

THE PROTECTION OF PRISONERS OF WAR UNDER INTERNATIONAL HUMANITARIAN LAW*

Abstract

Humane treatment to prisoners of war is legalized, however, in some instances, states and warring factions disregard on this obligation and abuse soldiers and combatants that have either surrounded or held in captivity after being captured. This work aims at finding out the protection available to prisoners of war under international humanitarian law and the extent of such protection if any. This is because in many situations of warfare, the detaining power holding the surrendered soldiers or those captured most often tortures the Prisoners of war and some other times deny them their basic needs of food, medicals, clothing etc. The work looked at the basic treatment that prisoners of war are entitled under humanitarian law and the possible challenges towards realizing them. The method adopted in this research is doctrinal, primary and secondary sources of data namely textbooks, statutes, legislations, and library sources were used as well reference to journals, periodicals and judicial authorities. It was found out in this work that elaborate provisions have been made under humanitarian law treaties and conventions for the protection of Prisoners of war but the challenge is that most of the time the basic provisions and rules of armed conflict are not obeyed by the parties to the conflict, there is always violations which cause more problem than expected. The strong parties to the conflict often exploit the weak side by sometimes adopting strategies which negatively impact on the sensibilities and physical realities of the conditions of combatants in captivity under the detaining power. It is recommended in this work that the extant rules of armed conflict not only as it relates to Prisoners of war but to other categories of victims must be obeyed and complied with while non-compliance should attract sanctions including holding perpetrators of such criminal actions and violations accountable. It is concluded that humanitarian law recognizes the Prisoners of war as world citizens and should like every other person be protected under the law irrespective of the situation they find themselves.

Keywords: Humanitarian Law, Prisoners of War, Armed Conflict, Protection

1. Introduction:

As Morrow reasoned, in the twentieth century, a system for treatment of prisoners of war (POW) was legalized.¹ This system improves the treatment of Prisoners of war so that they are not subject to abuse or human rights violations or even killed in most circumstances. The legalization of the protection and treatment of Prisoners of war significantly made states and their armed forces to abandon the incidences of abuse and murder of soldiers and combatants who have either surrendered or are captured and taken to captivity. It is interesting that the legalization of protection and treatment of Prisoners of war is facilitated by international humanitarian law which is a broad aspect of international law. Humanitarian law provides the basic rules for regulations of armed conflict by ensuring that the parties or states in war does not and are not given the opportunity to decide and choose the means and method of warfare they adopt in executing wars. Protection of the Prisoners of war is not restricted to protecting them from physical torture and humiliation, detention or harassment upon capture or surrender, it also extends to and encompasses ensuring that their basic needs are not denied or deprived them. Thus, the Prisoners of war are entitled to the basic political and civil rights enjoyed by other citizens of the world. Their liberty and personal dignity is respected and they are not subjected to inhuman, degrading and cruel punishment or treatment. International humanitarian law governing treatment of Prisoners of war is designed to protect almost every aspect of war fare, in order to minimize as far as possible the adverse effects of captivity.² As noted by the International Military Tribunal at Nuremberg³ ‘war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war ...and that it (is) contrary to military tradition to kill or injure people. From the judgement and decision of the ITMTN above, some important points are noted below:

- a. Captivity is not revenge nor is it a punishment.
- b. Captivity is a protective custody and
- c. Its aim is to prevent the captive from further participation in war.
- d. It is always the military tradition not to kill or injure a helpless people.

It is also instructive that captivity play two major roles, it helps to save the life of the captive by removing him/her from participation in conflict. Secondly, when a captive is taken, it weakens his forces or enemy force where the captive belongs especially where such a captive may be one trusted belligerent or is among the arrow heads in the group. It should be noted that to the individual prisoner of war, certain aspects will be of more concern than others. In some conflicts, for example, hunger and disease may be the major preoccupations, in others, where food and medical care are adequate, the main anxiety of Prisoners of war may be the well-being of their family at home and his entitlement to correspond to them. One of the concerns of international humanitarian law which is often overlooked

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¹ J.D.Morrow ‘The Institutional Features of Prisoners of War Treaties’

² Gordion Risius & M.A. Meyer ‘The Protection of prisoners of War against insults and public curiosity’ Report of 26th.

