A REVIEW OF THE ATTITUDES OF THE UNITED NATIONS AND BELLIGERENT STATES TOWARDS INTERNATIONAL HUMANITARIAN LAW PROVISIONS DURING ARMED CONFLICTS**

Abstract

It has been argued among men of letters that war is inevitable in human society, that war is so much weaved into the fabric of our being, that it always was and always will continue to be. Humans, sadly, have been at peace for only 8 percent of the past 3,400 years of recorded history. According to a Spanish – born American philosopher, George Santayana, it is only death that can set us free from wars; and the Gospel of Matthew in the Bible warns of "wars and rumours of wars", concluding glumly that "such things are bound to happen." Wars or armed conflicts are actually random disasters of which the definite time and place they will occur, we do not know but which the recurrence we must expect just as we expect other natural disasters. They are facts and issues of life which we must expect, accept if we must, and device a means of regulating them as much as we can. Under International Humanitarian Law (the bedrock which is the 4 Geneva Conventions and the Additional Protocol), there are sets of rules that regulate and restrict the means and method of warfare and of course the protection of those who are not and/or are no longer participating in hostilities. Belligerents' states and all parties fighting in a conflict are obliged to respect international Humanitarian Law, be they governmental forces or non-state actors. Article 33 and 13 of the United Nations' Charter specifically call on the organization to help in the settlement of international disputes by peaceful means, including arbitration and judicial settlement, and to encourage the progressive development of international law and its codification. This Article evaluated the attitudes of the United Nations and the belligerent states towards the provisions of International Humanitarian Law (IHL) during armed conflicts. The researchers employed doctrinal research methodology while data were garnered from both primary and secondary sources. Findings revealed that while the attitudes of belligerent States to the rules of armed conflict are majorly influenced by the circumstances of the State's foreign policy that of the United Nations is politics and their interest in the area. It is worthy of note that the United Nations, as an inter-governmental institution, is not a party to the Geneva Conventions (Laws of armed conflict), but the State parties to the organization are, and therefore should adhere to the rules. History shows that in times of armed conflict, the laws of war are frequently violated. The research ended with recommendations which if religiously followed would help in regulating and moderating armed conflict and its ugly outcome as there appears to be no end to war.

Keywords: International Humanitarian Law, United Nations, Belligerent States.

1. Introduction

Volumes have been written by scholars and social scientists to describe armed conflict and/or war. The term "War", put simply, refers to a state of armed conflict between societies or people. It is generally characterized by extreme aggression, destruction, and mortality (using regular or irregular military forces). To a Prussian military philosopher, Carl von Clausewitz[1], "war is thus an act of force to compel our enemy to do our will…." It is the act of unleashing violence against people and our generous but

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[1]IC Von-Clausewitz, On War, ed. & Trans. By M Howard,and PParet, (Princeton, New Jersey: Princeton University Press, 1976).

vulnerable earth. In International Humanitarian Law, there exist sets of rules that govern armed conflicts or warfare. These rules, among other things, seek to regulate and restrict the means and methods of warfare in both international and non-international armed conflicts. However, the strong and perhaps daunting question is: since war is the act of unleashing violence against people and our generous but vulnerable earth, can rules be made for such a thing? Again, can one enact rules for mayhem and slaughter? Is it, therefore, not like trying to make rules to regulate heartbeat? Are not wars, like the heartbeat, impatient of regulation? History shows that in the heat of military necessity, the idea of "rules of war" tend to melt down like wax before fire!

Armed conflict is a negative occurrence. It is a negative occurrence in the sense that it entails violence, and the surrounding situation which represents or embodies war is such that one party is required to overpower the other in order to emerge victorious or win, while the defeated party remains in the state of vanquished. It is more like the game of soccer where the two teams involved contend with each other to score goal(s) so as to emerge a winner. In warfare or armed conflict, no one wants to be defeated or to be a failure. This is because of the obvious fact that the winner takes all there is at stake, leaving nothing for the defeated party. This, perhaps, accounts for the reason why warfare appears uncontrollable and seemingly limitless. Nevertheless, without regulation or moderation, the conduct of war would be such a horrendous and callous engagement, and the scars it would occasion would be rather indelible from the minds of the belligerents. War changes rather constantly. It has changed from charging knights in bright armour to long bowmen with their arrows, from uniformed soldiers in armoured vehicles and planes, to guerilla warfare! The changes in warfare, point irresistibly to the fact that the mode of war is rather an artificial creation of humans.

Armed conflict can be inter-state or intra state. It can be fought for political reasons and sometimes, for other reasons such as freedom or domination. The Nigerian civil war, otherwise called the Nigeria/Biafra war of 6th July 1967 – 15th January 1970[2], for instance, was a political conflict largely caused by the attempted secession of the South-Eastern Region of Nigeria when it declared itself the Republic of Biafra. Under International Humanitarian Law, the Nigeria Biafra war fell within the description of Non-International Armed Conflict, and the prosecution of war under such category merited absolute and total adherence to agreements.[3] A breach of the provisions of the Geneva Conventions and other war laws are punishable under international law. The United Nations as well as the belligerent States is not only expected to ensure that the war tactics and weapons employed in the hostilities are the ones permitted, but also follow and observe the principles on which armed conflicts are based.

