

APPRAISAL OF THE CHALLENGES OF IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW RULES IN NIGERIA BOTH IN TIMES OF PEACE AND WAR

Maureen Obiageli Ugwu* Chioma .O. Nwabachili, PhD**
Godwin Emeka Ngwu. PhD***

Abstract

International humanitarian law is one of the oldest branches of international law, a complex and diverse area of law, covering matters such as the treatment of civilians in times of hostilities, permissible means and methods of conducting hostilities as well as the rules of international humanitarian law vis-à-vis implementation, enforcement and accountability. Sadly, when these IHL rules are violated or ignored they often result in brutal and inhuman treatment. This study identified fundamental issues which largely inhibit the effectiveness of enforcement and implementation of IHL in conflict, like lack of political will on the side of the government, challenges of disciplined and trained security forces, and the issue of weak and ineffective institutions like the judiciary. The study's object point to the fact that the unwillingness of the Nigeria authority in enforcing international humanitarian law has led to several breaches of the rules of IHL during the armed conflict including the targeting of civilians and civilian objects, acts of torture, rape and other forms of sexual violence, the casualness of governments towards proper investigation and prosecution of alleged perpetrators of crime. The study concludes that the changing nature of warfare particularly in non-international armed conflict in the recent past is significantly undermining the efficacy of IHL. The study further recommends amongst others that society be educated about the rules of armed conflict and that violators of the rules be brought to light so that people are held accountable for their actions or inactions.

Keyword Word: *International Humanitarian Law, Nigeria, Contemporary Armed Conflict, Challenges, Implementation and Enforcement*

1.0 Introduction

International humanitarian law also called the law of war sets out detailed rules that seek to limit the effects of armed conflict.¹ In particular, it protects those who are not, or no longer, taking part in the fighting and sets limits on the means and methods of warfare.² International Humanitarian Law is a universal set of rules, its main treaties have been accepted by nearly every State in the world³ and become generally applicable whenever a situation of violence reaches the level of armed conflict.⁴

International Humanitarian Law (IHL) hitherto known as the Law of War has also been defined as the branch of international law limiting the use of violence in armed conflicts by sparing those who do not or no longer directly participate in hostilities, restricting it to the amount necessary to achieve the aim of the conflict, which independently of the causes fought for can only be to weaken

* **Maureen Obiageli Ugwu**, LL.B, B.L, LLM is a Lecturer I, in the Department of Human Rights Law, Faculty of Law, Nnamdi Azikiwe University Awka Anambra State Nigeria. Tell: 08036860338 Email: mo.ugwu@unizik.edu.ng.

** **Dr Chioma .O. Nwabachili**, LL.B, B.L, LLM, PhD is an Associate Professor of Law in the Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka Anambra State Nigeria. Tell: 08063772200 Email: co.nwabachili@unizik.edu.ng.

*** **Dr Godwin Emeka Ngwu LL.B, B.L, LL.M, PhD** is a Senior Lecturer in the Department of Private and Property Law, Enugu State University of Science and Technology, Enugu State Nigeria Tell: 08069742259, Email: emeka.ngwu@esut.edu.ng, godeme77@gmail.com.

¹International Committee of the Red Cross (ICRC).Advisory Service On implementing International Humanitarian Law: from Law to Action implementing_ <http://www/ihl.pdf> accessed on 2nd May 2022

²*ibid*

³*ibid*.

⁴*ibid*.

the military potential of the enemy.⁵ In other words, International Humanitarian Law is applicable only in times of armed conflict⁶ protects persons not or no longer taking a direct part in hostilities; and regulates permissible means and methods of warfare.⁷

Hans Peter Gasser defines International Humanitarian Law to include all those rules that for humanitarian reasons limit the resort to force in an armed conflict between states or an intrastate conflict situation. He went on to state that those rules limit the right of parties to an armed conflict to choose methods or means of warfare, and emphasized that they prohibit the use of force against persons who are not or who are no longer taking part in hostile acts, like the civilian population and individual civilians, military and civilian prisoners or detainees described as protected persons and against civilian property, described as protected objects.⁸

Furthermore, the International Committee of the Red Cross (ICRC) defines International Humanitarian Law as International rules established by treaties or customs, which are specially intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods, and means of warfare of their choice, or protect persons and property that are, or maybe, affected by conflict⁹

Flowing from the foregoing definition, the basic principles of International Humanitarian are as follows:

- a. The principle of distinction between civilians and combatants,
- b. The principle prohibiting the infliction of unnecessary suffering,
- c. The principle of necessity, and
- d. The principle of proportionality.¹⁰

On the other hand, the following inherent limits of International Humanitarian Law have been acknowledged:

- a. It does not prohibit the use of violence;
- b. It cannot protect all those affected by armed conflict;
- c. It makes no distinction based on the purpose of the conflict;
- d. It does not bar a party from overcoming the enemy;¹¹
- e. It presupposes that the parties to an armed conflict have rational aims and that those aims as such do not contradict International Humanitarian Law.¹²

⁵M.Sassoli *et al*, How Does Law Protect in War? 'Cases, documents and Teaching Materials on contemporary practice in International Humanitarian Law' Vol. 1 (3rd ed.), International Committee of the Red Cross ICRC, Geneva 2011, p. 93.<http://www.icrc.org/files> accessed on the 2nd of February 2023.

