11TH INAUGURAL LECTURE

TAMING THE BEAST: IHL IN A BLEEDING ENVIRONMENT

PROFESSOR THERESA UZOAMAKA AKPOGHOME

LL. B (Calabar) BL (Lagos) LL. M (Benin) PhD (Jos)

Professor of Law

BENSON IDAHOSA UNIVERSITY, BENIN CITY, NIGERIA

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Prof. Sam Guobadia

Vice-Chancellor

By

Prof. Theresa U. Akpoghome

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PROTOCOL

- The Chancellor and Archbishop of Church of God Mission
- The President, Benson Idahosa University
- The Vice President, Benson Idahosa University
- The Pro-Chancellor
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- The Bursar
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- Deans of Faculties and Directors
- Professor
- Heads of Departments/Units
- Members of Senate and Congregation
- Distinguished Guests from other Universities
- Member of the Bar
- My family Members
- Members of Staff of Faculty of Law B.I.U
- Distinguished Student of Faculty of Law, B.I.U
- All other staff and students of B.I.U
- My Lords Spiritual
- Members of Church of God Mission Int'l Inc.
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- Pastors' Wives Association (PAWA)
- Gentlemen of the Press
- Ladies and Gentlemen

My Academic Journey

Mr. Vice Chancellor Sir, permit me to say that I am a product of grace. I would not have attained this height in my pursuits in life if not by the grace of God and I do not take it lightly. The Bible in I Cor. 15 v 10 says that "By the grace of God I am what I am" these words are true and infallible in my life and career. It is also by His Grace that I am standing before you all to present the 2nd inaugural lecture from the Faculty of Law and the 1st from a female lecturer in the Faculty, the 4th from a female Professor and the 11th for the University. It is also interesting to observe again that the inaugural lecturer of today is the 1st female Professor of International Humanitarian Law in Nigeria and this lecture is the 1st on International Humanitarian Law as a subject.

God has been my help just like the song writer Isaac Watts noted "O God our help in ages past, our hope for years to come, our shelter from the stormy blast and our eternal home" through the journey the Lord had been my strength and He told me in Isa 43:1-4 '… fear not for I have redeemed you; I have called you by your name; you are mine, when you pass through the waters, I will be with you; and through the rivers, they shall not overflow you. When you walk through the fire, you shall not be burned, nor shall the flame scorch you. For I am the Lord your God, the Holy One of Israel, Your Saviour; I gave Egypt your ransom, Ethiopia and Seba in your place since you were precious in my sight, you have been honoured, and I have loved you; therefore I will give men for you, and people for your life'.

In Revelations 3 vs 8 the Lord said "I know your works. See, I have set before you an open door, and no one can shut it; for you have a little strength, have kept my word, and have not denied my name".

I have held on to these promises of God and God has not failed me. I have gone through the flood, rivers and fires and I am standing and the door is still open because it was opened by God and no one can shut it. I give Him all the glory, praises and adoration for being my refuge, my rock, help and salvation. I will praise you with my whole heart; I will tell of all your marvelous works; I will be glad and rejoice in you; I will sing praises to your name; O Most

High (Ps 91-2). Be thou exalted, be thou magnified for there is none like you. Receive my thanks in Jesus name, Amen.

Vice Chancellor Sir, as a child nobody believed I would live except my parents. I owe my life to my mother, the prayer warrior who held on to God on my behalf. I was very sickly but was never abandoned by my parents late Chief Daniel Anonye and Mrs. Cecilia Obiageli Okafor. During my primary school days, I was hardly in school, if I attend school twice in a week I will be hospitalized for the remaining part of that week. Some weeks were terribly bad and at such times, no one talked about going to school. I remember that in one of those times, I happily went to school only for my class teacher Miss. Onwudinjo to send me home because I was "spoiling" her register. I went home and my father was notified. My father was furious and the entire school knew he visited. After that day, all the teachers took note of me as the "untouchable". Although they did not want me, they could not reject me either. I was quite intelligent but was not living out my full potential; I was managing to pass my terminal exams. I managed to get to primary six but could not pass the common entrance examination for that year. I was very sad and dejected but my father told me that he was not sad that I could not pass the entrance examination rather he was grateful to God that I was alive. He told me that failure was not the end of my life and was not going to be the end of my dreams and ambitions. I had to repeat primary six and this time I passed the common entrance examination in flying colours. This was a new dawn for me.

I was going to secondary school and my father promised that he would do everything possible to support me academically if I make him proud by passing my examinations. I braced up and took the challenge and I made my parents proud. I remember with nostalgia my father's dancing steps each time we had prize giving day in school and my name is called for prizes in the entire subject as the overall best student. I wrote WAEC and passed at a sitting. I wrote JAMB and was to study English. On the day the JAMB result was delivered to my houses, there was a gas explosion in my house and I was caught up in the inferno.

I was screaming for help and everyone ran away except my mother. The instincts of motherhood took over when she heard me screaming. She ran into the burning kitchen without minding the consequences because she wanted to save her child, that boldness kept me alive,

she was able to disconnect the gas cylinder and removed it from the house before she came back for me.

That incident ended my dream of going to the university in September of 1986. I was thoroughly burnt and was receiving treatment. When I got better, a family friend who was a lecturer at the Federal Polytechnic Oko, promised to help secure admission for me at the Polytechnic. That was how I ended up studying Library and Information Science. I finished my HND with Distinction and proceeded for the National Youth Service Corps Programme at Gboko, Benue State.

How I Became a Lawyer

My experience at the NYSC orientation camp opened a new page in my quest for knowledge. I discovered that the law graduates were given preferential treatment because they read law. They were put in charge of various activities and made Liaison Officers (CLO's) I felt bad about it. I went on to interact with some of them and I discovered they were not more intelligent than me. Right there, I made up my mind that I will study law.

When I muted the idea, my father did not approve of it but a fire had been kindled and the only extinguisher was a degree in law. I returned to Calabar, nursing my ambition. I did not get a job immediately but by 1995, I get a job with DHL as a customer service representative in Calabar. It was while in DHL that I got admission to study law at the University of Calabar in 1995, my parents didn't know that I was studying law until I got to 400 level. My elder brother was able to calm my father down. He was disappointed but could not stop me.

At the University of Calabar, I had wonderful lecturers. I put in my very best and graduated as the best graduating student in the faculty of Law in 2001/2002 academic session. My father did not live to witness it and to dance the way he would normally do when good things happen. He passed on February 17, 2002 and we laid him to rest on the 8th of March 2002.

I proceeded to the Nigerian Law School in 2003 and finished in 2004. My call to bar was scheduled to hold on the 12 of October 2004 and my only child-Onoso Ozioma Akpoghome was snatched away by the cold hands of death in less than a week to my call to Bar ceremony. My world was shattered, after her burial, my husband and mother helped me to

pick up the remaining pieces of my life and we travelled to Abuja for my call to Bar. I could not celebrate because I was mourning my child.

In February 2005, I got a job as counsel in the Law form of K.O. Longe & Co (a Life Bencher). I had barely spent three months when Mr. Longe called me and asked whether I would like to pursue a Master's Degree in Law. I told him that I had applied to UNIBEN, written the entrance and awaiting the outcome of the entrance examination. He told me that he didn't want me to waste in his chambers because he believed that I will get to greater heights and impact more people as a university teacher.

When the results were published by UNIBEN, I passed and immediately, informed my principal. He gave me all the time I needed, paid my salaries and appearance fees. When I finished the LL.M program, my principal in chamber started looking for teaching jobs for me at University of Benin and Benson Idahosa University. Unfortunately, his efforts did not yield positive results as his contacts were not forthcoming. He told me not to give up.

In 2007, I went to church and my pastor's wife Dr. (Mrs.) Dele Ogboghodo requested that I give her a copy of my curriculum vitae. She was to give it to her cousin who had been appointed a commissioner in Edo State to help me get a job with the Edo State Ministry of Justice. It was that CV that I gave to her that changed the story.

Mr. Vice Chancellor Sir, God makes all things beautiful in His time. She took the CV home and dropped it on the table. The husband Prof. Abraham Ogboghodo went to the table to take water and saw the envelope. He opened it and on further enquiry, he found out that it belonged to me, his assistant pastors' wife. He did not believe that I had such a wonderful result and did not have a better job. He took the CV and went to see the Vice President of Benson Idahosa University- Prof. John Okhuoya and in a matter of days I was employed in Benson Idahosa University as a lecturer/Law Librarian in August 2007. I moved over to the faculty of law fully in February 2008 when a substantive law librarian was hired in the person of Mr. Vicent Okponaviobo.

At the faculty, I met colleagues that helped in making my dream a reality. The first is Prof. Michael O. Adediran (Baba) who was the Ag. Vice Chancellor and the Dean of Law. Prof. Adediran is a scholar with great personality. Not minding his status and achievements, he always came down to our level to advice and encourage us. Prof. Chris Ohuruogu was very

instrumental to my growth as a young teacher. While he was here, he was my mentor. He taught me how to write papers and we published some papers together and I also co-taught some courses with him- International Law, International Humanitarian Law and Maritime Law.

In 2010, I accepted at the University of Jos for my PhD. I had a wonderful supervisor in the person of Prof. Dominic Asada. I wish all postgraduate supervisors will be like this professor who believes that a PhD should not be a life time degree. I finished my PhD in record time to the glory of God.

Vice Chancellor Sir, my journey into the field of law has been exciting despite the fact that I have had to face numerous challenges and obstacle in this journey. At a point, I felt like Apostle Paul when he was on his journey to meet with Caesar. The sea was very turbulent with contrary winds but I believed God and held on to Him and He fought my battles and kept me safe. He is still on the throne fighting and protecting me against the wiles of the wicked. He has not slept nor slumbered in my case and I overcame by the blood of the lamb and by the words of my testimonies and I say may His name be praised forever.

My only regret today is that my father Chief Daniel Anonye Okafor (Ugochukwu) and my lovely daughter Onoso Ozioma Akpoghome are not here today to be part of this memorable occasion. It is trite to note that I dedicated both my LL. M Dissertation and Ph.D. Theses to these two individuals who made very indelible marks in my life. This is the 20th year of my father's passage and the 18th of my daughter and I want to dedicate this inaugural lecture to their memories.

