 1996.*

4.5 Penalty for Breaches

IHL set out detailed rules aimed at protecting victims of armed conflict especially civilian objects which are indispensable to the survival of the civilian population. It has also established mechanisms to ensure these rules are respected. In particular humanitarian law holds individuals responsible for violations of the rules which they commit, or order others to commit. It requires that those responsible for serious violations should be prosecuted and punished as criminals³².

However, these rules did not themselves define specific penalties, nor do they institute jurisdiction to try the perpetrators or create a tribunal to try offenders. Instead, they expressly require states to enact criminal legislation to punish those responsible for grave breaches. States are also required to search for persons accused of grave breaches and either to bring them before their own courts or to hand them over for trial in another state³³. However, IHL require states to take the following specific action in relation to breaches.

Firstly, a state must enact national legislation prohibiting and punishing grave breaches either adopting a separate law or by amending existing laws. Such legislation must cover all persons regardless of nationality. Secondly, a state must search for and prosecute those alleged to be responsible for grave breaches. It must prosecute such persons or extradite them for trial in another state. Thirdly, a state must require its military commanders to prevent, suppress, and take action against those under their control who commit breaches.

³² Garner J.W. (1982) Punishment of Offenders Against the Laws and Customs of War. Cambridge University Press p145

³³ Article 50 first Geneva Convention, 50 Second Geneva convention, 129 Third Geneva Convention and 146 Fourth Geneva Convention

Fourthly, states should assist each other in connection with criminal proceedings relating to breaches. States are required to fulfill these obligations in times of peace as much as in time of armed conflict. In order to be effective, the above measures must be adopted before breaches have opportunity to occur.³⁴

As regards the sentences applied, it depends in the first instance on national legislation, gravity of the crime, and individual circumstance. It covers the death sentence³⁵, and prison sentences of varying lengths. The ICC Rome Statute set out available penalties in part seven³⁶. They are imprisonment for a term of up to 30 years, or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstance of the convicted person. For example, the sentence handed down in the case of crimes against humanity by the Dili special chamber in *Timor Leste vs Australia*³⁷ are generally 10 years prison sentences, where as the law prescribes a maximum of 25 years. The Belgian courts condemned four people accused of war crimes to sentences ranging from 12 to 20 years in prison. The court in the *Peleus Trial*, case No. 75, British military court at Hamburg³⁸, sentenced three of the accused to death by shooting, one was sentenced to imprisonment for life and the other was sentenced to suffer imprisonment for five years. The trial chamber in the *Prosecutor vs Tihomir*³⁹ sentenced the accused to 45 years in prison. He was found guilty of ordering a crime against humanity namely persecutions against the Muslim

³⁴ ICRC Violations of IHL <https://www.icrc.org/en/document/international-criminal-jurisdiction> accessed on 15th August, 2018

³⁵ The Death Penalty is not Included Among the Possible Sentences under the ICC Rome Statute

³⁶ Article 77 – 80 ICC Rome Statute

³⁷ *Timor – Leste vs Australia* (2013) Permanent Court of Arbitration

³⁸ The United Nations War Crimes Commission, Law Reports of Trials of War Criminals, Vol. 1, 1947 p.1 – 21

³⁹ *The Prosecutor vs Tihomir Blaskic* (1995) ICTY, Trial Chamber IT – 94 – 14.

civilians in Bosnia, in the municipalities of Vitez, Busovaca and Kiseljak between 1st May 1992 and 31st January, 1994.

Few of the decisions specify the objectives of the sanctions applied. In *Timor Leste* for example, the decisions specify that the sentences aim at a deterrent effect and to further the struggle against impunity, the advent of peace and promotion of national reconciliation. In most of the decision examined above, the sentences were accompanied by other accessory ones like payment of sums (fine) towards reparation for the damage caused, including payments into a special fund for the victims, confiscation or seizure of condemned persons' property; forfeiture of proceeds, property and assets derived directly or indirectly from the crime; perpetual and full deprivation of civil rights. Finally, whenever a soldier is sentenced, he is dismissed or stripped of his rank.⁴⁰

Conclusion

This chapter successfully analyzed some grave breaches of the laws of armed conflict which includes war crimes, crimes against humanity and genocide. It went further to discuss penalty for these breaches.

⁴⁰ Manner G. (1943) *The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War*. Cambridge University Press p145

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This dissertation examined the protection accorded to civilians and civilian objects during armed conflict, and it can be summed up as follows: chapter one is the introductory part and contains the main aim for embarking on this research. It provides the reasons why the topic is necessary to be researched despite many other similar write ups on the topic. The chapter also highlights the problems the topic seeks to address and the aim and objectives of the research. The chapter equally provides the method of research adopted by the writer and the coverage or extent of the research, that is the scope. Lastly, the chapter gives a breakdown of all the chapters in this dissertation and the contents of each chapter.