⁶ As established in *Prosecutor v Tadic (IT-94-1-A) May, 1997*, an armed conflict is said to exist „whenever there is a resort to armed forces between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state“. Treaty law does not define the term; it merely regulates permissible means and methods of warfare.

⁷*Ibid.*

⁸ H.Gasser *Humanitarian Law*“, *Encyclopaedia of Human Rights* (Vol. 2), 2009, P. 462.

⁹ J.Pictet, *Commentary on the Additional Protocols to the Geneva Convention of 12 August, 1949*, J *et al* (eds.), Geneva, International Committee of the Red Cross ICRC, xxvii1987.<http://www1987.http://www.icrc.org.publication> accessed on the 5th of February 2023.

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

The changing nature of armed conflict in the 21st century is significantly undermining the efficacy of IHL. Serious violations occur in situations where armed groups and other non-state actors consider their successes to be premised on not respecting the law thereby adopting methods of warfare inimical to the philosophy and purpose of IHL.¹³

International armed conflicts took place in Afghanistan and Iraq, leading to the establishment of a US-supported government in Afghanistan and the military occupation of Iraq. Non-international armed conflicts on the other hand erupted and continued to take their human toll in Africa, while military occupation and violence in the Middle East remained a major focus of international concern.¹⁴

Typical examples of this conflict can be seen in Al-Shabab in Somalia, and Boko Haram in Nigeria, in these situations, there has been deliberate targeting of civilian population, terrorizing the civilian populations, rape, torture and other acts amounting to war crimes, crimes against humanity and genocide.¹⁵

While the justifications for and qualifications of some of these situations of violence may be in dispute, there can be no disagreement about the magnitude of human suffering that any armed violence causes. Where international humanitarian law is not respected, human suffering becomes all the more severe and the consequences become all the more difficult to overcome.¹⁶

IHL violations have also been regularly perpetrated by governmental forces and non-state armed groups during armed conflict like deliberate attacks against civilians, indiscriminate attacks, forced displacement of populations, destruction of infrastructure vital to the civilian population, use of civilians as human shields, and looting.¹⁷ Likewise, access to populations in need of humanitarian aid remained a constant problem, aggravating the already desperate plight of millions of people caught up in war.¹⁸

More sophisticated technology is employed in the pursuit of war by those who possess it. The uncontrolled availability of large quantities and categories of weapons has also dramatically increased, new actors capable of engaging in violence have emerged, there are multiplications of armed actors and the fragmented nature of conflicts is weak. Armed conflicts seem to have grown more complex and permanent peace settlements more difficult to reach. These New or aggravated features make the work of humanitarian organizations in these contexts particularly difficult and present huge challenges in terms of enforcement of the rules of IHL and the protection of civilians.¹⁹

¹³*Ibid.*

¹⁴International Committee of the Red Cross (ICRC). *international humanitarian law and the challenges of contemporary armed conflicts 28th international conference of the red cross and red crescent 2-6 December 2003* ihlcontemp_armedconflicts_final_ang.pdf accessed on the 2nd of May 2022

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷*Ibid.*

¹⁸*Ibid.*

¹⁹International Committee of Red Cross ICRC Nigeria, ECOWAS Members States Discuss Implementation of International Humanitarian Law 28th June 2016 <https://www.refworld.org/docid/57a445184.html> accessed on the 2nd of May 2022.

2.0 Implementation and Enforcement of International Humanitarian Law Rules

The term implementation covers all the measures that must be taken to ensure that the rules of IHL are fully respected, it is not enough to apply these rules after the fighting has begun, some measures must be taken in both wartime and peacetime.²⁰ Implementation is said to encompass all measures that must be taken to ensure that the rules of war are fully respected.²¹ In the context of IHL, implementation refers to such measures designed to monitor and ensure observance and compliance with its rules.²²

It means putting the law into effect, an action which goes further than mere observance of the law. A series of mechanisms for the implementation of IHL exist, however, most of them have not recorded many achievements while some have been described as inherently insufficient and in some cases even counter-productive.²³ Numerous challenges continue to exist about the implementation of the rules of IHL, Some of these stemmed from the difficulty with engaging parties to conflict in dialogue about their responsibilities under IHL. Armed groups fragment and reconstitute themselves with new, often ill-defined, hierarchies, and government's involvement in activities which are contrary to the rules of war especially in contemporary armed conflict. It is becoming increasingly difficult to attribute responsibility for violations and corrective measures in the event of armed conflict.