³ Ibid, Judgement 1947,41 *AJIL*, 172 International Cont. of Red Cross/Red crescent, 1993.

when arguably higher priority and more immediate issues are at stake but nevertheless of importance is the protection of Prisoners of war dignity and honour.⁴

2. Conceptual Terms

Humanitarian Law

International humanitarian law according to Gordon and Meyer is a body of rules that regulates armed conflict.⁵ It prescribes the method and means of warfare and ensures that parties to a conflict have no choice or liberty on their own to decide or choose the method and means to adopt in warfare. Humanitarian law governs the treatment of prisoners of war.⁶ The humanitarian law is a broad aspect of international law with human rights law being the second aspect. It is commonly referred to as law of war but has been expanded in scope as it now applies any situation where there is a humanitarian crisis. The draft rules of Henry Dunant after the war of Solferino facilitated the drafting and adoption of IHL rules by the United Nations as a body of law to regulate armed conflict. Thus, with the adoption, the rules of war became a template and a body of law regulating the execution of armed conflict. IHL prescribes the rules regulating the following:

- i. Method and means of warfare.
- ii. Rules relating to those participating in armed conflict and those who for one incapacity or the other, they are no longer participating in conflict and should be protected namely:
 - a. The prisoners of war
 - b. The wounded soldiers
 - c. The sick combatants and the shipwrecked,
 - d. The old and the aged members of the armed forces
- iii. Civilian population and their properties should not be subject of military attack or military objective.
- iv. Prisoners of war or those held in captivity after surrendering to the enemy should be protected and not killed or tortured by or under a detaining power.
- v. The shipwrecked combatants should be collected and not killed or left to die.
- vi. The cultural properties 'places of monument should not be subject of attack or military objective.
- vii. Furthermore, the media personnel, medical personnel, aid workers and medical property as well as medical equipment should not be subject of attack.
- viii. Weapons that cause excruciating hardship suffering or that will lead to the death of many civilians shall not be used in armed conflict.

Armed Conflict

According to the Black's Law Dictionary, Armed Conflict is a conflict between two or more warring parties over an issue or issues of disagreement among them⁷. From the above, an armed conflict is a dispute between two or more parties having differences or a dispute and each of them has an interest or the other at stake which ought to be protected. By extension too, an armed conflict refers to a conflict or dispute where the parties use 'arms' or weapons to settle or show their dissatisfaction of the other parties' position and stand. The rules of IHL and indeed the body of law were developed in the first place to ensure that the use of weapons in conflict does not cause or lead to excruciating human suffering or the death of civilians. It also ensures that the parties have no choice of their own exclusively to determine the means, method of warfare to be adopted in the execution of war. Armed conflict refers to conflict or disaster between two or three opposed armed forces and when we talk of armed forces we refer to groups commissioned to commit hostilities against the enemy.⁸ The soldiers are mere tools in the hands of the states to demonstrate their military capability and supremacy against the other side.

Protection

Webster's Dictionary Online Version defined the term protection to mean 'guard' safeguard and to defend so that it will exist⁹. In the same vein, the Oxford Dictionary defined the word protection to mean 'to safeguard' to promote the existence of something and secure from being damaged or destroyed.¹⁰ From the community reading of the definitions above, it can be conceded that the word protection means and refers to the safeguarding of something or somebody or something to save it from being damaged, killed or put in a situation of danger. Relating the above definition to the prisoners of war, many conventions and instruments driving humanitarian law of armed conflict have made provisions to protect the soldiers that either surrender or are captured and fall into the hands of a detaining power. Some of the instruments include the Geneva Convention, Hague Convention and Protocol Additions to the Conventions of Geneva

⁴ Ibid

⁵ Gordon Rissius and Michael Meyer 'The protection of prisoners of war against insults and public curiosity' Redcross Review 'Judgement of Int. Military Tribunal at Nuremberg (1947).

⁶ Ibid

⁷ *Black's Law Dictionary*, 8th Edn, Oxford Press Ltd, United Kingdom.

⁸ Ibid

⁹ Webster Dictionary online.com.org (5/6/2022)

¹⁰ *Oxford Dictionary* (London, Oxford University Ltd, 6th Edn.

as well as the UN charter on Human Rights. The prisoners of war by the rules of humanitarian law reinforced in the treaties should not be killed but should be treated humanely with respect to their dignity maintained and sustained.