My Journey into the Field of IHL

Mr. Vice Chancellor Sir, permit me to say that I was not really sure why I developed interest in IHL. When I got to UNIBEN for my Masters Programme, I decided that I will not offer any course I had already offered at the undergraduate level. In picking the new courses, I came across a course titled IHL and I ticked it as one of my courses. I honestly thought I was looking for something new but I came to realize that I was searching for answers to the prevailing circumstances at the time of my birth. I was born in the heat of the civil war in Nigeria and as a young soul that survived that incident an impression had already been made to the very young life that everyone thought did not understand the events. I enjoyed the course

and eventually wrote my Master Dissertation on IHL and dealt with the issues of Prisoners of War. In 2017, I was selected by the International Committee of the Red Cross (ICRC) Geneva, to be one of the peer reviewers for the Geneva Convention on Prisoners of war

After the Masters progamme there was no more opportunity to continue with this course as it was not one of the courses taught in the Faculty of Law of Benson Idahosa University in 2007-2008. In 2009, the International Committee of the Red Cross was invited to the Faculty by Prof. Chris Ohuruogu to inaugurate the course. After the inauguration, led by Ms. Sybil Sagay the ICRC donated a library to us and requested for teachers who would take the course. I was the only one that indicated interest to teach the course. From all they taught us I knew I had a lot of work to do but a foundation had already been laid at the University of Benin by Professor Ikponmwosa Omoruyi.

I was then attached to Prof Ohuruogu as a mentee/trainee. I would sit in his class as a student and copy notes with the other students. Once in a while he would give me topics to research on and then teach the students. On the days I would teach, Prof. Ohuruogu would sit at the back of the class to listen to my presentation. My interest began to grow and in 2010, I led students to Ahmadu Bello University Zaria to participate in the National Moot Court competition. We did not go beyond the preliminary stage as it became obvious that we have not done much and that was our first set of IHL students. We stayed all through the competition because it afforded me and the students the opportunity to learn from colleagues from other universities that served as Judges.

In 2010, I was invited to Abuja to attend the workshop on IHL for University Teachers and by 2011 I served as a Judge during the competition at Obafemi Awolowo University, Ile Ife and have continued to serve as a Judge. The beauty of serving as a judge is the opportunity you have to teach IHL to other students from all the participating Universities. In 2013 the ICRC sponsored my trip to South Africa to attend the All Africa Course on IHL. In that course we were shared into eight classes and we had experts in the field from South African Universities and Geneva teaching us. At the end of the courses we had series of assessments and when the results were published my team-(I was the team leader) came out best and we were given materials to aid our teaching of the course.

Having completed the South Africa course, I became better in my teaching of IHL and I was also given opportunities by the ICRC to present papers during the Workshops. It gave me the platform to learn from colleagues. I was again sponsored to Geneva by the ICRC in 2015 to attend the Advanced Training Course on IHL for University Teachers at the Geneva Academy of Human Rights and Humanitarian Law. I had the rare privilege of being taught by the experts in the field. I successfully completed the course and was given sets of books on the subject and other teaching aids in the subject area.

From 2010 to date, I have been the coach for IHL National Moot Court Competitions and the Faculty emerged the winner in 2016 and represented Nigeria in Tanzania. I have also been a regular attendee at IHL Workshops and Conference since 2010 to date sponsored by the International Committee of the Red Cross (ICRC). I have been invited by ICRC to educate the military, police and doctors on the rules of humanitarian law. In 2017, I was nominated as one of the peer reviewers for the Updated Commentary on Geneva Convention III. We reviewed over 10,000 drafts of the 143 Articles of Geneva Convention III and I was also made to submit a paper on state practice in Nigeria. This process opened my eyes to the gross violations of IHL by the Nigerian armed forces. This report was sent to Geneva and the ICRC has been doing a great deal in the North East of Nigeria. I also did my PhD research on IHL and this time I dealt with international laws protecting the environment in times of armed conflict.

Mr. Vice Chancellor Sir, I make bold to say that the inaugural lecture of today will be delivered by an expert in the field having been actively involved in research, teaching and training in this filed for a period of twelve year consistently.

Inaugural Lecture

Vice Chancellor Sir, various views have been expressed by scholars on what an inaugural lecture is. The Nelson Mandel University in South Africa posits that 'an inaugural lecture is an auspicious occasion for the University to acknowledge the appointment or promotion of new, full professors, introduce them to the academic community of the University, and to provide opportunity for engagement with the greater community'.[1] The

[1] Nelson Mandela University, "Inaugural Lectures-Public and Inaugural Lectures", https://www.lectures.mandela.ac.za/inaugural-lectures/ (accessed 15 January 2022).

Black's Law Dictionary defines it as a 'formal ceremony introducing someone into office'.[2] I want to agree with the school of thought that says that the presentation of an Inaugural Lecture is a significant milestone in the academic career of a full professor and provides a platform to share past research and introduce new ideas to a diverse academic and non-academic audience.[3]

In October 2021, when I left office as the Dean of the Faculty of Law, my then Secretary Mr. Friday Iyobosa Urhoghide came to see me in my office with a request and what was the request? He said, 'Madam, now that you have left office, what you will do is to write your inaugural lecture and deliver it too before the end of 2022'. I told him that I was already working on it. That response became an assignment for him. Whenever he sees me, he would ask 'I hope you are still writing?' Mr. Friday Iyobosa Urhoghide, I am grateful for the motivation.

When I mentioned to my father and friend, Professor MacDonald Idu, former Vice Chancellor of Benson Idahosa University (BIU), Benin City, that I would be presenting my inaugural lecture this year 2022, he was very excited and inquired about the proposed date and when I said the end of the year he responded by saying: 'Tessy, why would you wait till the end of the year to present your lecture, it is a tradition that must be fulfilled by every professor, the earlier, the better'. I also mentioned it to another father and friend of mine Prof. Bamidele Sanni and he told me the story of how he kept postponing his inaugural lecture despite the nudging's from his dear wife. He later presented it few months before his retirement from service. He advised me to get to work and present the lecture as soon as possible. When I told him that a roster has been prepared for all the professors who were yet to present theirs, he commended the Vice Chancellor and the Chairman of the Inaugural Lecture Committee.

Vice Chancellor Sir, I am happy that this tradition has been established and I am grateful for the opportunity given to me to deliver mine today and I want to urge all the Professors on the list to do same so that this tradition can be firmly established as it is one of the hall marks of a world class university. Distinguished Ladies and Gentlemen, join me to appreciate with a warm applause, our amiable Vice Chancellor, Professor Sam Guobadia whose main interest is to make Benson Idahosa University, a world class institution.

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[2] Bryan, A. Garner, *Black's Law Dictionary*, 9th ed., (St. Paul, MN: West Publishing, Thomas Reuters; 2009) p 828.

[3] NMU, *supra note 1*, p.1.

The Lecture

In teaching and researching in the field of law, I have had the opportunity of teaching courses across all the departments in the Faculty of Law and other Faculties in the University. I have taught law of contract, law of Commercial Transactions, Principles of Equity and Trusts and Maritime Law in the Department of Private and Property Law. I have taught Legal Research and Methodology, Oil and Gas Law and Law of Evidence and a bit of Environmental Law. I have also taught Human Rights Law, Public International Law and International Humanitarian Law in Public Law Department. I also teach Business Law, Legal Aspects of ICT and Engineering Law. However, my LL.M Dissertation and Ph.D. Thesis were on International Humanitarian Law. These laid the foundation for my research interest and most of my publications are in this area of Law.

Destruction of infrastructure due to bombardments in Ukraine and the environmental effects, courtesy: istockphoto.com

Armed Conflict a Necessary Evil?

The history of the world would be incomplete without the story of various wars that nations fought to establish their territories. The history of mankind is in fact a story of power, struggle, of confrontations and armed conflicts between and among individuals, communities, societies and nations. Numerous armed conflicts occurred from 1300 BCE-1900. From 1900-2000, the world witnessed thirty eight armed conflicts including the First and Second World Wars.[4]

After the Kosovo conflict in 1998/99, there was the Afghanistan war in 2001 – 14, Iraq war 2003 – 11 and the ongoing Russian invasion of Ukraine on 24 February 2022 and Syrian War that started in 2012.[5] These armed conflict left in their trails very devastating effects which the world may never recover from. Available information reveals that conflicts took place in every year of the 20th century and violence caused by war only ceased briefly.[6] It is estimated that 187 million persons died as a result of war from 1900 to the present.[7] As noted earlier, the causes and consequences of every single armed conflict extends beyond the immediate environment where the conflict occurred.

It is observed that the Second World War (WWII) was the most devastating conflict recorded in human history[8]. The number of deaths and casualties during the Second World War vary largely because many were not documented. Most of the literature puts the number of deaths at 75 million people, including about 20 million military personnel and 40 million

[4]Britannica, " List of Wars" https://www.britanica.com/topic/list-of-wars 2031197?partnercode=BK_PJ_AF_USD$utm_some-pj_appliale7utm/ (accessed 19 January, 2022)
[5] Richard , Pallardy, *Ibid.*
[6]"Timeline of 20th and 21st Century Wars", https://www.iwm.org.uk/history.timeline-of-20th-and 21st- century-wars (imperial war museum) (accessed 2 January 2022).
[7]*Ibid.*
[8]*Ibid*. See "Impact of World War II: Boundless World History", https://www.courses.lumenlearning .com/boundless-word history/chapter/impact-of war-word-ii/ (accessed 2 January 2021).

civilians.[9] Most of the civilians died as a result of deliberate genocide,[10] massacres, mass bombings, disease and starvation.[11]

There were mass bombings of civilian areas in Warsaw, Rotterdam and London and aerial targeting of hospitals and refugees by the Germans.[12] There were also the bombings of Tokyo and German cities of Bresden, Hamburg, and Cologne by the Western Allies.[13] These were war crimes and the attacks led to the destruction of over 160 cities and the death of over 600,000 German civilians. It is important to observe that at this time there was no specific customary international humanitarian law with respect to aerial warfare.