2.1 Responsibility of State Parties towards implementation and enforcement of International Humanitarian Law Rules

The duty to implement the rules of IHL is primarily that of States, which have an unambiguous obligation to adopt several legal and practical measures for ensuring full compliance with this body of law. These measures may need to be taken by one or more government ministries, the legislature, the courts, the armed forces, or other State agencies. There may also be a role for professional and educational bodies and the National Red Cross Red Crescent Society or other voluntary organizations.²⁴

Under the 1949 Geneva Conventions, their Additional Protocols of 1977 relating to the protection of victims of armed conflicts, the 1954 Hague Convention on Cultural Property and the latter's Second Protocol of 1999 a range of measures must be taken by the state. The main ones are:

- a. To have the Conventions and Protocols translated into the national language(s);
- b. To spread knowledge of their provisions as widely as possible both within the armed forces and the general population;²⁵ For instance, they should include the rules and regulations of IHL in their military regulation, instruction for armed forces and code of military discipline.
- c. To repress all violations listed as such in the above-mentioned instruments and, in particular, to adopt criminal legislation that punishes war crimes;

²⁰International Committee of the Red Cross (ICRC). Advisory Service On International Humanitarian Law Implementing International Humanitarian Law: from Law to Action implementing_ihl.pdf Accessed On 2nd May 2022.

²¹ Commonwealth Secretariat, 1999 Meeting of Commonwealth Law Ministers and Senior Officials: Port of Spain, Trinidad and Tobago, 3-7 May 1999: Memoranda (Commonwealth Secretariat, 2001).

²²A. Faite and .U. Kadam, 'Implementation of International Humanitarian Law in Japan: The ICRC Perspectives accessed 17 may 2022.<http://repository.law.umich.edu> . accessed on the 5th of February 2023

²³ .M. Sassòli and .A. Bouvier, *How Does Law Protect in War* (2nd edition 1; Geneva: ICRC, 2006). p. 271.

²⁴.M. Sassòli and .A. Bouvier, *Op Cit* P. 1.

²⁵Art. 47 of Geneva Convention I (GCI) of 1949, Art. 48 of Geneva Convention II (GCII) of 1949 . Art. 127 of Geneva Convention III (GCIII) of 1949.

- d. To ensure that persons, property and places protected by the law are properly identified, marked and protected;
- e. To adopt measures that will prevent the misuse of the Red Cross, the red crescent and other symbols and emblems provided for in the Conventions and Protocols;
- f. To ensure that protected persons enjoy judicial and other fundamental guarantees during armed conflict;
- g. To appoint and train persons qualified in international humanitarian law, in particular, legal advisers within the armed forces²⁶
- h. To provide for the establishment and/or regulation of National Red Cross and Red Crescent Societies and other voluntary aid societies.
- i. To take account of international humanitarian law when selecting military sites and in developing and adopting weapons and military tactics.²⁷
- j. Political and military authorities also must take all measures to ensure that the obligation foreseen by humanitarian law is respected²⁸
- k. States are under the obligation to enact any legislation necessary to provide effective criminal sanctions for persons committing or ordering to be committed any grave breaches²⁹
- l. States have the responsibility to search for persons alleged to have committed such grave breaches³⁰

The four Geneva Conventions of 1949 (GC I-IV), their Additional Protocol I of 1977 (AP I) and other treaties set forth the State's Parties' explicit obligations regarding penal repression of serious violations of the rules they contain.³¹

The States party to the Geneva Conventions and Additional Protocols must prevent and halt acts contravening these instruments, whether they are committed in an international or non-international armed conflict.³² The measures that States must take to this end may vary in nature and may include penal sanctions if appropriate.

The States Parties have further obligations relating to certain flagrant violations of IHL, known as the "grave breaches".³³ These are precise acts listed in the Geneva Conventions and Additional Protocol I. They include wilful killing, torture and inhuman treatment, wilfully causing great suffering or serious injury to body or health, and certain violations of the basic rules for the conduct of hostilities³⁴ "Grave breaches" are regarded as war crimes³⁵

²⁶International Committee of the Red Cross (ICRC). *Advisory Service On International Humanitarian Law Implementing International Humanitarian Law: From Law To Action* Implementing_www/http/lhl.Pdf Accessed On 2nd May 2022.

²⁷*Ibid.*

²⁸GCI Art 49, GCII Art.50, GCIII Art. 129.

²⁹*Ibid.*

³⁰ art 146 GCIV.

³¹International Committee of the Red Cross (ICRC). *Advisory Service on International Humanitarian Law National Enforcement of International Humanitarian Law*.2004 [kit_national_enforcement.pdf](#) accessed on the 4th of April 2022.

³² *Ibid.*

³³ Art. 85, Para. 5 of the 1977 Additional Protocol (AP) I of Geneva Conventions (GC) of 1949.