History shows that in times of war, the United Nations as well as the belligerent States always violates the basic principles of International Humanitarian Law such as principle of humanity, principle of necessity, principle of proportionality and principle of distinction. In addition to the frequent violation of the principles of warfare is the fact that there are intrinsic flaws in the law of armed conflict. The law, for instance, does not prohibit the use of violence but only limits the extent of use of violence in armed conflict. It is unable, also, to prevent the defeat of one side by another during warfare (assuming that belligerents have any rationale for going to war in the first place which often they purport or claim to have). This Article, among other things, raised issues of conformity and/or adherence to these basic principles of war, the management of humanitarian crisis in times of war, etc.

[2] K. Ogba, General Ojukwu, The Legend of Biafra (Tri Atlantic Books Ltd, 2007).
[3] Such as the Hague Conventions, the Four Geneva Conventions and their Additional Protocols, treaties etc.

2. Conceptual Clarification

A. International Humanitarian Law

International Humanitarian Law (IHL), also referred to as the laws of armed conflict, is the law that regulates the conduct of war (*jus in bello*).[4] International Humanitarian Law is a branch of International Law that seeks to limit the effects of armed conflict by protecting persons who are not participating in hostilities and by restricting and regulating the means and methods of warfare available to combatants. It is actually inspired by considerations of human suffering. Fundamental to International Humanitarian Law are the following two:

1. The protection of persons who are not, or are no longer participating in hostilities; and
2. The right of parties to an armed conflict to choose methods and means of warfare is not unlimited.

International Humanitarian Law comprises a set of rules which are established by treaties or custom, and that seek to protect persons and property/objects that are or maybe affected by armed conflict, and they limit the rights of parties to a conflict to use methods and means of warfare of their choice.[5] The IHL is designed to balance the humanitarian concerns and military necessity, and subjects warfare to the rule of law by limiting its destructive effect and alleviating human suffering.[6] It defines the conduct and responsibilities of belligerent nations, neutral nations, and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning non-combatants. Whereas IHL (*jus in bello*) concerns the rules and principles governing the conduct of warfare once armed conflict has begun, *jus ad bellum* pertains to the justification for resorting to war and this includes the crimes of aggression. Serious violation and/or breach of IHL are referred to as war crimes.

At various periods and times in history, rules have been laid down to regulate the conduct of war. The modern laws of war trace their origins to the chivalric practices of medieval Europe. In those days, Feudal Knights were bound by the law of chivalry-a customary Code of Conduct that could be enforced in local courts throughout Western Europe by a military commander of any nation. Premised on notions of justice and fairness, the law of chivalry gave birth to the distinction between a soldier and a civilian and the idea that women, children, and older persons should be shielded from the bloody fields of combat. The Roman Catholic Church also influenced the development of these rules, differentiating between just and unjust wars, and denouncing certain weapons as odious to God.[7] Islam, more so, tackled the aspect of humanitarian needs, stipulating amongst other things that women, children and old people should not be killed, and that there should not be destruction of houses, fields, or livestock in period of warfare. In the 12th century, Sultan Saladin ordered equal treatment of the wounded on both sides and allowed hospital services to be provided.[8] The codification of the rules of war, however, began in the 19th century. In the year, 1862, the then president of the United States of America, President Abraham Lincoln, commissioned Mr. Francis Lieber to draft a code of regulations summarizing the laws of war. A year later Mr. Lieber handed over a draft of the regulations.[9]This was later christened the: "Lieber Code", and it remained the official pronouncement of the United States of America Army

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[4]GS Corn, *The Law of Armed Conflict: An Operational Approach*. (New York: Wolters Kluwer Law and Business, 2012).
[5]GS Corn, *The Law of Armed Conflict: An Operational Approach*. (New York: Wolters Kluwer Law and Business, 2012).
[6]"Topic Guide Archive". GSDRC. Retrieve 15/7/2024.
[7]Legal-dictionarythefreedictionary.com/rulesofwar. Retrieved 17/3/2017.
[8](http:www.icrc.orge///eng/resources/documents/feature/Islamic-law-iht-feature-010606.htm) Retrieved 17/3/2017.
[9]The executive branch of the government of the United States promulgated it General Orders (GO) No. 1 entitled "Instructions for the Government of Armies of the United States in the Field".

for more than half a century. The code systematically articulated the rules of war, and carefully addressed issues such as rights of prisons, concepts of military necessity, use of poisons, spies, unnecessary violence, cruelty and non-combatants.

The modern codification of laws of war or International Humanitarian Law started when the initial Geneva Convention was adopted in the year 1864. The rules that were adopted in the Convention derived to a large extent from customary rules and practices. They were adopted on the grounds that in certain circumstances, human beings (friends or foes), deserve some protection; and on a common understanding that there is need for regulations of some kind in human conduct even in times of war. International Humanitarian Law classified armed conflicts as International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC). Qualifying or classifying an armed conflict is germane to determining which set of rules apply to the armed conflict.

