AN APPRAISAL OF THE RIGHTS OF PROTECTED PERSONS IN ARMED CONFLICT SITUATIONIN INTERNATIONAL HUMANITARIAN LAW

BY

Ladi, Emmanuel GYONG
LLM/LAW/P18LAPU8144

OCTOBER, 2021

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BEING A DISSERTATION SUBMITTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE --LLM

OCTOBER, 2021

DECLARATION

I declare that the work in this dissertation entitled, *"An Appraisal of the Rights of Protected Persons in Armed Conflict Situation in International Law"* has been carried out by me. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

Ladi Emmanuel GYONG _____ Signature _____ Date

CERTIFICATION

This dissertation entitled "***An Appraisal of the Rights of Protected Persons in Armed Conflict Situationin International Humanitarian Law***" by Ladi Emmanuel GYONG meets the regulations governing the award of the Degree of Master of Laws of the Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

_____ _____

Prof. B.Y Ibrahim **Date**
Chairman, Supervisory Committee

_____ _____

Prof. Y. Dankofa **Date**
Member, Supervisory Committee

_____ _____

Dr. S. B. Magashi **Date**
Head, Department of Public Law

_____ _____

Prof. S. Abdullahi **Date**
Dean, School of Postgraduate Studies

DEDICATION

This dissertation is dedicated to my source, my foundation and inspiration the Almighty God for His mercies and kindness in the course of this programme without HIM I am nothing.

ACKNOWLEDGEMENTS

All praises are due to Almighty Godwhom without his wishes this work would not have seen the light of the day. Any work of this nature requires some acknowledgment and appreciation.

My profound gratitude goes to my first supervisor, Prof.B.Y. Ibrahim for his Scholarly guidance in the course of this research. His magnanimity and assistance is greatly appreciated. His simplicity has in a large extent affected my life greatly. May the Almighty God richly reward him.

My utmost gratitude goes to my second supervisor, Prof.Y. Dankofa, whose constructive critique and moral supports assisted me in the completion of this research. May the Almighty God reward him.To my Senior Mummy in the Faculty Prof. I.F. Akande who contributed selflessly in making sure that my work sees the light of day, thank you for your motherly love.

To my father Prof. J.E. Gyong whose encouragement, love and patience has led to the completion of this work, Daddy thank you for being my teacher, motivator and for believing in me. To my Mother (Late Mrs. J.E. Gyong), Aunty Kande Magaji Gyong, Siblings Yerima Emmanuel Gyong and Ghibek Stephen Gyong who have all supported me immensely through words and prayers. And to my friends, a big thanks to you all and God bless for immeasurable support at all times.

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ABBREVIATIONS

All ER	All English Report
AP	Additional Protocol
AFRC	Armed Forces Revolutionary Council
CA1	Common Article 1
CDF	Civil Defence Forces
HCP	High Contracting Parties
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
JSC	Justice of the Supreme Court
NCLR	Nigerian Commercial Law Report
NGOs	Non-Governmental Organizations
NWLR	Nigerian Weekly Law Report
Ors	Others
P	Page
RUF	Revolutionary United Front
Pt	Part
SC	Supreme Court
SCN	Supreme Court of Nigeria
SCSL	Special Court for Sierra Leone
UDHR	Universal Declaration of Human Rights
UN	United Nation
Vol	Volume

ABSTRACT

This dissertation aimed at appraisingthe current legal regime on the rights of protected persons during armed conflict situation in International Law. In other words, this dissertation discussed the legal instruments dealing with the protection of the rights of protected persons in armed conflict situation, namely the Four Geneva Conventions of 1949 and its Additional Protocol 1 of 1977; and the protection of the human rights of such persons in general terms. On this note, the sources of information relied upon for this research include relevant books,(both local and foreign),articles in journal publication, seminar, conference and internet materials. However, the statement of problem of this dissertation is that egregious violations of International Law (IL)are being committed every day both by States and Non-States Parties in their failure to protect persons in armed conflict situation. Consequently, this lead to failure of commitment to protect the rights of protected persons by States in armed conflict damages or destroys lives, community identity and links with the past, present and future as well as diminishes the cultural heritage of human kind. Thus, the objective of this dissertation is to identify the reasons accounting for failure to protect by States with a view to ensuring that perpetrators of gross violations and abuses of such rights are held accountable without any barriers. In the course of this research it was found (among others) that, the existence of prohibitive cultural barriers stand as a challenge to the implementation of the right to protect in armed conflict particularly where it affect gender and women's rights. More so, is the non-enforcement of the Geneva Conventions and the Additional Protocol to the Geneva Conventions and all the rights the protected person are entitled to by the State parties in armed conflicts situations.In the light of the general discourse, this research was concluded by recommending (among others) that there was the continuous need to strengthen the existing Conventions and Protocols protecting the rights of persons in armed conflict situation in International Humanitarian Law.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Contrary to popular opinion, war is not a state of anarchy or total lawlessness[1]. War is subject to law both in the manner in which hostilities are conducted and for the resort to it. It is evident from the perspectives of both the international human rights and humanitarian laws that rights of persons are very paramount in both peace and armed conflict situations[2].

Where war erupts, suffering and hardship invariably follow. Conflict is the breeding ground for mass violations of human rights including unlawful killings, torture, forced displacement and starvation. In conflicts across the globe, governments and armed groups routinely attack civilians and commit war crimes and terrible abuses of human rights[3] are also witnessed. However, in war there are rules that all sides to the conflict are legally bound to obey. International humanitarian law also known as the laws of armed conflicts or the laws of war seeks to mitigate or regulate the effects of such conflicts. It limits the means and methods of conducting military operations; this includes weapon types and usages, tactics, and the general conduct of operations. Its rules oblige combatants to spare civilians and those no longer participating in hostilities, such as soldiers who have been wounded or have surrendered and the amelioration of their conditions. The rules also seek to provide restrictions or prohibitions on the means of warfare and the methods of warfare (such as military tactics of using starvation or rape as a method of warfare). International humanitarian law applies only during armed conflict while human rights law applies both in war and peace times, it is important that both bodies of law

[1]Samgena,G. & Biidou, N. (2006) The Law of War:Non- International Armed Conflicts and Respect for the Law. A.B.U Zaria Law Journal, Vol. 1, p. 99.
[2] Ladan M.T. (2008) Materials and cases on Public International Law. A.B.U press, Zaria, p.249.
[3] "Amnesty International". http://www.amnesty.org/en/arme-conflict, accessed 14th January,2019 @2:37pm

should be applied in a complimentary and mutually reinforcing way in the context of armed conflict. It also seeks to protect some group of persons during armed conflict such as civilians (women, children, refugees, internally displaced persons, medical personnels, religious clerics) and those who no longer participate in hostilities such as soldiers who have been wounded or have surrendered, such protection accorded to victims of war must be without discrimination. The rights of protected persons during armed conflicts are principally regulated by the four Geneva Conventions[4], the Protocols Additional to the Geneva Conventions[5]. It is also important to state that international humanitarian law has had significant effect in this sphere.

The fact that there are several international instruments aimed at protecting protected persons, which clearly states how they are to be treated and cared for during and after armed conflict situations, the rights of these protected persons are still violated. For example, since the adoption of these instruments, there have been a number of violations against women, children (one of which is rape. Rape has since remained an active weapon of war long after the Geneva Conventions banned it in 1949), and those who no longer participate in hostilities.

International Humanitarian law by nature aims at all times at providing the basic fundamental rights and principles guiding the rights of protected persons during armed conflicts and certain guiding principles that seeks to emphasis that even in war situations there must be respect for the rule of law. This is by providing for the principles of humanity, necessity, proportionality and neutrality. This is a fundamental rule of human rights that is not only specified in the United Nations Charter but also in all human rights treaties. One of such examples in humanitarian law is article 27[6] which provides that: "….all protected persons shall

[4]Geneva Conventions, 12th August, 1949
[5]Additional Protocol, 8th June, 1977
[6] Fourth Geneva Convection of 1949

be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based in particular, on race, religion or political opinion".

However, in as much as the Conventions have covered the protection of a number of persons, it has excluded some category of persons, for example the journalist. This category of persons are very important considering the part they play during armed conflicts by reporting on activities of war and places they visit in order to gain information and above all they fall within the category of persons who need to be protected and as such they are protected by Additional Protocol 1. Where laws are not provided in guarding the rights of this group, there will be violations of their rights. Moreso, where parties do not adhere to the rules of war during armed conflicts by protecting the rights of protected persons, it may often lead to distortion of diplomatic relationship between international parties, affect governmental structures of state parties and it may cause economic hardships on families and other neighbouring countries[7]. Protected persons during armed conflicts under international law deserve as much attention as possible from states parties and armed groups alike. Efforts must be geared towards addressing emerging challenges in the bid to protect the rights provided under international law.

In light of this background, this research is set out to discuss the rights provided under different international instruments which the protected persons enjoy under international law such as the right to life, human dignity, freedom of religion and personal liberty, the category of persons protected under international law such as women, children, medical officers, religious clerics and journalist, the challenges faced during armed conflicts and the legislative attitude towards enforcement of the rights of protected persons during armed conflicts, the impact of the violation of the rights of protected persons under international humanitarian law.

[7]Samgena,G. & Biidou, N. (2006) The Law of War:Non- International Armed Conflicts and Respect for the Law. A.B.U Zaria Law Journal, Vol. 1, p. 99.

1.2 Statement of the Research Problem

The statement of problemof this dissertation is that considering the importance of the concern to protect rights of persons in armed conflict situation by States Parties in International law, yet it becomes worrisome that incidences of gross violations of the rights of protected persons continue to linger as a result of state parties neglecting and not complying with the rules of war. Lack of compliance is also aided by the inadequate provisions in the international instrument, which has led to the omission of certain category of persons such as immigrants and physically challenged persons whose protection are missing in the four Geneva Conventions of 1949. Consequently, this events permit lack of compliance by states for an effective implementation of the International instruments protecting the rights of this category of persons.Therefore, based on this analysis the following research questions are formulated:

i. What is the strength of the current international humanitarian Conventions and Protocols regulating the protection of right of persons in armed conflict situation adequate on the subject matters?

ii. How effective are the enforcement mechanism and logistics put in place in the implementation of the protection of rights of protected person in armed conflict situations?

iii. Are there notable improvements on the protection of the rights of persons in armed conflict situations in international humanitarian practice of recent?

iv. Is the international judicial system effective enough to imposed effective sanctions in international practice as a measure to improve the institution?

1.3 Aim and Objectives of the Study

Theaim of this dissertation is to appraisethe current legal regime on the rights of protected persons during armed conflict situation in International Law which is principally a study of specific rules of international humanitarian and human rights law. Therefore, the objectives of this research are as follows:

i. To examine the adequacy or otherwise of the International Humanitarian Conventions and Protocol currently regulating the protection of right of persons in armed conflict situation.

ii. To examine the adequacy or otherwise of the current sanctions for breeches of obligation to protect persons in armed conflict situation under the existing convention and protocol in international law so as to determine the extent of the strength of the enforcement mechanism and logistics put in place on the subject matter..

iii. To identify the factors militating against an effective implementation by State Parties in international humanitarian law on the rights of protected persons as well as to expose the disregard of tenets of international humanitarian law on protected persons during armed conflicts by state parties.

iv. To proffer suggestions to issues identified in (iii.) above in order to ensure a viable institutional practice in the International legal order.

1.4 Scope of the Study

The scope of this research is limited to examining the rights of protected persons under international law consequently the writer has as much as possible identify the meaning and nature of protected persons, the category of persons protected under international law during armed conflicts, international humanitarian law on protected persons and the challenges

associated with the international humanitarian law on the right of protected persons during armed conflicts. Thus, from a legal perspective, this research is limited to the provisions of international instruments on the rights of protected persons during armed conflict such as the Four Geneva Conventions of 1949, The Additional Protocol to the Four Geneva Convention of 1977, the Convention on the right of the child and the Convention relating to the status of refugees. This also includes the International Convention on Civil and Political Rights and territorially this research is limited to international practices between nations during armed conflicts.

1.5 Research Methodology

The research method mainly adopted in carrying out this research is doctrinal[8]. As a result, both primary and secondary sources are consulted. This entails the consideration of statutory and case law on the rights of the protected persons.Articles in journal publication, books (both local and foreign) in this area of research are considered. Also, conference and internet materials written by legal writers, professionals and academicians are used in this research.

1.6 Literature Review

Armed conflicts and the violation of right of protected persons have been part issues of international concern since the adoption of the Geneva conventions of 1949, the proportion of civilians among the dead in some instances was so high, irrespective of international instruments which provided guiding rules as to the rights civilians are entitled to during and after armed conflicts. It is on this note that many states, international organizations, scholars, authors and individuals took it upon themselves to challenge the actions by the international bodies or communities on the enforcement of rights. Literatures have been written and are still being

[8] Aboki, Y. (2009) Introduction to Legal Research Methodology. Tamaza Publishing Co. Ltd., Zaria (2nd ed.), p.3 defined this type of research method as theorizing without considering the practical consequence and that the method is also called visualized, imaginative, unpractical, visionary or conceptual research method. Most legal research is of this kind.

written to address this issues ranging from educational text, article in journal publication, and internet materials. In the course of this research work, some literatures were consulted on the rights protected persons have during armed conflicts under international law.

Ladan[9] wrote on protecting fundamental human rights in armed conflicts. The author's research focuses on international human rights, international humanitarian law and how fundamental rights are protected during armed conflicts. He mentioned the protected persons to include civilians such as women, children, refugees and internally displaced persons.[10]Ladan from the perspective of international humanitarian law discussed the protection of fundamental rights during armed conflict in addition to the category of protected persons under international law that is women, children, internally displaced persons and refugees. However, Ladan discourse did not entails issues relating to those who are no longer participating in hostilities such as soldiers who have been wounded or have surrendered; all of which have been considered in this dissertation.

Umozurike[11] considered how international humanitarian law and international human rights law operates in situations of war or armed conflicts and in operation during peace time. He noted some international instruments which reaffirm profound belief in fundamental freedoms which are the fundamental of justice and peace in the world and are best maintained on the one hand by an effective political democracy, and on the other, by a common understanding and observance of the human rights upon which they depend[12]. He also mentioned English women who displayed courage in their humanitarian help to the wounded in battle, and on how treatment

[9] Ladan, M.T. Op. cit, pp. 555-600
[10] Ibid, p. 263-283
[11] Umozurike U.O. (1993) Introduction to International Law, Spectrum Law Publishing, pp.212-229
[12] Ibid, p. 213

should be given without discrimination based on sex, race, nationality, religion, political opinion or other criteria[13].

However, in the entire content of his book, he did not focus on classes of persons that the law seeks to protect and the rights guarding such persons under the different international humanitarian instruments, ways of implementing and or enforcement of such rights: consequently this omission are discussed in this dissertation.It is important to note here that, the research of Umozurike predominantly examined international instruments on rights of protected persons during armed conflicts, though particularly vesting his attention on women and children.

Carverzasio [14] in his work conducted under the auspices of the ICRC identifies inadequate national legislation, inadequate capacity of local institutions and non-acceptance of international standards as some of the factors behind human right violation during armed conflict using Kibeho and Rwanda as a case study[15].Carverzasio concluded that developing the law of nations to reach highest international standards on armed conflict, encouraging adaptation of national legislation to international standards, advocacy, promoting respect for rules and principles and for forces whether military or police or the rules of engagement during armed conflict are comprehensive preventive measures that can curb human right violation during armed conflict[16]. The report did not identify the category of persons protected by law and the various rights accorded them.Carverzasio's contribution centered on the inadequacies of national legislation and the problem of non-compliance to international standards on the conduct of state parties during armed conflict.

[13] Umozurike U.O. Op. cit, pp. 212-229
[14] Caverzasio, S.G. (ed.), (2001). Strengthening Protection in War. International Committee of the Red Cross, Geneva, Swithzerland. Pp.42-80
[15] Ibid, p. 66
[16] Caverzasio, S.G. Op. cit, p. 95

Jean-Jaeques[17] is of the view that war should not be perceived always as the height of horror[18]. He quotes Phillipi Masson as saying:

> For the soldiers, the true combatant war holds strong, associations, a combination, of fascination and horror, humour and sadness, tenderness and cruelty. In combat, a man can show cowardice or blood thirsty fury. He is torn between the life instinct and the death instinct, impulses that can cause him to commit the most despicable nuclear or inspire in him the spirit of sacrifice[19].

The author revealed that international human rights are often violated by in today's war and that is principally because certain features of this conflict make allow for such violations, features such as the chronic spread of criminality, emergence of paramilitary groups, the distinction between external barbarity and domestic civility, between the combatant as the legitimate bearer of arms and the non-combatant, between the soldiers and the[20] criminal are breaking down. The author quotes Mary Kalder as saying:

> The new wars occurs in situations in which state revenues decline because of the decline of the economy as well as the spread of criminality, corruption, and inefficiency, violence is increasingly privatized both as a result of growing organized crime and the emergence of paramilitary groups, and political legitimacy is disappearing between combatant as the legitimate bearer of arms and the non-combatant, between the soldier or policemen and the criminal are breaking down.

Furthermore:

> The new warfare also tends to avoid battle and to control territory through political, the aim of which is to control population by getting rid of everyone of a different identity. Hence, the strategic goal of these wars is population expulsion through various means such as mass killing, resettlement, as well as a range of political, psychological and economic technique of intimidation…[21]

[17] Jean-Jaeques, F. (2004). The Roots of Behaviour in War. International Committee of the Red Cross, Geneva, pp.10-64
[18] Ibid, p. 18
[19] Ibid, p. 19
[20] Ibid, p. 35
[21] Jean-Jaeques, F. Op. cit, p. 36

Without doubt, the author did identify some of the factors that cause violations of fundamental rights of persons that ought to be protected by law during war. Even though the author did not clearly identify the plethora of rights available to category of persons during armed conflicts or war. The factors or causes of such violations having been revealed by him are quite commendable.

Starke[22]. This author identified who protected persons thus, the impact of human rights rules and standard during armed conflicts, which he said is the importation of human rights and standards into the law of armed conflict. He also provided some sanctions of international humanitarian law. However, the esteemed author of international lawdid not bring the issues relating to the rights protecting protected persons during armed conflicts within his focused. This is not far from the essential features of Jean-Jaeques work, though Jean-Jaeques was able to identify the causes of state non-compliance e.g emergence of paramilitary and wide spread criminality.

Malcolm[23] is of the view that as far as the civilian population is concerned during hostilities, the basic rule (sometimes termed the principle of distinction) is that the parties to the conflict must at all times distinguish between such population and combatants and between civilian and military objectives and must direct their operations only against military objectives[24].He further mentioned a number of specific bans on particular weapons such as small projectiles, dum-dum bullets, asphyxiating and deleterious gases, weapons that cannot be detected by x-rays, the use of incendiary devices, mines and booby-traps against civilians or

[22] Starke, J.G. (1977) An Introduction to International Law, Butterworths and Co (Publishers) ltd, London. pp.555-600
[23]Malcolm N.S. QC. (2008) International Law, Cambridge University Press. Cambridge, pp. 281-301
[24]Ibid, p. 1184

against military objectives located within a concentration of civilians where the attack is delivered by air[25].

According to Malcom, on implementing the concept of protecting power, one has to look after the interest of the national of one party to a conflict under the control of the other, whether prisoners of war or occupied civilians. Such a power must ensure that compliance with the relevant provisions has been effected and that the system acts as a form of guarantee for protected persons as well as a channel of communication for him with the state of which he is a national. Though the writer considered how combatants and civilians should be protected, he did not talk about the rights accorded to the civilians and combatants during armed conflicts. [26]Malcolm is of particular interest to military strategies such as the observance of the principle of distinction and the non-use of prohibited weapons during armed conflict in international war, a step which is sought to improve upon by this dissertation.