Prisoners Of War

The word 'prisoner' according to Hingorani,¹¹ is associated with some stigma attributing some wrong doing on his part. A layman according to him may think that prisoners of war may have done something wrong during war and it is as a result of this that there is usually a stigma attached to the word prisoner. The truth remains that prisoners of war did nothing other than that they are fighting for their country and they get captured by the belligerent, they are mere unfortunate victims of war as indicated by the Geneva Convention. The provisions are supplemented by Article 43 and 44 of 1977 Protocol 1 Addition to the Geneva Convention of 1949. The provisions of Article 43.1 of the Protocol state, that the armed forces of a party consist of all organized armed forces and units under a command responsible to that partly for the conduct of subordinates and who are subject to internal disciplinary system. Armed forces of a country would include national military or volunteer corps which forms part of the armed forces Article 44(1) confers prisoners of war status on such combatant groups listed under Article 43 (1) of the protocol. From the community reading of Article 43 (1) and 44 (1) of API, it means that prisoners of war status is not accorded to just any person rather, the person or persons seeking to be protected under the recognition as Prisoners of war must come within the window under Article 43 and once she or he has satisfied the provisions under Article 43, then he or she or they are entitled to Prisoners of war status under Article 44(1). It is important to point out the key points under Article 43(1) of the protocol which include:

1. The person seeking Prisoners of war status must be a member or they are members of organized armed forces in ware fare.
2. The person must be a member of a group or unit under a command.
3. The command must be responsible to that partly for the conduct of the subordinates.
4. The subordinates are subject to an internal disciplinary system.
5. The armed forces also include national militia and volunteer corps.

What it means is that a person who satisfies the conditions above is entitled to be granted Prisoners of war status once captured and is accordingly entitled to protection.

Armed Forces

Armed forces refer to a group of soldiers or combatants who are commissioned to commit hostilities against the enemy. They exhibit their enemy character by wearing an identifiable uniform and marks for which they are known and they are usually disciplined and under the command of a responsible commander who gives order and directions observed and obeyed by the subordinates. There are no armed forces without a commander and without rules of engagement. The word disciplined is used because the members of the armed forces are committed to obey the rules dictated by the commander. It must be noted that armed forces must be commissioned group of personnel by the state and they legitimately bear arms against the enemy who may attempt or have indeed threatened the sovereignty of their state. However, other armed bearing groups in a state that are not commissioned and are not approved by the state to work and co-operate with the armed forces are not members of the armed forces including some militia groups, rebels, dissidents and some other terrorist gangs etc that are usually found in some states like 'ISIS' Islamic Society of West Africa 'ISWA' and even the members of Boko Haram Jihadists in the North Eastern Nigeria and El Shabab Militia in Kenya.

Active Participation in Conflict

This is a principle that is very important in the consideration of protecting prisoners of war and other combatants that deserve protection in armed conflict. Under international humanitarian law, a soldier or combatant is in active participation in armed conflict when he is face to face with the enemy forces and participates in the actual conflict in the battle field. To that extent, the combatant participating actively in conflict unless captured or taken captive cannot seek protection because as he works to conquer his enemy so the enemy wants to get him conquered.¹² In the same vein, a mercenary or spy who infiltrates into enemy camp for purposes of getting information on the 'tactics' 'method' 'strategy' and 'intelligence' from the enemy and gives such information to the opponent is also seen as participating actively in conflict

Detaining Power

A detaining power is the armed forces and the authority that captured the Prisoners of war and took him captive and under whose custody and control the Prisoners of war finds himself¹³ It is the same thing as the command or the authority that has taken the Prisoners of war captive and such power controls both the movement and other issues concerning the Prisoners of war namely provisions of his needs like food, shelter, medication and protection of his life

¹¹ R.C. Hingorani 'Who are the prisoners of war? *Australian Year Book of International Law*, 2017.

¹² A. U. Abonyi, *A Handbook on International Humanitarian Law* (Nnewi, Chemag Press Ltd,2021).