³⁴ Art. 50 of Geneva Convention (GC) I of 1949; Art. 51 of Geneva Convention (GC) II of 1949; Art. 130 of Geneva Convention (GC) III of 1949; Art. 47 of Geneva Convention (GC) I of 1949 ; Art. 11 and 85 of Additional Protocol (AP) I of Geneva Convention (GC) of 1949.

³⁵ Art. 85, Para. 5 of Additional Protocol (AP) I of 1977. *Op Cit* p.7.

The Geneva Conventions and Additional Protocol I stipulate that "grave breaches" must be punished. The States Parties must search for persons accused of having committed or having ordered the commission of "grave breaches", regardless of the nationality of the perpetrator or the locus of the crime, by the principle of universal jurisdiction. They must bring these persons before their courts, or hand them over for trial to another State which has made out a prima facie case³⁶

For States party to Additional Protocol I, this obligation also covers "grave breaches" resulting from a failure to act when under a duty to do so.³⁷ To meet these obligations, the States Parties must adopt the legislative measures needed to punish persons responsible for "grave breaches". They must in particular: enact laws which prohibit and repress "grave breaches" and which apply to anyone, irrespective of his nationality, who has committed or ordered the commission of such offences, and ensure that these laws relate to acts committed in national territory and elsewhere; endeavour to trace persons alleged to have committed the offence, start legal proceedings against them, or extradite them so that they may be tried in another State; instruct their military commanders to prevent or put an end to acts which are clearly against the rules of international humanitarian law and to take steps against persons under their authority who are guilty of such offences; afford one another judicial assistance in any proceedings related to "grave breaches".³⁸

The notion of responsibility is an essential part of the implementation and respect of the law. The responsibility of a state is often triggered by the actions of its agent and notably its armed forces. IHL provides several responsibilities in case of violation. IHL rules can prevent atrocities only if all States take measures to implement their legal obligations if all parties to armed conflict are committed to respecting them if all actors can influence those involved in the fighting and use their leverage to ensure respect for IHL³⁹

2.2 Challenges of Implementation and Enforcement of International Humanitarian Law in Nigeria

The repression of war crimes, crimes against humanity, and genocide, whatever the nationality of the offender and the place where they are committed, is crucial to ensuring respect for international law and the interests of justice. The chief responsibility for this repression lies with the States. The substantive and procedural criminal law and the judicial system of each State must enable it to prosecute and bring to trial persons allegedly responsible for these crimes.

Notwithstanding the progress made, International Humanitarian Law (IHL) continues to suffer violation in many international and non-international armed conflicts⁴⁰ The major conflicts in the 1990s, like the conflict in the former Yugoslavia and Rwanda, the conflict between Eritrea and Ethiopia, Allied forces in Afghanistan and Iraq, civil wars Syria, Yemen and currently, fight

³⁶Art. 49 of GC I of 1949; Art. 50 of GC II of 1949.

³⁷ Art. 86, Para.1 of AP I.

³⁸ International Committee of the Red Cross (ICRC). Advisory Service on International Humanitarian Law *National Enforcement of International Humanitarian Law*. 2004 [kit_national_enforcement.pdf](#) accessed on the 4th of April 2022.

³⁹ International committee of red cross International humanitarian law and the challenges of contemporary armed conflict recommitting to protection in armed conflict on the 70th anniversary of Geneva conventions. [Http//www.icrc.org.publication](http://www.icrc.org.publication). Accessed on the 5th of March 2023.

⁴⁰ J. Kellenberger, 'Striving to Improve Respect for International Humanitarian Law', in IHL (ed.), *Strengthening Measures for the Respect and Implementation of International Humanitarian Law and Other Rules Protecting human dignity in armed conflict: challenges and prospects* (sanremo: IHL, 2004). p. 19.<http://www.icrc.org.ststatement> Accessed on the 5th of March 2023.

against the Islamic State and its affiliates such as the Boko Haram in Nigeria are typical examples of the growing challenges being suffered by IHL.⁴¹

Recent conflicts have witnessed the involvement of new actors; fragmentation in weak or failed States; the growing overlap between political and private aims; an increasingly sophisticated technology employed by both States and non-state actors; asymmetrical warfare; an uncontrolled availability of large quantities and categories of weapons; outsourcing of military functions to private security companies, involvement of military in humanitarian work and increasing involvement of civilians in armed conflict.⁴²

These new phenomena continue to complicate the nature of armed conflict and the response of the law,⁴³ War has been prohibited by both international⁴⁴ and domestic law but this prohibition has yet to result in ending the occurrences of war and it continues to be a sad reality necessarily warranting the continued existence of IHL.⁴⁵

In Nigeria, Between May 7th and June 2022 at least 60 civilians were killed by Boko haram in Dakwa local government of Borno state of Nigeria,⁴⁶ they have been known for mass kidnapping, bombing and other acts of violence which makes it all very difficult for the implementation of the rules of armed conflict.