Farthoter [27] mentioned journalist among protected persons whose rights should be protected during armed conflicts. In his presentation he distinguished between independent journalist and war correspondent, he said that while a journalist is practicing the profession, he has to be located as a civilian as long as he does not act to the contrary[28]. A commentary on the Geneva Convention[29] provided for the protection and care for the wounded or sick, that the wounded and the sick shall be respected, protected, treated and cared for in all circumstances by the party to the conflict in whose power they may be without any adverse distinction[30].The

[25] Ibid, p. 1189
[26] Malcolm N.S. Op. cit, p. 1198
[27] Mag. Hilde Farthoter, Journalists in Armed conflicts – protection measures in the International Humanitarian Law (unpublished) a paper presented at the SGIR 7th Pan-European International Relations Conference Stockholm, 2010, pp. 424-622
[28] Ibid, p. 468
[29] The Geneva Conventions of 12 August, 1949, Commentary 1 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, pp.1-34
[30] Ibid, p. 28

wounded should be respected just as much when they are with their own army or in no man's land as when they have fallen into the hands of the enemy[31]. This is an obligation which should apply to non-combatants and also civilians who shall respect this wounded and sick and in particular abstain from offering them violence[32]. He went further to talk about the protection of women, those women taking part officially in military operations should be treated with the special consideration due to their sex[33], and this treatment is in addition to the safeguards embodied to men. Although the write up provided persons protected by the international instrument during armed conflict and how they are to be protected, except that it did not provide the rights protecting the protected persons and ways of enforcement.

Heike[34] in his paper mentioned individuals that are accorded a range of protections from the effect of hostilities under international humanitarian law. He gave the first individuals protected by international treaties who are combatants and not civilians in his opinion, also banned are attacks on objects necessary for the survival of the civilians. His paper contained prohibited attacks against dams, dikes and nuclear power station if they may result in civilian losses. The writer here failed to discuss the rights accorded to the protected persons and make recommendations on how the rights can be implemented.

John [35] in his paper afforded protected persons rights depending upon their circumstances. While some rights are afforded generally to protected persons in the home territory of a party to the conflict, a more extensive catalog of rights is provided to such individuals if they have been interned. On trial rights accorded to detainees during prosecution, a

[31] Ibid, p. 135
[32] Ibid
[33] The Geneva Convention, Op. cit. p. 140
[34] Heike S. "Crimes of War". http://www.crimesofwar.org/protected-person, accessed 19th April, 2019. @ 3:00pm
[35] John C. "Status of Detainees in International Armed Conflict, and their Protection in the Course of Criminal Proceedings". http://www.asil.org/insigh, accessed 19th April, 2019. @ 3:25pm

detainee is prosecuted and afforded trial rights under both human rights and humanitarian law. Though the writer listed out some rights protecting protected persons during armed conflict but failed to give a detail explanation to these rights and also the means of implementing the rights.John is of the opinion that the rights of protected persons under international law during armed conflict depends on the circumstances such as the geographical area one finds himself.

In conclusion, the literatures reviewed above have contributed to the study of the rights of protected persons in international law in accordance to the subject matter of their specific research. However, there arestill areas of *lacuna* on the subject matter which this dissertation has considered and such areas improved on include the consideration of novel issues such as the protection of the right of the less privileged and handicapped's needs that have not been considered previously by most of the writers.

1.7 Justification of the Study

The justification of this research is to disseminate rules of international humanitarian law, educate and create awareness on the rights of protected persons under international law during armed conflicts which have in recent times suffered abuses and lack of protection. This research shall be useful to international organization in that it will expose the inadequacies inherent in the various international instruments on the right of protected persons with a view to assisting the international community improve on the provisions of these international instruments on the rights of protected persons during armed conflicts.

This research will also be of immense benefits to states parties in their disposition and conduct during armed conflict because this research will expose the causes of rampant violation of the rights of protected persons during armed conflict and how same can be remedied. This also applies to armed groups who either out of ignorance or in flagrant disregard of the

provisions of the international instruments violate the fundamental rights of protected persons under international law.

Also, this research is of benefit to scholars, teachers and students of international law in their study of the rights of protected persons during armed conflict under international law. Apart from generally enlightening or educating groups and institutions on the subject matter of this dissertation, this research is relevant because the recommendations proffered to the problems identified by this dissertation shall contribute to the quest by scholars in international humanitarian law to constantly develop the jurisprudence in the area of the international laws on protected persons during armed conflict.

1.8 Organizational Layout

This research comprises of five chapters in all.The first chapter gives an introduction of the work. It also highlights the aim, objectives, problems, significance, methodology and justification of the study. Chapter two covers the conceptual clarifications of crucial terms used in the research work such as international law, protected persons, armed conflict and rights.

Chapter three discusses the rights provided under different international instruments which the protected persons enjoy under international law such as the right to life, human dignity, freedom of religion and personal liberty. This chapter also discusses the category of persons protected under international law such as women, children, medical officers, religious cleric, aged, journalist and those not covered by the Geneva Convention such as, immigrants and physically challenged persons.

Chapter four captures the challenges faced during armed conflicts and considers the legislative attitude towards enforcement of the rights of protected persons during armed conflicts

under international law. The impact of the violation of the rights of protected persons under international law is also discussed in this chapter.

And lastly, chapter five which conclude the research, with summary, findings and recommendations, based on the discussionsfrom the preceding chapters.

CHAPTER TWO

CONCEPTUAL DISCOURSE

2.1 Introduction

In the existence of mankind from the cave to the computer age, a central role has always been played by the idea of law, the idea that law is necessary and chaos inimical to a just and stable existence. Every society, whether large or small, powerful or week, has created for itself a frame work of principles within which to develop. What can be done, what cannot be done, permissible acts, forbidden acts, have all been spelt out within the consciousness of that community.

Law is an element which binds members of the international community and actors together in their adherence to recognize values and standards. It is both permissive in allowing international actors to establish their own legal relations with rights and duties and also punishes those who infringe its regulations. In this chapter the writer will be discussing the conceptual clarification on the terms used in these work such as the definition and nature of international law, definition and nature of rights , definition and nature of protected persons, and the definition and nature of armed conflict. This will help in giving a better understanding of the work.

2.2 Meaningand Nature of International Law

The traditional definition of international law is that body of rules that govern the relations between states. It is true, that at the time, international law is primarily concerned with states, when states were the only bodies which had rights and duties under it[1]. Such traditional definition of the subjects, with its restriction to the conduct of states inter se, will be found set out in the majority of the other older standard works of international law, but in view of

[1] Starke, J.G. An Introduction to International Law, Butterworth and Co (publishers) ltd, London, (1977), p.1

developments during the last three decades, it cannot stand as a comprehensive description of all the rules now acknowledged to form part of the subject.

Today however, this definition cannot be taken as an adequate and complete description of the intents, purposes and scope of international law, nor its suggestions that international law is a matter of concern solely to states be upheld. International law comprises rules that relate to the functioning of international institutions or organizations, their relations with each other and their relations with states and individuals. Furthermore, certain rules of international law extend to individuals and non-states actors (Transnational Corporations) insofar as their rights or duties are the concern of the international community of states[2].

The Soviet Academy of Sciences defines international law as "the aggregate of rules governing relations between states in the process of their conflict and cooperation, designed to safeguard their peaceful co-existence, expressing the will of the ruling classes of the states individually or collectively"

Denning L.J. in Trendtex Trading Corp V. Central Bank of Nigeria asked the question, what then is international law? "He says, I know no better definition of it than it is the sum of rules or usages which civilized states have agreed shall be binding upon them in their dealings with one another……"[3].

Starke J.G.[4] in his text defined international law as that body of rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other and which includes also:-

A) The rules of law relating to the functioning of international institutions, their relations with each other, and their relations with states and individuals: and

[2] Ladan, M.T. (2008) Materials and cases on Public International Law. A.B.U Press, Zaria, p.1.
[3] (1997)1 All E.R. 881 p.901-2.
[4] Starke, J.G. Op. cit p. 1.

B) Certain rules of law relating to individuals and non-state entities so far as the rights or duties of such individuals and non-state entities are the concerns of international community.

The free dictionary[5] defines international law as a body of rules established by custom or treaty and recognized by nations as binding in their relations with one another, and the body of rules that governs the legal relations between or among states or nations.

To qualify as a subject under the traditional definition of international law, a state had to be sovereign. It needed a territory, population, a government and the ability to engage in diplomatic or foreign relations. States within the United States, provinces, and cantons were not considered subjects of international law, because they lacked the legal authority to engage in foreign relations. In addition, individuals did not fall within the definition of subjects that enjoyed rights and obligations under international law.

A more contemporary definition expands the traditional notions of international law to confer rights and obligations on intergovernmental international organizations and even on individuals. The United Nations for example, is an international organization that has the capacity to engage in treaty relations governed by and binding under international law with states and other international organizations. Individuals' responsibility under international law is particularly significant in the context of prosecuting war crimes and the development of international human rights[6].

[5] International Law-Legal Dictionary. http://www.legal-dictionary.thefreedictionary.com/, accessed 18th July,2013. @12:20pm
[6] Ibid

The business dictionary[7] defines international law 'as a body of legal rules governing interaction between sovereign states (public international law) and the rights and duties of the citizens of sovereign states (private international law). Since there has never been a law making body for international law, it has been built up piecemeal through accords, agreements, charters, compromises, conventions, memorandums, protocols, treaties, tribunals and understandings.'

Duhaime Lloyd[8] defined international law as a combination of treaties and customs which regulate the conduct of states amongst themselves, and persons who trade or have legal relationships which involves the jurisdiction of more than one state.

Duhaime[9] in quoting from William Edward Hall International Law, Chief Justice Chisholm of the Nova Scotia Supreme Court adopted these words in *R vs Mason,*[10]"International law consists in certain rules of conduct which modern civilized states regard as binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country."

By this, international law is the rules acknowledged by the general body of civilized independent states to be binding upon them in their mutual relations. It consists of rules and principles of general application dealing with the conduct of states and of international organizations, and with their relations inter se as well as some of their relations.

[7] What is International Law? Definition and meaning. http://www.businessdictionary.com/definition/, accessed 18th April, 2019. @ 2.20pm
[8] Duhaime, L. International Law Definition. http://www.duhaime.org/legaldictionary/, accessed 18th April, 2019 @ 2.30pm
[9] Ibid
[10] Duhaime in quoting from William Edward Hall International Law(1900, 8th ed.), Clarendon Press, Oxford, and F.M Smith on International Law, 6th ed., J.M. Dent., London. http://www.duhaime.org/legaldictionary/, accessed 18th April, 2019 @ 2.30pm

According to Betham's[11] classic definition, international law is a collection of rules governing relation between states. It is a mark of how far international law has evolved that this original definition omits individual and international organizations, two of the most dynamic and vital elements of modern international law. Furthermore, it is no longer accurate to view international law as simply a collection of rules; rather, it is a rapidly developing complex of rules and influential, though not directly binding principles, practices, and assertions coupled with increasingly sophisticated structures and processes. In its sense international law provides normative guidelines as well as methods, mechanisms and a common conceptual language to actors i.e. primarily sovereign states but also increasingly international organizations and some individuals. The range of subjects and actors directly concerned with international law has widen considerably, moving beyond the classical questions of war, peace, and diplomacy to include human rights, economic and trade issues, space law, and international organizations. Although international law is a legal order and not an ethical one, it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights.The term 'international law'[12] can refer to three distinct legal disciplines:

i. Public international law, which governs the relationship between states and international entities. It includes these legal fields: treaty law, law of sea, international criminal law, the laws of war or international humanitarian law and international human rights law.

ii. Private international law or conflict of laws which addresses the questions of (1) which jurisdiction may hear a case, and (2) the law concerning which jurisdiction applies to the issues in the case. It applies in civil law jurisdiction and governs

[11] Betham, D. International Law: The Nature and Development of International Law. http://www.britanica.com/..../internationallaw, accessed 18th July. 2013. @ 2:00pm
[12] International Law- Legal Dictionary, Op. cit. p.3

conflicts between private persons rather than states (or other international bodies or actors)

iii. Supranational law, or the law of supranational organizations, which concerns regional agreements where the laws of nation states may be held inapplicable when conflicting with a supranational legal system when that nation has a treaty obligation to a supranational collective.

International law is the set of rules generally regarded and accepted as binding in relations between states and nations. It serves as a frame work for the practice of stable and organized international relations. International law includes both customary rules and usages to which states have given express or tacit assent and the provisions of ratified treaties and conventions. International law is directly and strongly influenced, although not made by the writings of jurists and publicist, by instructions to diplomatic agents, by important conventions even when they are not ratified, and by arbitral awards. The decisions of the ICJ and of certain national courts are considered by some theorists to be part of international law. In many modern states, international law is by custom or statute regarded as part of national (or as it is usually called municipal) law, but international law differs from national legal systems in that it primarily concerns nations rather than private citizens. In addition, municipal courts will, if possible, interpret municipal law so as to give effect to international law[13].International law is treated as part of the law of the land in many national constitutions. Thus Gray J.[14] in the Paquete Habana said, "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are dully presented for their determination."The British Lord Chancellor, Talbot, said in

[13] International Law: Nature and Scope/infoplease. http://www.infoplease.com/..../internationallaw, accessed 20thApril, 2019. @ 1:00pm

[14] Umozurike, U.O. (1993) Introduction to International Law, Spectrum Law Publishers, Ibadan, p.6

Barbuit's case that "the law of nations in its fullest extent is and forms part of the law of England"[15].

Although in his view there is no international law parliament issuing legislation binding on all states on all issues, there is an increasing number of international legislation through treaties which can only be applied when used or put or included into the municipal law. The practical effect of this is that municipal law is interpreted so as to give effect to international law. If however the legislature expressly contravenes international law, the courts have no option but to apply municipal law.

States generally observe international law because it serves their interest[16], although in certain cases municipal law may impose international duties upon private persons, for example the obligation to desist from piracy. New rights and duties have been imposed on individuals within the frame work of international law by the decisions in the war crimes trials as well as the treaty establishing the International Criminal Court by the genocide convention, and by the Declaration of Human Rights. International law is law in its own characteristics, less developed but with potentialities for greater development and utilitarianism.

The preconditions for international law are the existence of states and the readiness of such political units to interact among themselves for their own benefits. The minimum expectations are that the entities would record, at least, certain minimum respect to one another and to their representatives and keep their promises. No political primitive relies entirely on itself but needs its neighbours for its fullest development. It is to the mutual benefit of all states to promote such intercourse and therefore to develop international law[17]. The General Assembly of

[15] Ibid
[16] Ladan, M.T. Op. cit. p.2
[17] Umozurike, U.O. Op. cit. p.6

the United Nations is entrusted with the development of international law (also called the law of nations).

More so, international law is an independent system of law existing outside the legal orders of particular states. It differs from domestic legal systems in a number of respects. For example, although the United Nations (UN) General Assembly, which consists of representatives of some countries, has the outward appearance of a legislature, it has no power to issue binding laws. Rather, its resolution serve only as recommendations, except in specific cases and for certain purposes with the UN system, such as determining the UN budget, admitting new members to the UN, and with the involvement of the security council electing new judges to the International Court of Justice (ICJ). Also there is no system of court with comprehensive jurisdiction in international law. The International Court of Justice's jurisdiction in contentious cases is founded upon the consent of the particular states involved. There is no international police force or comprehensive system of law enforcement, and there is also no supreme executive authority. The United Nation Security Council may authorize the use of force to compel states to comply with its decisions, but only in specific and limited circumstances; essentially, there must be a prior act of aggression or the threat of such an act[18].

International law is a distinctive part of the general structure of international relations. In contemplating responses to a particular international situation, states usually consider relevant international laws. Although considerable attention is invariably focused on violations of international law, states generally are careful to ensure that their actions conform to the rules and principles of international law, because acting otherwise would be regarded negatively by the international community[19].

[18] Betham, D. Op. cit. p.4
[19] Betham, D. Op. cit. p.4

The rules of international law are rarely enforced by military means or even by the use of economic sanctions. Instead, the system is sustained by reciprocity or a sense of enlightened self-interest. States that breach international rules suffer a decline in credibility that may prejudice them in future relations with other states. Thus, a violation of a treaty by one state to its advantage may induce other states to breach other treaties and thereby cause harm to the original violator. Furthermore, it is generally realized that consistent rule violations would jeopardize the value that the system brings to the community of states, international organizations, and other actors[20].

Nevertheless, from the practical point of view, it is well to remember that international law is primarily a system regulating the rights and duties of states inter se. so much is hinted at it in the very title 'international law' or in another title frequently given to the subject 'the law of nations', although strictly speaking the word 'nation' is only in a crude way a synonym for the word 'states'. Indeed it is a very good practical working rule to regard international law as mainly composed of principles whereby certain rights belong to, or certain duties are imposed upon states.

The main object of international law has been to produce an ordered rather than a just system of international relations, yet in later developments, there has been evidence of some striving to ensure that, objectively, justice be done between states[21]. Moreover, apart from seeing that states receive just treatment, the modern law of nations aims at securing justice for human beings.

[20] Ibid.
[21] Starke, J.G. Op. cit. p.2

2.3 Meaning and Nature of Armed Conflict

International humanitarian law based on the concepts of *Jus Ad Bello*, is defined to be the law of war. This means that the laws involved are meant to be active in a situation of an armed conflict or during war. However just like international law, the international humanitarian law requires the political will of states for a situation to be considered as an armed conflict, so that the law can be in force.

Project Ploughshares defines an armed conflict as a political conflict in which armed combat involves the armed forces of at least one state (or one or more factions seeking to gain control of all or part of the state), and in which at least 1000 people have been killed by the fighting during the course of the conflict[22].

Armed conflict is an organized and often prolonged conflict carried out by states or non-state actors. It is generally characterized by extreme violence, social disruption, and economic destruction[23].

An armed conflict is a contested incompatibility which 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.

The separate elements of the definition are operationalized as follows:

1. Use of armed force: use of arms in order to promote the parties' general position in the conflict, resulting in deaths.

   Arms: any material means, e.g. manufactured weapons but also sticks, stones, fire, water etc.

2. 25 deaths: a minimum of 25 battle-related deaths per year and per incompatibility.

[22] Defining Armed Conflict. http://www.ploughshares.ca/project/armed-conflict/defining. accessed 5th March, 2019. @3:20pm
[23] Armed Conflict. http://www.en.m.wikipedia.org/ accessed 5th March, 2019. @12:30pm

3. Party: a government of a state or any opposition organization or alliance of opposition organization.
    a. Government: the party controlling the capital of a state.
    b. Opposition organization: any non-governmental group of people having announced a name for their group and using armed force.
4. State: a state is
    a. an internationally sovereign government controlling a specified territory, or
    b. an internationally unrecognized government controlling a specified territory whose sovereignty is not disputed by another internationally recognized sovereign government previously controlling the same territory.
5. Incompatibility concerning government and/or territory the incompatibility as stated by the parties, must concern government and/or territory.
    a. Incompatibility: the stated general incompatible positions.
    b. Incompatibility concerning government: incompatibility concerning the type of political system, the replacement of the central government or the change of its composition.
    c. Incompatibility concerning territory: incompatibility concerning the status of a territory, e.g. the change of the state in control of a certain territory (interstate conflict), secession or autonomy (intrastate conflict)[24].

The free dictionary defines armed conflicts as a prolonged conflict carried on between nations, states, or parties. This includes the period upon which war is carried out and the techniques, procedures and military science used[25].

[24] Definition of Armed Conflict. http://www.pcr.uu.se/research/definition-. accessed 12th March, 2019@4:09pm

International humanitarian law recognizes three types of armed conflicts: international armed conflict, internationalized armed conflict and non-international armed conflict[26]. International humanitarian law does make it clear what an international armed conflict is, according to the Geneva Conventions of 1949, common article 2 states that:

> all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance.

This means that the occurrence of international armed conflict is clear, that is, it would be a conflict between the legal armed forces of two different states. A good example would be the North Korea-South Korea war of 1950.

The second armed conflict recognized by international humanitarian law is a new phenomenon known as 'an internationalized armed conflict'. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states (Stewart, 2003, p. 315). The most visible example of an internationalized armed conflict was the conflict in the Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the Democratic Republic of Congo.

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[25] Armed Conflict-The Free Dictionary. http://www.thefreedictionary.com/armed. accessed 5th March, 2019 @ 1:30pm

[26] Gertrude, C.C., (2011) Defining Armed Conflict in International Humanitarian Law. http://www.studentpulse.com/article/defining-armed, Vol. 3, No. 04, p. 1-3, accessed 19th July, 2019 @ 2.20pm

Non-international armed conflicts, according to common article 3 of the Geneva Convention, are 'armed conflict that are non-international in nature occurring in one of the high contracting parties'. This means that one of the parties involved is non-governmental in nature

For a situation to be recognized as an armed conflict in modern law, according to Gertrude[27], two variables are used; the intensity of the violence and the level of organization of the parties. If one of these is not fulfilled, then it is considered to be just a mere disturbance.