¹³ Wikipedia free encyclopediaonline.com. 'who is a detaining power in relation to prisoners of war' (accessed 2/6/2023).

and safety as well as respect for his personal liberty and dignity of his human person.¹⁴ The Prisoners of war is while under the detaining power entitled to all judicial guarantees as case may be especially with respect to any act against him that may violate his human rights and cause abuse on him including torture and any other deprivations while in captivity. International humanitarian law made it a rule that fair and humane treatment must be accorded the Prisoners of war by the detaining power and any deviation is regarded as a breach of IHL Rules.¹⁵ The implication of this is that minimum treatment must be given by the detaining power to the Prisoners of war and any degrading, inhuman treatment and cruel punishment of Prisoners of war by the detaining power is prohibited.

3. Theories relating to Prisoners of War under International Humanitarian Law

There are some theories that are apt in the discussion of the protection and promotion of the rights of prisoners of war. They include the following:

Theory of Law in Action and Order

Law regulates action of individuals as well as governments in a state. Law also enthrones order and creates harmony in a society. Among the classifiable realist philosophers and legal jurists, no society can stand and exist without it as law prescribes the codes and norms and gives the injunctions as to what should be done and others that should not be done.¹⁶ Without law therefore, there will be no ordered society and anarchy and lawlessness will dominate human life and existence. Humanitarian law is known as the law of war and regulates the conduct of war by prescribing rules relating to the method and means of warfare such that none of the parties in war have exclusive right nor is they at liberty to choose the type of method and means to adopt in warfare. Theory of law in action and order is important here in the sense that it expounded the concept of law, its function and role in the society and the fact that law exist to ensure and guarantee order in any setting. In armed hostility, there are rules of engagement which the warring factors or parties must observe and violation is a breach of rules of war and this attracts criminal liability. In the same respect, individual soldiers or combatants participating in armed hostility and under a responsible commander is expected within this theory to act in accordance with the stipulations of the rules not in accordance with the stipulations of the rules, his personal wish and emotions. He must recognize that himself and the combatants in the enemy camp or forces are mere enemies by accident fighting to protect and preserve the sovereignty of their respective states.

Theory of Active Participation in Hostility

One of the cardinal rules of international humanitarian law is that a combatant no longer participating in hostility should be protected from attack. The person is immune from attack and should neither be killed nor tortured by the detaining authority or whoever has collected such a person in cases of injured, sick, wounded and shipwrecked combatants. Under international humanitarian law, the theory or principle of active participation in hostility is one of the bases for protection of combatants and even attack. A person is still in active participation in hostility if he still carries up arms against the enemy and is under the authority and control of a responsible commander and engages in operations and activities targeted at the enemy.

However, there are situations in which a combatant may be recognized under international humanitarian law as no longer participating in active hostility. The situations include:

- a. Where the combatant has been taken captive by the enemy and he becomes a prisoner of war.
- b. Where the combatant voluntarily surrenders his arms and is now under the detaining authority or power, he becomes a prisoner of war.
- c. Where the combatant is injured and is no longer be treated as one in active participation in conflict.
- d. In addition, a combatant who is sick, shipwrecked or is old to the extent that he can no longer bear arms and stand in the battle field cannot be said to be participating in conflict.

The theory of active participation in hostility promotes the idea that combatants in active participation in conflict must observe and obey the rules of their engagement and when they contravene such rules, their action is seen as a breach of the rules of humanitarian law for regulation of armed conflict. It is important to note that a mercenary or spy who infiltrates the enemy territory and is found to be working for the opposing forces is under international humanitarian law actively participating in hostility, the reason as Abonyi viewed is that a mercenary or spy is usually most of the time sent out on a mission to gather information about the enemy which information will be used later against the enemy including information on military tactics, some weaknesses or weak points, such information can be used to the disadvantage of the enemy.¹⁷ Even relief and aid workers who are practically armless and who are only assisting victims of armed conflict can as well be regarded as participating in hostilities if they leave their duty and start engaging 'spying' activities, to that extent, they will also be deemed to be participating in conflict and will be treated as one and as enemy if captured by the stronger or even the weaker power or authority.

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Wikipedia online law research.com (assessed 2/5/2023).

¹⁷A. U. Abonyi 'Protection of prisoners of war and the concept of active participation in hostilities' COOU Lecture Notes, IHL, 2021/2022 Series.