International Humanitarian Law Regime

From time immemorial, men have tried to control the effects of violence so as to limit its inevitable consequences. The study of societies reveal that the rules of chivalry exists in almost every society by which those who bear arms were expected to act with some degree of honour and courtesy. They were prohibited from armed conflicts, and dishonorable manners towards their enemies. Men of arms would therefore not attack those who have offered no resistance, or those who were not armed or those who had surrendered. This code of chivalry was widely practiced in modern nations. Even among African societies, there were rules which governed the way and manner wars were fought.[14] Most of the rules regulating warfare in

[9] *Ibid.*
[10] The Genocide Convention of 1948 was a result of the experience of the Second World War.
[11] The numbers of deaths were put at 3% of the world's population then. The Soviet Union lost around 27million people, including 8.7million military and 19 million civilian. This represents the most military death of any nation. Germany sustained 5.3 million military losses. 85 percent of deaths were on the allied side and 15 percent were on the Axis side most of these deaths were as a result of War crimes committed by German and Japanese force in occupied territories Nazi Germany, as part of deliberate programme of extermination, systematically killed 11 million people including 6 million Jews. The Soviet Gulags (Labour camps) accounted for 3.6 million civilians. In Asia and the Pacific, between 3 million and more than 10 million civilians, mostly Chinese (estimated at 7.5 million), were killed by the Japanese occupation force. Another known atrocity committed by the Japanese forces was the Nanking massacre in which 50-300 thousand Chinese civilians were raped and murdered.
[12] Impact of World War II, *supra note* 8.
[13] *Ibid.*
[14] ICRC "Africa Values in War: A Tool on Traditional Customs and IHL", https://www.icrc.org/en/document/african-customer-tools-traditional-cistoms-and-ihl?Amp (accessed 12 January 2022). The International Committee of the Red-Cross (ICRC) examined the historical relationship between Africa and international humanitarian Law (IHL), as reflected in traditional customs of different ethnic groups and was able to answer yes to the question: is the principle "even wars have limits" universal? The rules are not peculiar to Africa but many countries in the world do not necessarily have a sense of ownership over this body of law. Pillage is prohibited attacking, looking and pillaging of property was violation of dignity, women, children, and person with disabilities

traditional societies still exist. Almost 2000 years BC the king of Babylon named King Hammurabi was said to have codified the rule of conduct of war.[15] Another example of codification was found in the ancient Indian society under the test of MAHAB HARATA which urged that mercy be shown to those who have been disarmed.[16] Systemic attempts to limit savagery of warfare only began to develop in the 19thcentury; these concerns were able to build on the changing view of warfare by States influenced by the Age of Enlightenment.

The first assignment given to students of IHL in my class is to present a brief report on how wars were fought in their local communities in time past. We do this in order to establish that rules regulating warfare existed in every community but men always breach these laws. These reports by students have proven that African communities had limits to savagery in times of war.

In our research we found that International Humanitarian Law (IHL) often referred to as the laws of war, the laws and customs of war or the law of armed conflict, is the body of law made up of the Geneva Conventions and the Hague Conventions, as well as subsequent treaties, case laws and customary international laws. It is a branch of public international law which regulates the means and methods of warfare (weapons/tactics) and affords protection to those who are not or longer taking part in hostilities. It also 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 the civilians.[17]

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are protected, attacking women, children and the elderly brought shame to the warriors, effective advanced warnings shall be given to civilians before attack. Signals such as beating drums were given to warn of upcoming battles, parties to the conflict must at all-time distinguish between civilians and combatants. Warriors wore distinctive armbands. Indispensable objects are protected. A well may be dug by one man, but it is not used by him alone. Cultural property is protected; warriors would not desecrate the place of rest of their ancestors nor of saints. The bodies of the dead must be respected and protected. The bodies of the enemy could not be desecrated or searched. Messengers and warriors and those no longer fighting were protected from attack by using face paint or holding batons or grass. Zone established to shelter the wounded, the sick and civilian from the effects of hostilities may not be attacked. Fighting between tribes took place outside the village. Attacks must be proportionate. Excessive and brutal acts of war brought about divine retribution. These rules were respected in ancient African societies and those that breached the rules were punished either by the society or by the gods.

[15]"The Code of Hammurabi: Laws and Facts"-History, https://www.history.com/topics/ancient-history/hammurabi/ (accessed 12 January 2022). There were 282 rules established standards of conduct to meet the requirements of Justice.

[16]Radhika, R.V., "Revisiting the Ancient Indian Laws of Warfare and Humanitarian Laws", https://www.indrastra.com/2017/03/-2017-0060. html?m=1 (accessed 20 January 2022).

[17]Ohuruogu C.C. and Akpoghome, T. U.,"Internationall Humanitarian Law in the Jurisprudence of the International Court of Justice", In Earnest Ojukwu and Nwankwo C. K. (eds.), *Law & Social Development. Essays in Honour of Chief Echeme Emole* (Abuja: Helen Roberts, 2012) 489-508.

Modern IHL is made up two historical streams-the law of The Hague; referred to as the law of war proper and the laws of Geneva or humanitarian law. These laws took their names from a number of international conferences which draw up treaties relating to war/armed conflict, particularly the Hague Convention of 1899[18] and its Regulations of 1907[19] and the Geneva Conventions which was first drawn up in 1864[20] in response to Henri Dunant's request after he witnessed the battle of Solferino in 1859.[21] Both laws represent the *jus ad bellum and the jus in Bello*, and international law regarding acceptable practices while engaged in war or armed conflict.

The law of The Hague determines the rights and limits the choice of means in doing harm, particularly; it concerns itself with the definition of combatants, establishes rules relating to the means and method of warfare and examines the issues of military objectives. Principles and rules of IHL limiting States in their freedom to use weapons have been included in treaties for a long time. The most pertinent provisions can be found in the 1907 Hague Regulations and the most recent general codification can be found in the 1977 Additional Protocols to the Geneva Conventions. Generally, IHL limits the means and method of warfare and covers the conduct of military operations by stating what weapons and military tactics can be used in armed conflicts.

Objective of International Humanitarian Law

It is noted that IHL is concerned with limiting the use of violence in armed conflicts and this it does by:

1. Seeking to spare those who do not or are no longer directly participating in hostilities or armed conflict;

[18]The Hague Convention of 1899, Article 2 of the Convention is reiterated in Article 4 of Geneva Convention III Relative to the Protection of Prisoners of War.

[19] The 1907 Hague Regulations

[20] Geneva Convention for the Amelioration of the Wounded and the Sick Members of the Armed Forces in the Field-GCI

[21] Henri Dunant referred to as the father of the Red Cross was a Geneva business man who witnessed the horrors of the battle of Solferino on June 24, 1859, made humanitarian appeals which led to the establishment of the Intentional Red Cross/Red Crescent Movement, which is currently made up of 188 national societies and millions of members as well as two international bodies the ICRC and the International Federation of Red Cross and Red Crescent Societies. See Henry Dunant, *A Memory of Solferino* (Geneva: ICRC; 1959) Pp. 1-147. See also Akpoghome, Theresa U. "Geneva Convention and its Relevance in International Humanitarian Law in the 21st Century", *Journal of Law and Diplomacy, (2009),* Vol. 6, No.1, 61-70.

2. Limiting the violence to the amount that is necessary to achieve the aim of the conflict. The aim of the conflict at all times must be to weaken the military potentials of the enemy;
3. IHL aims to mitigate the human suffering caused by war or sometimes said to humanize wars (*jus in bello*)

From the above, it can be deduced that IHL seeks to uphold certain principle in order to mitigate the harshness or the savagery of war. Some of these principles include but not limited to-Distinction, Precaution in attack, Military Necessity, Proportionality and Prohibition of Superfluous Injury or Unnecessary Suffering (SI r US). These and other principles necessary to mitigate the effects of armed conflict shall be discussed herein.

It is important to note that IHL has inherent limits and many people have criticized the purported goals of IHL wondering whether these goals are not at variance with the very essence of war and whether they are desirable at all.[22] IHL does not prohibit the use of violence, it cannot protect all those who are affected by violence; it cannot distinguish according to the purpose of the conflict, it cannot prohibit a party from overcoming its enemy. And of course, it presupposes that parties to an armed conflict have and exercise rationality.[23] The possibility of protecting persons through the instrumentality of law in times of armed conflict has been questioned over the years. Cicero was quoted saying "*silent enim inter arma*" meaning that "among those who bear arms the laws are silent".[24] The relevance of law in regulating the behaviour of armed men or belligerents in times of belligerency is still in doubt. Is it possible to expect that when individual or collective survival is at stake, legal consideration would restrict human behaviours? Yes, human behaviours must at all times be placed side by side legal considerations without which the society will be chaotic and the powerful would dominate and exterminate the weak.

Armed conflict remains a reality and there seems to be no reason why such a reality should not be governed by law. The applications of military penal and disciplinary laws have

[22]Akpoghome, Theresa, U. Geneva Convention and its Relevance to International Humanitarian Law in the 21st Century," *Journal of Law and Diplomacy*, (2009), Vol.6, No.1, Pp. 61-70 at 66.
[23]ICRC, Fundamentals of IHL: How Does Law Protect in War?-Online casebook: https://www.casebook .icrc.org/law/fundamentals-ihl/ (accessed 7 October 2021).
[24]"Laws are Silent among (those who use) Weapons", Cited in Cicero, Pro Milone, 4.11.

never been in doubt in international law. The law may appear to be silent but it speaks always.[25] Therefore, there must be international and domestic rules to govern the conduct of hostilities. The reason why the laws appear to be silent in times of war can by definition not be provided by law. *Frederic Maurice*, an International Committee of the Red Cross delegate wrote a few months before he was killed on 19th May 1992 in Sarajevo by those who did not want assistance to be brought through the lines to the civilian population as prescribed by International Humanitarian Law:

> War anywhere is first and foremost an institutional disaster, the breakdown of legal systems, a circumstance in which rights are secured by force. Everyone who has experienced war, particularly the wars of our times, knows that unleashed violence means the obliteration of standard of behaviour and legal systems. Humanitarian action in a war situation is therefore above all a legal approach which proceeds and accompanies the actual provision of relief. Protecting victims means giving them a status, goods and the infrastructure indispensable for survival, and setting up monitoring bodies. In other words, the ideas is to persuade belligerents to accept an exceptional legal order- the law of war or humanitarian law- specially tailored to such situations. That is precisely why humanitarian action is inconceivable without close and permanent dialogue with the parties to conflict.[26]

Despite the above, States and armed groups try as much as possible to justify the recourse to arms in settling disputes and this brings us to the legality or otherwise of the use of force in international law.