B. The United Nations

The United Nations has been defined or described as a diplomatic and political[10] "international organization whose major goals are to maintain international peace and security, develop friendly relations among nations, achieve international cooperation, and serve as a centre for harmonizing the actions of nations.[11] The United Nations is the world's largest international organization.[12] Its headquarters is in New York City, United States of America, and has other offices in Geneva (Swiserland), Nairobi (Kenya), Vienna, and the Hague (Netherland) where the International Court of Justice is located at the Palace of Peace.

The United Nations was established after World War II with the aim of preventing future world wars, and succeeded the League of Nations, which was grossly ineffective.[13] Fifty (50) nations of the world on 25th of April, 1945 met in San Francisco, California for a conference and started drafting the United Nations Charter. The Charter was later adopted on 25th of June, 1945 and that was the beginning and/or birth of the United Nations. The Charter took effect on 24th October 1945, when the United Nations began operations. The Charter of the United Nations begins thus:

> We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to humankind… [are determined] to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security….

More so, Articles 33 and 13 of the United Nations' Charter call on the organization to help in the settlement of international disputes by peaceful means, including arbitration and judicial settlement, and to encourage the progressive development of international law and its codification.

C. Belligerent States

The term "Belligerent', came from the Latin *bellum gerere"*[14] which means to wage war." It thus refers to a person, group, nation, or other entity that engage in war or combat. Belligerency, on the other hand, is the condition of being in fact engaged in war. Belligerent States are those engaged in an international

[10]"United Nations" History. 21st August, 2018. Retrieved June, 6th, 2024.
[11]"Chapter 1: Purposes and Principles" United Nationals Charter. United Nations. Retrieved 6th June, 2024.
[12]"International Organization" National Geographic Society, 23nd December, 2012. Retrieved 6th June, 2024.
[13]"The League is Dead. Long Live the United Nations" National NW2 Museum New Orleans 19th April, 2021. Retrieved 6th June, 2024.
[14]Present participle *bellum gerent-(*no minative singular *bellum gerens).*

armed conflict.[15] A nation is deemed a belligerent even when resorting to war in order to withstand or punish an aggressor. Since 1949, belligerent status attached as a result of a declaration of war, unopposed occupation, or hostilities between States.[16]

In times of armed conflict, belligerent States can be contrasted with neutral countries and non-belligerents. Nevertheless, the application of the laws of war to neutral countries and the responsibilities of belligerents are not affected by any distinction between neutral countries, neutral powers or non-belligerents.[17] A State of belligerency may exist between one or more sovereign states on one side, and rebel forces, if such rebel forces are recognized as belligerents. Belligerent States and in deed all parties fighting in an armed conflict are obliged to respect International Humanitarian Law, be they governmental forces or non-state armed groups.

3. Attitudes of the United Nations to International Humanitarian Law Provisions

The statement below, credited to the United Nation's Office of Legal Affairs (OLA), speaks volume of the UN stance and/or attitude when it comes to the issue of Humanitarian Law thus:

> UN forces were bound only by the Security Council mandate and were not legally obliged to uphold the conventions. "From a strictly legal point of view, obligations (such as the Geneva Conventions) are binding on states. The role of the UN is to carry out the will of the international community as expressed by it in the Security Council.[18]

Exactly in November 1994 as hundreds of Bosnia and Kraji nor Serb troops marched towards the United Nations "safe area" of Bilhac a municipal hospital with nine hundred (immobile) in-patients (including the neighbourhoods) was in danger of an impending military offensive but the United Nations forces commander (a Canadian) was reluctant to intervene. The United Nations forces' civil affairs representative insisted that hospitals qualified as having a sacred status under the 1949 Geneva Convention and therefore, the United Nations Protection Force (UNPROFOR) had a duty to offer protection to the hospital from attack. Following a memo made to his superior in Sarajevo in that respect, the UN Commander instructed Bangladeshi troops to spare the hospital and indeed the Bihac city. But fearing that such rescue of Bihac would not be construed to constitute a precedent, he made the above statement two weeks later. UN posits that state troops to peacekeeping operations pay allegiance and answerable solely to the Security Council. It is apposite to note that the United Nations, as an inter-governmental institution, is not a party to the Geneva Conventions but state parties to the United Nations are.

The United Nations attitude to International Humanitarian Law provisions for instance was evident in the Nigeria/Biafra war. There was complete or a near inactivity of the institution and that was largely caused by the then Secretary General of the UN (Mr. U Thant) who with due respect was somewhat docile, passive and better described as a non-interventionist[19]. He was a clear opposite of Dag Hammarskjold (a former UN Secretary General whom some writers described as a "conflict resolution expert and a humanist"). The shortcomings of Mr. U. Thant were believed to have contributed to the United Nations non-intervention during the war which accounted to the high human toll rate, mainly Biafra overwhelmingly civilians. Report had it that in October, 1969 when Ojukwu desperately reached

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[15]https://lieber.westpoint.edu>strict-versus-qualified-neutrality-lieber-institute. Accessed 15/7/2024.