Theory of Human Rights

The theory of human rights is a universal theory that recognizes the rights of all citizens and human beings irrespective of race, origin, colour, sex or age and even the territory or other institutions such a person finds himself. It is a theory that promotes the inalienability of rights of human beings and so even as a combatants who is in captivity, who is injured, the sick, the aged, the wounded and the shipwrecked, they are entitled to their respect and dignity and cannot be deprived of same. The sanctity of life of such individual is important and cannot be taken away, the prisoners of war under a detaining power should not be tortured or subject to inhuman, degrading or cruel punishment, they are entitled to all judicial guarantees and rights enshrined in all international instruments protecting the rights of other citizens of the world including the UN Charter on human rights, the international convention for protection of civil and political rights and so on. This theory therefore advances the respect and dignity of warfare especially those no longer in active participation in armed hostility like the prisoners of war.

Theory of Humanity

One of the basic reasons for the development and birth of humanitarian law is to promote the need to treat all men under the situation of crisis with humanity. It may be crisis arising from generalised violence, armed hostility, displacement and natural or manmade disasters. Generally, humanitarian law ensures that victims of war and other calamities creating humanitarian need are fairly and humanely treated. The theory of humanity is anchored on the principle that those who are suffering as a result of war, natural disasters, generalised violence and human rights violations should not be subjected to further suffering. The prisoners of war are combatants no longer participating in conflict either because they have surrendered or captured or are sick, injured or wounded etc.

4. Origin of Protection of Prisoners Of War Under Humanitarian Law

According to Morrow,¹⁸ during the twentieth century, a system for the treatment of prisoners of war was legalized. This system as the learned author reasoned improved the treatment of Prisoners of war in some cases but in other instances failed to induce states to abandon the abuse and murder of soldiers who had surrendered to them. The purport of the above is that although the protection and promotion of humane treatment to Prisoners of war was legalized, some states refused to abandon or dispense with the practice of either abusing the soldiers that have surrendered or even killing them in the circumstances. Thus the legalization of the treatment of Prisoners of war did not stop the states from abusing, torturing and even subjecting the Prisoners of war to degrading and cruel punishment which in most cases led to their eventual death. Prisoners of war treaties cannot be implanted to protect and promote the Prisoners of war without international institutions to drive the implementation.¹⁹ International institutions vary in different forms. Among these institutions, international law has relatively less institutional structure. The law of armed conflict does not require decisions nor do they judge based on individual cases, instead, the Prisoners of war treaties and other laws of war set standards and prescribe mechanisms for ratifying states to use when they are at war with one another. Enforcing the standards is left to the parties themselves.

From the above, the treaties touching on the treatment of Prisoners of war makes provisions but the enforcement of the provision is left in the hands of the states. If the enforcement is totally left in the hands of the states, there is likely to be problem in the sense that there will be absence of monitoring. For most of human history, in times of armed conflict, fighters falling into the hands of their enemy have been taken captive.²⁰ This is so even in the ancient conflicts among kingdoms and communities. It is noted that even in those olden days, warfare had a system of rules which are sacrosanct and are observed by warring communities. The warlords led community warriors and give the order that every members of the group obey. In the period in review, when such a warrior or warriors are taken captive by the enemy, there is always the rules of war that such a person should not be killed but is treated more of a slave in the custody of the community holding him captive, he becomes a second class citizen and either serve in the palace of the kings as palace servants, guards or may well be used as farm helpers that cultivate in farms of the kings and other wealthy class in such communities. It is also of note that some of those captured soldiers were either killed when captured or even sacrificed to the gods and goddesses of the enemy believed to be the source of their strength. In international armed conflict, fighters who have been taken captive are known as prisoners of war (Prisoners of war). They are always vulnerable to abuse due to their affiliation with the enemy and the fact that their captivity usually occurs against the backdrop of wartime animosity. Fortunately, the status of Prisoners of war has drastically evolved over time and we are far from the era when the expected outcome for captured soldiers was either execution or enslavement.

In the 19th Century, there were efforts to improve the treatments of Prisoners of war. Then in 1929, building on agreement between countries to protect Prisoners of war during the First World War, states adopted a Geneva Convention on Prisoners of war. It was the first multi lateral treaty aimed specifically at protection the Prisoners of

¹⁸ J. D. Marrow 'Institutional features of prisoners of war treaties' int.org review, vol 55N4 2001.