Boko Haram intentionally killed and maimed civilians in attacks throughout the country, especially in the northern part. ⁴⁷As of 2015, there were about 1.3 million internally displaced persons as a result of Boko haram insurgents⁴⁸ Children are also not left out as some children both boys and girls have been recruited for active hostilities.

Most civilians under the captivity of the groups have been brutally killed, and a lot of women and girls were adopted for sexual exploitation, forced marriage and religious conversion. ⁴⁹Attacked by security forces in Nigeria in defence of Boko haram has also resulted in the death of a high number of civilians.⁵⁰ The state must respect and protect the right to life of individuals under its jurisdiction from attack by armed forces, such an obligation includes taking measures to prevent the commission of offences, investigating human rights abuses and international humanitarian law violations, promptly, thoroughly and independently and prosecuting those found responsible. However, Nigeria still faces several challenges in the implantation of the rules of war.

⁴¹K. Balarabe *Improving Mechanisms For The Implementation Of International Humanitarian Law* KIUIJ Vol1, January 2017 <http://www.mprovingmechanismsforimplementinginternationalhumanitarianlaw.pdf> Accessed On The 6th of April 2022.

⁴²J. Kellenberger, 'Striving to Improve Respect for International Humanitarian Law'. Op Cit.

⁴³*Ibid*.

⁴⁴Art. 2(4) of the United Nations Charter 1945.

⁴⁵International Committee of Red Cross and Economic Committee of West Africa State. *2016 Report On Implementation of IHL. Report in West Africa Participation of West African Countries, In International Humanitarian Law Treaties And Their National Implementation*. 2016 Annual Review Meeting on the Implementation of IHL in West Africa.

⁴⁶www.recent Boko Haram killings in Nigeria, accessed on the 27th of Feb 2023.

⁴⁷Human Right Council violation and abuses caused by boko haram and the impact on human right in the countries affected. Report of the United Nations High Commissioner for Human Right <http://www/ohchr.org> HRC. Accessed On The 27th Day Of Feb 2023.

⁴⁸*Ibid*.

⁴⁹ *Ibid*.

⁵⁰*Ibid*.

2.2.1 Lack of Adherence to International Humanitarian Law

The Boko Haram crises in Nigeria are asymmetric and often fought amongst the civilian population. The enormous technological and military superiority of the States has led the armed opposition groups to move underground, intermingling with the civilian population to avoid identification and detection. As a result, most battles occur not in open areas, but both in towns and cities. This exposes civilians to an increased risk of harm. Boko Haram has over the years attacked armed citizens directly during the conflict, especially women and children.

We also see the challenges of protecting civilians in situations where a State or other armed group may be deliberately targeting civilians. When this armed group are unable to confront the State forces, they resort to methods of warfare prohibited by IHL, such as wearing civilian clothes, conducting indiscriminate attacks or deliberately targeting civilians State armed forces in situations like this face the challenges in distinguishing fighters from the civilian population. Regrettably, however, there is always a willingness of both State armed forces and non-state armed groups to disregard basic rules of distinction proportionality and even humanity in the event of armed conflict.

2.2.2 Non-Commitment to the Obligation to Respect and ensure respect for International Humanitarian Law

Whereas State Parties to the Geneva Conventions undertake to respect and to ensure respect for the Conventions in all circumstances,⁵¹ there has been significant evidence of non-commitment to the obligation to respect and to ensure respect for IHL like in the Boko Haram situation. By Common Article 3 to the Geneva Conventions, this obligation to respect and ensure respect for IHL is also extended to non-state actors or armed groups like Boko Haram who are bound to apply certain provisions of IHL, as a minimum.⁵²

In keeping with this obligation to respect IHL norms, Nigeria has signed up or ratified several international legal instruments that constitute the framework for regulating the conduct of armed conflicts and protecting their victims.⁵³ Such relevant instruments which constitute her table of ratification as of September 2017, include the following: Geneva Conventions I-IV, 1949⁵⁴; Additional Protocol I, 1977⁵⁵; Additional Protocol II, 1977⁵⁶; Child Rights Convention, 1989; Optional Protocol to the Child Rights Convention, 2000⁵⁷; Rome Statute of the International Criminal Court, 1998⁵⁸; the Hague Convention Relative to the Protection of Cultural Property,

⁵¹Article 1 to the Geneva Conventions; 1949 and Article 1 of Additional Protocol of 1977. Cited in E. C., Ibezim, PhD *et al*, Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 25, Issue 6, Series 4 (June. 2020) 36-53 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org.

⁵²Article 3 (1)(a-d) and (2) of Geneva Conventions. Cited in E. C., Ibezim, PhD and others, Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria *Op cit*.

⁵³Table of ratification as at September 2017, Cited in E. C., Ibezim, PhD and others, Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria.