[16]Geneva Conventions, common art 2.

[17]E Goldstein, and B J C Mckercher, Power and Stability (British Foreign Policy, 1865-1965, Routledge, 2003) p.63.

[18]UN's Office of Legal Affairs (OLA) representative, Stephen Kate said in November, 1994.

[19]C Achebe, *There was a Country. A personal Story of Biafra* (Penguin Book, 2012).

for the United Nations to broker a cease fire as a prelude to negotiation for peace, Mr. U. Thant, instead turned to Nigeria for an answer to Ojukwu's plea. The expected answer from Nigeria of course came naturally as Gowon insisted that it was either an "outright surrender or nothing." As a matter of fact, the stance of the United Nations was evidence at the start of the war.[20] Nigeria was, as it were, more emboldened. After that answer from Gowon, Nigerian Army intensified human right and International Humanitarian Law violations, including openly attacking civilians in a cruel and desperate bid to incite internal strife about the war to possibly achieve a quick surrender.[21] It was the news that in February 1969, nearly eight hundred civilians were annihilated by Nigerian Air Force targeted strikes on open markets near Owerri, Umuohiagu and Ozu-abam. In Harvard Crimson, Jeffery D Blum's article "Who Cares about Biafra Anyway"[22], he Stated expressed that Nigerian Air Force pilots were notorious for disrespect for Geneva Convention resolutions.

Describing events that happened in what should have ordinarily qualified as civilian safe havens in Biafra under International Humanitarian Law, such as hospitals, refuge food distribution camps and centres of religious worship, based on account of what Professor Jean Meyer witnessed, he testified thus:

> Distribution centres and refugee camps are bombed and strafed of any large number of people is visible in the daylight. Red Cross insignias are single out for special attention by Nigerian bombers". Meyer saw one European engaged in working on the Biafran side of the war carrying 117 dying children in his truck to a hospital in a single night".[23]

Often times, the duty of drumming the beats of the Geneva Conventions and the Additional Protocols falls on the shoulders of the International Committee of the Red Cross (ICRC). Every now and then, possibly on the eve of deployments, the Security Council would issue statement(s) reminding States Contingents of the applicability of the pertinent and related Geneva rules on war, and the corresponding responsibility to discipline violations. This practice however, is neither here nor there as in actual practice, these "riot act" were either ignored, neglected or forgotten. As a matter of fact, there exist situations where the officers responsible for this all "important reminder" negligently omitted it.[24]The reason for this "no-love-lost" in the United Nation/Geneva Convention is not farfetched. After all, the progenitor of the United Nation-the League of Nations having outlawed wars, seemed to have no reasons to regulate the conduct of wars.[25] Again, the United Nations Charter states that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such

[20]A work co-authored by Edward Newman, Ramesh Thakur and John Triman suggested that the UN's response to humanitarian disaster prior to 1970 was "underdeveloped" at best. The UN system was not utilized to manage a systemic and multilateral response to a broad range of humanitarian disaster… In the well publicized Nigerian/Biafra conflict, (1967 – 1970), the major relief players were the ICRC… No UN organ or agency was a major player in that drama. After the Biafra tragedy, the UN GA created the UN Disaster Relief Office which was to grow to become UN Dept of Humanitarian Affairs later.

[21]A Friendly Jr. Nigerians Are Preparing For Another "Final" Offensive: War With Biafra. New York Times.

[22]C Achebe, the Was a Country. A personal story of Biafra. (Penguin Books 2012).

[23]JB Blum, "Who Cares About Biafra Anyway?" (Harvard Crimson, February 25, 1969).

[24]While the Security Council endorsed the use of force against Iraq in Kuwait operations, the resolution failed to remind the coalition of their duties as combatants under the Geneva Conventions or International Humanitarian Law. Same in the operations in Bosnia-Herzegovina, the peacekeeping campaign in Cambodia in the early 1990s, again the Security Council issued no declaration on the importance of humanitarian law to the UN peacekeeping deployment.

[25]UN International Law Commission explained. "War having been outlawed, the regulation of its conducts has ceased to be relevant". This resulted in the epoch role of the ICRC in its drafting in Geneva.

matters for settlement under the present charter.[26]How dead wrong it was as the events later proved. Again, the founding fathers of the United Nations in drafting the treaty, regarded it as a "body that would establish world peace." Technically, this possibly informed the United Nation choosing to opt out in the codification of the laws of war in 1949 resting the burden of doing so on the shoulders of the ICRC who indeed, consciously took up the arduous responsibility.

The then crisis in Syria again represent another typical situation where the United Nations has demonstrated a docile posture over matters it would have intervened to check the deteriorating humanitarian situation and abuse of rules of armed conflict, yet it didn't deem it fit to so intervene somewhat militarily; same for what happened in Northern Mali as well as the horrific arbitraries in Rwanda which claimed tens of thousands of Hutu people.