¹⁹ Ibid

²⁰ Wikipedia online prisoners of war.research.com (assessed 6/6/2022).

war and was the precursor to the 1949 Third Geneva Convention on Prisoners of war (GVIII).²¹ During the Second World War, the 1929 Convention had proven effective to protect captured combatants in the hands of states that were parties to it, so in 1949, the New GCIII aimed to strength that protection and make it universal. The third Geneva Convention constituted a landmark in the history of Prisoners of war laying a solid legal framework for their protection. It is very interesting to note that as at today, every country in the world is a party to the Third Geneva Convention which also confers a special mandate on the international committee of the Red Cross (ICRC) entrusting it with a central role in the protection of the dignity and well being of the Prisoners of war.²²

In summary therefore, it can be said that from the beginning of times, armed conflict even at the stage of traditional community clashes among communities, there has always been the rules of war though in its primitive form but they were observed though not absolutely as there were minor breaches here and there. As the society grew from one stage of development to the other and as technology and social relationship increased among states, there became the need for the world to come up with rules that will reduce human suffering through restriction of method and means of warfare.

5. Protection of Prisoners Of War under Humanitarian Law

Prisoners of war are not protected in vacuum, rather there must be laws driving the promoting of rights of Prisoners of war and the laws also creates the institutions in place to ensure the protection. The following highlights are the laws and institutions promoting the welfare and protection of prisoners of war.

Geneva Convention of 1949

The Geneva Convention of 1949 that came into or entered into force in 1950 is the Third Geneva Convention and made with reference to treatment of prisoners of war.²³ By Article 2 of the convention, the convention the convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more High contracting parties even if the state of war is not recognized by one of them. Being applicable in any war or armed conflict between one state and another or more than one states, it signifies that it occurs in international armed conflict. If there is occupation of territory and no resistance is made, the convention also applies. However, by Article 3 of the Convention, where the conflict is non-international but occurs in the territory of a party to be convention, each party to the conflict shall be bound to apply as a minimum the following provisions:

Those no longer taking part in hostility including members of armed forces who have laid down their arms or are taken captive or those that are sick, wounded or under detention or other causes, shall in all circumstances be treated humanely without any advance distinction founded on race, colour religion or faith, sex, birth or wealth or any other similar criteria.

From the above, the convention is completely against treatment of any victim of warfare on the basis of sex, colour, race and other considerations. A further and closer look of the provisions of Article 3 of the convention shows that the following acts are prohibited:

- a. Violence to life and person in particular numbers of all kinds, mutilation, cruel treatment and torture.
- b. Taking of hostages.
- c. Outrages upon personal dignity particularly humiliation and degrading treatment.
- d. Passing of sentences and carrying of executions without previous judgments pronounced by a regular constituted court.

It is also observed that by subsection 2 of the Article, the wounded and the sick must be collected and cared for and an impartial body like the ICRC may offer its services to the parties to the conflict. Interestingly and as it concerns prisoners of war, the convention under its Article 4 defined Prisoners of war as persons belonging to one of the following categories who have fallen into the power of the enemy. The Geneva Convention III protecting the Prisoners of war required them to give information relating to their names, ranks, serial numbers to their captors and the member states to the convention are disallowed from using torture to extract the above information from the prisoners of war. The convention like the other Geneva Conventions apply in cases of declared war between signatory nations and this has always been the original sense of applicability. The convention also applies where many signatory states are in armed conflict even without declaration of ar. This language was added in 1949 to accommodate situations of armed conflict where there is no formal declaration of war. The general convention provide for universal jurisdiction as opposed to other treaties with limited or territorial jurisdiction. This is because some crimes are exceptionally grave and capable if not checked to cause threat to international community. The Third Geneva

²¹ Ibid

²² Article 13 of GCIII (this is an essential article of the convention in review which comprehensively laid elaborate provision for the protection of Pows).

²³ *University of Minesota Human Rights Library Review*, University of Minnesota rights library.com.org (accessed 26/6/2023).

Convention in the authoritative statement concerning the prisoners of war.²⁴ An outstanding innovation of the convention in addition to its application to all other armed conflict is that it makes reference to internal wars.²⁵ The convention defined prisoners in a way calculated to include every person likely to be captured in hostilities.