In conclusion, an armed conflict is deemed to have ended if:

i. There has been formal cease fire or peace agreement and, following which, there are no longer combat deaths (or at least fewer than 25 per year); or

ii. In the absence of a formal cease fire, a conflict is deemed to have ended after two yrs of dormancy (in which fewer than 25 combat deaths per year have occurred)[28].

2.4 Meaning and Nature of Protected Persons

A protected person is a minor or incapacitated person for whom a court has appointed a conservator. It can also be any person for whom a protective order has been made[29].

In English Law, a protected person is someone who is an inhabitant of a protectorate of the United Kingdom. Even though the person is not a British subject, such a person is given diplomatic protection by the crown[30].

In International Law, a protected person is one who is in the hands of an occupying force during a conflict[31].

According to Canada's Immigration and Refugee Protection Act[32], a person who has been determined by Canada to be either (a) a Convention Refugee or (b) a person in need of

[27] Gertrude, C.C. Op. cit. p.27
[28] Defining Armed Conflict. Op. cit. p.25
[29] Protected Person Law and Legal Definition. http://uslegal.co. accessed 27thApril, 2019. @1:30pm
[30] Protected persons. http://lawofwar.org/protected%20persons.htm. Accessed 25thMarch, 2019. @12:40pm
[31] Ibid

protection i.e a person who may not meet the Convention definition but is in refugee like situation defined in Canadian Law as deserving of protection, for example because they are in danger of been tortured.

Article 4 defined protected persons by the Convention as those who at a given moment and in any manner whatsoever find themselves, in case of a conflict or occupation in the hands of a party to the conflict or occupying power of which they are not nationals[33]. Nevertheless, it will be seen that there are two main classes of protected persons: (1) enemy nationals 'within the national territory of each of the parties to the conflict and (2) 'the whole population' of occupied territories (excluding nationals of the occupying power)[34].

Persons in need of protection were described under a number of conventions as persons whose removal to their country of origin would subject them personally to:

i. A danger of torture
ii. A risk to their life, or
iii. A risk of cruel and unusual treatment or punishment[35].

The Four Geneva Conventions and the Protocols Additional to the Geneva Conventions of 12 August 1949 provides for the protection of the wounded, sick, shipwrecked members of the armed forces, prisoners of war, civilians, medical personnel, religious clerics and victims of international armed conflicts, and prohibits any form of attack on the set of persons mentioned and their properties, including all acts of violence, whether committed in offence or defence. Attacks or threats of violence intended to terrorize these persons are prohibited.

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[32] Meaning of Protected Person. http://www.ccrweb.ca/glossary.PDF. accessed 25th March, 2019. @3:20pm
[33] Convention (iv) Relative to the Protection of Civilian Persons in time of War Signed at Geneva 12th August, 1949. http://unispal.un.org/UNISP....NSF/O/F9AA.. accessed 25th March, 2019. @ 2:20pm
[34] Ibid.
[35] Refugee Protection Division-Refugee Claims. http://www.irb.gc.ca/eng/media/.../rpdfacts.asp. Accessed 26 March, 2019 @1:20pm

The prohibition includes attacks launched indiscriminately; in particular these are attacks which are not directed or which cannot be directed, because of the methods or means of combat employed, at a military objective. As considered as indiscriminate are attacks which treat as a single military objective a number of clearly separated and distinct military objectives located in a town, village or other area containing a similar concentration of civilians or civilian property.

Demarcations of neutralized zones in regions of fighting where the wounded, the sick and civilians may shelter in safety are to be provided.

Protected persons are to be well treated in accordance with their status, religion and sex, (war prisoners are to be respected and protected as befit their rank and sex). In particular, no physical suffering, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by their medical treatment shall be inflicted on them[36].

The Protocols Additional to the Geneva Conventions of 1949[37] forbids starving these protected populations. Objects indispensable to the survival of these persons such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works must neither be attacked, destroyed, removed nor rendered useless. So also medical units including civilian hospitals, hospital ships, ambulances and aircraft conveying the sick and the wounded are to be protected and shall be visibly marked carrying the Red emblem which shall be displayed on the flags, armlets and on all equipment employed in the medical service. This safety is also extended to their staff.

In protecting persons, it is also necessary that their properties are protected. Civilian property is anything which is not a military objective i.e which by its nature, location, purpose or use does not effectively contribute to military action and whose total or partial destruction,

[36] Umozurike, U.O. Op. cit. p.6
[37] Additional Protocols I & II of 1977

capture or neutralization would not offer a definite military advantage in the circumstances ruling at the time. Some of these properties include cultural property, historical monuments, works of arts or places of worship which constitute the cultural or spiritual heritage of peoples which must not be objects of any acts of hostility nor be used in support of the military efforts. Thus, military equipment, a road of strategic importance, a supply column on its way to the army, a civilian building evacuated and reoccupied by combatants are military objectives[38].

In case of risk of the release of dangerous forces which could cause severe losses among the civilian population, dams, dykes and nuclear electrical generating stations, must not be attacked, even if they constitute military objectives[39]. This protection can only cease if they are used for the regular, significant and direct support of the military. These installations may be marked with a special sign (three bright orange in straight line).

The Fourth Geneva Convention guarantees the free passage of all consignments of medicaments and medical equipments as aid, as well as objects necessary for religious worship intended only for civilians of another contracting party, even those of an enemy. It also permits the free passage of foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and women in labour. The Protocol considerably extends the scope for undertaking relief operations. It provides that when the civilian population of a territory under the control of a party to the conflict, other than an occupied territory, is not adequately provided for, relief actions of a humanitarian and impartial character, conducted without any adverse distinction, must be undertaken, subject to the agreement of the parties concerned in such relief actions. These may consist of foodstuffs, medicines, clothing, bedding, means of shelter and other

[38] Protection of Civilian Persons and Populations in Time of War. http://www.icrc.org/eng/resources/.../57jmjv.ht. accessed 15th March, 2019 @ 4:00pm
[39] Ibid.

supplies essential to the survival of the civilian population. The personnel taking part in relief actions must be respected and protected.

Moreso, Article 27 of the Fourth Geneva Convention[40] states the basic principle of the Geneva Convention which proclaims respect for the human person and the inalienable character of his fundamental rights such as respect for their persons, their honour, their family rights, their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence and threats thereof and against insults and public curiosity. This Article is now supplemented by Article 75 of the Protocol[41] relative to fundamental guarantees as well as by other relevant provisions which appear under the heading which provides thus:

> …Persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the conventions or under this protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or benefit, political or other opinion, national or social origin, wealth, birth or other status or on any other similar criteria.

In conclusion, in as much as the Four Geneva Conventions[42] and Protocols Additional to the Geneva Conventions[43] provides for the protection of the sick, wounded, shipwrecked, medical personnel, religious clerics and civilians (women and children), it must be recognizes however that the Conventions themselves stipulate that in order for the Conventions to be binding on states they must be ratified by those States; that being so, it is difficult to see how they could be applied to the nationals of a State which is not party to them. That is to say nationals of a State which is not bound by the Convention are not protected by it.

[40] 1949
[41] Additional Protocol 1 of 1977
[42] 1949
[43] 1977

It should be noted that, certain states which are bound by the Geneva Conventions do not maintain diplomatic relations among themselves; in case of war, whether one of them is neutral and the other a belligerent or whether they are co-belligerent, their nationals must enjoy full protection under the Convention.

2.5. Meaning and Nature of Rights

The term "right" is from a latin word rectus, meaning straight, correct, just, moral, and not crooked, and evolved simply to mean that which the law directs, approves or supports. We say something is right when it agrees with law, morality and justice. Specifically, it refers to that which is so directed for the protection and advantage of an individual or group and is said to be his or their right respectively[44].Anything which falls below a given standard is said to be wrong. As a noun the word "right" means anything to which somebody can lay a just and valid claim [45] .Black law dictionary [46] defines right as, "……..a power privileges or immunity guaranteed under a constitution, statues or decisional laws, or claimed as a result of long usage…"

Rights can also be termed as powers granted by the political community. In another view the term right is used in a fourth sense to mean an immunity from the legal power of some person just as a power is a legal ability to change relations, so an immunity is an exemption from having legal relations hanged by another. And in the case of *Uwaifo vs Attorney-General Bendel State & Ors*[47] immunity is seen as a right which needs to be preserved.On the definition of "right" our own Cicero, justice Oputa writes as follows:

[44] Tewogbade, T. Citizen Rights as Enshrine in 1999 Constitution.
[45] Ibid
[46] Bryan, A.G (2004) Black's Law Dictionary, 8th Edition, West Publishing Co. United States America, p. 831
[47] (1932) 4 N.C.L.R. 1, SCN.

> A right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling, with the absent and assistance of the state, the action of others[48].

It follows then, that every right involves a person invested with the right, or the person entitled; an act of forbearance which is the subject of the right, and in some cases an object, that is, a person or thing to which the right has reference, as in the case of ownership. A right therefore is in general, a well-founded claim, and when a given claim is recognized by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the state.

In *Afolayan vs Ogunride and Ors*[49], it was held that a right is an interest recognized and protected by the law. The word "right" means an interest or title in an object or property, a just and legal claim to hold, use or enjoy an object or property[50]. In a juristic context, right is a concept denoting an advantage, a position or benefit validly conferred on a person, human or artificial, by rules of a particular legal system[51].L. S. Jawitsch, a reputable soviet scholar defines right as:

> "A legally sanctioned measure of a person's possible conduct that guarantees him independence, freedom of choice, and the enjoyment of materials and spiritual blessings on the basis of the existing relations of production and exchange."

Philosophers writing on the nature of rights have for ages been divided. However, it is crystal clear that there is no universal agreement as to what rights are. The 1993 united nation world conference held in Vienna gave a clear indication to this assertion. Proponents of the will

[48] Oputa, C.A. (1988) Human Rights in the Political and Legal Culture of Nigeria. 2nd Idigbe memorial lectures Lagos Nigerian Law Publishers Ltd, p. 38-39
[49] (1990) 1 NWLR (pt. 127) 369 at 391.
[50] Nwankwo & Ors V. Onuma & Anor (1994) 5 NWLR (pt. 343) 191 at 204.
[51] Tewogbade, T. Op. cit, p. 7

theory of rights hold that individual freedom, autonomy, control, or sovereignty is somehow fundamental to the concept of a right, while proponents of the interest theory argue that rights protect people's welfare, and this may include protecting interests that are directly associated with people's freedom or control[52]. We shall see how different legal writers and authors perceive or view rights in their different forms.

"Rights" are moral concepts that provide logical transition from the principles guiding ones relationship with others. This concept preserves and protects individual morality in a social context that links between the moral code of a man and the legal code of a society, between ethics and politics. Individual rights are the means of subordinating society to moral law[53].

Man's life is the standard of moral value because each person should act to sustain and further his own life, and because physical force used against a person stops him from acting on his basic means of living, one needs a moral principle to protect oneself from people and governments that attempt to use force against an individual. That principle involves the concept of rights.

Rights are moral laws specifying what a person should be free to do and they come from God and can be said to be inherent in man's nature. Also rights are political laws specifying what a person is free to do and they are created by governments. Thus an interest qualifies as a right when an effective legal system treats it as such by using collective resources to defend it. On this account rights are government decrees: if the government says one has a right to take a good or service, then one does, if the government says one doesn't, then one doesn't.

But this notion of rights entails a fundamental contradiction. The idea that rights are permissions granted by a government or a legal system or political community or the like

[52] Ayn , R., Theory of Rights: The Moral Foundation of a free Society. TOS Journal (2005) Vol. 6, No. 3 p. 1.
[53] Ibid..

contradicts the very purpose of the concept of rights. Rights are fundamentally a moral concept; they pertain to that which a person should be free to do. The essential function of the concept is to specify those actions that no one including government can morally preclude one from taking[54].

Right may refer to animate or inanimate objects. Thus, it could be right to land or right to dignity of human person or right to life or right to fair hearing. When I say I have a right over something, my meaning is that everybody owes me a duty not to violate such right, just as I also have the duty to respect the rights of other persons. This further means that my own (as I validly or legally claim) stop where those of other begins[55].

2.5.1 God – Given Rights

The idea that rights come from God is particularly popular among conservatives and republicans. According to this theory, an all-powerful, infallible, all good being makes moral law and gives man rights; thus rights exist prior to and apart from any man-made law and cannot be granted or repealed by government. Sarah Palin[56] puts it that, "the constitution doesn't give us our rights. Our rights came from God, and they are inalienable. The constitution created a national government to protect our God-given unalienable right". Similarly, Rush Limbaugh[57] says that, "you all have individual rights, as granted by God, who created you, and our founding documents enshrine them. Life, liberty, pursuit of happiness. These rights don't come from either man or government.Newt Gingrich[58] in his opinions challenges anyone to identify another possible source of inalienable rights, he said that "if you are not endowed by your creator with certain inalienable rights where do they come from?"

[54]Ayn R. Op. cit, p.35
[55] Okpara, O. (2005) Human Rights Law and Practice in Nigeria. Chenglo Limited Publishers, p. 36.
[56] Ayn , R. Ibid, p. 35.
[57] Ibid p.35
[58]Ibid

2.5.2 Government - Granted Rights

Government create laws, and the laws in turn dictate the rights and non-rights of the people who live under those governments. "Absent a government", writes E.J. Dionne[59] there are no rights.

Stephen Holmes and Cass Sunstain[60] elaborate that "rights are powers granted by the political community", thus an interest qualifies as a right when an effective legal system treats it as such by using collective resources to defend it.

2.5.3 Natural Rights

Aware of the dangers of governments dictating what rights people have and have not, enlighten thinkers, classical liberal and the founding fathers sought to ground rights in nature. Rights, they posited, are born not of man-made law but of natural law, specifically, natural moral law; natural law concerning how people should and should not act[61].

John locke[62] puts it, there is a "law of nature" and this law 'teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possession." For men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property whose workmanship they are made to last during his, not one another's pleasure.

Thomas Jefferson[63] a founder agreed that man is endowed by nature with rights and these rights are a matter of moral law thus they are inherent, inalienable, and unchangeable. People should claim their rights as its derived from the laws of nature, and not as the gift of government.

[59]Ibid, p. 3.
[60] Ibid, p.3
[61] Ibid, p. 1
[62] Ibid, p. 4
[63]Ibid

In other words, the "law of nature" that gives rise to man's rights is the law of God. He ordains that we are his property and must serve his progress; thus, men may not make us serve their purposes.

Under the law of nature all men are born free, everyone comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the author of nature.In line with this Alexander Hamilton[64] wrote that:

> Good and wise men, in all ages…… have supposed that the deity, from the relations we stand into our self and to each other, has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature……..upon this law depend the natural rights of mankind.

George Mason[65] wrote: "the laws of nature are the laws of God, whose authority can be superseded by no power on earth". John Adams[66] wrote that man possesses rights "antecedent to all earthly government. Rights that cannot be repealed or restrained by human law, rights derived from the great legislator of the universe".We have what is called a legal right, which is either the liberty of acting or abstaining from action in a specific manner, or the power of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus, the capacity residing in one man or a group of men controlling with the assent and the assistance of the state, the action of others[67].

The Supreme Court held in *Uwaifo vs A.G Bendel State and Ors*[68] that a legal right is any advantage or benefit conferred upon a person by a rule of law. Every legal right seeks to protect

[64] Ibid, p. 4
[65] Ibid, p. 5
[66] Ibid, p. 5
[67] Oputa, C.A., Ibid p.34
[68] (1982) 7 SC. 124 at 273

the essential rights of its subjects. In the municipal system, a legal right *strict sensu* imposes an obligation to do or abstain from doing something to the possessor of the right. Such rights are recognized in torts, crimes, contracts and so on. A legal right at the international level vests certain privileges on the entities entitled and impose an obligation on states and other legally recognized entities to respect and promote those rights. The progress of human rights is therefore marked by increasing international concern and respect for those rights.

2.5.4 Human Rights

The word human has been defined as pertaining to characteristic of having the nature of mankind, moral and rational creatures. The word human right has a definitional problem. Many jurist and human right activist have tried without generally acceptable success to evolve a precise and comprehensive definition. Any discussion on human rights issues raises emotion. As long as the phase 'human rights' remains emotive, definitions would so long remain varied and inaccurate. A priori, no definition gives an arithmetical solution to a human problem. On this the learned prolific author, Justice Niki Tobi[69] aptly writes:

> Definitions by their very nature, concept, and content, are never accurate like a mathematical solution to a problem. Definitions are definitions because they reflect the idiosyncrasies, inclinations, prejudices and emotions of the person offering them. While a definer of a word or an agglomeration of words may pretend to be impartial and unbiased, the final product of his definition will be a victim of partiality and bias. The definer may not know in the course of his definition that he is working into the package, his petty sentiments and prejudices; but the end product proves it all. His embellishments show his emotions and sentiments. This is a human problem, which unfortunately has no human solution. As long as our orientations, our backgrounds and outlooks remain distinct and distant, the problem will be with us. There is no point pretending about it.

Be that as it may, it is still safe to see how other legal writers have defined human rights.

[69] Nwankwo &Ors V. Onuma & Anor (1994)5 NWLR (pt. 343) 191 at 204.

The concept of human right arises from the intrinsic nature of man. He is a human being endowed by God with certain inalienable rights. Because of his inviolable nature he cannot be used as a means to other ends. As a human person, he stands free as end unto himself in this regard. As a complete whole, he alone is sound, as he stands, responsible for his actions. He is equal to his next-door neighbor or any person anywhere in the world. This is the premise in which human rights issues have always been treated for academic and/or practical purposes.

Cranston gave many people regard as a better definition of human right when he wrote that, "a human right is something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be invaded, something's which are supremely sacred."[70]Cranston's definition appears idealistic and somewhat imprecise[71]. It was yet approved and adopted by the Supreme Court in *Ransome Kuti vs Attorney General* of the Federation[72] when it stated that a human right:

> Is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be "immutable" to the extent of the non-immutability of the constitution itself.

According to Dowrick[73], human rights are, "those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of humankind……." While Osita Eze[74] defines human rights as, "representing demand or claims which individuals or groups make on society, some of which

[70] Okpara, O. Op. cit p. 36.
[71] Okpara, o. Op. cit. p.36 Gasiokwo, M.O.U., a learned author criticizes Cranston's definition for sounding idealistic and lacking precision: and referring to justice, a value which varies from society to society.
[72]Ibid, (1975) 2 NWLR (PT. 6) 211, per Kayode Eso, J.S.C.
[73] Dowick, F.E., (1979) Human Rights, Problems, Prospects and Texts, Westmead, Uk: Saxon House, p. 8-9.
[74] Osita, E. (1984) Human Rights in Africa: Selected Problems, Lagos, Macmillian, p. 5.

are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future".

Following Eze's position, saying that "human rights, is of prime concern in every legal system". It encompasses claims, some of which are enforceable by the law. On his part, Umozurike has defined human rights as:

> …Claims, which are invariably supported by ethics and which should be supported by ethics and especially on its official managers, by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals…. They are those rights which every individual claims or aspires to enjoy irrespective of his colour, race, religion, status in life, etc[75].

Claims which individuals and groups make on the society as members of the human family are today called human rights.Gasiokwu[76] correctly writes: 'Contemporary human rights can be summarized as claims made on society by individuals and groups, which claims have found expression in objective law, either at national or international levels, and serve as a standard for measuring the conditions of human existence, below which no human being should enjoy'.

Human rights are those rights which the international community recognizes as belonging to all individuals by the very fact of their humanity. These rights combine with traditional legal rights that were hitherto considered to be moral or political.Human rights make it possible for man to realize his human qualities, not as a mere creature, but a human being who must enjoy certain basic rights pertaining to human. Human rights represent virtuous not licentious freedom because human right represents the best morality can offer. Whenever a man is denied human

[75] Ibid.
[76] Gasiokwu, Op. cit. p.16

rights, he has been reduced to nothing in the sense that he can no longer perform according to human nature.

Put more simply, human rights are the universally accepted principles and rules that support morality and that make it possible for each member of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice and peace. They include both traditional civil and political rights and the more recently recognized economic, social and cultural rights. The definition is ever expanding and may include discovery and formulation, such as the right to an environment that permits a life of health and well-being and the right to development[77].