⁵⁴Ratified 20-06-1961; and cited as: Geneva Convention for the Amelioration of the Geneva Conventions I-IV, 1949.

⁵⁵Additional Protocol I, 1977. Ratified 10-10-1988, and cited as Protocol Additional to the Geneva Conventions of 12 August, 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June, 1977.

⁵⁶Additional Protocol II, 1977 Ratified 10-10-1988, and cited as Protocol Additional to the Geneva Convention of August, 1949 and Relative to the Protection of Victims of non-International Armed Conflicts (Protocol II) of 8 June, 1977. Cited in E. C., Ibezim, PhD *et al*, Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria *Op cit*.

⁵⁷Optional Protocol to the Child Rights Convention, 2000. Ratified 20-09-2012 Cited in E. C., Ibezim, PhD and others, Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria *Op cit*.

⁵⁸Rome Statute of the International Criminal Court, 1998. Ratified 27-09-2001.

1954⁵⁹; Protocol to the Hague Convention, 1999⁶⁰; O.A.U Refugee Convention, 1969⁶¹; African Cultural Charter, 1976⁶²; African Children Charter, 1990⁶³; O.A.U Convention on Nature, 1969⁶⁴; Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979⁶⁵; and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999.⁶⁶

On regulation of weapons, Nigeria also ratified the following instruments, among others: Geneva Gas Protocol, 1925; ⁶⁷Bacteriological Weapons Convention (BWC) 1972; ⁶⁸Chemical Weapons Convention (CWC) 1993⁶⁹; and Additional Protocol to the Mine Ban Convention, 1977⁷⁰.

The list of treaties and international legal instruments, which Nigeria has subscribed to is impressive, but relatively few of such instruments have been domesticated by any form of legislation. Nigeria's dualist approach to treaty implementation, which insists that no treaty between the federation and any other country shall have the force of law, except to the extent to which any such treaty has been enacted into law by the National Assembly constitutes another implementation and enforcement challenge.⁷¹ This is a challenge because such enactment demands the onerous two-thirds majority votes of members of the National Assembly for treaties to come into force.⁷²

In the armed conflict between Nigeria and the Boko Haram insurgents, Non-domestication of the treaties has the effect of limiting their application in Nigeria. Implementation encompasses mechanisms for their enforcement in Nigeria, which entails domestic legislation aimed at incorporating them into the juris corpus of Nigeria in line with the country's dualist approach to the implementation of international law.⁷³ The legislative stricture occasioned by the country's dualist approach seems to be one of the reasons, besides a general lack of political will, for the poor performance of Nigeria in the implementation and enforcement of IHL norms.

On the other hand, even though IHL governing non-international armed conflicts is binding on belligerent States, as well as on each Party to the conflict, which means that non-state armed groups, too, must respect IHL and prevent violations by their members.⁷⁴ Boko Haram armed group seems to have continued to operate as a party that does not subscribe to any rule of combat, and more especially any IHL rule.

⁵⁹The Hague Convention Relative to the Protection of Cultural Property, 1954. Ratified 5-06-1961.

⁶⁰Protocol to the Hague Convention, 1999. Ratified 21-10-2005

⁶¹O.A.U Refugee Convention, 1969. Ratified 23-05-1986.

⁶²African Cultural Charter, 1976. Ratified 24-09-1986.

⁶³African Children Charter, 1990. Ratified 23-07-2001.

⁶⁴O.A.U Convention on Nature, 1969. Ratified 2-04-1974.

⁶⁵ Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979. Ratified 13-06- 1985.

⁶⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999Ratified 2004.

⁶⁷ Geneva Gas Protocol, 1925

⁶⁸ Bacteriological Weapons Convention (BWC), 1972

⁶⁹ Chemical Weapons Convention (CWC), 1993

⁷⁰ Additional Protocol to the Mine Ban Convention, 1977

⁷¹Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria.

⁷²Abacha v Fawehinmi[2006] NWLR (part 660) P.228.

⁷³*Ibid.* The 1999 Constitution of the Federal Republic of Nigeria provided in Section 12 that no treaty between the federation and any other Country shall have the force of law, except to the extent to which any such treaty has been enacted into law by the National Assembly. However, for matters outside the Exclusive Legislative List, a bill to implement a treaty shall not be presented to the President for his assent nor shall it be enacted, unless it is ratified by two-thirds majority of legislative houses of the States in the Federation.

⁷⁴N. Melzer, and E. Kuster, *International Humanitarian Law: A Comprehensive Introduction*, Geneva, ICRC, 2016, P. 304-305.