In the Syrian case, the Arab League States presented the Syrian issue to the United Nations Security Council (UNSC) twice through the League of Arab States (LAS), and again to the United Nations General Assembly (UNGA), through the proposed "Friends of Syria" conference in Tunisia, and finally a proposal on a resolution pertaining to Syria at the United Nations Human Rights Council yet nothing meaningful was achieved. In all these aforementioned cases, China and Russia vetoed the UN Security Council draft resolutions twice and cast a negative vote at the UN General Assembly probably for their own political reasons. The horrendous use of chemical weapons on 21st August, 2013 on his people by the Assad regime in Syria did not even triggered enough case against Syria government worthy of intervention by the UN as an organ. This was in blatant defiance of the warning by the US president sometimes the previous year that any attempt by the Assad regime to resort to chemical weapons to win the Syria political impasse would amount to crossing the "Red Line." Since after the so called "Crossing of the red line" threat, the United States has been in the fore front in the fight for bringing Assad government to account for the death of over 1,500 Syrians, about 455 of them, innocent children.

The Syrian case, no doubt, was a full blown internal armed conflict, sometimes posturing even as an international armed conflict with the likes of the Taliban, Al Nusra, Hezbollah and many other cross border/transnational militant Islamic extremist, known to have joined in the fight on either sides. The 20-member UN chemical weapon attacks were earlier refused access to the sites. The inspectors were later attacked in the course of their duty with snipers, while the Syria regime continued intense bombardment of the locations ostensibly aimed at obscuring evidence to make credible the UN team analysis of the samples collected from sites. US Secretary of States, John Kerry addressed a press conference on 27th August, 2013 in which he warned that a confirmation of the use of chemical weapon in Syria (Ghouta) carried serious consequence.[27]

The laissez-faire attitude of the UN is sometimes encouraged or complimented by counterparts (combatants) in the field and on the ground. More often, the commanders would decide and choose what they did, based on their reading of the directive. For example, in Bosnia (1992), the UN forces visited Sonja's Kon-Tiki, near Sarajevo, which according to the Bosnian government housed a Serb-run concentration camp. The UN forces neither asked questions, nor investigated, or protested what they saw, claiming that neither the UN command nor their governments ordered otherwise.[28] This action

[26]Article 7 in Chapter 11 of the United Nations Charter.

[27]Qu Xing "The UN Charter, the Responsibility to protect and the Syria Issue". China Institute of International Studies. www.ciss.org.cn visited 20/05/2024.

[28]When Canadian soldiers killed a Somali which they termed an intruder in cold blood in March 1993, the Canadian commander never bathed an eyelide, instead, it helped to cover it up. The best that was gotten out of that crime was that upon intense outcry and setting up of a public enquiry, the Airborne Regiment involved was

irked many International Humanitarian Law Jurists as well as human right activists or campaigners. It attracted condemnation from far and wide and Kofi Annan, who served as UN Secretary – General from 1997 to 2006; reacted rather solemnly this way: 'They should have seen it and reported. And in fact if they had reported, it is the sort of thing that would have gone public much earlier than it did.'

The UN legal office had this to say on the matter: '"We have asked them to respect the Geneva Conventions whether we signed it or not". But he also had somewhat, kind words for them. "Soldiers like to have a clear mandate", he said. "They will not go out of their way" to look for war crimes.' Discussions between ICRC and UN experts on this subject matter prompted Mr. Annan to issue a bulletin in August, 1999 on the observance by UN forces of International Humanitarian Law stating:"… that the rules and principles of IHL as contained in the Geneva Convention are binding on military personnel."

Annan's statement, which was at best declaratory, specified that breach(es) are subject to national court's jurisdiction as against the principle of universal jurisdiction. ICRC declared in dismay thus: "we fought and lost that battle." The UN attitude towards the provision of IHL can also be seen in the present crisis between Israel and Palestine. It has always been about politics and interest!

4. Attitudes of Belligerent States to International Humanitarian Law Provisions in Times of Armed Conflict

A discussion on the attitude of belligerents to the IHL provisions in period of armed conflict cannot be done without first looking at the Marten's Clause. The Martens Clause[29] which is a clause in the 1899 Hague Peace Conference named after the then Russian delegate to the convention has continued to remain germane as far as International Humanitarian Law is concerned. Though the clause is a subject of dispute with regard to its meaning and application, it is used in dealing with issues not directly addressed in the existing treaties covering the field. The Martens Clause envisages a situation where a particular belligerent nation decides to hide under the cover of any circumstances to play against the rules in any case of armed conflict so as to pull a surprise against another. The wordings of the clause were applied to all manner of violations of the rule of wars under scrutiny irrespective of the cause, reasons, objectives and principles that may have informed or actuated a States recourse to war against another (international) or within itself (non-international).

Attitudes of States to International Humanitarian Law in times of armed conflict are majorly influenced by the circumstances of the States foreign policy (as in the case of United States War on Terror) or, as in the case of Kosovo/NATO or even the case of Nigeria/Biafra war. Nigerian Forces with a rather phantom phobia of Eastern Region domination of the political landscape of Nigerian nation (obviously because of Easterner's early embrace of education and commerce), saw Biafra as a secessionist movement, which must be crushed hence the gross violation of the rules of war with flagrant attacks on civilians, civil objects, market square, and use of hunger as a weapon of war by the Nigerian government.