Intergovernmental organizations such as the United Nations, European Union, Organization of American States and the African Union, Non-Governmental Organizations (NGOs), individual scholars and thinkers throughout the world continually re-evaluate the concept of human rights. The process of examining the inherent rights and freedoms due each human being is ongoing, perhaps never ending. Human rights and fundamental freedoms represents the basic moral values of our modern world and are thus fully an expression of the conscience of Mankind[78].

The United Nations in 1987[79] described human rights as follows, "human rights could be generally defined as those rights, which are inherent in our nature and without which, we cannot function as human beings". Also, Ndubuisi and Nathaniel[80] have clearly written that:

> The existence of human rights does not depend on any legal or constitutional authority and it is for this fact that men could still enjoy them as their legitimate and authentic claims without their

[77] Edward Lawson, Encyclopedia of Human Rights, 2nd Edition, 1996, p. 711.
[78] Ibid. 17.
[79] Okpara, O. Op. cit, p. 41.
[80] Ndubuisi, F.N. and Nathaniel, O.C., (2002) Issues in Jurisprudence and Principles of Human Rights, Dmodus Publishers, Lagos, p. 181

> being officially enacted by authority. However, human rights are better and easily enforced when positively prescribed in a social compact. By its nature, human rights is beyond the power of legal or political authority to make void because it is impossible to annual or remove from existence, something that is an inherent aspect of human nature.

In conclusion, human rights are those inherent rights of all human beings wherever they are and whosoever they are. These rights are no gifts by governments or any person. These rights are attached to a human being wherever he goes. Every human being is therefore, the subject and object of these rights. This is the deal. It is because each human being has intrinsic worth that we talk of fundamental human right or the inalienable rights of man[81].

Since states do not confer human rights, they cannot therefore withdraw them or take them permanently from human beings. Rather, states have the duty to promote and protect human rights. This duty is being owned to all persons irrespective of sex, nationality, race, political opinion or social group. No legal or constitutional authorities can annual human rights.

Universality of Human Rights

Human rights apply to all humans without any discrimination. Human rights are universal. They respect neither boundaries nor state origins. They fear no political systems. They must be upheld at all times for any individual or group in any condition except where 'they threaten to curtail similar or comparable rights of others'[82].

[81] Okpara, O. Op. cit, p. 42
[82] Okpara, O. Ibid. p.42

CHAPTER THREE

THE LEGAL FRAMEWORK FOR THE PROTECTION OF RIGHTS OF PERSONS IN ARMED CONFLICT SITUATION AND ITS DEVELOPMENT IN INTERNATIONAL HUMANITARIAN LAW

3.1 Introduction

During armed conflict protected persons need protection. The legal framework that supports the protection of persons in armed conflict was built by states. Through the years, states have affirmed their commitment to protecting persons during armed conflict by acceding to different instrument which protect and regulate the conduct of war. Following the horrors of World War II, states vowed to create safe guards for the protection of human rights. The first step was taken in 1948 with the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations. Since then, many systems for the protection of human rights were established on different levels: international, regional and national. In this chapter, the writer will be discussing the different instruments for the protection of protected persons, which will include: international instruments and regional instruments which seek to protect persons, their properties and regulate the conduct of war. In general terms the international legal framework applicable for the protection of right of persons in armed conflict is primarily composed of two interrelated and mutually reinforcing set of rules namely;International Humanitarian and Human Rights Law. Examples here include right to life, right to shelters, right to adequate medical facilities, right to freedom of thought and expression, freedom from torture and many others as specifically identified in International convention and protocol discuss in this chapter.

3.2 International Instrument on the Protection of Rights of Persons in Armed Conflict Situation

International Human Right Law deals with the general right and freedom of persons which persons in armed conflict situation are also privileged to. While international humanitarian law regulates the protection of persons and the conduct of hostilities in armed conflict, international human rights law imposes standards that government must abide by in their treatment of persons both in peace time and war. International refugee law focuses specifically on protecting persons who have fled their country due to persecutions or other serious violations of human rights or armed conflict.

3.2.1 The Protection of Right of Persons in Armed Conflict Situation under International Humanitarian Law

International Humanitarian law is a set of rules which protects and seek to limit the effects of armed conflict on people including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and restrictions on the means and methods of warfare. The protection of the right of person in armed conflict situation in International Humanitarian Law finds its sources in treaties and customary international law and so consist of a large number of treaties which have been developed over the past years, starting with the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.The bulk of modern international humanitarian law is however, composed of the following:

i. The Geneva Convention (I) for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (12 August, 1949);

ii. The Geneva Convention (II) for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of armed Forces at Sea (12 August, 1949);

iii. The Geneva Convention (III) relative to the Treatment of Prisoners of War (12 August, 1949);

iv. The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (12 August, 1949);[1]

v. The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Law ([Protocol I] 8 June, 1977);

vi. The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts ([Protocol II] 8 June, 1977).[2]

The Conventions and Additional Protocols which were developed and drafted by states enumerate the rights and responsibilities of persons whom the instruments protect and the obligations of states that are parties to it.

3.2.1.1 The First Geneva Convention (GCI)

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 is the first Geneva Convention[3].

This convention relates to the treatment and protection of members of the armed forces who are wounded and sick in the field i.e. soldiers who are hors de combat (out of the battle). The 10 articles of the original 1864 version of the convention have been expanded in the First Geneva Convention of 1949 to 64 articles that protect:

i. Wounded and sick soldiers;

ii. Medical personnel, facilities and equipment;

[1] The Geneva Conventions of 12 August, 1949, ICRC, Switzerland, pp. 1-36
[2] Protocols Additional To The Geneva Conventions of 12 August, 1949, ICRC, Switzerland.
[3] GC Ibid

iii. Wounded and sick civilian support personnel accompanying the armed forces;

iv. Military chaplains; and

v. Civilians who spontaneously take up arms to repel an invasion[4].

Specific provisions with respect to the above mentioned group of persons include:

Article 6 of the 1864 Geneva Convention provides that *"wounded and sick combatants, to whatever nation they may belong, shall be collected"*

This Convention, like the others, recognize the right of the International Committee of the Red Cross and Red Crescent National Societies, other authorized impartial relief organisations and neutral government may be asked to care for the wounded and sick[5]. The wounded and sick shall be respected without discrimination on the basis of sex, race, nationality, political beliefs or other criteria. The wounded and sick shall not be murdered, exterminated or subjected to torture or biological experiments[6]. All parties in a conflict must search for and collect the wounded and sick especially after battle, and provide the information concerning them to the Central Tracing `and Protection Agency of the International Committee of the Red Cross (ICRC). The wounded and sick must also be protected against pillage and ill-treatment[7].

3.2.1.2 The Second Geneva Convention (GC II)

The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949 is the second Geneva Convention[8].

This Convention relates to the treatment and protection of members of the armed forces who are shipwrecked or wounded and sick at sea. It adapts the protections of the First Geneva

[4] Malcolm N.S.Z (2008) QC. International Law, Cambridge University Press, pp.281-301
[5] Article 9 Geneva Convention I of 12 August, 1949.
[6] Article 12 GCI, Op. cit
[7] Ibid
[8] Geneva Convention II of 12 August, 1949

Convention to reflect conditions at sea, it protects wounded and sick combatants while on board ships or at sea. It has 63 articles which apply to the following:

i. Armed forces members who are wounded, sick, or shipwrecked;

ii. Hospital ships and medical personnel; and

iii. Civilians who accompany the armed forces.

Some specific provisions include that;

The Convention mandates that parties in battle take all possible measures to search for, collect and care for the wounded, sick and shipwrecked. "Shipwrecked" refers to anyone who is adrift for any reason, including those forced to land at sea or to parachute from damaged aircraft[9]. While a war ship cannot capture a hospital ship's medical staff, it can hold the wounded, sick and shipwrecked as prisoners of war, provided they can be safely moved and that the war ship has the facilities to care for them[10].

The Convention provides for appeals which can be made to neutral vessels, including merchant ships and yachts, to help collect and care for the wounded, sick and shipwrecked. Those who agree to help cannot be captured as long as they remain neutral[11]. Also hospital ships cannot be used for any military purpose. They cannot be attacked or captured. The names and descriptions of hospital ships must be conveyed to all parties in the conflict[12]. Religious, medical and hospital personnel serving on combat ships must be respected and protected. If captured, they are to be sent back to their side as soon as possible[13]

The First and Second Geneva Convention are similar, covering land and sea respectively. They embody the main idea which led to the founding of the Red Cross: if a member of the

[9] Article 12 & 18 GCII, Op. cit. p.56
[10] Ibid Article 14
[11] Ibid Article 21
[12] Ibid Article 22
[13] Ibid Article 36-37

armed forces is wounded or sick, and therefore in no condition to take an active part in the hostilities, he is no longer part of the fighting force and becomes a vulnerable person in need of protection and care.

The main points of these two conventions are: the sick, wounded and shipwrecked must be cared for adequately. Belligerents must treat members of the enemy force who are wounded, sick or shipwrecked as carefully as they would their own. All efforts should be made to collect the dead quickly, to protect them from robbery. Medical equipments must not be intentionally destroyed and medical establishments and vehicles must not be attacked, damaged or prevented from operating even if, for the moment, they do not contain patients.

3.2.1.3 The Third Geneva Convention (GC III)

The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 is the third Geneva Convention[14].

This Convention relates to the treatment and protection, and sets out specific rules for the treatment of prisoners of war. The Convention's 143 articles require that prisoners of war be treated humanely, adequately housed and receive sufficient food, clothing and medical care. Its provisions also establish guidelines on medical care. Its provisions also establish guidelines on labour, discipline, recreation and criminal trial. Prisoners of war may include:

i. Members of the armed forces;
ii. Volunteer militia, including resistance movements; and
iii. Civilians accompanying the armed forces.

Specific provisions include:

Prisoners of war must not be subjected to torture or medical experimentation and must be protected against acts of violence, insults and public curiosity. Captors must not engage in any

[14] Geneva Convention III of 12 August, 1949

reprisals or discriminate on the basis of race, nationality, religious beliefs, political opinions or other criteria, and female prisoners' must be treated with regard due to their sex[15]. The prisoners of war have a duty to provide to their captors only the name, rank, date of birth and military service number[16]. The names of the prisoners of war must be sent immediately to the Central Tracing Agency of the ICRC, and they are to be allowed to correspond with their families and receive relief packages[17]. When the conflict ends, all prisoners of war shall be released and if they request, be sent home without delay[18].

Prisoners of war must be housed in clean, adequate shelter, and receive the food, clothing and medical care necessary to maintain good health, seriously ill prisoners must be repatriated (returned home). They must not be held in combat areas where they are exposed to fire, nor can they be used to "shield" areas from military jobs under reasonable working conditions when paid at a fair rate. They may be required to do non-military jobs under reasonable working conditions when paid at a fair rate[19]. The prisoners are subject to the laws of their captors and can be tried by their captors' courts. The captor shall ensure fairness, impartiality and a competent advocate for the prisoners[20].

The International Committee of the Red Cross (ICRC) is granted special rights to carry out humanitarian activities on behalf of the prisoners of war. The ICRC or other impartial humanitarian relief organisation authorized by parties to the conflict must be permitted to visit with prisoners privately, examine conditions of confinement to ensure the Conventions' standards are being met and distribute relief supplies[21].

[15] Article 13, 14, 16 & 25 GCIII, Op. cit
[16] Ibid Article 17
[17] Ibid Article 70-72, & 123
[18] Ibid Article 118
[19] Article 22-29, 50, 54, 109 & 110 GCIII, Op. cit
[20] Ibid Article 82, 84
[21] Ibid Article 125

Prisoners of war must be:

i. Treated humanely with respect for their persons and their honour.

ii. Enabled to inform their next of and Central Prisoners of War Agency (ICRC) of their capture.

iii. Allowed to correspond regularly with relatives and to receive relief parcels.

iv. Allowed to keep their cloths, feeding utensils and personal effects.

v. Supplied with adequate food and clothing.

vi. Provided with quarters not inferior to those of their captor's troops.

vii. Given the medical care their state of health demands.

viii. Paid for any work they do.

ix. Repatriated if certified seriously ill or wounded, (but they must not resume active military duties afterwards).

x. Quickly released and repatriated when hostilities cease.

Prisoners of war must not be:

i. Compelled to give any information other than their name, age, rank and service number;

ii. Deprived of money or valuables without a receipt (and this must be returned at the time of release);

iii. Given individual privileges other than for reasons of health, sex, age, military rank or professional qualifications;

iv. Held in close confinement except for breaches of the law, although their liberty can be restricted for security reasons; and

v. Compelled to do military work, nor military work which is dangerous, unhealthy or degrading.

3.2.1.4 The Fourth Geneva Convention (GC IV)

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 is the fourth Geneva Convention[22].This Convention was the first treaty that exclusively sought to provide protection for civilians during armed conflict. However, it is mainly concerned with the treatment of all individuals "who do not belong to the armed forces, take no part in the hostilities and find themselves in the hands of the enemy or an occupying power".Specific provisions include:

Civilians are to be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion or political opinion[23]. Civilians cannot be forced to do military-related work for an occupying force, they are to be paid fairly for any assigned work[24]. Given the vulnerability of children, this Convention lays down a series of rules according them special protection and also provides for the care of children who are either orphaned or separated from their families. The ICRC's Central Tracing and Protection Agency is also authorized to transmit family news and assist with family unifications, with the help of Red Cross and Red Crescent national societies[25].

The safety, honour, family rights, religious practices, manners and customs of civilians are to be respected[26], pillage, reprisals, indiscriminate destruction of property and the taking of

[22] Geneva Convention IV of 12 August, 1949.
[23] Article 13, 32, Op. cit, p. 9
[24] Ibid Article 40, 51
[25] Ibid Article 24, 25
[26] Ibid Article 27

hostages are prohibited[27]. The civilians are not to be subjected to collective punishment or deportation[28].

Occupying powers are to provide food and medical supplies as necessary to the population and maintain medical and public health facilities. Medical supplies and objects used for religious worship are to be allowed facilities[29], when that is not possible, they are to facilitate relief shipments by impartial humanitarian organisations such as the ICRC, Red Cross or other impartial humanitarian relief organisations authorized by the parties to the conflict are to be allowed to continue their activities[30].

Public officials will be permitted to continue their duties. Laws of the occupied territory will remain in force unless they present a security threat[31]. If security allows, civilians must be permitted to live normal lives. They are not to be deported or interned, except for imperative reasons of security. If internment is necessary, conditions should be at least comparable to those set forth for prisoners of war[32]. Internees have the right to send and receive mail and receive relief shipments, they are to receive adequate food, clothing and medical care, and protected from the dangers of war. Information about internees is to be sent to the Central Tracing Agency[33].

Children, pregnant women, mothers with infants and young children, the wounded and sick and those who have been interned for a long time are to be released as soon as

[27] Article 33, 34, Op. cit, p. 8
[28] Ibid Article 49
[29] Ibid Article 55, 58
[30] Article 59, Op. cit, p. 9
[31] Ibid Article 64
[32] Ibid Article 79-135
[33] Ibid Article 89-91, Article 106-108

possible[34].Importantly, in its general protection measures for civilians, protected civilians must be:

i. Treated humanely at all times and protected against acts or threats of violence, insults and public curiosity;

ii. Entitled to respect for their honour, family rights, religious convictions and practices, and their manners and customs;

iii. Specially protected, for example in safety zones, if wounded, sick, old, children under fifteen, expectant mothers or mothers of children under seven years;

iv. Enabled to exchange family news of a personal kind, helped to secure news of family members dispersed by the conflict; and

v. Allowed to practice their religion with ministers of their own faith. Civilians who are interned have the same rights as prisoners of war. They may also ask to have their children interned with them, and wherever possible families should be interned together and provided with the facilities to continue normal family life. Wounded or sick civilians, civilian hospital and staff, and hospital transport by land, sea or air must be specially respected and may be placed under protection of the Red Cross/ Crescent emblem.

Also protected civilians must not be:

i. Discriminated against because of race, religion or political opinion, or forced to give information;

ii. Used to shield military operations or make an area immune from military operations; and

[34] Ibid Article 132

iii. Punished for an offence he or she has not personally committed, women must not be indecently assaulted, raped, or forced into prostitution.

3.2.1.5 Additional Protocol I (AP I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict of 1977 is the first additional protocol[35].The Additional Protocol I extended the protection for those caught up in international conflicts, in particular by up-dating the rules applicable to the conduct of hostilities. The Protocol expanded the categories of protected persons, expanded protection for the civilian population as well as military and civilian medical workers in international armed conflict and contained rules on the conduct of hostilities (e.g. prohibition of indiscriminate attacks against civilians and civilian objects, principle of proportionality). It also expanded the definition of international armed conflict to include armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of self- determination.

Additional Protocol I widen the protection afforded to children in international conflicts, stating that they shall be the object of special respect and be protected from any form of indecent assault. Parties to the conflict must also provide them with the care and aid that they require[36]. Significantly, it sets the minimum age for recruitment by armed forces and for the direct participation of children, marking the first time the issue of child soldiers had been addressed in a binding international document. However, 15years and not 18 years was set as the minimum age for the participation and recruitment[37]. Limited juvenile justice guarantees are provided for children who commit crime related to the armed conflict, shall be held separately from adults, unless families are being accommodated together in family units and an individual shall not be subjected to the death penalty for a crime they committed when they were under 18years[38].

[35] Additional Protocol I to the Geneva Conventions of 12 August, 1949, pp.1-36
[36] Article 77 (1), Ibid
[37] Article 77 (2) & (3)Ibid
[38] Article 77 (4) & (5), Ibid

The Protocol addresses the evacuation of children from war torn countries, providing that children shall not be evacuated except where there are compelling reasons[39]. This is to avoid the risk of removal for the purpose of ethnic cleansing and unnecessary removal of children, representing a major change in practice from World War II when mass evacuation of children took place. Prior to any evacuation, parental consent shall be sought if the parents can be found[40], and everything shall be done to ensure that the children are reunited with the parent when the danger has passed[41]. In addition, while away a child's education shall continue[42].

Specific provisions include:

Special protections are provided for women, children and civilian medical personnel, and measures of protection for journalists are specified[43]. The ICRC, national societies or other impartial humanitarian organizations authorized by parties to the conflict must be permitted to provide assistance[44].The Protocol prohibits the use of weapons that "cause superfluous injury or unnecessary suffering", as well as means of welfare that "cause widespread, long-term, and severe damage to the natural environment". It also outlaws the indiscriminate attacks on civilian populations and destruction of food, water and other materials needed for survival[45]. It took consideration of modern means of warfare and transport, dames, dikes and nuclear generating stations may not be attacked, nor can cultural objects and places of worship[46]. It is a war crime to use one of the protective emblems recognized by the Geneva Conventions to deceive the opposing forces or to use other forms of treachery[47].

[39] Ibid Article 78 (1)
[40] ibid
[41] Ibid Article 78 (3)
[42] Ibid Article 78 (2)
[43] Ibid Article 15, 76-77, 79
[44]Ibid Article 17, 81
[45] Article 51, 54.
[46] Ibid Article 53, 56
[47] Ibid Article 85

The conventions and protocols are long and complicated, but they are essentially a series of 'do's and 'don'ts to apply during conflict to protect vulnerable and defenseless individuals. The human dignity of all individuals must be respected at all times. Everything possible must be done, without any kind of discrimination, to reduce the suffering of people who have been put out of action by sickness, wounds or captivity whether or not they have taken direct part in the conflict.

3.3 Protection of Human Rights Principles in Armed Conflict Situation

International law is a system designed to protect and promote the human rights of all persons. These rights which are inherent in all human beings as human being, whatever their nationality, place of residence, sex, nationality or ethnic origin, colour, religion, language, or any status, are interrelated, interdependent and indivisible. States are obligated to act in certain ways or refrain from certain acts, in order to promote and protect the human rights and fundamental freedom of individuals or groups.[48]

3.3.1 Right to Life

Life is the most precious gift on this earth and therefore, it is but appropriate that it has been given the first place in most national constitutions and in the international bill of human rights. The right to life is the most fundamental human right and every person has the right to life and no one shall be deprived of his or her life intentionally or without any legal justification, this cannot be subject to derogation even in war or states of emergency. This right is available against both the state and private persons. However, the right to life is not an absolute right due to certain qualifications or exceptions, such as, in execution of the sentence of a court of law or

[48] Jamsheed A.S. (2017) The International Legal Protection of Human Rights in Armed Conflict, International Education and Research Journal (IERJ). Pp.79-85

tribunal in respect of a criminal offence of which one has been found guilty, or in self defence.[49] The European Convention however, gives more guidance as follows: Deprivation of life shall not be regarded as inflicted in contravention of the Article when it results from the use of force which is no more than absolutely necessary:

(a) In defence of any person from unlawful violence;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) In action lawfully taken for the purpose of quelling a riot or insurrection[50].