This is reflected in their incessant targeting of civilians and civilian objects; the use of Child-Soldiers; and Suicide bombers; hostage-taking and extra-judicial executions, among other impunities, which amount to grave breaches of the Geneva Conventions, War crimes and Crimes against humanity.⁷⁵ Generally, their strategies and tactics are geared towards blurring the distinction between combatants and civilians.⁷⁶ They are often deployed in densely populated urban centres where avoiding collateral injuries or damage to individuals is practically impossible. Of course, this strategy is deliberate, thereby underscoring their non-commitment to the obligation to respect and ensure respect for IHL.

Ironically, the Nigerian military has also been accused of committing war crimes and possible crimes against humanity. This is following allegations, by Amnesty International, of war crimes against certain senior military officers along the chain of command up to the Chief of Defence Staff and Chief of Army Staff whose names include nine senior Nigerian military figures who should be investigated for command and individual responsibility for the crimes committed.⁷⁷

The report alleges horrific war crimes committed by Nigeria's military which included situations where people were murdered or starved, suffocated or tortured to death.⁷⁸ However, the Nigerian Military and Government have denied culpability on behalf of the named personnel, in what seems to be an attempt to shield the alleged culprits from prosecution. Therefore, the overall picture presented by this state of affairs is a general non-commitment to the obligation to respect and ensure respect for IHL in the ongoing Boko Haram and this constitutes a huge challenge to the implementation of IHL in Nigeria.

2.2.3 Weak Institutional Mechanisms for the Implementation and Enforcement of International Humanitarian Law

Weak Institutional mechanisms constitute another bane in implementing and enforcing IHL during the armed conflict in Nigeria. Such mechanisms span across, the executive, the legislature and the judiciary and include the Army, the Police, the Prisons, the National Assembly and relevant courts. These mechanisms which ought to be the basic institutional framework for the protection of war victims in times of armed conflicts hardly serve as such due to corruption, indiscipline and general lack of sufficient professionalism. For instance, while there hardly seems to be any record of these institutions protecting women in the present war against the Boko Haram insurgency, Amnesty International claims to have received consistent reports that women have been raped or sexually

⁷⁵ Geneva Conventions 1, Article 12-18 and Articles 49-50; Geneva Convention II, Articles 12- 21; and Article 50-51; Geneva Convention III, Articles 12-16, Articles 89-99; Geneva Convention IV, Articles 13-26, and Articles 27-34. Additional Protocol I, Article 13-20; Additional Protocol II, Articles 7-18; and Rome Statute of International Criminal Law, Articles 7, and 8.

⁷⁶ This is ensured by the faceless and anonymity of the suicide bombers who while disguised, freely commingles with civilian populations, and detonates their concealed bombs.

⁷⁷ Amnesty International, *New Amnesty Report: Senior Members of Nigerian Military Must Be Investigated for War Crimes* available at: <http://www.amnestyusa.org/press-releases/new-amnesty-report-senior-members-of-nigerian-military-must-be-investigated-for-war-crimes/of-06/02/2015> accessed on The 2nd of May 2020.

⁷⁸ For instance, a preliminary Examination Report on Nigeria released by the ICC's Office of the Prosecutor identified eight possible cases (heads) of crimes against humanity and War Crimes under Article 7 and 8 of the Rome Statute, perpetrated by both the militants and the Nigerian military. See N. Ibekwe, *ICC lists 8 possible war crimes against Nigeria military, Boko Haram*, available at : <http://www.premiumtimesng.com/news/headlines/193142-ICC-lists-8-possible-war-crimes-against-nigerianmilitary-boko-haram.html> accessed on the 2nd of May 2022.

abused by the Police, while being transferred to Police stations, while in custody or when visiting male detainees or women in the internal displaced person's camps.⁷⁹

The reports further state that rape and other forms of sexual violence or the threat of torture and ill-treatment have been used by the Police to extract confessions or other information.⁸⁰ The fact that the government does not seem to have ordered investigations into these allegations and incidents, nor does there seem to be any prosecutions in the country for war crimes and crimes against humanity in the ongoing war against Boko Haram underscores the weakness of existing mechanisms.

2.2.4 . Non-state Armed Groups

Another challenge to adhering to IHL is getting non-state armed actors to respect basic norms on the conduct of hostilities. Engagement with non-state actors is key to reducing violence against civilians. Many of these groups like Boko Haram in Nigeria situation may see support from the local population as conferring legitimacy and continued operation and thus may be open to improving their behaviour.⁸¹

However, challenges exist in situations whereby some national legislation has criminalized engagement as a form of "support" to non-state armed groups or when states label armed opposition groups as "terrorists." Engagement with non-state armed groups can also be difficult when there is a lack of professionalization, command and control, and oversight/disciplinary processes in the group. Thus, engagement strategies must be creative and flexible to allow such groups to have ownership in how they are improving their behaviour. For example, discussing core IHL protection principles through a religious and cultural lens can work in some cases⁸²

2.2.5. Availability of Small Arms and Light Weapons

As weapons have become easily available to parties, especially non-state armed groups, the promotion of respect for IHL has become vastly difficult, the unregulated availability of weapons particularly small and light weapons to groups with no knowledge and respect for IHL has outpaced effort to ensure compliance with the basic rule of warfare and has led to a deteriorating situation for civilian cut up in armed conflict

From the Nigerian perspective, the pernicious and multidimensional effect of the proliferation and misuse of small weapons has also organised violence and criminality which have become defining characteristics of the social-political landscape.