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[25] The Omnipresence of international humanitarian law in contemporary armed conflicts is easily seen from the United Nations Security Council Resolutions, to be speeches made by political and in newspaper articles. In the report of non-governmental organizations, in the military manuals of soldiers, in the memories of diplomats with completely different cultural and intellectual backgrounds, emotions and political opinions seem to agree that in an armed conflict the killing of an enemy solder in the battle field is not the same as the killing of innocent women and children just because they belong to the enemy. This is proof that behaviours even in war is subject to some legal regulations.

[26]Maurice Frederic "Humanitarian Ambition", *International Review of the Red Cross (IRRC),* (1992), Vol. 289. p.371

Basic difference between *Jus ad Bellum* and *Jus in Bello*

Jus ad bellum means the legality of the use of force and *jus in bello* means that the humanitarian rules should be respected in warfare. International Humanitarian Law (IHL) developed when the use of force was a lawful and permissible form of international relations. States were not prohibited from waging war, they had the right to go to war (they had *jus ad bellum*). It was not logical for international law to mandate them to respect certain rules of behaviour in war (*jus in bello*) when they resort to hostilities. This has changed because in modern times, the use of force between States is prohibited by rules of international law found in the United Nations Charter.[27] By this very stipulation the use of force has been prohibited since 1945 after the Second World War. There are however exceptions to this rule as there may be a resort to armed violence in the case of individual or collective self-defense;[28] based on Security Council Resolution,[29] and in pursuance of the right to self-determination.[30]

Despite the fact that armed conflicts are prohibited by international law, they do occur in spite of all attempts to put an end to war. It is today recognized that international law has to address this reality that war still occur and find ways to regulate armed conflicts in order to ensure a minimum humanity in the often inhumane and illegal situation brought about by wars for practical as well as policy and humanitarian considerations.[31] The application of IHL has to be the same for all the belligerents irrespective of the reasons for the resort to war.[32] In the same way, the victims of the conflict on both sides need and deserve the same protection because they are not necessarily responsible for the violation of *jus ad bellum* committed by the parties to the conflict. Therefore, IHL must be respected irrespective of any argument put

[27]Article 2 (4) of the UN Charter 1945. See Akpoghome, T.U and Nwano T.C. 'The Use of Force, Humanitarian Intervention and Human Rights Abuses in Africa: Evaluation of Recent Events, *Kogi State University Law Journal*, (2015), Vol. 7, Pp. 1-19 at 3, 13-17

[28] This is recognized in Article 51 of the UN Charter.

[29]This is in response to the right of the Security Council under Chapter VII of the UN Charter

[30]The legitimacy of the use of force to enforce the right of people to self-determination is recognized in article 1 of both UN Human Rights Conventions. It was recognized for the first time in Resolution 2105 (XX) of the UN General Assembly (20 December 1965).

[31] ICRC, *supra note* 23.

[32]The one resorting lawfully to force and the one resorting unlawfully to force must respect the rules of war. Respect for IHL could otherwise not be obtained as at, least between the belligerents, which party is resorting to force in conformity with jus ad bellum and which is violating jus contra bellum is always a matter of controversial.

forward to justify *jus ad bellum* and IHL must be differentiated from *jus ad bellum*. Any past, present and future theory of the just war only apples to *jus ad bellum* and cannot justify any argument that those fighting a just war have more rights or fewer obligations under IHL than those fighting an unjust war.[33]

The complete separation of *jus ad bellum* and *jus in bello* is recognized in the preamble to Additional Protocol I (AP I) of 1977. It provides thus:

> The High Contracting Parties, proclaiming their earnest wish to see peace among peoples, recalling that every state has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any state, or in any other manner inconsistent with purposes of the United Nations, believing it necessary nevertheless to reaffirm and develop provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application, expressing their conviction that nothing in this protocol or in the Geneva Convention of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations, reaffirming further that the provisions of the Geneva Convention of 12 August 1949 and of this protocol must be fully applied in all circumstance to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the parties to the conflict.[34]

[33] Using the Boko-Haram Insurgents as a case study, it the expectation of IHL that both the members of the armed forces of Nigeria and the non-state actors must respect the law. The insurgents are not to be treated or punished outside the provisions of IHL because they are fighting an unjust war in the same way the members of the armed forces will not be condoned or congratulated for committing war crime. The citizens are also to be protected from the harsh effects of the war.

[34] Preamble to AP I 1977

This complete separation between jus ad bellum and *jus in bello* implies that IHL applies whenever there is a *de facto* armed conflict no matter how that conflict is qualified and that *jus ad bellum* argument cannot be used to interpret it.[35]

Classification of Armed Conflicts

The term armed conflict has been used severally and it is only in times of armed conflict that IHL applies. In other words, IHL is a *lex-specialis* and not a peace time rule like international human rights instruments. Since IHL applies in times of armed conflict, this section examines the types of armed conflicts that would warrant the applicability of international humanitarian law. Armed conflicts can be categorized into two-international and non-international.

a. International Armed Conflict

International armed conflicts are waged between two or more States. In recent time, IHL rules regulating international armed conflict is codified in The Hague Convention of 1899 and Regulations of 1907, the four Geneva Conventions of 1949 and Additional Protocol I of 1977 and these treaties are supplemented by customary IHL.[36] Geneva Conventions provide thus:

> In addition to the provisions which shall be implemented in peace-time, the present convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties even if the state of war is not recognized by one of them;[37] to all cases of partial or total occupation of the territory of High Contracting Party, even if the said occupation meets with no armed resistance.[38]

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[35] ICRC *supra note 23*

[36]Ohuruogu, C.C. and Akpoghome T.U "Four Decades of the Additional Protocol to the Geneva Conventions: Extent of their Applicability in Nigeria", In Okene, O.V.C (ed.) *Excellence in Governance and Creativity-Legal Essays, in Honour of Nyesom Ezenwo Wike*, (Lagos: Princeton Publishing Co; 2018) Pp. 107-127 at 121-4.
See Jean-Marie Henckaerts 'Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict', *International Review of the Red Cross (IRRC)*, (2005) Vol. 87, No. 857. Pp.175-212.

[37] Common Article 2 (1) to Geneva Convention I-IV

[38] Common Article 2(2) to Geneva Convention I-IV

Where a state has ratified the Additional Protocol I, the situation described in common article 2 of the four Geneva Conventions will include:

> Armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations.[39]

The existence of an international armed conflict depends on the legal status of the belligerent parties and the nature of the confrontation between them.[40] The international character of armed conflicts is derived from the fact that it happened between States.[41] From the provisions of the API, it is clear that parties to the treaty also agreed to recognize national liberation movements as "parties" to an international armed conflict although they have not met the criteria as sovereign State under international law. Armed conflict between parties that are not state or national liberation movements cannot be an-international armed conflict. They can either be non-international armed conflicts or other situation of violence (OSV). As noted earlier international armed conflicts are confrontations between two or more states. Traditionally, states go to war through a formal declaration of water. This creates a political state of war triggering the application of the law of war (*Jus in bello*) even in the absence of hostilities.

It is important to observe that the traditional law of war is wider in scope than IHL because it is made up of humanitarian rules as well as all essential rules governing relationship between belligerent States. It also contains rules on diplomatic, economic and treaty relations

[39] Article 1(4), Additional Protocol I

[40] Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (Geneva: ICRC: 2016)

[41] Art 96(3) states that the authority representing a people engaged against a high contracting party in an armed conflict of the types referred to in article I, paragraph 4, may undertake to apply the convention and this protocol in relation to that conflict by means of a unilateral declaration addressed to the depository. Such declaration shall, upon its receipt by the depository, have in relation to that conflict the following effects: (a) the conventions and this protocol are brought into force for the said authority as a party to the conflict with immediate effects (b) the said authority assumes the same rights and obligations as those which have been assumed by a high contracting party to the conventions and this protocol and (c) the convention and this protocol are equally binding upon all parties to the conflict.

and provision on the legal position of neutral States.[42] On the other hand the traditional law of war is narrower than IHL as it applies only during the conduct of hostilities between the warring States but IHL establishes minimum standards of humanity that are applicable in any armed conflict regardless of the existences of a political State of war.[43]

In the 20th century, formal declaration of war was replaced with the concept of armed conflict.[44] The change from war to a more general expression of armed conflict was intentional.[45] States can always pretend when it commits a hostile act against another State that it is not engaged in war, but merely engaging in a police action, or acting in self-defense. The term 'armed conflict' makes such argument difficult. The Geneva Conventions provides that any difference arising between two States and leading to the intervention of armed forces is an armed conflict (…) even if one of the parties denies the existence of war (…)[46]

The International Criminal Tribunal for the former Yugoslavia (ICTY) stated that "armed conflict exists whenever there is a resort to armed force between States…"[47] This means that "the existence of an armed conflict within the meaning of article 2 common to the Geneva Conventions can always be assumed when the armed forces of two States clash with each other. Any kind of use of arms between two States brings the Convention into effect".[48] Currently an international armed conflict is presumed to exist once a State uses armed force against another State, regardless of the reasons for or intensity of the attack and irrespective of whether a declaration of war has been made or recognized.[49] In the absence of a formal declaration of war belligerent intent is derived by implication from factual condition rather than official recognition of a political state of war. The situation on ground becomes a determinant factor on whether there is international armed conflict.