The death of a combatant as a result of a "lawful act of war" within the meaning of international law does not constitute a violation of the right to life. Similarly, if law enforcement agents take a person's life, for example if the death results from a use of force that was absolutely necessary for such legitimate purposes as self-defence or the defence of a third person or from a lawful arrest, or from actions taken to prevent the escape of a person legally detained or to put down a riot by a competent judicial body on a case-by-case basis, taken into account the principle of proportionality and, in the final instance, by a treaty body[51]. The Geneva Conventions and its additional protocols of 1977 as well as the Hague Conventions forbid violence to the life of all protected persons namely, the wounded, sick prisoners of war, civilians persons (children, women, refugees, internally displaced persons, journalist, medical personnel, religious clerics); it likewise forbid the killing or murder of enemy persons who have laid down their arms, have surrendered or are defenseless. The prohibition is also extended to attacks on persons parachuting from an aircraft in distress, indiscrimination attacks, all attacks intended to starve civilians, the destruction of objects and installations indispensable to the survival of the

[49]Ladan, M.T. Op. cit. p.2

[50]Article 2(2) of the EuropeanConvention for the Protection of Human Rights and Fundamental Freedoms, 1950 (ECHR).

[51] Ibid

civilian population, so on. The right to life in armed conflicts would not be sufficiently regulated without such details. All persons in the direct power of the adversary must be protected from murder[52].

Given the obvious risk in armed conflict, a great deal of humanitarian law is devoted to the protection of life, especially the life of civilians and people not involved in the conflict. These people are mainly protected by the 1949 Geneva Conventions and the Additional Protocol 1 of 1977. As far as the protection of life during hostilities is concerned, it is still obvious that the lives of combatants cannot be protected whilst they are still fighting. However, humanitarian law is not totally silent even here, for the rule that prohibits the use of weapons of a nature to cause unnecessary suffering is partly aimed at outlawing those weapons that cause an excessive high death rate among soldiers. The protection of protected persons during hostilities is of great importance. A number of customary rules, including the customary law of the eighteenth and nineteenth centuries, required that civilians be spared as much as possible. Military tactics at this time made this possible, and civilians were less affected by direct attacks than starvation during sieges, or shortages caused by the use of their resources by occupying troops. However, military developments in the twentieth century, in particular the introduction of bombardment by aircraft or missile, have seriously jeopardized these customary rules[53].

The most important contribution of the 1977 protocols is the regulation of the conduct of hostilities in order to spare civilians as much as possible. The balance between military necessity and humanitarian needs continues to be at the basis of this law, and the states that negotiated the Protocols kept this firmly in mind, codifying a law that was acceptable to their military staff. The result is a treaty that reaffirms that attacks must be limited to military objectives and that

[52]Ladan, M.T. Op. cit. p.2
[53] Ibid

targeting of the civilian population and indiscriminate attacks are prohibited. Humanitarian law also restricts the imposition of the death penalty, in particular by requiring a delay of at least six months between the sentence and its execution, by providing for supervision mechanisms, and by stipulating that the death sentence may not be pronounced on persons under eighteen or carried out on pregnant women (thereby protecting the unborn child) or mothers of young children. The United Nations Committee on crime prevention and Control in 1988 recommended to the Economic and Social Council that states members should be advised to establish a maximum age for sentencing or execution with respect to elderly persons, that capital punishment should not be imposed on persons who at the time the crime was committed, were over 70 years of age. Also of interest is the fact that an occupying power cannot use the death penalty in a country which has abolish it[54].

Furthermore, humanitarian law protects life in a way that goes beyond the traditional civil right life, for the provisions concerned would be categorized in human rights law as "economic and social". First, the 1977 Protocols prohibit the starvation of civilians as a method of warfare and consequently the destruction of their means of survival. Secondly, Protocol 1 provides ways and means for improving civilians' chances of survival by, for example, stating that special zones may be set up that contains no military objectives. Thirdly, the Geneva Conventions and their Additional Protocols require that the wounded shall be collected and given the medical care that they need. Fourthly, the Geneva Conventions and Additional Protocols contain a great deal of detail on the physical conditions needed to sustain life in reasonable conditions possibly in armed conflicts[55]. Thus, for example, the Third Geneva Convention describes the living conditions required for prisoners of war, and the Fourth Geneva Convention required for civilian

[54]Ladan, M.T. Op. cit. p.2
[55]Ladan, M.T. Op. cit. p.2

persons interned in occupied territory. With regard to relief shipments, an occupying power is required to see to it that an occupied population has the necessary means of survival and to accept outside relief shipments if necessary to achieve this. Other provisions concern relief supplies for the parties' own populations, although these are not as absolute as those applicable in occupied territory[56].

3.3.2 Right to Personal Liberty

Right to personal liberty[57] is a great right in the history of human rights. It aims at providing protection against arbitrary or unlawful arrest and detention[58]. An individual should be free from physical restraint on his/her body; this basic guarantee applies to everyone, including persons held on criminal charges or on such grounds as mental illness, vagrancy or immigration control. Other restrictions of movement, such as banishment to an island or a certain area of a country, curfews, expulsion from a country or prohibition to leave a country, do not constitute interference with personal liberty, although they may violate other human rights, such as freedom of movement and residence[59]; one should not be restricted bodily except in justifiable circumstances which are specifically recognized by law[60]. The implication is that both national and international instruments recognize the occasional need for detention of persons pending trial, but places a limit on the duration of such detention. When the arrest of an individual is effected, it is lawful only if it is effected on the authority of a warrant duly sworn to and issued by competent authorities. Under the right to liberty, the person accused of an offence is entitled to be brought to trial within a time limit.

[56] ibid
[57] Article 3 of Universal Declaration of Human Rights
[58] Article 9 Ibid
[59] Article 14 Ibid
[60] Article 9(1) of Convention on Civil and Political Rights

However, there are specific circumstances in this human rights instruments under which a person may be denied his/her liberty without the authorities falling foul of the law. For instance, if a person is found guilty of a criminal offence and the court sentences him or passes any order depriving him of his liberty, such sentence or order can be executed and the person cannot challenge it on the ground that the right to liberty is infringed thereby, as this is an exception recognized by law.Similarly, the right has been covered in the various provisions of international humanitarian law applicable in armed conflicts. Under the law, each party to the conflict who holds foreign persons and persons whose liberty has been restricted (e.g. prisoners of war, civilian internees, arrested persons) is responsible for the treatment given to such persons by its agents, irrespective of any individual responsibility which may be incurred[61].

Under the humanitarian law, taking of hostages and deportation of civilians are prohibited; more detailed rules are laid down with regard to the retention of medical personnel by an enemy, the internment of civilians of enemy nationality, the right to compel prisoners of war and enemy civilian to do work, and the restrictions to the liberty of prisoners of war. Under articles 43 and 78 of the Fourth Geneva Convention and 75 of the Additional Protocol 1 of 1977, any person arrested, detained or interned for actions related to the armed conflicts shall be informed promptly in a language understandable to him of the reasons for the measure taken. He shall be released as soon as possible unless he is charged with penal offences[62].

[61]Ladan, M.T. Op. cit. p.2
[62] Ibid

3.3.3 Right to Dignity of Human Person

The international and national human rights instruments forbid any form of torture or cruel, inhuman or degrading treatment or punishment[63]. Torture is one of the most serious human rights violations, as it constitutes a direct attack on the personality and dignity of the human being. It is due to the prevalence and dimensions of torture that the UN has repeatedly committed itself to fight torture. The starting point is the fact that all UN members States are bound by article 5 of the Universal Declaration on Human Rights (UDHR) which prohibits torture. Therefore, neither morally nor legally can torture be justified. Antonio Cassese[64] in his view said

"Torture is intended to humiliate, offend and degrade a human being and turn him or her into a thing". Further, Theo Van Boven[65]had this to say; "The legal and moral basis for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and imperative and must under no circumstances yield or be subordinated to other interests, policies and practices."

Article 2 of UDHR prohibits torture and other forms of physical and mental ill-treatment, making this right an absolute human right and is therefore not subject to derogation under any circumstances by States Parties. This also means that no one may invoke an order from a superior as justification of torture or in any circumstances whether in a state of war or a threat of war, internal political instability or any other public emergences.In fact, the Vienna Declaration and Programme of Action (1993) emphasized that "one of the most atrocious violations against

[63] Article 5 of Universal Declaration of Human Rights; Articles 1-2 Of The Un Convention Against Torture of 26 June 1987; Section 31 Of The Nigerian Constitution, 1979.
[64]Manfred N. et al., (2005) Human Rights: a handbook for Parliamentarians. Sadag Bellagrade-Sur-Valserine France, p.91.
[65] Ibid.

human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities"[66].

International organizations and experts often include the phrase 'cruel, inhuman and degrading treatment' as such practices as corporal punishment, internment in dark cells, restraint by means of shackles or other pain-causing devices, interrogation under duress, biomedical experiments on prisoners, the use of drugs on prisoners, castration, or practices such as female genital mutilation, reduction of diet, solitary confinement, and or force-feeding. Minimum standards in this area vary from country to country. In Europe, the death penalty and all forms of corporal punishment are today considered as inhuman or degrading punishment, and are therefore prohibited, and in many countries life imprisonment is considered in the same vein[67]. The Human Rights Committee has considered corporal punishment, such as chastisement of prisoners in Jamaica and in Trinidad and Tobago, as degrading punishment under article 7 of Convention on Civil and Political Rights (CCPR). Furthermore, it has maintained that certain methods of execution such as gas asphyxiation constitute inhuman punishment, and thus violate international law.

Further, no person shall be held in slavery or servitude. No person shall be required to perform forced or compulsory labour. But forced or compulsory labour does not include any labour required in consequence of the sentence or order of the court. It also does not include any labour required of members of the armed forces or the police force in pursuance of their duties as such or alternative labour required of persons who have conscientious objections to service in the armed forces. Neither does it include any labour required in an emergency or calamity

[66]Paragraph 55 Of The Vienna Declaration (1993), Articles 4 Of UDHR And 8 Of International Covenant On Civil And Political Rights.
[67]Manfred N. ET AL., (2005) Op. Cit. P.72

threatening the life nor well-being of the community and which is reasonably necessary. Also, any labour or service which forms as an art of normal communal or other civic obligations for the well-being of a community is not to be regarded as forced labour[68].

Human rights law as well as international humanitarian law absolutely prohibits torture and inhuman treatment. Not only is this stated explicitly in all the appropriate places, but it can also be said that a large part of the Geneva Conventions is in practice a detailed description of how to perform one's duty to treat victims humanely. Thus the following are prohibited at any time and in any place whatsoever:- murder, torture, corporal punishment, mutilation, outrages upon personal dignity, collective punishments, the taking of hostages, execution without regular trial and all cruel and degrading treatment.Article 10 of the Convention on Civil and Political Rights guarantees the right of detainees, prisoners and all persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity[69].

3.3.4 Right to Fair Trial

The right to fair trial is essential for a person to secure justice. Fair trial guarantees presuppose equality before the law and the courts. The right to equality before the law means that laws must not be discriminatory and that judges and officials must not enforce the law discriminatorily[70]. The right to equality before the courts means that all persons are equally entitled to a court and have a right to equal treatment by the court, where an aggrieved party is denied the right to be heard by an unbiased court, there is likelihood of there being a denial of justice.This right is recognized under national Constitutions and international human rights instruments. Under article 14 of the International Convention on civil and Political Rights, everyone shall be entitled

[68]Ladan, M.T. Op. cit. p.2
[69] Ibid
[70]Article 7 of Universal Declaration On Human Rights

to a fair and public hearing by a competent, independent and impartial tribunal established by law[71].

The competence of a court of law or tribunal refers to the appropriate personal, subject-matter, territorial or temporal jurisdiction of a court in a given case. The reference to the tribunal's establishment by law presupposes that the court as such, including the delineation of its competence, has been established by the normal law-making body of the legal system in question. The general aim of the provision is that criminal charges are headed by courts which are set up independently of a particular case rather than by courts established specifically for the offence involved.In order to be independent, a tribunal must have been established to perform adjudicative functions. Independence also presupposes that the judiciary is independent of the executive and legislative branches and that judges are impartial and competent. In particular, this depends on factors such as the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office as well as the conditions governing promotion, transfer and cessation of their functions.

The provisions of article 14 of the International Convention on Civil and Political Rights apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Human Rights Committee of the UN has noted the existence in many countries, of military or special courts which try civilians and is of the view that this could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. "Quiet often is the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice"[72]. While the covenant does not prohibit such categories of court, nevertheless the conditions which it lays down clearly indicate

[71]Article 8 and 10of Universal Declaration On Human Right.
[72]Human Right Committee General Comment No. 13. Para. 4.

that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in the article.

The second sentence of article 14(1)[73] provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3[74] of the article elaborates on the requirements of a "fair hearing" in regard to the determination of criminal charges. Although it must be borne in mind that the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.The publicity of hearings is an important safeguard in the interest of the individual and of society at large. Court hearings and judgements must in general be public; not only the parties to the case, but also the general public must have a right to be present. The idea behind the principle of a public hearing is transparency and control by the public, a key prerequisite for the administration of justice in which "justice must not only be done; it must be seen to be done". To give practical effect to this right the court or tribunal is obliged to make information about the time and venue of the hearing available to the public and to provide adequate facilities (within reason) for attendance by interested members of the public. At the same time, article 14(1), acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order, national security, private interests and in exceptional cases, the interests of justice. Moral grounds for the exclusion of the public are usually asserted in cases involving sexual offenders. The term "public order" in this particular context has been interpreted to relate primarily to order within the courtroom while "national security" may be invoked so as to preserve military secrets. The "private lives of the parties" refers to family, parental and other relationships such as guardianships that might be prejudiced in public proceedings.

[73] Op. cit. p.75
[74] Ibid

It should be noted that, apart from such exceptional circumstances, a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. Even in those cases in which the public is legitimately excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public. A judgement is considered to have been made public either by full oral delivery or by written announcement. The primary consideration in this regard is the accessibility of the judgement.Another component of the right to a fair trial is the presumption of innocence[75]. By reasons of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. The presumption of innocence must therefore be maintained not only during the trial stage vis-à-vis the defendant, but also in relation to a suspect or accused throughout the pre-trial phase. In particular, it is the duty of all officials involved in a case as well as all public authorities to refrain from prejudging the outcome of a trial.

Among the minimum guarantees in criminal proceedings prescribed by paragraph 3 of Article 14[76], the first concerns the right of everyone to be informed in a language which he understands of the charge against him. Article 14(3)(a)[77]applies to all cases of criminal charges, including those of persons not in detention. The right to be informed of the charge "promptly" requires that information is given in a manner described as soon as the charge is first made by a competent authority. This right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a

[75]Article 11(1) Of Universal Declaration of Human Right
[76]International Convention on Civil and Political Rights
[77] Ibid

crime or publicly names him as such. The specific requirements of sub-paragraph (3)(a) may be met by stating the charge either orally or in writing, provided that information indicates both the legal description of the offence ("nature") and the alleged facts ("Cause") on which it is based. Article 14(3)[78] is thus wider than the corresponding rights granted under Article 9(2)[79] applicable to arrest which provides for a long time lag between information on the cause of arrest and information on the legal charge. The rationale at this stage is that the information provided must be sufficient to allow the preparation of a defence.

Sub-paragraph (b) of Article 14[80] provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice. What is "adequate time" depends on the circumstances of each case. Factors to be taken into account are the complexity of the case, the defendant's access to evidence. The time limit provided for in domestic law for certain actions in the proceedings and so on. The facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or his indigent, he should be able to have recourse to a lawyer provided by a state. Furthermore, this sub-paragraph requires counsel to communicate with accused in conditions given full respect for the confidentiality of their communications. Lawyers should be able to counsel or represent clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

[78] Ibid
[79] Ibid
[80] International Convention on Civil and Political Rights

The right to communicate with counsel applies to all stages of the criminal proceedings and is particularly relevant in cases of pre-trial detention. Thus, all arrested, detained, or imprisoned persons must be provided with adequate opportunities to be visited by and to communicate with a lawyer without delay, interception or censorship and in full confidentiality throughout the proceeding.Sub-paragraph 3(c)[81] provides that the accused shall be tried without undue delay. The guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement rendered. All stages must take place "without undue delay". What amounts to undue delay also depends on the circumstances of the case such as its complexity, the conduct of the parties, whether the accused is in detention and so on.

Sub-paragraph 3(d)[82] is a conglomerate of the following specific rights:-

i. the right to be tried in one's presence;
ii. to defend one's self in person;
iii. to choose one's own counsel;
iv. to be informed of the right to counsel;
v. to receive free legal assistance.

Whether or not the interest of justice requires the state to provide legal assistance depends primarily on the seriousness of the offence and the potential maximum punishment. According to prevailing interpretation, the right to counsel applies to all stages of criminal proceedings, including the preliminary investigation and pre-trial detention. The right to defend oneself means that the accused or his lawyer must have the right to act diligently and fearlessly in pursuing all

[81] International Convention on Civil and Political Rights
[82] Ibid

available defences and the right to challenge the conduct of the case if they believe it to be unfair.

Sub-paragraph 3(e)[83] states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. This also means that the prosecution must inform the defence of the witnesses it intends to call to trial within a reasonable time prior to trial so that the defendants may have sufficient time to prepare for his defence.

The defendant also has the right to be present during the testimony of a witness except in those exceptional cases where it is considered that the witness reasonable fears reprisals by the defendant. Any such claim must be carefully considered by the court before the defendant is excluded but in no case may a witness be examined in the absence of both the defendant and his counsel. The use of the testimony of anonymous witnesses would also amount to a violation of the defendant's right to properly prepare his defence and examine witnesses against him.

Sub-paragraph 3(f)[84] provides that if the accused cannot understand or speak the language used in a court, he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence. Although the provision

[83] International Convention on Civil and Political Rights
[84] Ibid.

would appear to limit this right to proceedings in court, the view has consistently been held that the right to an interpreter includes the translation of all relevant documents. The right to an interpreter may also be claimed by a suspect or an accused being interrogated by the police in the pre-trial phase.

Sub-paragraph 3(g)[85] provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard, the provisions of article 7 and 10(1)[86] should be borne in mind. In order to compel the accused to confess or to testify against himself, frequent methods or any other form of compulsion should be inadmissible, in addition, silence by the accused may not be used as evidence to prove guilt and no adverse inferences should be drawn from an accused exercise of the right to remain silent. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14[87], judges should have authority to consider any allegation made of violations of the rights of the accused during any stage of the prosecution.

Article 14, paragraph 4[88], provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. This means that special courts, the laws governing the procedures against juveniles and special arrangements for juveniles must take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protections as are accorded to adults under article 14[89].Article 14 paragraph 5[90] provides that everyone convicted of a crime shall have a right to his conviction and sentence being reviewed by a higher tribunal according to law. The right of appeal is aimed at ensuring at least two levels

[85] International Convention On Civil and Political Rights
[86] Ibid
[87] Ibid
[88] Ibid
[89] International Convention On Civil and Political Rights
[90] Ibid

of judicial scrutiny in respect of criminal cases. The right is available to all convicted persons and does not depend on the severity of the offence or on the sentence pronounced in the first instance. All appellate proceedings must also observe the guarantees of a fair trial.

Article 14(6) [91] provides for compensation according to law in certain cases of miscarriage of justice as described therein. Compensation for miscarriage of justice can only be granted in the following circumstances;-

i. the conviction must have been final;
ii. a pardon or reversal of conviction must be based on an acknowledgement of a miscarriage of justice;
iii. the convicted persons must have suffered punishment as a result of the conviction;
iv. the delayed disclosure of the pertinent facts which reveal a miscarriage of justice must not be attributable to the defendant.