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later disbanded. What followed later that year was an abuse by UN forces who detained hundreds of Samalis, and denied the ICRC access to them, a situation that persisted until ICRC suspended all operations in protest.

[29]The Marten Clause states that: "Until a more complete code of the laws of war is issued, the High Contracting parties think it right to declare that in cases not included in the regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience" – R Ticehurst, The Martens Clause and the Laws of Armed Conflict. International Review of the Red Cross No. 317. April 30, 1997.

The Gulf War could not have been more distinct for this Article. It provides one of the finest analysis of the stance or attitudes of belligerents in periods of warfare. The United States' led coalition to justify the military intervention in the Gulf first, locally (within America and among Americans) and foremost in the eyes of the international community, was as far as was possible, precisely guiding her attacks against military objects only.[30] The reason was not far-fetched: it was to maintain a delicate balance necessary to keep the allies together, still elicit international acclamation and justification for the military operation and continue to maintain a favourable opinion rating of why America should go into the war and indeed lead the coalition. Frank Smyth noted that The United States led coalition commander, Gen. Norman Schwarzkopf, regularly consulted with law of war experts, including members of the International Committee of the Red Cross (ICRC), to make certain that military operations would not be seen later as violation even with obvious advantages of superior firepower.[31] On the other hand, Iraqi President (Saddam Hussein), declined to meet with ICRC representatives and did not also consult any known international watchdogs in matters of war to ensure conformity.

Most of the other western nations which would have been in the vanguard for scrutinizes, or cry foul for non-conformity, were all well-disposed and at home ostensibly because of their favour for military actions against the infamous regime of President Saddam Hussein at that time. In other words, laws of war violation may have been committed by the Allied Forces that contributed to needless civilian deaths, but relatively, it prosecuted a clean campaign and still won. Conversely, Iraqi forces, committed countless violations including grave breaches of the 1949 Geneva Conventions and the 1977 Additional Protocol 1 both during the United States' led invasion of Iraq and the civil uprisings inside Iraq, and after the Gulf war.

The respective attitudes of the two sides, i.e. the United States and Iraq towards International Humanitarian Law (IHL) were apparently circumstances-based. The United States feared that any violations by the Coalition Forces might weaken the strong support for the war back home, and possibly crack the twenty-seven member coalition countries against Iraq. President Saddem Hussein, on the other side, was not bothered by the welfare of Iraqis, nor is he concerned about what the world's reaction to his handling of the war looked like nor to the fate of the coalition army on the other side because of what he perceived as an interference on the Iraqi internal sovereignty by the Coalition Force as well as in Israel which he also targeted in an attempt to draw Israel to the fight possibly to divide the stand of the Arab League on the war.

The Allied Forces destroyed many electrical power stations in Iraq which badly affected Iraq's civilian population, hospitals and other important institutions which depended on public power supply. They launched several indiscriminate attacks involving needless civilian causalities. For an example, on February 14th, a British Plane fired a laser-guided missile ata bridge in Al-Fallujah west of Baghdad, missing its target and hitting a residential area, killing up to 130 civilians. Another tragedy had occurred when a U.S cruise missile broke through the America air-raid shelter in Baghdad, killing up to three hundred civilians, at least ninety-one of them, children. Again, U.S led forces killed many civilians

[30]Article 52, paragraph 2 defines military objectives as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

[31]Crimes of war report per Frank Smyth confirmed that Schwarzkopf's aides inundated ICRC with requests for guidance to its representatives and eventually stopped, insisting that they were not legal counsel for the coalition.

when B-52 bombers, launched heavy strikes in and around the port of Basra.[32] Yet another contentious incident occurred on the last day of the ground campaign when an entire contingent of Iraqi troops who had not yet surrendered (making them yet a legitimate military targets anyway) was withdrawing from Kuwait when a coalition aircraft dropped “Rockeye” fragmentation bombs and other antipersonnel arms, killing thousands. Other forces allied to the U.S – led coalition also violated humanitarian norms.[33]The allied forces conduct provoked discussions as to why they took such actions in each instance. Human Rights Watch (HRW), an independent monitoring organization based in New York, took the forefront in this respect, inquiring whether such attacks violated International Humanitarian Law provisions against attacks on civilian and civilians, vis-à-vis military objectives and military advantages anticipated from the attack. In the first instance, ICRC differed with HRW by stating that while it expressed concern with the civilian causalities, it nonetheless recognized that electrical power stations can be, and traditionally have been, legitimate military targets. In the case of the B – 25 bomber incident, the allied forces through the commander justified her actions claiming that the bombed shelters had been formerly used by civilians in the mid – 1980s during the Iran – Iraq war, but had since been transformed to “a hardened shelter used for (military) command and control”[34] a justification viewed differently by HRW and seen as a violation of the laws of war[35] but which did not bury the argument.[36]