Hague Convention 1929

The Hague Convention preceded the law of Geneva and made salient provisions and rules over armed conflict. It also recognized the Prisoners of war as vital elements in war and expressed the need for the protection of these elements emphasizing the fact that humane treatment is necessary for all men of the world and those who participated in war but here either surrendered or were capture should not be killed but protected and their life saved.

United Nations Charter

The United Nations Charter is a charter of the World body which declared and recognized the human rights of all human beings as inalienable and indivisible too and no human being should be denied or deprived of his human rights. By extension, the prisoners of war are individuals and soldiers who have not committed a crime but rather were captured in war defending the sovereignty of his state in war or surrenders to the enemy either due to injury or other reasons. The Prisoners of war are men of honour and committed no crime like ordinary prisoners hence the provisions of the UN Charter applies to them fully and completely like every other citizen of the world.

International Convention for Protection of Civil and Political Rights

In the same respect and manner the UN Charter protects the human rights of all citizens of the world, the ICCPR also recognize the fact that the civil and political rights of citizens are fundamental and should be protected namely right to life, personal liberty, freedom of expression etc. These are extended to the Prisoners of war.

International Convention for the Protection of Economic, Social and Cultural Rights

There are rights that are recognized as economic, social and cultural rights. There is no discrimination in the enjoyment and protection of those rights. Thus, the Prisoners of war even through under the detaining powers are entitled to these rights namely right to food, housing medication and other things that make life worth living including conducive environment like the detention camp.

Convention Against Torture

This convention prohibits torture generally for all persons. The Prisoners of war under the detaining power should not be torture or subjected to any task so dangerous to endanger their life.

European Convention on Human Rights

This is a regional human rights treating among the European states it provides for the protection of the human rights of citizens of member states. The Prisoners of war in these states are protected like any other citizen.

Inter-American Convention On Human Rights

This is the convention by American Organization of states. It is made by them for promotion of the rights of all citizens and people within those states, the Prisoners of war in such states cannot be exempted from such protection.

African Charter on Human and People's Rights

This is another regional human right bill made by the African states under the auspices of organization of African Unity now African union. It promotes the protection of both the civil and political rights of citizens as well as the third generation rights. All the citizens of member's states to the charter are protection by implication the Prisoners of war in such countries in times of war and hostilities are protected.

Rome Statute Establishing International Criminal Court

This statute created the ICC and made provisions that ensure accountability for crimes of international concern. When the prisoners of war are detained, it will amount to serious crime of international concern if they are killed or murdered 'mass murder' by detaining power without allowing them to exploit all available judicial guarantees.

Additional Protocol to the Third Geneva Convention 1977

The additional protocol 1 made provisions protecting the Prisoners of war and the provisions of the protocol enhanced and facilitated their protection.

Additional Protocol to the Geneva Convention 2005

This Convention made provision for the adoption of the third emblem called the Red Crystal which took care of the belief that the Red Crescent and the Red Cross maybe interpreted to have religious connotation that is the Red cross for Christianity and Red Crescent for Islam. The Red Crystal does not represent any religion.

²⁴ Article 5 (2) GCII

²⁵ *International Law Cases and Materials*, Lori Dam Rosh, Richard Cranford et al.

6. Specific Issues over Prisoners of War under Humanitarian Law

Humanitarian Law is a broad aspect of International Law. It is regarded as law of war and prescribes rules for regulation of means and methods of warfare. One of these rules is that parties to armed conflict shall not use means and method to cause grave hardship to the civilian population or mass suffering. It is also a cardinal rule of IHL that those who are no longer participating in hostility either because they fell into the hands of the enemy or they surrendered and were collected by the enemy should be accorded and recognized as Prisoners of war and accordingly be protected as so and treated humanely as a person and should not be killed.²⁶

Treatment of Prisoners of War

Provisions on the treatment of prisoners of war are contained in the Hague Regulative of 1899 and 1907.²⁷ During the World War I, the provisions revealed some deficiencies and were overcome by special agreements between the warring parties. However, ICRC motivated a conference in Geneva in 1929 and the Hague Regulations and its provisions were replaced with important innovations including prohibition of reprisals and collective penalties, organization of prisoners world and the control exercised by detaining powers.²⁸ Article 2, 3 and 4 of Hague Convention makes highlights on right of honour and respect for the Prisoners of war and the fact that women among them shall be treated with all the regard due to their sex and that of a prisoner of a similar category that must be treated the same way.