The phase "according to law" does not mean that states can ignore the right to compensate by simply not providing for it but rather than they are obliged to bring national legislation in line with the provisions of the covenant by providing a mechanism to grant compensation.Article 14(7)[92]provides for the principle of double jeopardy. This is aimed at preventing a person from being tried and punished twice for the same offence. According to the Human Rights Committee, the principle of double jeopardy applies to prohibit a subsequent trial for the same offence within the jurisdiction of one state and is not operational where the second trial takes place in the national jurisdiction of another state. Thus, for example, the international Criminal Tribunals which have been established by the UN to try war crimes committed in the

[91] Ibid
[92] Ibid

former Yugoslavia and Rwanda may validly retry persons after the completion of proceedings in a national jurisdiction[93].

Similar protections are accorded to the rights of accused person under international humanitarian law. According to Articles 82-86 of the Third Geneva Convention, articles 33, 71-76 and 126 of the Fourth Convention as well as article 75 of the Additional Protocol 1 to the Geneva Convention of 1977, no sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict without trial. Further, the conviction must be pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:-

i. the right to fair trial including means of defence;
ii. individual and not collective penal responsibility;
iii. law in force at the time the offence was committed (i.e. no retroactive law);
iv. presumed innocence until proved guilty;
v. trial in the presence of the accused;
vi. no compulsion to confess guilt;
vii. presence of defence witnesses;
viii. examination of witnesses against the accused;
ix. no punishment more than once for the same act or the same charge;
x. public pronouncement of the judgement;
xi. information on right of appeal and other remedies and their time limits[94].

[93]Ladan, M.T. Op. cit. p.2
[94]Ibid

3.3.5 Right to Freedom of Religion, Thought and Expression

Under article 18 of the Universal Declaration of Human Rights, everyone has the right to freedom of religion, thought and conscience; the right includes freedom to change his religion or belief; and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.Article 18 of the International Convention on Civil and Political Rights provides thus;"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching"[95].

Freedom of thought, conscience, religion or belief are fundamental freedoms which may not be suspended, even in states of emergency. The same protection is due to religious believers as to non-believers. None may be discriminated against because of his/her religion and belief, nor forced to adhere to any other. This freedom to practice one's religion or belief (either alone or in community with others) is related to a broad range of activities and customs (specific ceremonies, dietary regulations, the right to have specific places of worship, etc.)[96].

The freedom may be threatened by states whose attitude towards religion differs widely, ranging from encouraging any religious belief. There is also the controversial problem of the relation of the conscience of the individual to the social and political context in which he or she lives. Despite the controversial perceptions of this freedom, the international community's concern regarding intolerance and discrimination in these spheres is manifested in the adoption

[95] Ibid
[96] Ibid

of the declaration on the elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

To promote the implementation of this declaration, a Special Rapporteur on Religious Intolerance was appointed by the Commissioner on Human Rights in 1986. The report presented in 1995 by the Special Rapporteur states that complains had been received from virtually all religions of the world, ranging from denial of the right to have a religion or believe of one's own choice to discrimination to these grounds by the state. Special difficulties have been encountered by the propagation of extremist and fanatical opinions, and the acts perpetrated in pursuance of these, which includes threat to life, liberty and security of persons, arbitrary arrest, detention and torture. The United Nations General Assembly recently once again condemned all instances of hatred, intolerance and acts of violence, intimidation and acts of coercion motivated by religious extremism and intolerance of religion or belief[97].

The Commission on Human Rights recognized conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion[98]. The resolution appeals to states in which compulsory military service exist to introduce alternative forms of public service for conscientious objectors. Respect for people's right to freedom of religion is also taken into account in international humanitarian law. Not only must prisoners of war and interned civilians be allowed to practice their religion, but also ministers of religion, religious objects and places of worship are given special protection. By virtue of article 24 of the First Geneva Convention and articles 36-37 of the Second Geneva Convention as well as article

[97]Ladan, M.T. Op. cit. p.2

[98] Article 19, 24, 35-36 of the First Geneva Convention; Article 22, 27and 36-37 of the Second Geneva Convention; and Article 8 And 12 Of Protocol 1 OF 1977.

8 of the Additional Protocol 1 of 1977, “religious personnel” means military or civilian persons, such as chaplains engaged exclusively in their ministry and attached:-

To the armed forces;

(b) to civilian medical service;

To civil defence

The attachment of religious personnel can be temporary. The law grants the same status to military and civilian personnel.Under the Third and Fourth Geneva Conventions article 33, 72 and 58 respectively, “religious objects” means objects and articles of a religious character (e.g. books, devotional articles) and objects exclusively used by military religious personnel (e.g. means of transportation).

Furthermore, article 53 of the Additional Protocol 1[99] applies to object with an important religious dedication independent of any cultural value. As a rule places of worship, historic monuments and works of arts which constitute the cultural or spiritual heritage of people should enjoy full protection. Their immunity may not be withdrawn, contrary to that of marked cultural objects. Their value is generally self-evident and does not require special identification means. When burying the dead, if possible he/she should be buried in accordance with his/her religious belief.

3.4 The Development of the Protection of the Rights of Persons in Armed Conflict Situation

It is generally concluded that since time immemorial war may have existed but the nature is nonetheless an issue that continues to perplex humankind. In ancient times each state had its own theories and perceptions of how the nature of war should be defined. E.g, in ancient Greece,

[99] 1977

waging war against barbarians is considered just. It was Saint Augustine (354- 430 A.D) a representative of the Christian figure in ancient Rome, and Saint Thomas Aquinas (1225- 1274 A.D), a renewed Medieval theologian who first put forward just war doctrine. To them, there were three principles' that govern the prerequisites for the initiation of the war, namely; the authoritativeness of the initiator of war, just reasons for waging war, and the legitimate intentions of war[100].

Humanitarian law derives from the principle that the individual is entitled to certain minimum rights whether in peace or in war. The idea of the rights of man dates back to the most ancient times in human history. The most prominent instruments for their achievement include the Magna Carta 1215, the Bill of Rights 1688, the French Declaration of the Rights of Man and Citizen (Declaration de Droit de I'homme et Citoyen) 1789 and the American Bill of Rights 1791. The rights of an alien, of a Head of State or of an Ambassador have long been recognized in international law; as well as the responsibilities of a pirate and, later, a slave trader. Primitive societies recognized the rights of their kinsmen and of a foreigner who have taken refuge with them[101]. The evolution of international law related to the protection of the war-victims and the conduct of war has been strongly affected by the development of human rights legal protection after the Second World War. These rights in peacetime have greatly expanded with the express inclusion of fundamental human rights in the Charter of the United Nations. And the adoption of important international instruments to include the Universal Declaration of Human Rights (1948), the International Convention on Civil and Political Rights (1966) and further still in the International Covenants of Human Rights 1966 (the latter came into force in 1970)[102].By far the

[100] Hongsheng, S. The Evolution of the Law of War, Chinese Journal of International Law (2006), China
[101] Umozurike, U.O. Op. cit. p. 7.
[102] Umozurike, U.O. Op. cit. p.7

clearest internationalization of these rights is to be found in the European Convention of Human Rights (1950) which reaffirm "profound belief in those fundamental freedoms which are the foundation of justice and peace in the world are best maintained on the one hand, by an effective political democracy and on the other, by a common understanding and observance of the human rights upon which they depend". The American Convention on Human Rights and the African Charter on Human and People's Rights have similar characteristics[103].

Humanitarian law in its present form can be traced back to the efforts of concerned individuals in different parts of the world during the 19th century. The Russian Pirogov raised the issue of protecting the wounded and sick in battle fields as a matter of international law during the Crimean War 1853-56. He embodied the idea in his Course of Military Surgery 1862. Jean-Jacques Rousseau, in his famous Social Contract, replaced the old distinction between just and unjust war with one between combatants and non-combatants. The Englishwoman Florence Nightingale, during the War of Spanish Succession, and Clara Barton, during the American Civil War, displayed courage in their humanitarian help to the wounded in battle. The most famous of these great humanitarians was the Swiss, Henry Dunant (1863), who made a graphic depiction of one of the bloodiest battles of the Austro-Sardinian war, he wrote *A Memory of Solferino* after been appalled by the brutality of the battle of Solferino in 1859[104].

On 24th June 1859, Henry Dunant a Swiss merchant was clearly what most would label in the wrong place, at the wrong time. Having travelled to Italy on a business mission, Henry Dunant was journeying in Castglione delta pieve on the exact day when the French and Sadinian armies clashed with the troops of the Australian Emperor at the nearby village of solferino. As

[103] Ibid
[104] Ibid

the Town was flooded with casualties, it was only natural for Dunant to assist and to try to help relieve the pain and suffering of the wounded. The scenarios witnessed by Dunant on that fatal day in summer and the days following changed his life forever. Shocked by the lack of adequate care for the sick and wounded- with so many young men simply left to die on the battlefield, Dunant embarked on a crusade for the protection of those hors de combat[105].In 1863, Dunant[106] wrote down his testimonial in *A Memory of Solferino*, explaining his intentions to his readers as follows:

> *But why have I told all of these scenes of pain and distress, and perhaps aroused painful emotions in my readers? Why have I lingered with seeming complacency over lamentable pictures, tracing their details with what may appear desperate fidelity?*
> *It is a natural question. Perhaps I might answer it by another: would it not be possible, in time of peace and quiet, to form relieve societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers?*

Dunant suggested that national societies should be created to care for the sick and wounded irrespective of their race, nationality or religion. He also proposed that states should make a treaty recognizing the work of these organizations and guaranteeing better treatment for the wounded.

Dunant's quest resulted in the creation of an international committee for the relief of the wounded, which eventually served as the impetus for the creation of the international committee of the Red Cross (ICRC) which was founded in 1963[107]. In 1864 Dunant's ideas met a wide response and the Geneva Convention for the Amelioration of the condition of the wounded in Armies in the field was concluded in 10 short articles, this Convention became the first

[105] Hongsheng, S. Op. cit. p.44
[106] Ibid
[107] Ibid

instrument of what is referred to as the 'Geneva Law', the branch of the law of armed conflict dealing with the protection of persons in the hands of the enemy. Under Article 6 "Wounded or sick combatants, of whatever nation they may belong shall be collected and cared for"[108]. At a diplomatic conference in Geneva in 1864, the delegates of 16 European nations adopted the Convention for the Amelioration of the condition of the wounded in Armies in the field[109].

This document, the First Geneva Convention, enshrined the principles of universality and tolerance in matters of race, nationality and religion; it recognized the neutrality of ambulance, military hospitals and medical personnel and instituted distinctive sign of the Red Cross (i.e. a red cross on a white field, while in Islamic countries it's a red crescent on a white field)[110].

Gustave Moyneir[111], president of the founding Committee of the Red Cross was so pleased with the result that he said with justified optimism:

> "To take this road is to make a decisive step; one step will inevitably lead to another until it will be impossible to stop…….. future generations will see the gradual disappearance of war. An infallible logic will have it so".

The Geneva Red Cross Convention was unlike the cartels concluded by the heads of armies for specified periods in that it applied for all times and to all wars that the parties were engaged in. Alongside the treatment of the wounded, the sick and those rendered *combat de hors*, were restrictions on the conduct of military operations known as the Hague Laws. Strategically,

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[108] Umozurike, U.O. Op. cit. p. 7
[109] International Humanitarian Law and Human Rightshttp://www.ohchr.org/Documents/publications/factsheet13en.pdf. accessed 22nd October, 2014, @3:20pm
[110] Ibid
[111] Umozurike, U.O. Op.cit. p.7

the aim of war is to weaken the forces of the enemy. The preamble to the Declaration of St. Peterburg 1868 which was never ratified stated:

> "Considering … that the sole legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy …"[112]

The Convention formally laid the foundations of international humanitarian law. The peace conference at the Hague in 1899 and 1907 adopted the Convention defining the laws and customs of warfare and declarations forbidding certain practices, including the bombardment of undefended towns, villages, dwellings or buildings, the use of poisonous gases and soft-nosed bullets, belligerents cannot employ arms, projectiles or materials calculated to cause unnecessary suffering[113].The Red Cross was active in the European wars towards the end of the last century and in the wars of the present century beginning with the Russo-Japanese War, 1904-5. To preserve the experience gained during the First World War and co-ordinate the activities of the National Red Cross Societies, the League of the Red Cross Societies was formed in 1919. Under Article 25 of the Covenant of the League of Nations[114]:

> "Members of the League agree to encourage and promote the establishment and incorporation of duly authorized voluntary national Red Cross organizations having as purpose the improvement of health, prevention of diseases and the mitigation of suffering throughout the world".

[112] Ibid
[113] Umozurike, U.O. Op. cit. p.7
[114] Ibid

Ever since 1864, the body of 'Geneva Law' has developed considerably, by and large as a result of major armed conflicts revealing lacunae in the existing protective regimes[115]. Thus, in 1906, the first Geneva Convention was revised to give greater protection to victims of war on land, and in the following year, all its provisions were formally extended to include situations of war in sea. Respect for the Geneva Convention and operations led by the international Committee of the Red Cross played a vital role in saving lives and preventing endless suffering in the First World War (1914-18). However the disastrous human toll of the conflict convinced the international community that the convention must be strengthen[116].

In this spirit, a conference in Geneva in 1929 adopted a convention with better provision for the treatment of the sick and wounded (Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field 1929), and a second convention on the treatment of prisoners of war (Geneva Convention for the Treatment of Prisoners of War 1929). Four years earlier, a protocol had been adopted at a League of Nations Conference to prohibit the use of asphyxiating and poisonous gases[117].

A draft convention on the treatment of interned civilians was approved by the 15th International Conference of the Red Cross in Tokyo in 1934 though not formally approved in a diplomatic conference because of the intervening war. The draft was nevertheless applied by the International Convention of the Red Cross to enemy civilians detained in belligerent territories[118].

[115] Hongsheng, S. Op. cit. p. 44
[116] Op. cit, p.18
[117] Ibid
[118] Umozurike, U.O. Op. cit. p. 7

The Spanish Civil war (1936- 1939) and the Second World War (1939- 1945) provided compelling evidence of the need to bring international humanitarian law once again into line with the changing character of warfare[119]. The abuses and horrors of the Second World War and the growing regard for the rights of individuals led to a further codification effort in 1949. A decision was taken to make a fresh start and new Geneva Conventions were drawn up and adopted at an international diplomatic conference held in Geneva from April to August 1949 covering, namely,

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)
2. The Geneva Convention for the amelioration of the condition of the Wounded, sick and Shipwrecked members of Armed Forces at Sea (Second Geneva Convention)
3. The Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)
4. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)[120].

The Four Geneva Conventions remain in force today. However, the outbreak of war after 1949 revealed the inadequacy of the four Conventions. More experience was gained from international wars in Korea, Vietnam and in the recurrent Arab-Israeli wars. The liberation wars in Southern Africa were intensified in the 1960s. Experience was also gained from civil wars. The provision of relief for civilians affected by the Nigerian Civil War 1967-1970 presented novel difficulties. New forms of armed conflict offered sharp and violent but localized and

[119] Hongsheng, S. Op. cit. p. 44
[120] Op. cit, p.8

involving limited number of troops and other combatants had arisen. The changing nature of armed struggle called for further action. There were resolutions from International Conferences of the Red Cross (ICRC) and from the General Assembly of the United Nation for updating humanitarian law, their more effective application and their extension to all conflicts including liberation wars. No less important is the Convention on the Protection of Cultural Property in the Event of Armed Conflict 1954. All these culminated in the Geneva Conference on the Reaffirmation and Development of International Humanitarian Law which met at Geneva and discussed from 1974 to 1977 the negotiation text produced by the I.C.R.C, adopted two Additional Protocols to the 1949 Conventions[121].

In 1977, two additional protocols to the Geneva Conventions were adopted, and they are:

1. Protocol I (1977); Protocol Additional to the Geneva Convention of 12 August, 1949, relating to the protection of victims of international Armed Conflicts. As of 12 January, 2007 it had been ratified by 167 Countries.
2. Protocol II (1977); Protocol Additional to the Geneva Conventions of 12 August, 1949, and relating to the victims of Non-International Armed Conflicts. As of 12 January, 2007, it had been ratified by 163 Countries.
3. Protocol II (2005); Protocol Additional to the Geneva Conventions of 12 August, 1949, and relating to the Adoption of an Additional Distinctive Emblem. As of June, 2007 it had been ratified by seventeen Countries and signed but not yet ratified by an additional 68[122].

[121] Umozurike, U.O. Op.cit. p.7
[122] Op. cit, p.8

In conclusion, in as much as the Four Geneva Conventions[123] and Protocols Additional to the Geneva Conventions[124] provides for the protection of the sick, wounded, shipwrecked, medical personnel, religious clerics and civilians (women and children), it must be recognized however that the Conventions applies to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting parties. Although one of the powers in conflict may not be a party to the Conventions, the powers who are parties therefore shall remain bound by it in their mutual relations, and shall furthermore be bound by the Conventions in relation to their power, if the latter accepts and applies the provisions.

It should be noted that, certain states which are bound by the Geneva Conventions do not maintain diplomatic relations among themselves; in case of war, whether one of them is neutral and the other a belligerent or whether they are co-belligerent, their nationals must enjoy full protection under the Convention.

[123] 1949
[124] 1977

CHAPTER FOUR

SANCTIONS FOR BREACHES OF OBLIGATIONS TO PROTECT PERSONS IN ARMED CONFLICT SITUATIONS

4.1 Introduction

When violations of International Humanitarian Law occur, victims often suffer serious consequences including infringements upon their human dignity and in the wake of such violations, attention turns to accountability. Important question arises which may include: what are the legal consequences when rules of international law are broken?, what legal consequences flow from serious international crimes?, in which legal forums can perpetrators be held accountable for committing such crimes?[1]. When such violations occur, the four Geneva Conventions of 1949 with their Additional Protocols of 1977 provide an extensive body of codified rules to that end.

The law of armed conflict or IHL has a place of its own and its own special characteristics in the general scheme for the imposition of penal responsibility and sanctions for breaches of the law. Sanctions do not operate, succeed or fail in a vacuum. The measures are more effective at maintaining or restoring international peace and security when applied as part of a comprehensive strategy encompassing peace keeping, peace building and peacemaking. Contrary to the assumptions that sanctions are punitive, many regimes are designed to support governments and regions working towards peaceful transition.

International law is, in a sense, on the fringe of the provisions made by states in their domestic law for the repression of unlawful acts. It has its own system of repression, which

[1] Accountability for Violations of International Humanitarian Law: An Introduction to Legal Consequences Stemming from violations of International Humanitarian Law, October 2013. http://diakonia.se/globalassets/documents/ihl/ihl-in-opt/briefs/account. accessed 12th February, 2016 @12:55pm

imposes sanctions for breaches of international law committed by States, international organisations or individuals[2].

In this chapter the writer will be discussing the types of breaches under IHL, an overview of legal obligations and consequences of grave breaches under IHL specifically addressing State level consequences and the sanctions for breaches of IHL.

4.2 Types of Breaches in International Humanitarian Law (IHL)

The IHL contained in the Geneva Conventions of 1949 and the additional provisions contained in Protocol I of 1977 form the legal framework and basis for definition of the breaches that have to be punished. In other words, the international regulations indicate the types of crimes or offences considered as breaches and which by their very nature and enormity cannot go unpunished by States.Cumulatively, three (3) principal categories of breaches in International Humanitarian Law are discussed below.

4.2.1 Acts Contrary to the Provisions of the Convention

The Geneva Conventions of 1949[3] (Article 49 of Convention I, 50 of Convention II, 129 of Convention III, 146 of Convention IV) refer to "acts contrary to the provisions of the present Convention". Thus, Article 50 of Convention I and article 51 of Convention II[4] state in identical terms as follows:

> Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of

[2]Ladan M.T.(2008) Introduction to International Human Rights and Humanitarian Law. A.B.U press, Zaria, p.281.
[3] The Geneva Conventions of 12th August, 1949, ICRC, Geneva, Switzerland
[4] Geneva Convention I & II of 12th August, 1949

property, not justified by military necessity and carried out unlawfully and wantonly.