Accounts of Iraqi forces violations of humanitarian norms and laws are actually many as they flagrantly disregarded all known decorum during the war and in its aftermath by deliberately and in obvious defiance to the rule of International Humanitarian Law, targeting civilians other than military objectives.[37] Reports had it that Iraqi troops harassed, tortured, and sometimes summarily executed thousands of Kuwaiti nationals[38] during the inglorious and obnoxious occupation by Saddem Hussein regime, including use of foreign nationals as human shields to protect military targets in both Kuwait and Iraq.[39] Iraq’s annexation, occupation and war in Kuwaiti were clearly a war crime.[40] During this war, Iraq failed to register coalition Prisoners of War (POW) with the ICRC.[41] Iraq fired Scud missiles

[32]A United States spokesman in Riyadh later described Basra as a “military town, which was quartering among other forces, a strong contingent of elite Republic Guard troops.

[33]Kuwaitis committed human rights violations upon arrival at home where mobs harassed, detained, tortured, and sometimes summarily executed thousands, suspected of having supported the Iraqi occupation in whatever form and manners.

[34]CNN broadcast the carnage US Brig. Gen. Richard Need in Riyadh later admitted that allied forces had intentionally targeted the shelter.

[35]According to HRW, the allied forces were obligated to warn Iraq that they now considered the former civilian shelter a legitimate military target and that the shelter’s alleged conversion to a military purpose does not erase a presumption that it was still being used by civilians.

[36]Other observers, including Lawyers for Coalition Forces, disagree positing that allied commanders were not obligated to warn that the shelter has now become a legitimate military target in the Gulf War. Coalition Lawyers also blamed President Saddem Hussein for failing to separate military from the civilians which they used as a shield, rendering such places vulnerable to military attacks.

[37]Protocol I, part IV, Articles 48 reads “… In orders to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives”.

[38]Many Kurdish combatants (as well as Newsweek freelance photographer Gad Gross) were executed after capture while a CBS News Correspondent Bob Simon, was physically tortured.

[39]On March 20th, in As-Samawah in Southern Iraq, Iraqi troops marched behind captured Shia women, (used as human shields) as they shot Shia men on sight. Other incidents of human rights abuses against its own citizens Iraq “back into the family of peace – loving nations”.

[40]Article 51 of Additional Protocol 1.

[41]Saddam forces violated humanitarian norms and human rights in its handling of foreign detainees at the Abu Ghraib prison, where captured Journalists were also held (considered by Protocol II, Article 4 to be “protected persons”). Captured Journalists were said to have been treated as Prisoners of War, in accordance with Article 5

into civilian population both in Saudi Arabia and Israel, a situation that was devoid of any justification, in Israel particularly because Israel had no direct nexus with the war.[42]

More so, Iraq released millions of litres of crude oil into the Persian Gulf waters pursuant to undermining sea water desalination plants used by coalition forces, a clear manifestation of environmental warfare (prohibited) with its attendant ecological consequences. As if that was not enough, its forces set fire to as many as 950 oil wells which discharged tons of toxic gases into the atmosphere, further complicating an already tense situation[43]. Iraq forces committed human rights breaches at least inconsistent with international humanitarian Laws.

5. Challenge to International Humanitarian Law

a. The Politicization of International Humanitarian Law: The politicization of the laws of armed conflict (IHL) has actually worsened the plight of those whom the laws were adapted to protect. Put differently, the selective application and non-application of the rules by the United Nations and the misinterpretation of same for domestic or other political purposes or because of their interest in the areas involved actually do have a direct negative effect on the lives and livelihoods of those who are not or are no longer waging war. United Nations and Belligerent States have on many occasions denied the applicability of International Humanitarian Law to certain situations even though the fact on the ground clearly indicated that an armed conflict was taking place. In other cases, the United Nations and Belligerent States have attempted to enlarge the scope of application of IHL to include situations that could not, based on the facts, be classified as armed conflicts.

b. Lack of Political Will: The United Nations in her Charter begins thus:

> We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind… [are determined] to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security….

Despite the beautiful preamble, the UN has continued to breach even its own rules. The United Nations seems not to have the political will to fulfil her mandate and ensure the observance of the rules of armed conflict. The provisions in the UN's Charter are regularly and continuously being violated, and this questions the UN's resolve and readiness to maintain world peace and ensure respect for International Humanitarian Law. Even her troops (the UN troops) also engage steadily in the ignoble act of violating rules of war during peace-keeping missions. Cases abound where the UN troops on peacekeeping missions, raped civilians and commit other serious war crimes with impunity.

c. Lack of Awareness and Education about IHL: There is serious lack of awareness of the existence of International Humanitarian Law by most people. It is true that the International Committee of the Red Cross has been doing something in this regard but it is not enough. Much still needs to be done. There has been serious and continuous breach of International Humanitarian Law because most combatants who engage in hostilities are not aware or are not educated enough to know of the laws of armed conflict.