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[42]Nils Melzer, supra note 40, p. 56
[43]*Ibid*
[44]This change took place in 1949 and has remained so till date.
[45]Pictect Jean S., *Commentary to the first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Geneva: ICRC; 1952) 32
[46] Common Article 2 to the four Geneva Conventions.
[47]*Prosecutor v Tadic*, ICTY: Decision on the defence motion for interlocutory appeal on Jurisdiction, IT-94-1-a, 2 October 1995, Para. 70.
[48]Schindlers D., 'The Different types of Armed Conflicts according to the Geneva Conventions and Protocols," *RCADI*, (1979), Vol. 163, No. 11, p. 131
[49] Nils *supra note* 40, p. 56

Non International Armed Conflict (NIAC)

A non-international armed conflict is an armed conflict between a government and dissident armed group or rebels within a particular country. It may be seen as a situation of civil war. It therefore presupposes that a non-international armed conflict occurs within the territory of a State party to the Geneva Conventions and its Additional Protocol.[50] Most of the conflicts around the world today are not waged between States but between States and organized armed groups or between such armed groups themselves. The IHL rule governing NIAC is primarily the common Article 3 to the Geneva Convention and Additional Protocol II. Treaty law differentiates between non-international armed conflicts within the meaning of common article 3 and non-international armed conflict falling within the provisions of article I of Additional Protocol II.

For IHL to apply to situations of non-international armed conflict, the threshold of violence must be very high. Although lower threshold for the non-applicability of IHL was not defined, Article 3 common to the Conventions did not also provide a clear definition of the term "non-international armed conflict".[51] During the Diplomatic Conference prior to the adoption of the 1949 conventions,[52] the need for a comprehensive definition of non-international armed conflict was reaffirmed and dealt with accordingly in Article I of Additional Protocol II.

Common article 3 identifies a number of key duties and prohibitions providing a minimum of protection to all persons who are not, or who are no longer, taking active part in the hostilities. Common article 3 should be applied "as a minimum" by each party to any "armed conflict not of an international character".[53] Article I Protocol II provides that the Protocol:

> shall apply to all armed conflicts not covered by Article I of the Protocol Additional to the Geneva Convention…. which takes place in the territory of a

[50]Akpoghome T. U., "The Responsibility of Non-State Actors to International Humanitarian Law in Northern Nigeria", *BIU Law Series* (2013), Vol. 1, No. 1, p. 90.
[51]Common article 3 merely provide that: "in the case of armed conflict not of an international character in the territory of one of the high contracting parties, each party to the conflict shall be bound to apply, as a minimum…"
[52]Final Record of the Diplomatic Conference of Geneva Convention of 1949, Vol. 11-3, Pp. 120 – 129 and 325 – 339. See also Commentary on the first Geneva Convention, 2nded, 2016, Art 3 (Geneva:/ICRC/Cambridge University Press; 2016).
[53] Common Art 3 (1), GC I-IV

> High contracting party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them carry out sustained and concerted military operations and to implement this Protocol.[54]

From the above provision, it can be deduced that non-international armed conflicts are protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State Party to the Geneva Conventions. The armed confrontation must reach a minimum level of intensity and the party must show a minimum of organization.[55] It is already established that AP II has a higher threshold of application than common article 3. Common article 3 conflict must not necessarily involve a government; it can take place entirely between organized armed groups especially where the State is experiencing a situation of weak governance- 'failed State".

It does not require any recognition of belligerency by the opposing State, nor popular support, territorial control or political motivation.[56] We discovered in our research that the application of IHL to AP II confrontation requires three cumulative conditions under Article I Para l which must be met. The cumulative threshold includes: responsible command, control over a territory; sustained and concerted military operations.[57]

It will almost be impossible for armed group to carryout acts of belligerency without a minimum level of organization which is a defining element of armed force or organized armed group participating in hostilities different from group participating in riots and other form of unorganized violence.[58] Member of the armed force of a State are generally presumed to satisfy this criteria of organization, to ascertain the level of organization of a non-state armed group some factors must be considered and they include: "the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarter; the fact that

[54]Art I (1) Additional Protocol II 1977
[55]ICRC, How is the Term "Armed Conflict" Defined in International Humanitarian Law, ICRC Opinion Paper, March 2008, p.5
[56] Nils Melzer, *supra note* 40, p.68
[57]Akpoghome Theresa U., s*upra note* 50, p 95
[58] See Treaty IHL governing both international and non-international armed conflicts, particularly Art 4(A) (2) GCIII (organized resistance movements, Art 43 (1) API (all organized armed forces, group and units), Art 1 (1) AP 1 (other organized armed group).

the group controls certain territory, the ability of the group to gain access to weapons, or other military equipment, recruit and military training; its ability to plan, coordinate and carryout military operations; including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice, negotiate and conclude agreements such as cease –fire or peace accords.[59]

Ordinarily, domestic use of force by State agents against private individuals, or the use of force between such private individual remain within the ambit of law enforcement regulated by human rights law and the national criminal law. For such domestic confrontations to qualify as armed conflict it must be clearly distinguishable from internal disturbance and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature. Beside military organization of each party to the conflict, the confrontation must reach a certain level of intensity that cannot be contained through routine peacetime policing but require the intervention of the armed force.[60]

In the jurisprudence of the ICTY, a non-international armed conflict requires a situation of "protracted armed violence" between a State and organized armed groups or between such groups,[61] a factor that has been interpreted to mean the intensity of the violence rather than its duration.[62] The ICTY further noted that other factors that denotes the intensity of the conflict includes: the number, duration and intensity of individual confrontation; the type of weapons and other military equipment used; the number and caliber of munitions fired; the number of persons and types of forces partaking in the fighting; the number of casualties; the extent of material destruction and the number of civilians fleeing combat zone.[63] The involvement of the UN Security Council may also be a pointer to the intensity of the conflict.[64]

Once, it is certain that a state of non-international violence is in place, IHL begins to apply until a peaceful settlement is achieved. This settlement may include formal peace agreement or declaration of surrender to the complete military defeat of either party or the

[59] ICTY, *The Prosecutor v Ramush the Haradinaj et al*., Trial Chamber I (Judgment) Case No. 17-04-84-1, 3 April 2008, Para 60
[60]ICRC Opinion Paper *supra note* 55, p3
[61] ICTY, *The Prosecutor v DusakoTadic, supra note 47, P*ara 70
[62] ICTY, *The Prosecutor v Ramush Haradinaj, supra note 59*, Para 49
[63]*Ibid*
[64] Armed Conflict subject to foreign interventions

gradual subsiding of armed violence until peace and public security have been firmly reestablished.[65] Therefore the end of NIAC requires not only the end of hostilities but also the end of related military operations. The territorial scope for non-international armed conflict for common article 3 and Art I (1) AP II is restricted to the "territory" of the High Contracting Party. This is due to the fact that both provisions introduced binding rules not only for the contracting States, but also for the non-state actors operating within the territory.

This brings to mind the situation of the Boko Haram insurgents. When these non-state actors began their operations in Nigeria, there were debates as to what to call the activities of the group. Some believed that it was mere insurgency or an OSV; I termed it terrorism in one of my publications,[66] while some called it non-international armed conflict. These views were all correct. From 2008-2014, Boko Haram carried out sporadic attacks and the violence did not meet the threshold of armed conflict. In fact, another paper I authored titled the "Responsibility of Non-state Actors to International Humanitarian Law in Northern Nigeria", I took a position that the activities of the group could be described as other situations of violence as they did not satisfy the requirements of intensity. By 2015, the intensity of the violence reached the threshold and the group satisfied the requirements of AP II Art I (1) viz-being under a responsible command; occupied a part of the territory of Nigeria and carried out sustained and concerted military operations. They were able to recruit and train, had access to weapons and other military equipment and engaged the Nigerian armed forces. The group has spread beyond to north east although most of the attacks and counter measures are still within the territories of the northern part of Nigeria. From 2015 to date, there has been a state of NIAC in the northern part of Nigeria.

Other Situations of Violence (OSV)

Whenever there is OSV, IHL will not apply because of the lack of intensity in violence and lack of organization. Article 1 (2) AP II provide thus:

[65] Nils *supra note 40*, p70

[66] Akpoghome T.U. "Terrorism in Nigeria: Trends, Prosecution and the Challenges" in Ohuruogu C.C. and Umahi O.T. (eds.) *Selected Themes on Nigeria Legal System*, (Lagos: Continental Resources Concept; 2015) F19-F42

> This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflict.[67]

In times of OSV, the law also protects the persons involved but this time it is the human right rules and other peacetime domestic legislations that would apply. These rules are more restrictive with respect to the use of force and detention of enemies while IHL gives a more robust provision on these two aspects. The concept of internal disturbances and tensions was not the object of precise definition during the 1974-1977 Diplomatic Conference. The concept was later defined by the ICRC thus: "internal disturbance" this involves situation in which there is no non-international armed conflict as such but there exists a confrontation within the country which is characterized by a certain seriousness or duration and which involve acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules"[68]

ICRC further noted that internal tensions could include in particular situations of serious tensions (political, religious, racial, social, economic etc.), and also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time:

- Large scale arrest
- A large number of "political prisoners"
- The probable existence of ill-treatment or in humane condition of detention;
- The suspension of fundamental judicial guarantees either as part of the promulgation of a state of emergency or simply as a matter of fact;
- Allegation of disappearances.[69]

[67] Article 1(2) AP II 1977.
[68] Commentary to Article 1 (2) of Additional Protocol II; Para 4475-4476.
[69] *Ibid.*

The classification of conflict has generated a lot of concerns. In Nigeria for instance, we have witnessed series of conflicts in the different parts of the country and these conflicts have left in their tract tails of woes.[70] In another of my publication, we noted that people have been killed and others maimed without the government accepting that there is a situation of armed conflict because the situation did not meet the required threshold specified in common article 3 and Additional Protocol II and does not come within the ambits of IHL. Nigerians who reside in the affected areas live in fear of their lives as a result of classifying the incidences as "other situation of violence, a term which most Nigerians find extremely difficult to understand and appreciate.[71]