4.2.2 Compelling a Prisoner of War to Serve in Forces

The corresponding Article in Convention III[5] is Article 130, which instead of ending with a reference to destruction and appropriation of property replaces it with the following, "Compelling a prisoner of war to serve in the forces of hostile power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention".The corresponding Article in Convention IV[6] is Article 147, in which the passage is replaced by:

> Unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces or a hostile power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

Also, Article 11, paragraph 4, of Protocol I[7] of 1977 states:

> Any willful act or omission which endangers the physical or mental health or integrity of any person who is in the power of a party other than the one which he depends and which either violates any of the prohibitions in paragraphs one and two or fails to comply with the requirements of paragraph three shall be in grave breach of this Protocol.

4.2.3 Suppression of General Breaches of the Convention

Suppression of General Breaches of the Convention is governed by provision of Article 85[8], which states as follows:

[5] Geneva Convention III of 12TH August, 1949
[6] Geneva Convention IV of 12th August, 1949
[7] Protocol Additional to the Geneva Convention of 12th August, 1949
[8] Ibid

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Article, shall apply to the repression of breaches and grave breaches of this Protocol.
2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse party protected by Article 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse party and are protected by this Protocol.
3. In addition to grave breaches defined in article II, the following acts shall be regarded as grave breaches of this protocol, when committed willfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury:
    a. Making the civilian population or individual civilian the object of attack;
    b. Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attacks will cause excessive loss of life, injury to civilians or damage to civilian object, as defined in article 57, paragraph 2 (a) (iii);
    c. Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);
    d. Making non-defended localities and demilitarized zones the object of attacks;
    e. Making a person the object of attack in the knowledge that he is *hors de combat;*

f. The perfidious use, in violation of article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed willfully and in violation of the Conventions or the Protocol:

a. The transfer of its occupying power or parts of its own civilian population into the territory it occupies, or the deportation of transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;

b. Unjustifiable delay in the repatriation of prisoners of war or civilians;

c. Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

d. Making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organisation, the object of attack, causing as a result of extensive destruction thereof, where there is no evidence of the violation by the adverse party of article 32, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objects;

e. Depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair hearing and regular trial.

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

Article 86[9], paragraph 1, adds a reference to breaches consisting in failure to act, paragraph 1 states that, "The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this protocol which result from a failure to act when under a duty to do so".

Breaches have been classified into two major groups of greater or lesser gravity, or in other words according to their enormity, for there is no qualitative or inherent difference between the breaches in the two groups. The first group consists of what the international texts specifically call "grave breaches", and the second of what we may call "minor violations", although this expression is not used in the international text[10].

Grave breaches, sometimes also called "serious violations" are those which most seriously prejudice the basic interests protected by humanitarian law. They are accordingly known as "War Crimes". This term is interpreted to mean violations of international humanitarian law seriously affecting the persons and objects protected and, moreover, directly affecting the vital interests of the international community[11].

As stated above, it is difficult to define grave breaches because they have merely being classified by the Conventions and Additional Protocol I enumerate them, but not exhaustively. This list is left open for the possible inclusion of other grave breaches, which may be subject to universal jurisdiction as are those expressly enumerated, under customary law or other treaties.

[9] Protocol Additional, Op. cit
[10] Ladan, M.T. Op.cit, p.88
[11] Ibid

Minor violations, sometimes referred to as merely "breaches" and in others as "acts contrary" to the Conventions or "other breaches" of the Conventions or the Protocol, are violations of or failure to comply with humanitarian law. They are not included under the heading of grave breaches because they do not fundamentally affect protected persons.[12]

Simple breaches or minor violations have purposely not been enumerated, because it was considered that they were not important enough to call for universal jurisdiction and such a list would have been too long. Undoubtedly, many of these violations may be illegal acts, but equally most of them are the result of failure to act when under a duty to do so[13].

There is no clear distribution between grave and minor breaches, for as stated above there are grave breaches other than those expressly enumerated. Minor violations, if repeated, may be classified as grave breaches in some circumstances[14].

4.3 Legal Obligations in Armed Conflict Situation

The following legal obligations are created on States of the armed conflict situations

4.3.1 Respect for the Provision of IHL

Respect for IHL is one of the most important obligations of the parties to an armed conflict. IHL applies at all times during armed conflict (which includes situations of occupation). Parties to conflicts are therefore strictly bound to respect every applicable rule of IHL without exception or derogation[15]. The general notion of respect for international obligations finds expression in the Vienna Convention on Law of Treaties[16]. Under Common Article One of the Geneva Conventions, which codifies the notion of respect, parties to a conflict must respect all applicable

[12] Ibid
[13] Article 86, para. 1, Additional Protocol I
[14] For the purpose of the competence of the International Fact-Finding Commission mentioned in article 90, Protocol I
[15] Op. cit, p. 88
[16] Vienna Convention on the Law of Treaties, preamble.

rules of IHL in all circumstances. These rules include those found in the Geneva Conventions and its Additional Protocols, The Hague Regulations as well as rules of Customary IHL.

The notion of respect extends beyond the basic obligation to refrain from illegal conduct. Many international treaties include obligations to ensure and secure respect for the law[17]. Put differently, the obligation to respect the law demands positive protective steps, for example, the terms 'ensure' and 'secure' have been interpreted to "require governments to take positive action so that respect actually occurs"[18]. In this way, the notion of respect can afford genuine legal protection. Relevant 'positive action' by states could include ensuring domestic law which provides for independent and credible review (e.g criminal investigation or some form of administrative review) of claims of violations of applicable international law[19].

4.3.2 Restraints from Illegal Conduct

IHL binds all parties in armed conflict, claims that IHL has been violated are often disputed, parties often challenge allegations leveled against them by doing the following; questioning the applicability of the law; disputing the facts (denying that an event or specific elements of it occurred); interpreting the law in a different manner to those asserting a clear violation; arguing that the law does not appropriately regulate the specific situation and the context in question; stating that they lack the intent to violate the law[20].

Often such arguments are not made in good faith but instead advanced to protect a party's image, circumvent international condemnation, and avoid consequences. Some claim that those who have never fought in an armed conflict have little insight into the realities of war or the

[17]Terms used in the Geneva Conventions (Common Article One), European Convention on Human Rights (Article 1), ICCPR (Article 2). See also General Comment 31 of the UN Human Rights Committee.
[18] Doswald B. L., (2011) 'Human Rights in Times of Armed Conflict and Terrorism' (Oxford University Press; Oxford, at p.32.
[19] Ibid
[20] Ibid

practical application of IHL. Ultimately, so the argument goes, the warring parties are the ones best placed to know when a violation has occurred[21]. While the latter point may be true, the essentially self-regulatory nature of international law's approach to enforcement of IHL means that punishment of serious violations has often been found wanting. For the parties point of view, leaving accountability to the parties often leads to impunity[22].

Such statements offer little comfort to victims of violations of IHL, however, international law contains other mechanisms for addressing violations, including third state obligations arising from Common Article One of the 1949 Conventions policy[23]. Common Article One embraces a shared legal responsibility where the 1949 Geneva Conventions does not only oblige the parties to an armed conflict to respect the law, it also imposes an obligation on all High Contracting Parties (HCP) to ensure respect of the Geneva Conventions in all circumstances[24]. Hence both during times of armed conflict and at other times, all States must take step to ensure respect for (and refrain from taking any measure to undermine respect for) these cornerstone conventions of modern IHL. The nature of this obligation has been summarized by the ICRC as follows: Common Article 1 is now generally interpreted as enunciating a responsibility on third States not involved in armed conflict to ensure respect for international humanitarian law by the parties to an armed conflict by means of positive action in line with the Security Council sanctions. Third States have a responsibility, therefore, to take appropriate steps unilaterally or collectively against parties to a conflict who are violating

[21] Ibid
[22] Ibid
[23] Op. cit. p.88
[24] High Contracting Parties are States that have ratified or acceded to a treaty, in this case the 1949 Geneva Conventions.

international humanitarian law, in particular to intervene with states or armed groups over which they might have some influence to stop the violations[25].

The duty in Common Article 1 (CA1) is an obligation, meaning that States cannot be legally obligated to take steps which they do not have the means to undertake. Importantly, obligations under CA1 go well beyond the mere fact of putting a stop to violations, the preventive aspect remains just as important. It is important to emphasize both the legal nature of this obligation and its broad scope of application. Not only does it demand that states directly involved in armed conflict provide genuine legal protection of the rights of war victims, the obligation to ensure respect for IHL in all circumstances obliges all States to take necessary measures to ensure legal protection where parties to an armed conflict do not comply with IHL. An important example is the obligation by third States to cease providing weapons to States that are committing war crimes or arms groups violating IHL, joining an international arms embargo, and imposing economic sanctions against the offending States of armed group[26].

The European Union Guidelines on Promoting Compliance with International Humanitarian Law represents an important step towards fulfillments of this legal Obligation. However, it is important to emphasize that fulfillment of the obligation by European Union member States depends on implementation. It goes without saying that the legal obligation to ensure respect cannot be met by a textual commitment alone[27].

[25] Improving Compliance with International Humanitarian Law, ICRC (2004). http://www.icrc.org/eng/resources/documents/report/ihl-respect-report-011003.htm Accessed 17th February, 2016, @2:00pm
[26] Op. cit. p.88
[27] Ibid

4.4 Sanctions for Breaches of International Humanitarian Law

In any legal system, there must be liability for failure to observe obligations imposed by its rules. Municipal law distinguishes between civil and criminal liability based upon deliberate or negligent acts or omissions that constitute an offence under that law. When international rules and obligations are abused, there are legal consequences and such liability is known as responsibility,[28]which brings about penal sanctions against the State concerned. Sanctions are immediate consequences or failure to adhere or act on any responsibility by States or individuals which can be the ultimate or intermediate consequences of a breach[29]. Thus, in international humanitarian law, legal consequences are as follows:

4.4.1 Sanctions by the Security Council

The Security Council can take action to maintain or restore international peace and security[30]. As stated in Article 24 of the United Nations Charter, the Security Council is mandated to act on behalf of all members of the UN to ensure prompt and effective action with respect to the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the UN. The basis for the UN sanctions under international law derives from Chapter VII of the United Nations Charter which provides the frame work within which the Security Council may take enforcement action. It allows the council to determine the existence of any threat to the peace, breaches of peace and acts of aggression and make recommendations or resort to non-military or military action to maintain or restore international peace and security[31]. Article 39 provides that, "The Security Council shall determine the existence of any

[28] Ibid
[29] Ladan M.T. Op.cit. p. 2
[30] Sanctions/United Nations Security Council Subsidiary Organs,. http://www.un.org/sc/suborg/en/sanctions/ information. Accessed 27thMarch, 2019, @ 3:00pm
[31]Frequently Asked Questions about the United Nations Security Council,. http://www.un.org/en/sc/about/faq.shtml. Accessed 27th, March, 2019, @1:30pm

threat to the peace or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security".

Among the most common measures not involving the use of armed force, which the council has at its disposal to enforce its decisions, are those measures that are known as sanctions[32]. Though Article 41 and 42 does not specifically mention the word sanctions but it lists out specific sanctions measures to be taken while at the same time making it clear that the list is not exhaustive, thus provides;

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the UN to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Sanctions can be imposed on any combination of states, groups or individuals. The range of Security Council sanctions has taken a number of different forms, in pursuit of a variety of goals. The measures have ranged from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans and financial commodity restrictions. The council has applied sanctions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights and protect non-proliferation[33].

4.4.2 Diplomatic and Travel Ban

This is the severance of diplomatic relations, it is one of the possible measures specifically mentioned in Article 41 of the UN charter. While historically, diplomatic sanctions have been one of the more frequently used forms, no diplomatic sanctions are currently in effect.

[32] Op. cit p.99Sanctions/United Nations Security Council Subsidiary Organs
[33] Committee Established Pursuant to Resolution 841 (1993),. http://www.un.org/en/sc/repertoire/subsdiary_organs/sanctions_and_other. Accessed 27th March, 2019, @5:20pm.

Diplomatic sanctions were seen to have previously been applied in the following regimes: Southern Rhodesia 253, Libya 748, Yugoslavia 757, Angola 864, Sudan 1054 and Afghanistan/Taliban/Al-Qaida 1267[34]. In the cases of Libya and Sudan, diplomatic sanctions were imposed on recognized states, while in the cases of southern Rhodesia and Yugoslavia, diplomatic sanctions were imposed on unrecognized states.

Travel bans are a common form of targeted sanctions. Individual travel ban has taken numerous forms: a comprehensive ban on travel by nationals of a country, a ban on travel to rebel held territory within a country, a ban on travel to an entire country, an aviation ban on all flights into or out of a country and the ban on the operation of a national airline. Most recently, the Libya regime added an aviation ban with resolution 1973 which was terminated six months later with resolution 2009 in September 2011[35].

Also, the Taliban/Al-Qaida 1267 regimes had an air embargo on Ariana Afghan Airlines (imposed with resolution 1267, terminated with resolution 1388) and a ban on flights over Taliban controlled territory (imposed by resolution 1333 and terminated with resolution 1390). One of the more significant example of the council's ability to be flexible and act quickly was the removal of former president Laurent Gbagbo of Cote d'Ivoire from the 1572 regime travel ban list to enable his transfer to the Hague in November 2011 to face charges at the ICC[36].Travel bans are rarely imposed in isolation from other measures, the most common combination is travel ban with an asset freeze and an arms embargo.

4.4.3 Asset Freeze

The predecessor of asset freezes targeting individual and entities was general financial sanctions which had been imposed in the following contexts: southern Rhodesia 253, Iraq 661, Libya

[34] Ibid
[35] Ibid
[36]Op. cit, p.100 Committee Established Pursuant to Resolution 841 (1993)

748,Somalia 733, Yugoslavia 757/820 and Haiti 841. The respective purposes are asset recovery, non-proliferation and counter-terrorism[37].

i. Southern Rhodesia Situation

In November 1965, Southern Rhodesia unilaterally declared independence from the United Kingdom. The United Kingdom declared the action an illegal assumption of independence and initiated action within the United Nations for economic sanctions against Rhodesia. In November 1966, the United Nation Security Council (UNSC) determined that the situation constitutes a threat to international peace and adopted a resolution prohibiting certain trade and the transfer of funds with Rhodesia. Two years later on 29th May 1968 the Security Council adopted a resolution providing for nearly a total economic embargo against Rhodesia with the following measures;[38]

a. Prevented the importation of products originating in Southern Rhodesia after the date of this resolution regardless of the legal nature of those products.
b. Suspend any activities of their national in the territories of UN member states designed to promote the export of commodities of products from Southern Rhodesia.
c. Prohibit the shipment of vessels or aircraft registered in Southern Rhodesia or Southern Rhodesians from coming into their territory.
d. Prevent the sale or supply by their nationals or from their territories any commodities or products (save those strictly intended for medical purposes, education, publications, pensions, news and in special humanitarian circumstances such as foodstuffs).

[37] Ibid
[38] United Nations Security Council Resolution 253., www.SecurityCouncilreport.org/atf/cf accessed15th July, 2019, @2:20pm

e. Prohibit the shipment of goods by vessels, aircraft or land transport across their territory intended for Southern Rhodesia.

The Council also decided that member states should not make available to the regime any commercial, industrial or public utility undertaking, including tourist enterprises any funds for investment or any other financial or economic resources and shall prevent their nationals or anyone in their territories from making available any such funds or resources and from remitting any other funds to persons or bodies with Southern Rhodesia. The Council further decided that member states would prevent the entry into their territory of anyone travelling with a Southern Rhodesian passport as well as persons whom they have reason to believe to be ordinarily a resident of Southern Rhodesia or believed to have furthered or encouraged or likely to further encourage the unlawful actions of the illegal regime. Airlines of member states were prevented from operating into or from Southern Rhodesia or linking up with any airline company constituted or aircraft registered in Southern Rhodesia.[39]

ii. Iraq Situation of Asset Freeze

Iraq became subject to sanctions on 6th August 190, shortly after its invasion of neighbouring Kuwait. United Nations Security Council Resolution 661 later complemented with Resolution 687 in April 1991 imposed a series of sanctions on Baghdad which included restrictions on free trade , financial dealings, weapons sales, flights and various imports. It also included an inspection system designed to prevent Iraq from obtaining and maintaining ballistic missiles and nuclear, chemical and biological weapons. Most of these sanctions were lifted in 2003, after the toppling of Sadam Huussein, but not all were rescinded due to a number of outstanding disputes between Iraq and Kuwait. United Nations Security Council Resolution 1483 replaced

[39] UNSC Resolution 253 Op. cit p. 101

the punitive measures with asset freeze and a limited weapons embargo which still allowed for Iraq to build its security apparatus with conventional weapons.[40]

Unfortunately the dispute between the two neighbours could not be settled quickly as it encompassed a number of financial and political files which had remained unresolved for decades. These included the contested border demarcation between the two states, a United Nations mission finally demarcated the boundary in 1993 and although Iraq voiced its objections, it did legally accept the decision, Kuwait later demanded an official and unequivocal acceptance of its borders by Iraq which was finally issued in 2013.[41]

iii. Libya Situation of Asset Freeze

Since early 2011, what appears to have begun as an expression of dissent and dissatisfaction at the Gaddafi regime developed from around the middle of February 2011 into an armed conflict. This led to the de facto division of Libya into Eastern (oil rich sector)which is controlled by opposition forces, whilst the Gaddafi hold remains strong in Tripoli and the Western part of Libya. On 26th February 2011, by way of an unanimous UNSC Resolution invoked Chapter VII Article 41 on the basis inter-alia of gross and systematic violation of human rights, deploring the failure of the Libyan authorities to comply with resolution 1970 (2011) and expressing grave concern at the deteriorating situation, the escalation of violence and heavy civilian casualties. Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians and noting

[40] Florence G., (2013) Iraq: Closing a Chapter, European Union Institute for Security Studies (EUISS), www.iss.europa.eu/EUISSFiles/Alert_Iraq.pdf. Accessed 16th July, 2019, @1:15pm
[41] Ibid

that widespread and systematic attacks currently taking place against the civilian population amounted to crimes against humanity.[42] The UNSC referred the situation in Libya since 15 February 2011 to the International Criminal Court, it further ;

a. Imposed armed embargo
b. Imposed travel bans on some individuals
c. Imposed an asset freeze on all funds, other financial assets and economic resources which are owned or controlled directly or indirectly by the Gaddafi Family, and
d. Established a sanctions committee to monitor implementation of sanction measures.[43]

iv. Somalia Situation of Asset Freeze

The sanction regime on Somalia is the oldest of the current sanctions regimes, dating back to 1992. In response to the rapidly deteriorating security and humanitarian situation following the downfall of president Said Barre and the eruption of conflict between Somalia's clans and sub-clans. The security Council imposed a complete and general arms embargo on Somalia, asset freeze, travel ban and charcoal ban. In 2013, the Security Council decided to ease the arms embargo for the Federal Government of Somalia, at the same time the Council strengthened the procedures for notification of arms that are coming into Somalia, and required more detailed reporting from the Federal Government of Somalia on security sector structures and arms management.[44]

[42] Khawar Qureshi QC. (2011) New Law Journal, www.newlawjournal.co.uk. Accessed 16th July, 2019, @3:15pm
[43] Ibid
[44] Subsidiary Organs of the United Nations Security Council (2019). https://www.un.org/securitycouncil/contentsubsidiary-bodies.pdf. Accessed 16th July, 2019, 1:17pm

4.4.4 Arms Embargo

Arms embargo includes a ban on heavy conventional weapons and materials, equipments, goods and technology related to nuclear programmes, ballistic missile programmes, like the Iran sanctions which includes a ban on items related to the enrichment or reprocessing of nuclear materials as well as the development of delivery systems for nuclear weapons. Also, the prohibition on the export of arms which serves the dual purposes of non-proliferation and constraining government financing from weapon sales[45].

4.4.5 Commodity Interdiction

The imposition of commodity sanctions in a UN context dates back to the first comprehensive regime on southern Rhodesia. However the two most significant cases in terms of setting a precedent for the current use of targeted commodity sanctions were Angola (1998-2002) and Sierra Leone (2000-2003), in which sanctions were imposed on rough diamond exports in order to reduce the financing available to two rebel groups. UNITA and the Revolutionary United Front (RUF) respectively[46].

Currently, there are commodity sanctions imposed within three sanctions regimes: the export of diamonds from Cote d'Ivoire (resolution 1643 of 15 December, 2005), the export of luxury goods to DPRK (Resolution 1718 of 14 October, 2006) and the export of charcoal from Somalia (Resolution 2036 of 22 February, 2012).