Article 7 and 8 provides that prisoners of war must be evacuated from the combat zone within the shortest possible period and that belligerents are mutually bound to notify each other of their capture of prisoners within the shortest period. Article 9 and 10 covers the type of Camps in which Prisoners of war can be detained. They must be constructed in such a way so that the conditions are similar to those used by belligerents own soldiers in base camps. The camps must be in healthy locations and away from the combatant zone. It is also imperative to note that issues concerning the food, medicals, religious needs, intellectual and sports facilities, respect discipline transfer from one location to the other and rate of their pay are all covered in sections 12,13,14,15,16,17,18,19,20-23 and thereafter 24-26 while Articles 27-34, 42-67 coners issue about their labour and relations to authorities while 68-74 is about termination of captivity on grounds of sickness or ill health and their repatriation. Other vital area is Article 76 covering issue of Prisoners of war that may die in captivity, they must be given honourable burial and their graves marked and maintained properly. It is worthy of note that the Geneva Convention of 1949 replicated and modified the provisions of the convention of 1929.

Challenges to Protection of Prisoners of War

There are often challenges in the realization of the protection of Prisoners of war under Humanitarian Law and their protection generally. Some of these challenges include:

1. Challenge over determining who should be protected as a Prisoners of war. This is often a big and serious problem. This is because it is not only those that were captured or that surrendered that can be granted the status. Sometimes the conditions to be fulfilled to accorded the status may not be fulfilled.
2. Problem of identifying them/registration:
There is often lack of identification, some are not well documented and as a result, they may not be captured for protection.
3. Problem of overcrowding and improper camps. The camps may not be conducive.
4. Lack of basic needs and facilities to Prisoners of war like food, housing, medicals etc.
5. High handiness and torture by the detaining power: sometimes prisoners of war die under the detaining power owing to torture and other in human treatment.
6. Grave violations/breaches of IHL rules relating to the treatment of Prisoners of war by detaining powers leading to gross violations of rights of Prisoners of war.

Judicial Guarantees and Remedies for Prisoners of War

The prisoners of war should enjoy the judicial guarantees enjoyed by other citizens outside the war situations. The rights other citizens enjoy should be extended to them also. Thus, they should be availed of all judicial guarantees and seek redress for their illegal and unjustified detention by detaining power, or abuse of the rights during detention, their torture or inhuman, degrading treatment or cruel punishment. All remedies like judicial review, mandamus and injunctions or prohibitions should be extended to them within the international and domestic criminal jurisprudence.

7. Conclusion and Recommendations

In this paper, the following findings were made. It was found out that prisoners of war are vulnerable and deserve protection. It was also found out that humanitarian law made elaborate provisions under relevant instruments for the protection of prisoners of war. The study also found out that there are a lot of challenges to the protection and promotion of rights of Prisoners of war. The study also exposed the ICC as a toothless bull dog that barks without

²⁶ Article 4 of GCIII

²⁷ Wikipedia Free encyclopedia online, prisoners of war.com (accessed 2/7/2022).

²⁸ Note (No. 105)

biting as the arrest warrant against Putin till date is yet to be executed. This confirms the claims by developing countries that ICC is created by the west against the developing countries. Finally, it was also found out that IHL has the potentials of addressing the protection of Prisoners of war. Prisoners of war are vulnerable group in armed conflict situation, they deserve protection but their effective protection is challenged by many variables. The following recommendations are made. UN must stand up and take the issues of Prisoners of war serious especially in the face of Russia/Ukraine war. This is serious threat to international peace and Dialogue must be used than military option: Unless the above step is taken, the situation in Ukraine will not stop, the impending trouble and war in Niger Republic is also a threat. The challenges to effective protections of rights of Prisoners of war must be addressed, steps must be taken to identify them, register them, reunite them with their families, give them their due respect and bury them properly if they die and repatriate them if they are sick and old. Grave breaches of IHL should be accounted for and there should be no sacred 'Prisoners of war' like it is the case of big five countries or super powers. Advocacy and sensitization on rights of Prisoners of war are needed to remove stigma of seeing them in the same category of common criminals convicted for offences they committed.