2.2.6. Challenges in Urban Warfare or fighting in a populated area

Another trend over the past few years is that fighting in populated areas poses significant challenges to forces trying to adhere to the rules that govern warfare. Even assuming that international humanitarian law is respected, urban warfare inevitably leads to human suffering. Planning for any military operation is complex, but the presence of thousands of civilians in an urban environment introduces additional considerations in particular, like the need to adhere to IHL's principle of proportionality and undertaking precautionary measures.

⁷⁹ Amnesty International, Nigeria: *Boko Haram and Nigerian Military committing crimes under International Law in North east Nigeria*" (Amnesty International written statement of the 28th session of the UN Human Rights Council) (2-27 March, 2015). Amnesty international <http://www.Amnesty.Org> accessed on the 5th of March 2023.

⁸⁰*ibid.*

⁸¹*ibid.*

⁸²*ibid*

We have seen an increase of improvised explosive devices by non-state armed groups resulting in high levels of civilian harm. Most current armed conflicts are asymmetric and often fought amongst civilian populations. The enormous technological and military superiority of some states involved in conflict has led armed opposition groups to move underground, intermingling with the civilian population, and engaging in guerrilla warfare to avoid identification and detection. As a result, most battles occur not in open areas, but in towns and cities, this exposes civilians to increased risk of harm.

Both state and non-state armed groups are also using munitions with wide-area effects such as artillery, rockets or large bombs. These weapons result not only in death and injuries but also impact critical infrastructure civilians rely on. One key takeaway has been the widespread destruction of towns and cities with civilians left wondering whether they are being punished for the crimes of non-state armed groups.

3.0. Conclusion

In the 21st century, armed conflicts have become more complicated. The rise of transnational conflicts between states and non-state actors has created numerous problems for the identification of armed conflicts.

Ensuring respect for IHL includes an obligation not to encourage, aid or assist in violations of IHL, as well as a due-diligence obligation to take proactive steps to influence parties to conflict and bring them to an attitude of respect for IHL and States have very broad discretion in choosing measures with which to exercise influence.

IHL being unique in its rules, compassionate and humane in its operation is aimed at protecting victims of war by ensuring the observance of its fundamental principles of necessity, distinction, proportionality, precaution and above all, that of humanity. IHL balances the concept of military necessity and the protection of war victims in that while recognising the right of belligerent to wage war, neutralise opponents, and destroy objects it equally requires respect and consideration for humanity. It protects the civilian population during armed conflicts, persons deprived of their liberty, sick, and wounded as well as those under military occupation. It comes into play when rules and structures are breaking down” and “when humanitarian standards are in jeopardy.

IHL was specifically designed to fit into this inhumane and illegal situation, to bring into being precisely defined rules balancing military needs with respect for humanity. The success of IHL rests on the extent to which its rules are implemented and enforced in armed conflict situations. In this light, several international legal instruments notably, the four Geneva Conventions and their Additional Protocols and The Hague Regulations have provided for mechanisms designed to ensure that IHL functions as intended and provides the needed protection to war victims, however, the implementation of the rules of IHL is still impracticable.

4.0 Recommendations

There is a need to develop manuals, training, policies and operational planning to respect the dignity of life of persons affected by conflict. It also means ensuring all efforts are made to minimize incidental harm to civilians. Pre-conflict planning for massive displacement and coordination between security actors and humanitarians to reduce the suffering of those who have lost everything must be prioritized.

During armed conflict, it is essential that armed actors continuously assess the impact of their operation on civilians to identify and investigate possible rule violations. Also, armed actors should identify ways to reduce incidental harm by tracking and analysing causes of civilian harm and implementing new tactical measures or additional training to keep civilians protected during armed conflict.

Many organizations regularly engage with armed non-state actors or groups, like the ICRC, Geneva Call, Human Rights Watch, Amnesty International, and Center for Humanitarian Dialogue, the activities of each of these should be regarded as indispensable towards furthering compliance with IHL.

It's important in enhancing compliance with IHL rules to ensure that the relevant non-state group is aware of its obligation under IHL and also engage them in informal discussion and conventions, the humanitarian group must engage in such dialogue with non-state armed group to be truly open to hearing and considering their concerns and grievances. It's unproductive to just simply hand over a pamphlet and expect violent armed groups to automatically adhere to the contents.

Non-state armed groups could be provided with advisory services by impartial organizations such as ICRC to fully develop an understanding of responsibility and accountability in warfare as a tool for reducing violence.