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of the Third Geneva Convention, Baghdad generally never conceded to holding them until their release, in breach of the rules of war.

[42]Thirty-seven (37) missiles directed into Saudi Arabia, Thirty-nine(39) Scud missiles into Israel (Tel Aviv).

[43]Protocol 1, Article 53-56.

6. Conclusion and Recommendation

In concluding this Article, it is important to reiterate that International Humanitarian Law provisions are constantly being breached in different circumstances by not only belligerent states but also the United Nations both in International armed conflict and non-International armed conflict alike. The breaches and/or violations have always come from abuse of principles of proportionality and distinction, defective principles and practice of rules of engagement, improper understanding and or misjudgment of the principle of necessity, and in most cases, a deliberate and intentional disregard to the rules of armed conflict even sometimes by the troops of the United Nations.

As pointed out before, the attitude of the United Nations to the provisions of IHL is majorly influenced by politics and interest as well as lack of political will to fulfil her mandate and ensure the observance of the rule of war. Belligerents States attitude to the provisions of laws of armed conflict, on the other hand, is influenced by the states foreign policy and other circumstances. There is need to regulate and moderate armed conflicts and their ugly effects in so far as there appears to be no end to armed conflict. We can only continue to make efforts to lessen the effects of armed conflict on civilians, hors de combats and combatants alike. This can be possibly achieved through the following recommendations:
a. Non-Politicization of the International Humanitarian Law: There should be no playing of politics with the rules of International Humanitarian Law by states. It has been observed that some states especially the Super Power, often play politics when it comes to the interpretation and implementation of the rules of International Humanitarian Law. This should not be encouraged and allowed to continue. No State should be allowed to bend the rules or misinterpret same when violation or breach of the rules has been occasioned by her. Nations or States whose combatants breach the law of war should be subjected to trial and if found guilty, should be punished according to the letters of the law. Many states, especially the Super Powers, have at several times violated the rules of International Humanitarian Law and go scot-free. Sometimes, the so-called world powers of Super Powers through the Security Council would scuttle the rules by refusing to refer alleged breach of the International Humanitarian Law to the appropriate court for trial. This, they do always, when the alleged breach involves their nationals, individual, friendly or favoured state. It has happened many times and this speaks volumes of the hypocrisy of the Superpowers when it comes to the implementation of International Humanitarian Law.

The ICJ being an organ of the UN should be proactive enough to intervene and address the issues of abuse or violation of International Humanitarian Law. It should not condone or allow States to play politics with the rules of war. In a situation where it is noticed that the so called Superpowers would not refer an alleged abuse or breach of the rules through the Security Council to the International Court of Justice (ICJ), the International Criminal Court (ICC), being an independent body whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations, should intervene. The ICC should see that the nationals, belligerent state or individual involved in the breach of International Humanitarian Law is eventually tried and if found guilty should be punished according to the provision of the law without regard to the country or state of origin.

b. Commitment and Political will to Respect International Humanitarian Law: Respect for International Humanitarian Law is one of the most important obligations of the parties to an armed conflict. It is a self-evident principle of international law that obligations must be respected. Without respect and commitment on the part of parties to armed conflict, rules of International Humanitarian Law become meaningless and to say the least, an effort in futility. It is, therefore, recommended that State parties as well as non-state armed groups should at all-time be committed to seeing that the rules of war are respected. There should be a strong political will and serious commitment to ensure that the

rules of International Humanitarian Law are not only respected, but also seen observed and implemented during armed conflict by State parties and non-state armed groups. State parties and non-state armed groups, more so, should be committed to observing the rules whether they have ratified the conventions and treaties embodying the rules or not because, the 1949 Geneva Conventions have now become universal, therefore making the treaties binding on all countries (people) of the world. The notion of respect for international obligations finds expression in the Vienna Convention on Law of Treaties.[44] Common Article one of the Geneva Conventions which codifies the notion of respect, has it that parties to armed conflict must respect all applicable rules of International Humanitarian Law in all circumstances.

c. Public Awareness and Education of People On International Humanitarian Law: Serious effort should be made now more than ever to educate people all over the world on the rules governing warfare and indeed International Humanitarian Law. Heightened awareness campaign must be encouraged and welcomed, bearing in mind the very fact that knowledge of anybody of the rules is a prerequisite to better observation and implementation. Admittedly, much has been done by the International Committee of the Red Cross, but a lot more needs to be done in terms of creating awareness of the rules of International Humanitarian Law. The awareness campaign has to be taken, as it were, to all places not just to the scene of armed conflicts. The campaign should be taken to places of worships, markets and any gathering of humans. This is because armed conflict can occur anywhere and no one knows the time it will happen (so to speak).

More so, the awareness campaign has to be taken to schools of learning be it primary, secondary or tertiary institutions. Going further, International Humanitarian Law should be made a course of study even in the secondary schools so as to impact on the students at a younger age what rules of warfare are all about and believe me, they will not depart from the rules when they grow old! The awareness campaign should not just be involved in the campaign and it should be taken serious.

[44]Vienna Convention on the Law of Treaties, Preamble.