Researching further in this areas, we discovered that the reasons for the grouping of conflict is predicated on the applicable rules, i.e. being able to determine the applicable rules as well as to allow States exercise their sovereignty using military or police force to maintain peace.[72] These have implications as various areas of law-international or domestic heavily depend upon carefully determined definitions to establish threshold issues and IHL is not an exception.[73] IHL makes available detailed prescriptive provisions more than any other field of international law that is designed to protect people in extreme cases of conflict or violence. Consequently, the inability or failure to categorically classify a state of violence as an armed conflict has very serious and disastrous legal consequences.[74] My research submitted that Classifying confrontations as 'other situations of violence" have two basic outcomes, and they include:

a. It reduces IHL's claim of being an effective and credible body of law;

[70] There have been incidences herdsmen, bandits and cases of unknown gun men. These attacks are not considered to have enough intensity or to have met the required threshold for the application of IHL. See Akpoghome T.U. and Adikibe E. "Herdsmen and Farmers Conflict in Nigeria: A Quest for Paradigm Shift", *BIU Law Journal*, (2019), Vol. 5, Pp. 1-20.
[71]Akpoghome, T.U., "Other Situations of Violence: Classification Issues and Concerns- The Nigerian Situations" *Journal of Law and Criminal Justice*, (June 2015) Vol.3, No. 1, Pp. 73-85 at 73.
[72]*Ibid.*
[73]*Ibid p. 52.*
[74]*Ibid*

b. It show or reveals that IHL keeps silent about certain types of conflict and violence because they are not defined as armed conflicts or are excluded from the coverage of international or internal armed conflict.[75]

The result of this is that certain types of suffering is more often than not removed from the discussion of IHL principles and this reduces the claim of IHL to humanity and being creative. It is often asserted that IHL or the law of war applies whether or not the conflict is termed as legal or illegal by the standards of the law of war but such assertion would be of no relevance when confronted with the need to ensure that the victims are protected within the framework of IHL.[76] We further observed that another dangerous effect with the classification of conflict is that the relationship between the law of war and humanitarian law can only be applied effectively and with utmost certainty in established cases of armed conflict. Where these classifications are not made on objective facts as observed in the field but on political considerations, the humanitarian effect and credibility of IHL will be seriously threatened.[77]

By limiting the threshold of application of AP II; States have succeeded in ensuring that they do not give international legitimacy and recognition to groups or rebels fighting within their territories. This is reiterated by AP II and the emphasis placed on ensuring that States have the duty by all legal means to maintain laws and order and to defend the national unity and territorial integrity of their states.[78] The problem generated by the definitions of the minimum standard from determining the existence of an armed conflict is believed to be an effective mode of determining the limits or boundaries of IHL. It creates or draws the line within which killing and maiming is legitimized. It also limits the boundaries of discussions with respect to the application of the rules regarding the way those *hors de combat* i.e. the wounded and the sick are treated, the involvement of the Red Cross, the granting of the prisoner of war status and the rights to particular trial procedures take place.[79] In fact, the definition dictates the limits

[75]*Ibid.* see also Duxbury A., "Drawing Lines in the Sand-Characterizing Conflict for the Purpose of Teaching International Law", *Melbourne Journal of International Law*, (2007) Vol.8 p6 https://www.law.uniemelb.edu.au/801266.co-51BB-11-Ez-950000050568-Do-140 (Accessed 28th September 2013).
[76]Akpoghome, T.U., *supra note 71*, p82.
[77]*Ibid*
[78]*Ibid, p 83*
[79]*Ibid*

of internationals humanitarian law.[80] The effect of these limitations is that every other issue has to be discussed in other subject areas like the refugee law, human rights law, international criminal law or international law.[81]

Our research therefore submitted that there is need to consider the suffering of the people affected by violence or conflict before any classification can be complete. Without factoring the sufferings of the people into the classification the exercise will continue to be in futility. It was further submitted that factoring human suffering into the classification will help in lowering the threshold of application of the AP II and this will help States that do not have effective criminal and human rights prosecution systems.

Core Principles of IHL

As we have observed, IHL is a *lex specialis* and applies only in times of armed conflict. This application is not done in vacuum. IHL has laid down very core principle that must be observed by the belligerents during hostilities. The observation of these principles is central to mitigating the harsh or devastating effects of armed conflict on civilians and their objects and the environment. But has this been the case? What are these principles? The principles include: Military Necessity, Distinction, Precaution, Proportionality, Unnecessary Suffering and the principle of Humanity or the Martens clause.

a. **Military Necessity**

The United Nations Charter prohibits the use of force against another State except in cases of individual or collective self-defense.[82] In effect, any other use of force will be deemed illegal. To this extent, we observed in another research that belligerents involved in legal and illegal armed conflicts should be restricted by this principle and this means that the use of the means and tactics of war should be limited to the minimum extent possible.[83] If this principle is followed, it will reduce the humanitarian impact of armed conflict. The purpose of warfare is to weaken the military forces of the adversary by disabling the enemy combatants. There must be

[80] Bruce Oswald. "The Laws of Military Occupation: Answering the Challenges of Detention During Contemporary Peace Operations; *Melbourne Journal of International Law (2007), Vol*.8, p 311.
[81]Akpoghome T.U, *supra note 71*, p83.
[82]Art 51, UN Charter
[83]Akpoghome T.U 'Impact of Armed Conflict on the Environment in Africa: A Case Study of Sierra Leone Civil War," *Ajayi Crowther University Law Journal,* (2016), Vol. 1 No.1, Pp. 1-35 at 20.

a balance between the considerations of military necessity and of humanity. Ordinarily, Military necessity recognizes that during belligerency, it may be militarily necessary to cause death, injury and destruction, and to impose more severe security measures than would be permissible in peace time.[84] But, the concept of military necessity does not however give the armed forces the freedom to do what they want because States have been limited in their freedom to use weapons and these rules apply to all weapons and methods of warfare.[85] According to Harvard based Programme on Humanitarian Policy and Conflict (HPCR), there are five tests to verify the proper use of military necessity and they are:

1. Will the measure violate on absolute prohibition of IHL? The right to take a measure under military necessity has to be stated in the law.
2. Are the military forces facing an actual state of necessity, a danger or a need for supply?
3. Is the measure taken a sufficient and effective response to the existing threat?
4. Is the measure in line with the principles of proportionality? Does the military advantage outweigh the risk of damage to the civilian or civilian property?
5. Is the decision taken by the right authority and after a careful review?[86]

Therefore military necessity permits measures which are actually necessary to accomplish legitimate military purposes and are not otherwise prohibited by IHL. Military necessity generally runs counter to humanitarian exigencies consequently, the purpose of humanitarian law is to strike a balance military necessity and humanitarian exigencies.[87]

b. **Proportionality**

This principle prohibits attack against military objective which are expected to causes incidental loss to civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage

[84]Nils, *supra notes 40*, Pp. 17-18.
[85]Article 35 (1) AP I, Art 2, Hague Regulations of 1907.
[86]"Program on Humanitarian Policy and Conflict Research (HPCR) - Harvard Worldwide", https://www.world-wide.harward.edu/department/program-humanitarian-policy-and-conflict-research-hpcr/ (accessed 10 September-2016).
[87]ICRC "How Does Law Protect in War: Military Necessity? Online case book" https://www.casebook.icrc.org/glossary/military-neccesity/ (accessed 12 January 2020).

anticipated.[88] In other words, those who plan or decide on an attack must refrain from launching or suspend any attack that will produce more civilian casualties or damages in excess of the motive for waging the war. This principle forbids any form of indiscriminate attack.[89] So, even if there is a clear military target, it is not possible to attack it if the risk of civilian property being harmed is larger than the expected military advantage.[90] In other words proportionality relates to an issue referred to by philosophers as the 'double effect' and by military personnel as 'collateral damage'. By this principle any attack that would cause such damage will be regarded as unlawful.[91]

c. **Distinction**

The principle of distinction is the cornerstone of IHL. This is based on the recognition that "the only legitimate object that States should endeavor to accomplish is to weaken the military force of the enemy,[92] whereas the civilian population and individual civilian shall enjoy general protection against the dangers arising from military operation.[93] To achieve this, the parties to an armed conflict must "at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives".[94] This principle prohibits all means and method of warfare that cannot distinguish between those who do not take part in hostilities and are therefore protected. Belligerents are obliged to distinguish between combatants and civilians, the combatants are objects of attack but not the civilians.[95] They are to distinguish military objectives from civilian objects and shall direct their operations only against military objectives.[96]

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[88]Article 51 (b) AP I, CIHL Rules 14, 18, 19.

[89]Indiscriminate attacks are those not directed at a specific military objective. Those which employ a method or means of combat which cannot be directed at a specific military objective or those which employ a method or means of combat the effect of which cannot be limited as required by this Protocol and consequently, in each such case, are of a nature to strike military objective and civilians or civilian objects without distinction Art 51 (4) AP I

[90] Article 51 (5) AP I

[91] Akpoghome, T.U., "Challenges in the Application of IHL in Non-International Armed Conflict and Avenues for Improving Compliance," *DELSU Law Review*, (2011), Vol. 3, No. 1, p. 152. See *Public Committee against Torture in Israel v Government Israel*, Case No. HCJ 769/02; 13 December 2006, Supreme Court.

[92] Preamble to be protect declaration of 1868

[93] Art 51 (1) AP I, CIHL Rule I

[94] Art 48 AP I; CIHL Rule I and 7

[95] Akpoghome T.U., *supra note 91*, p 151-152

[96] Art 48 AP I.

d. **Precaution**

As part of the principle of distinction, the parties to the conflict are obliged to respect the principle of precaution in attacks and this means a duty to avoid or minimize the infliction of incidental death, injury and destruction on persons and objects protected against direct attacks. Therefore it is required under IHL that "in the conduct of military operation, constant care shall be taken to spare the civilian population and civilian objects".[97] This means that the attacking party must do everything feasible[98] to avoid inflicting incidental harm as a result of its operations (precautions in attack) and the party being attacked to the maximum extent possible, must take all necessary measure to protect the civilian population under its control from the effects of attacks carried out by the enemy (precaution against the effects of attack).[99]

e. **Humane Treatment**

One fundamental rule of IHL is that all persons who have fallen into the power of the enemy are entitled to humane treatment irrespective of their status and previous activities. Common article 3 which is considered to reflect a customary "minimum yardstick" for protection and binding all parties to any type of conflict provides that: "persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause shall in all circumstances be treated humanely, without any adverse distinction founded on race colour, religion or faith, sex, birth or wealth, or any other similar criteria".[100] Regardless that IHL permits parties to the conflict expressly to "take such measures of control and security with regard to person under their control as maybe necessary as a result of war".[101] The

[97] Article 57 (1) AP I; CIHL Rule 15

[98] In IHL "feasible" precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time including humanitarian and military considerations. This all depend on some factors such as available intelligent, the level of territorial control, the precision of available weapons, the urgency of military actions and the costs and risks associated with additional precautionary measures.