Chapter two is Conceptual Discourse and the Development of the Laws of Armed Conflict. It laid a foundation for the proper understanding of the topic. It explains the key terms used in the topic, providing a solid platform and accorded the writer the opportunity to explain some fundamental principles and terms that are very crucial to the proper understanding of the research work, the definition of some key concepts necessary for proper understanding and appreciation of the dissertation. It traced the development of the laws of war from the 18th century when the Lieber Code was drafted, through the involvement of Henry Dunant and eventually the Geneva Conventions.

Chapter three discussed the main topic of research which is the laws governing the protection of civilians and civilian object during armed conflict. It contained, among other things categories of protected persons and objects, special protections, safety zones, loss of

protective right. Civilians must be protected against all forms of violence and degrading treatment, including murder, and torture. Moreover, in case of prosecution, they are entitled to a fair trial affording all essential judicial guarantees. The protection of civilians extends to those trying to help them, in particular medical units and humanitarian or relief bodies providing essentials such as food, clothing and medical supplies. The warring parties are required to allow access to such organisations. While IHL protects all civilians without discrimination, certain groups are singled out for special mention. Women and children, the aged and sick are highly vulnerable during armed conflict. So too are those who flee their homes and become internally displaced or refugees. IHL prohibits forced displacement by intimidation, violence or starvation. Families are often separated in armed conflict. States must take all appropriate steps to prevent this and take action to re-establish family contact by providing information and facilitating tracing activities.

Chapter four is Grave breaches and penalty for breaches of the laws of war. It highlighted specific breaches like War Crimes, Crimes Against Humanity and Genocide, which are considered the most heinous crimes to the international community and often occur during periods of armed conflict.

Chapter five is the final chapter It summarizes the whole work and accorded the writer the opportunity to make findings on the topic and also to make meaningful recommendations.

5.2 Findings

In a nutshell, the legal regime for the protection of civilian objects in armed conflict is comprehensive and cover every object that is civilian in nature from medical supplies, food

items, houses, hospitals, schools, water installations and every object indispensable to the survival of the civilian community. The paper finds as follows:

1. There are in existence, laws for the protection of civilians and civilian objects during armed conflict. However, these laws are grossly inadequate and therefore do not serve the purpose for which they were made. For example, the Fourth Geneva Convention actually does not cover the protection of civilian population as a whole but, instead, focuses on specific categories of victims in the armed conflict. Even though its full title (The Convention Relative to the Protection of Civilian Persons in Time of War), the convention neither provides full protection to all civilians, nor does it address all potential effects of hostilities on the civilian population. Furthermore, IHL applicable to non-international armed conflict falls short of the protection needs arising from these conflicts. As admitted by the diplomatic conferences that adopted them, article three common to the Geneva Conventions and Second Protocol Additional to these conventions are the only provisions in relation to non-international armed conflict and represents only the most rudimentary of rules.
2. The laws of armed conflict are being disregarded and disrespected by parties to the conflict because there are no mechanisms put in place to ensure implementation and enforcement of the laws of armed conflict to the detriment of civilians. The sheer disregard for the rules and the lack of willingness to respect the rules on the part of combatants and other actors in the conflict makes it even more impossible to ensure effective enforcement and implementation of the laws

of armed conflict. The international conference for the protection of war victims convened in Geneva from 30/08/1993 to 1/9/1993 discussed in particular, ways and means to address violations of IHL but did not propose the adoption of new treaty provisions, instead, in its final declaration adopted by consensus, the conference reaffirmed ‘the necessity to make the implementation of humanitarian law more effective’ and called upon the Swiss government ‘to convene an open ended intergovernmental group of experts to study practical means of promoting full respect and compliance with that law’.⁴¹

3. There are Ambiguities inherent in the rules, particularly for terms used in the rules that are not clearly defined. For example, civilian objects, military objects, concrete and direct military advantage. Other areas of ambiguity is what does it take for civilian losses to be considered excessive. Who decides between unfortunate and unlawful civilian harm..

5.3 Recommendations

In view of the foregoing, it is therefore recommended as follows:

1. States should take adequate steps to strengthen and expand measures to protect civilians and objects which are civilian in nature and those indispensable to the survival of the civilian population especially with respect to those areas where the law is inadequate like the law dealing with non-international armed conflicts implementation, dissemination of information and strict compliance with available laws

⁴¹ International Conference for the protection of War Victims, Geneva 30 August-1 September 1993, Final Declaration, International Review of the Red Cross. No 296, 1993, p381.

2. The authorities should consider a proposal for an independent monitoring agency that would collect data and report on all situations of armed conflicts. This will help promote accountability for possible violations and also help to identify measures that both parties can take to prevent future occurrence. This will in turn ensure effective implementation and enforcement.
3. Efforts should be made to specifically translate the rules into military doctrines in the form of policies, manuals, procedures, codes of conduct, rules of engagement and other directives made available to combatants before any hostility begins . this will help in resolving the issue of ambiguity inherent in the laws.

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