Article 41 has been used by the council for a range of purposes and measures other than sanctions, such as the creation of international tribunals and examples of such tribunals are the

[45] Op. cit, p.100 Committee Established Pursuant to Resolution 841 (1993)
[46] Ibid

International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) and the Special Court of Sierra Leone (SCSL)[47].

4.4.6 International Humanitarian Fact-Finding Commission (IHFFC)

The International Humanitarian Fact-Finding Commission (IHFFC) is an international agency with the main mandate of investigating allegations regarding serious infractions to IHL. It is a dedicated expert body established by API to the GC to respond to incidents in relations to IHL. It stands at the service of parties to an armed conflict to conduct enquires into alleged violations and to facilitate through its good offices the restoration of an attitude of respect for that body of law. In order for the commission to perform the activities regarding its mandate, there must be a request for it to do so that is, it must have the authorization of all the parties involved in an armed conflict, authorization that might be expressed previously by means of a statement of recognition of due competence or making reference to a specific case. Private individuals, organizations, or other representative bodies do not have such authority, nor does the commission have the power to act upon its own initiative.

4.4.7 Judicial Interventions

Most of the violations of the laws and customs of war prior to the first and Second World War were tried within the criminal jurisdiction of national courts. More commonly, war crime trials were concluded by states in accordance with domestic laws. For example, criminal trials of United States soldiers were conducted in the United States Military Tribunal. The famous form of criminal trial for IHL violations is undertaken in an international war crimes Tribunal. The first tribunals were the International Military Tribunals held in Nuremberg and Tokyo in the aftermath of Second World War. With the passage of time ad-hoc tribunals continued to receive

[47] Sanctions-Global Policy Forum,. http://www.globalpolicy.org/security-council/index-of-countries-on-the sea. Accessed on 2nd February, 2019, @4:05pm

attention which culminated in the establishment of the International Criminal Tribunal for the former Yugoslavia and Rwanda. These tribunals have been vested with the jurisdiction to determine cases involving grave breaches of the Geneva Conventions. It is important to state that these tribunals are not permanent International Criminal Courts. Their jurisdictions are circumscribed by cases of atrocities committed in former Yugoslavia and Rwanda in 1991 and 1994 respectively to curb impunity. The combined courts were vested with both national and international criminal jurisdiction.

i. International Tribunal for the Former Yugoslavia (ICTY)

Yugoslavia formally referred to as the Socialist Federal Republic of Yugoslavia experienced a series of economic and political crises which led ultimately to the violent breakup of the country. After the breakup, six successor states were formed; Bosnia and Herzegovina, Croatia, Republic of Mecedonia, Serbia and Montenegro and Slovenia[48].

In the early 1990s, a brief flare up of hostilities in Slovenia was soon followed by brutal conflicts in Croatia and Bosnia and Herzegovina. The chronology of war in the Former Yugoslavia was completed with armed conflicts in Kosovo and the Former Yugoslav Republic of Macedonia in 1998-99 and 2001. The mass atrocities committed first in Croatia and later in Bosnia and Herzegovina spurred the international community into action. As early as September 1991, the UN took note of the situation and urged parties to the conflict to abide by IHL. Thousands were injured and killed and hundreds of thousands were displaced[49].

Reports about massacres of thousands of civilians, rape, torture in detention camps, terrible scenes from cities under siege and the sufferings of hundreds of thousands expelled from their homes moved the UN in late 1992 to establish a commission of experts to examine the

[48] Burchfield A., (2005) 'International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to Online and Print Resources' (George Town University Law Center, pp.119-312.
[49]Ibid, p.104

situation on ground. In its report, the commission documented horrific crimes and provided the Secretary-General with evidence of grave breaches of the Geneva Conventions and other violations of IHL. Its findings led the Security Council to decide on the establishment of the ICTY for persons responsible for these crimes in order to stop the violence and safeguard international peace and security[50].

On 25th, May 1993, the UN Security Council passed resolution 827 establishing the ICTY located in Hague, Netherlands. The tribunal has jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991; grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity.

Since the establishment of this tribunal, several persons have been convicted: in April 2001, Milosevic was arrested and extradicted to the ICTY and was indicted on crimes of genocide in Bosnia and war crimes in Croatia and Kosovo; in 2001, Serbia General Radislav Krstic who played a major role in the Srebrenica massacre was convicted of genocide and sentenced to 46years in prison; Momcilo Perisic a former Yugoslavian army's highest ranking officer was sentenced to 27yrs in prison for war crimes and crimes against humanity. Perisic was found guilty of assisting and supporting crimes committed in Serajevo, Srebrenica and Zagreb in the 1990s; on April 15, 2011, two Croatian generals, Ante Gotovina and Mladen Markac were convicted for war crimes during operation storm- a Croatian offensive that pushed secessionist Serbs out of Krajina in August 1995. The tribunal found both guilty on the basis of joint Criminal Enterprise which holds individuals accountable for the actions of a group; Ratko

[50] International Criminal Tribunal for the Former Yugoslavia,. http://www.en.wikipedia.org/wiki/international_criminal_tribunal. accessed on 2nd February, 2019, @2:20pm

Mladic was arrested and extradicted to the Hague in 2011 after 16years as a fugitive and was convicted of genocide, crimes against humanity and violations of the laws of war[51].

ii. International Criminal Tribunal for Rwanda (ICTR)

On April 6th 1994, a plane carrying the Rwandan president Juvenel Habyarimana and Burundian president Cyprien Ntaryamira was shot down over the Rwandan capital, Kigali. The plane crash triggered ethnic killings across Rwanda on an unprecedented scale orchestrated by Hutu political and military extremists, the genocide that followed claimed more than half a million lives and destroyed approximately three quarters of Rwandan Tutsi population in just three months[52].

In response to the genocide, the UN Security Council set up the ICTR in 1994 in resolution 955, with a mandate to prosecute persons responsible for genocide and other serious violations of IHL committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1st January and 31st December1994. The tribunal is located at Arusha, Tanzania[53].

The tribunal has tried and convicted several prominent figures, including Prime Minister Jean Kambanda, former army chief of staff General Augustine Bizimungu, and former Minister of Defence Chief of staff Colonel Theoneste Bagosora. The ICTR also set important precedents in the development of International Criminal law, such as the first-ever prosecution of rape as genocide in the case of former *bourgmestre* (mayor) Jean-Paul Akayesu[54].

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[51] Global Policy Forum, 'International Criminal Tribunal for Yugoslavia',. http://www.globalpolicy.org/international-justice/international-criminal-tribunal. Accessed 3rd February, 2019, @1:10pm

[52] Corinne D., 'Rwanda: Justice After Genocide- 20years On', Human Rights Watch (1994). http://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years. accessed 3rd February, 2019, @ 4:15pm

[53] Ibid

[54] Ibid

iii. Mixed Tribunal

The mixed tribunal is a hybrid tribunal with both domestic and international criminal jurisdiction. Its establishment is to further deepen and enforce individual criminal responsibility for serious breaches of IHL. For example, the Special Court for Sierra Leone (SCSL) was established in 2000 by an agreement between the government of Sierra Leone and the UN to prosecute atrocities and violations of IHL that occurred in the eleven years horrendous civil war in Sierra Leone. Under its domestic criminal jurisdiction, the SCSL was conferred with power for criminal trial of violators of offences concerning wanton destruction of property as prescribed by the Malicious Damage Act and offences relating to abuse of girls prohibited by the Prevention of Cruelty to Children Act.

a. Special Court for Sierra Leone (SCSL)

In 1991, a rebel group called the Revolutionary United Front (RUF) sought to overthrow the Republican government of Sierra Leone. The Republican launched their attacks from neighbouring Liberia. An inter-state war ensued between Liberian troops led by Liberian president Charles Taylor, and Sierra Leonean troops. In 1996, the president of Sierra Leone, Ahmed Kabbah negotiated a short-lived ceasefire agreement. Kabbah was overthrown by a group called the Armed Forces Revolutionary Council (AFRC). The AFRC invited the RUF to join the government of Sierra Leone. The RUF/AFRC pitted against the Civil Defence Forces (CDF), a pro-government militia. All sides were responsible for countless crimes against the civilian population, including executions, torture, rape, mutilation and the inscription of child-soldiers[55].

[55] Nicol-Wilson M.C. 'Accountability for Human Rights Abuses: The United Nations Special Court for Sierra Leone'. Australian Law Journal (2001) p.159.

Kabbah's government was reinstated in 1998, and in 1999 a Lome Agreement which granted amnesty to the RUF, the RUF later violated the agreement and committed various acts of violence, which led to the government of sierra Leone approaching the UN in 2000 requesting assistance in forming a criminal court to try the worst of the perpetrators.

The SCSL is a hybrid court established by an agreement between the UN and the Government of Sierra Leone. The SCSL is authorized to prosecute persons responsible for the most serious crimes committed on the territory of Sierra Leone since November 30th, 2006. In the course of the trial, the prosecutor issued an indictment against four individuals, including former Liberian president Charles Taylor[56].

Article 49 of the First Geneva Convention as provided above and corresponding articles in the other three Conventions, and Articles 85 and 86, para1, of Additional Protocol 1 require States to enact any legislation necessary "to provide effective penal sanctions" for grave breaches[57]. They go on to say that States must take measures necessary for the suppression of all acts contrary to the Conventions and Protocol.

iv. The International Criminal Court (ICC)

The repeated demands for the need to curb impunity and hold individual accountable for crimes of international concern especially in the wake of horror that greeted World War II and subsequent establishment of ICT led to the establishment of the ICC. The ICC therefore is the first Permanent International Court vested with jurisdiction to investigate and prosecute individuals alleged to have committed serious breaches of IHL, war crimes, genocide and crimes against humanity. The ICC is intended as a court of last resort, to undertake and prosecute where domestic courts have failed or neglected to act.

[56] Nicol-Wilson M.C. Op. cit p.109
[57] Ladan M.T. Op. cit, p.88

Protocol 1 of 1977 merely broadens the scope of sanctions for the breaches it mentions. It follows that:-

1. International law requires States to impose penal sanctions only for the breaches described as grave breaches in the Conventions and Protocol1.
2. As for breaches not expressly described as grave, i.e., other acts contrary to international law, the only obligation required of States is to repress them. States are not obliged to fix penalties, but there is nothing to prevent them from doing so if they wish.
3. The penal sanction to be fixed by States for grave breaches have to be proportionate or adequate to the gravity of the breach. This means that States have to establish a scale of penalties of various degrees for severity and perhaps even of difficult kinds, following their usual internal methods.
4. This principles are applicable both to penalties for the grave breaches specified in the Conventions and to penalties for the grave breaches specified in Protocol 1. Since as stated above, the system is same for the Conventions and Protocol.
5. Needless to say, this so to speak complete delegation of the authority of international law to domestic legislation in the matter of penalties has caused complete anarchy in the system with countless ill-effects[58].

4.5 Roles of Non-Governmental Organisations (NGOs) in the Protection of protected Persons affected by Armed Conflict Situations

During armed conflicts, increasing numbers of civilians are killed, wounded, treated without dignity, arbitrarily detained and/or separated from their families. They have been targeted on purpose, forced to leave their homes, and deprived of their basic rights as human beings. In so-

[58] Ladan M.T. Op. cit, p.88

called failed States or anarchic states, the central government, having effectively lost control over much, or all, of its territory, can no longer carry out its formal functions. When civilians become the actual target of hostilities, the basic rules protecting them are completely blurred.[59] Since 1990, a rapidly growing number of field agencies and NGOs have been working in situations of armed conflict. Though they appear to be engaged in similar activities when viewed from outside, each of these agencies and NGOs has its own set of working methods and ethical standards.[60]

The international committee of the Red Cross (ICRC) and Red Crescent Movement been one of the NGOs has a specific mandate from the states to monitor the implementation of humanitarian law as well as contribute as supporters and catalysts. The ICRC deals directly with governments and armed opposition groups to obtain greater compliance and appeals to the International Community only as a last resort in the face of massive violations. It is also entitled by the law to visit prisoners of war and monitor the circumstances of civilians protected by the Four Geneva Conventions, and other humanitarian services to those party to an armed conflict.[61]

The fundamental principles of the Red Cross and Red Crescent Movement are contained in the Statutes of the International Red Cross and Red Crescent Movement adopted by the 25th International Conference in Geneva 1986. The Fundamental principles are an essential guide to the movement in its work and a powerful unifying factor for the movement. State parties to the Geneva Conventions have also committed, in Article 2.4 of the Statutes of the Movement that

[59] Protection of Victims of armed conflict through respect of IHL, 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October to 6 November 1999, https://www.ICRC.org accessed on 14th October, 2021 at 12:40pm
[60] Humanitarian Policy Group, How Can NGOs help Promote International Humanitarian Law? By HPG November, 1997, https://www.odihpn.org accessed on 14th October, 2021 at 1:20pm
[61] Ibid

"The States shall at all times respect the adherence by all components of the movement to the fundamental principles".[62]

The ICRC and National societies have also developed approaches and products aimed specifically at irregular actors in war areas, at increasing their security and acceptance and reminding them of the basic rules of humanitarian law. These creative programmes, expressly adapted to a local context, will need to be supported by a stronger universal conceptual background and standard tools as their importance increases. Other NGOs have done a great deal, thus far; however, they have had a debate on such roles in the form of workshops organized by the ICRC in 1996. Some NGOs felt they had inadequate knowledge of neither humanitarian law nor a sufficient mandate to take action in this regard. Therefore, they often looked to the ICRC for guidance (though some did attempt to act on their own despite their limited knowledge of the law).[63]

International non-government organizations, aside from the international committee of the Red Cross, possess an important role in assessing whether governments and armed opposition groups are respecting their human rights and humanitarian law obligations. American watch, Amnesty International, the International Commission of Jurists, and other organisations have for some time being using humanitarian law and human rights law in armed conflict situations. They also learn from the experience of the Red Cross in how to be more effective in safeguarding human rights during periods of armed conflict.[64]

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[62] Ibid

[63] Humanitarian Policy Group, How Can NGOs help Promote International Humanitarian Law? By HPG November, 1997, https://www.odihpn.org accessed on 14th October, 2021 at 1:20pm

[64] David Weissbrodt,Humanitarian Law in Armed Conflict: The Role of International Non-governmental Organisations by Journal of Peace Research School of Law, University of Minnesota, https://www.jstor.org/Stasle/424369 accessed on 14th October, 2021 at 12:20pm

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

International Humanitarian Law as a body of law establishes a number of regulations for the protection of the rights of victims of armed conflict and imposes limitations on the means and methods of warfare. IHL, also outlawed cruel or inhuman treatment and torture, outrage upon personal dignity, indecent assault and enforced prostitution and requires respect for persons and honour. Therefore in the conduct of armed conflict of whatever category, the belligerents are duty bound to comply with the core principles of IHL encapsulated in the Geneva Conventions and the Additional Protocols. Thus, this dissertation deals with issues such as the justification, objectives and literature review of the research as a basis for the foundation of the study.

Further, the dissertation considered the conceptual discourse of terms used in the research such as the meaning and nature of international law, meaning and nature of rights. In defining the rights we have different definitions of rights including the God-given right, the government granted rights, natural rights and human rights which the international community recognizes as belonging to all individuals by the very fact of their humanity.More so, the dissertation observed the meaning and nature of armed conflict which is an organized and often prolonged conflict carried out by states and non- state actors.

In addition, the dissertation discussed the different legal framework that protects protected persons during armed conflict situations such as the four Geneva Conventions which deals with the amelioration of the conditions of the wounded and sick in armed forced, wounded, sick and shipwrecked members of armed forces, treatment of prisoners of war, and the protection of civilians in times of war. It further observed that the additional protocol 1 regulating to the

protection of victims of international armed conflict extended the protection for those caught up in international conflicts in particular by up-dating the rules applicable to the conduct of hostilities.

Further, the dissertation discussed the penal sanctions of the rule of IHL in armed conflict situation. States are not obliged to fix any penalty for breaches of the law of armed conflict other than the grave breaches specified in the conventions of 1949 and Protocol 1 of 1977. They can however, fix penalties and disciplinary sanctions if they convert breaches other than grave ones into offences, or if they regard them merely as misdemeanors and include them in their regulations in order to repress them or make them liable to disciplinary sanctions. International law imposes no limits, to say that sanctions have to be adequate, is to give national legislation a blank cheque.

The establishment and work of the international and mixed criminal tribunals have since affirmed the criminal responsibility of states and individuals in serious breaches of IHL which attract penal sanctions of varying degrees including death, terms of imprisonment and reparation. It is therefore gratifying that this sanctioning of violators of IHL would constitute a deterrent to would be violators. Practice has shown that grave breaches have been prosecuted in national courts in very different ways. They have been charged as grave breaches, as other international crimes like genocide or crimes against humanity, or as ordinary crimes like murder or manslaughter. These prosecutions have led to sentences that appear to be either light or acquittals. These trails do show that the grave breaches regime can be an effective instrument in the fight against impunity for war crimes, when it is taken seriously by the states involved.

5.2 Findings

International humanitarian law is a branch of public international law which deals with the constraints of war. However, around the world, violations of the most basic of its norms are perpetrated with an alarming frequency. This has led this research into identifying the following challenges:

1. Protecting the rights of protected persons is a basic element of humanitarian rule in International law. These persons and all those no longer taken part in the conflict must on no account be attacked and must be spared and protected. Unfortunately, today's reality shows that the protected person and those no longer participating in hostilities do suffer most from the consequences of armed violence. Such persons are not only increasingly directly caught up in the violence, but control over the population is often one of the things at stake in a conflict. The development of such a situation can be attributed to collapse of state structures, the struggle for control over natural resources, the widespread availability of weapons, the rise of acts of terror and the proliferation of so-called asymmetric armed conflicts. Nowadays, the general lack of protection in crises affecting the civilians caught up in armed conflict and other situations of violence is due, not to inadequate legal framework but to compliance, that is, the non-enforcement of the Geneva conventions and the additional protocol to the Geneva Conventions and all the rights these protected persons are entitled to by State Parties in armed conflicts situations.
2. A challenge faced by the international community is the inadequacy of budget allocations, insufficient institutional staffing and week infrastructural development. Limited funding also contributes to limited skills and knowledge on preventing violence against protected persons. For example, observations made by the monitoring checklist

on Women peace and security (2011) showed that the Democratic Republic of Congo (DRC) National Commission for Human Rights which aims at harmonizing international instruments that the DRC signed and ratified failed to operate at its full capacity due to lack of financial support.

3. Furthermore, the Four Geneva Conventions of 1949 omit certain categories of person such as,immigrants and physically challenged persons. Consequently, this event of omission permits lack of compliance by States for an effective implementation of the International instruments protecting the rights of this category of persons.
4. The existence of prohibitive cultural barriers stand as a challenge to the implementation of gender and women's rights conventions and protocols. In Afghanistan the sharia had primacy in the legal system and constitutional provisions of the penal code worsens the situation. Most judges rule base on their own understanding of Customary Law.

5.3 Recommendations

In view of the above findings, the following recommendations are proffered:

1. Implementation of protection activities on behalf of a population required adequate operational means, human resources, infrastructure and logistics. Parties to armed conflict must ensure full compliance with the principles of distinction and proportionality and the obligation to take all feasible precautions to protect civilians when carrying out military operations.
2. Developing the laws of nations to reach highest international standards on armed conflict, encouraging adaptation of national legislations to international standards, advocacy, promoting respect for rules and principles and for forces whether military or police or the rules of engagement during armed conflict can serve as comprehensive preventive

measures that can cure human right violation during armed conflict. States should be ready to release funds which goes a long way in taking care of situations during armed conflicts.

3. The need for the review of the Four Geneva Conventions of 1949 to capture the categories of persons such as,immigrants and physically challenged persons presently omitted in the Convention. This will go a long way to prevent Member States from circumventing the breach of the Convention simply because there was a just omission. Consequently, this event of omission permits lack of compliance by States for an effective implementation of the International instruments protecting the rights of this category of persons.
4. Armed violence continues to take an absence toll on protected persons and their communities, the states supported by the international community must continue its efforts to provide appropriate care and protection for hundreds of thousands or protected persons who have suffered from humanitarian violations and abuses. The international community including the Security Council and human rights council must continue to closely follow situations with a view to ensuring that perpetrators of gross violations and abuses of human rights and serious violations on humanitarian law are held accountable without any barriers.

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