[99] Article 58, CIHL Rule 22

[100] Common Article 3 to GCI – IV; CIHL Rules 87 and 88

[101] Article 27 (4) GC IV

entitlement to humane treatment is absolute and applies not only to persons deprived of their liberty but also to the inhabitants of territories under enemy control.[102]

MEANS AND METHODS OF WARFARE

[102]Nils *supra note 40*, p 20


Means (Weapons) and Methods (Tactics) of warfare- courtesy istockphoto.com and gettyimages.com

Means and Methods of Warfare

Mr. Vice Chancellor sir, we have just examined the core principle of IHL and it is important we look at the means (weapons) and method (strategy/tactics) employed by belligerents. This is important because if the means and methods are used as they should in compliance with the principle, there would be little or no devastating impacts on the environment during and after the conduct of hostilities. It is trite to note that there is a universal recognition that belligerents are not allowed to employ every weapon or strategy during hostilities. Additional Protocol I expressly provide that: in any armed conflict, the right of the parties to the conflict to choose method and means of warfare is not unlimited.[103]

Contemporary IHL has developed an extensive body of rules regulating or prohibiting the development, possession and use of certain weapons and prohibiting or restricting the ways in which such weapons can be used or how hostilities can be conducted.[104] It is crucial to distinguish between the 'means' and 'method' of warfare. This is because any weapon (means) can be used in an unlawful manner (method) but it should be noted that using weapons that

[103]Art 35 (1) AP I
[104]Nils *supra note 40*, p 104

have been prohibited due to their inherent characteristics is not legal irrespective of the manner in which they are employed.[105]

The other fundamental principle applicable in means and methods of warfare can be found in second and third paragraphs of Article 35 AP I and it reads:

i. The rights of parties to an armed conflict to choose means and methods of warfare is not unlimited;
ii. It is prohibited to employ weapons, projectiles and materials and method of warfare of a nature to cause superfluous injury or unnecessary suffering;
iii. It is prohibited to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment.[106]

Having noted that belligerents do not have unlimited right in choosing the means and methods of warfare, the second rule further restricts this right by demanding that weapons that would cause superfluous injury or unnecessary suffering must be avoided. This rule was first noted in 1868 during the St Petersburg Conference and it became the preambular paragraph of the 1868 St Petersburg Declaration which states as follows:

> That the only legitimate object… during war is to weaken the military forces of the enemy; that for this purpose it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the suffering of disabled men, or render their death inevitable; that the employment of such arms would, therefore be contrary to the laws of humanity.[107]

The application of this rule has led to the prohibition and restriction of certain types of weapons that their effects are considered to be excessively cruel irrespective of the

[105]Once a weapon has been declared prohibited, no one party to the conflict can deploy such weapons. The argument that it was deployed in a lawful manner will not be tenable. Few years back, the Syrian government deployed chemical weapons which have been prohibited as a means in the conduct of hostilities against the "rebels" or armed group. This was out-rightly condemned by the United Nations and the immediate withdrawal of it was requested and the Syrian government had to comply with the request.
[106]Article 35 (2) and (3) AP I
[107] Preambular paragraph to the 1868 St Petersburg Declaration , it is also contained in Art 23 (c) Hague Regulation; art 35(2) AP I; CIHL Rule 70

circumstances and such weapons include: anti-personnel land mines,[108] the 1980 Convention on Certain Conventional Weapons (CCW) including the five Protocols covering landmines, incendiary weapons,[109] blinding laser weapons and explosive,[110] and undetectable fragments.[111] The use of biological and chemical weapons is prohibited.[112] The prohibition of biological and chemical weapons has attained customary status binding on all States whether or not they have ratified the Protocol. In 1972 and 1993, conventions were adopted to prohibit the use as well as the production, transfer and stock piling of biological and chemical weapons.

The International Court of Justice (ICJ) in its Advisory Opinion with reference to the prohibition found in arts 35(2) of AP I noted that unnecessary suffering would be "harm greater than that unavoidable to achieve legitimate military objective".[113] In other words, a balance between military necessity and the harm caused by weapons or means and method of warfare need to be struck, so that the latter is not excessive in relation to the former. It is important to note that some of these weapons have life threatening effects. The ICRC attempted to bring objectivity to some of those related questions through the SI r US project. The findings of the project show that the measurable effects on health of weapons such as rifles, mortars, bombs and shells which have been commonly used over the last 50 years are in many ways consistent.[114]

The project recognized the fact that the effect of other weapons such as incendiary and anti-personnel laser weapons which exert their effects by means other than the transfer of kinetic energy are fundamentally different.[115] ICRC further observed that the notion of 'superfluous injury and unnecessary suffering'[116] relates to the design-dependent effects of the specific weapon on health. The prohibition refers to weapons 'of nature to cause' these effects.

[108]Prohibited by the Ottawa Treaty of 1997
[109]Weapons that set fire to objects or cause burn injuries to persons
[110]Weapons and ammunitions left behind after war
[111]Weapons with effect to injure by fragments that are not detectable by X-ray
[112]By the 1925 Geneva Protocol
[113] *The Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, Paras 78-9
[114] Robin Coupland and Peter Herby, "Review of the Legality of Weapon: A New Approach to the SI r US Project," *International Review of the Red Cross*, (1999), No. 835 ICRC, http://www.org/en/doc/resoruces / documents/articles/other/57jq36.htm (accessed 26 January 2013).
[115]*Ibid*
[116]Both terms are translations from the single French concept of Maux superflus contained in the 1899 and 1907 Hague Regulations respecting the laws and customs of war on land, Article 23(e). The French text is the only authentic text of the 1899 and 1907 Hague Regulations

Although much of humanitarian law is aimed at protecting civilians from the effect of armed conflict, this rule of customary international law constitutes one of the few measures intended to protect combatants from certain weapons which are deemed abhorrent or which inflict more suffering than required for their military purpose.[117]

The final sub-paragraph of article 35 deals with the natural environmental and it is the core of this lecture. The preceding sections of this lecture were necessary as they laid the foundation to help us see how the disregard for the law affects the environment which sustains civilians. Article 35 (3) AP I prohibits the use of weapons and methods of warfare that are intended or may be expected to cause widespread, long-term and severe damage to the natural Environment. Vice Chancellor sir, you would agree with me that the natural environment is always at risk anytime there is an armed conflict. Consider the devastating effects of the atomic bomb of Hiroshima and Nagasaki,[118] the environmental disaster caused by Agent Orange and Agent White (chemical weapons)[119] used by the US army during the Vietnam War.[120] The United States Army sprayed a range of herbicides across more than 4.5 million acres of Vietnam to destroy forest cover and food crop used by enemy North Vietnamese and Viet Cong troop.[121]

In 1991 at least 650 of Kuwait 250 oil wells were set ablaze by Iraqi troops as part of a 'scorched earth policy' that had blanketed a quarter of the occupied nation with smoke and cut

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[117] *Ibid.*

[118] The atomic bombing in the war gave humanity a giant blood stain but also shows us that an atomic bomb is no mere explosion, it also has the ability to leave numerous impacts on the environment. One of the impacts was the emission of the tremendous amount of radiation. There were also some falls out. The fallout produces thick black rain that contains radioactive and soot and once it reaches it becomes hazardous radioactive water which damages the surrounding and infrastructures and also radiation poisoning through inhalation and consumption of contaminated food and water. It also causes contamination of water which goes beyond the boundaries of originally targeted State. There was thermal radiation that burned the surrounding with extreme heat. See "Environmental Impacts of the Manhattan Project", https://www.ukessays.com/eassy /environmenal-studies/long-term-evironmental-impact-of-the-manhattan.php (accessed 10 August 2020)

[119] The US also used herbicides named Agents Pink, Agent Green, Agent Purple and Agent Blue but Agent Orange was the most potent.

[120] Agent Orange was a powerful herbicide used by the US Military forces during the Vietnam war to eliminate forest cover and crops for north Vietnamese and Viet Cong troop. The U.S program codenamed Operation Ranch Hand, sprayed more than 20 million gallons of various herbicides over Vietnam, Cambodia and Laos from 1961-1971. Agent Orange which contained the deadly chemical dioxin was the most commonly used herbicides and it is proven to cause serious health issues – including cancer, birth defects, rashes and severe psychological and neurological problems among the Vietnamese people as well as among returning US servicemen and their families, https://www.history.com/amp/topic/vietnam-war-agent-orange-1/ (accessed to July 2013).

[121] *Ibid*

off electricity supply and water.[122] The environmental impact was unprecedented. The blazing well heads generated a smoke plume reaching at least 22,000 feet into the atmosphere and initially stretching over 800 miles to blacken the skies over the region.[123] Coming back home, the Boko Haram insurgency also has produced environmental implications such as soil and water-contamination, mining of landscapes, indiscriminate killings, destruction of habitats, farmlands and cultural landscapes.[124]

In view of these devastations, we decided to examine the laws that protects the environment in times of armed conflicts as the topic for my PhD Thesis at the University of Jos.[125] In the course of my research, it discovered that prior to Vietnam War, there was no law protecting the environment from the effect of armed conflict. After that war, the International Community with the ICRC brought on board two legal instruments[126] in 1977. One of the instruments is war time legislation while the second is a peace time treaty. The war time treaty is the Additional Protocols I and II and therein lays the provision for environmental protection. Unfortunately, we discovered that in the entire Additional Protocol I, only two articles mentioned environmental protection,[127] due to the growing environmental awareness as well as concerns over military tactics employed by belligerents.

The first article protecting the environment is Article 35(3) which captures the basic rules relating to the means and methods of warfare. Its provides that it is prohibited to employ methods or means of warfare which are intended or may be expected to cause wide spread, long term and severe damage to the natural environment.[128] This would include the so called

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[122]Michael J. Kennedy and Melissa Healy, "Iraqis Torch Scores of Oil Facilities in Kuwait; Gulf War: At Least 150 of the Emirate Wells are set Ablaze Allies Continues to Hammer Enemy Forces" (Feb 23 1991), https://www.latimes/archieves/la-xpm-1991-02-23-mn-1492-story?amp=true/ (accessed 20 September 2012).

[123]Seacor, Jessica, E., "Environmental Terrorism: Lessons from the Oil Fires of Kuwait", *American University International Law Review* (1996), Vol.10, No. 1, Pp. 481-523. This fire posed serious threat to civilians, military personnel and fire fighters.

[124]Azeez O. Olaniyan and Ufo Okeke-Udodike, "When Two Elephants Fight: Insurgency, Counter Insurgency and Environmental Sufferings in Northeastern Nigeria", *Journal of Contemporary African Studies (2021)*, Vol. 39, lssue 3, Pp. 437-453 https://www.do.org/10./080/0289001.2020.1825649 (accessed 10 December 2021).

[125]Akpoghome T. U., "The International Legal Framework for Environmental Protection in Armed Conflict: An Agenda for Reform", a PhD Thesis submitted to the Faculty of Law, University of Jos, 2014.

[126]The Additional Protocols to the Geneva Conventions of 1977 and the Environmental Modification Technique Convention (ENMOD) 1977

[127]Article 35(2) and 55 (1) AP I

[128]Akpoghome, T. U., "Conceptual Foundation for International Environmental Law and the Legal Regimes Regulating Warfare," *Bayero University Journal of Public Law (BUJPL),* (2011), Vol.3 No.1, Pp. 52-68

"collateral damage" to the environment.[129] The research discovered and rightly too that article 35 (3) applies to situations in which the natural environment is damaged through intentional use of method or means of warfare and where such consequences are foreseeable.[130]

The next provision which is Article 55 provides specific protection for the environment within the context of the general protection granted to civilian objects and thus any attack against the natural environment by way of reprisals is prohibited.[131] Article 55(1) reiterates that 'care' shall be taken to protect the natural environment against wide spread, long-term and severe damage during armed conflict. The common principles enshrined in Articles 35(3) and 55 thus relate to the prohibition of warfare that may cause widespread, long-term and severe damage to the natural environment. There are problems with these provisions. The scope of these provisions appears to be extensive[132] but article 35 neither defined the term "natural environment, nor the terms 'widespread; long-term; and severe damage. The precise definitions of these term are very crucial as they establish a threefold threshold that must be crossed simultaneously to establish liability under international law.[133] There would, for example be no liability where damage to the environment during armed conflict is widespread, but not severe or long-term.[134]

Our research finds that Article 35 (3) therefore insists on a threshold that is not only high and uncertain, but also of an imprecise nature. Article 55 on the other hand must be interpreted as a governing principle[135] which requires that the effects or consequences of permitted actions[136] may not result in escalating damage or produce the expressly prohibited widespread, long-term and severe damage to the natural environment. We therefore submitted that as a governing principle, article 55 thus extends beyond Article 35 in so far as it relates to issues of health or survival of the civilian population. This is a relief as Article 55 could then be

[129]*Ibid, p59*
[130]This means that where the destruction is not intentional and not for-seeable the provision will not apply.
[131] Article 55 (2) AP I
[132]Ibid, p 60. See also United Nations Environment Program (UNEP), *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law,* (Kenya: UNCEP; 2007) P 11
[133]Latecia Van Der Polle and Booley A., "In Our Common Interest: Liability and Redress for Damage Caused to the Natural Environment During Armed Conflict", *Law, Democracy and Development* (2011), Vol. 15, p 12.
[134]The liability regime which Article 35 (3) seeks to establish is difficult to determine not only because of the clarity about key definitions but also due to the fact that the three threshold are difficult to satisfy concurrently.
[135]Reyhani R., "The Protection of the Environment during Armed Conflict", *Missouri Environmental Law and Policy Review,* (2007) Vo. 14, No.2, p. 329.
[136]Permitted actions would exclude reprisals which are expressly excluded by Article 55 (2) AP I.

interpreted to also provide for occasions where environmental damage is not only caused directly by combatants, but also by action of civilians and refugees.

Such situations may for instance arise in an armed conflict where civilians or refugees resort to the destruction of wildlife as was the case in the Democratic Republic of Congo.[137] By excluding the human factor, Article 35 (3) represents a radical departure from the traditional humanitarian law formula. Art 35(3) values the environment in and of itself, [138] while Article 55 retains the human centered approach of humanitarian law generally.[139] The research concluded that article 55 protects those aspects of the environment upon which human beings depend for their survival and sustenance. Violation of Article 55(1) is essentially a lesser included offence of Article 35 (3) in terms of normative force. Any separate value of Article 55 may well be in the 'care' language of the sentence. Article 35 (3) prohibits causing damage, whereas Article 55(1) impose a standard of care. The care requirements would presumably apply equally to the attacker and the defender. We have earlier noted that the Protocol did not define "natural environment" but the ICRC commentary suggests that "it should be understood in the widest sense to cover the biological environment in which a population is living" i.e. the fauna and flora as well as climatic elements.[140]

IHL framework also contains customary rules and soft laws from the United Nations General Assembly Resolutions that protect the environment in times of armed conflict. The customary rules include: Rules 43,[141] 44,[142]and 45,[143]. On the normative force of the

[137]Human Rights Watch, *Uprooting the Rural Poor in Rwanda* (New York: HRW: 2001), Kalpers, J., *Volcanoes Under Siege: Impact of a decade of Armed Conflict in the Virungas*, (Washington D.C Biodiversity Support program; 2001); Kaplers, J., *Overview of Armed Conflict on Biodiversity in Sub-Saharan Africa: Impacts, Mechanisms and Responses* (Washington DC: Biodiversity Support Program; 2001); Shambaugh *et'al, The Trampled Grass: Mitigating the Impacts of Armed Conflicts on the Environment,* (Washington DC: Biodiversity Support Program, 2001)

[138] Article 35 (3) protects the environments as a victim of armed conflict from the effects of weapons.

[139] Article 55 refers to the population without the use of the adjective "civilians". The official record makes it clear that this was intentional, that the goal was to extend the protection to the whole population since the damage was to be long term. See 15 Official Records of the Diplomatic Conference on the re affirmation and development of international law applicable in armed conflicts. The term 'health' is used in the provision to provide protection beyond that needed for bare survival. Effects that would pose a serious blow to health such as congenital defects degeneration or deformities would therefore be encompassed within the meaning of the provisions.

[140] Pilloud, C and Pictet, J, "Article 55" as cited in Sandez, Y., *et al,* ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC: Geneva; 1987) Pp. 661 – 2.

[141] Rule 43, the general principles on the conduct of hostilities apply to the natural environment: A. No part of the natural environment may be attacked unless it is a military objective; B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity; C. Launching an attack against a

resolutions from the UN, it is submitted that although they may not be binding but they remain very persuasive instruments to resolve disputes where there is a deadlock and may grow into hard or treaty laws in the future.[144]

It is important to state that my research on laws protecting the environment in times of armed conflicts did not reveal that Art 35(3) and 55 of AP I were sufficient to answer the question of environmental damage during hostilities. Because of the gaps already identified, Article 35(3) has not been used to address any real war time environmental damage. We therefore, began to search for other laws that protect the environment directly in times of armed conflicts.[145] We considered the Environmental Modification Technique (ENMOD) Convention but noted that the ENMOD was designed as a peace time treaty and cannot be used for hostile purposes although the ENMOD is an improvement of article 35(3). It is couched in the same verbiage but the ENMOD does not have a cumulative threshold as it made use of the word 'or' when it described the damage 'widespread', 'long-term' or 'severe damage'. ENMOD therefore has a lower threshold and it is very precise. ENMOD does not protect the environment from being a victim of means and method of warfare rather it prevents the use of the environment as a weapon for hostile purposes.[146]

Another treaty that directly protects the environment is the Convention on the prohibition or restriction on the use of Certain Conventional Weapons 1980[147] (CCW). The CCW also known as the Convention on Certain Conventional Weapons and the Inhumane

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military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete direct military advantage anticipate is prohibited.

[142] Rule 44: Methods and means of welfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event minimise, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.

[143] Rule 45: The use of methods or means of warfare that are intended or maybe expected to cause widespread, long term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon.

[144]Akpoghome, T.U., *supra note 128*, p62. The UN General Assembly Resolution 47/37 February 9, 1993 states in its preamble that 'destruction of the environment, not justified by military necessity and carried out wantonly is clearly contrary to existing international law'.

[145]Akpoghome T.U "Appraisal of Treaties Directly Protecting the Environment in Times of Armed Conflict", In M.O.U Gasiokwu (ed.), *Law in Motion, Nuturing Democracy and Development: Essays in Honour of Chief George Uwechue* (Enugu: Chenglo Books: 2012), Pp. 40 – 82.

[146] *Ibid*, Pp. 64 – 75

[147]Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, and its Protocols III on Prohibition or Restriction on the Use of Incendiary Weapons 1980.

Weapons Convention[148] has three Annexed Protocols and were adopted on the 10 October 1980. The Fourth paragraph of its preamble reiterates the triple cumulative standard contained in Article 35(5) of AP I and provides that it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long term and severe damage to the natural environment. One important feature of the CCW is the amendment to its Article 1 in 2001, which refers to common Article 3 to the GCs and thus extends its field of application to non-international armed conflicts. Two out of the three annexed Protocols have specific relevance to the protection of the environment during armed conflicts.[149] Article 2(4) of Protocol III addresses the issue of environmental protection directly.[150]

The Chemical Weapons Convention

This was adopted in January 1993, but came into force in 1997.[151] Chemical substances have both direct and acute impact on the natural environment and for this purpose; the Chemical Weapons Convention imposes obligations on State Parties not to develop, produce, transfer, stockpile or retain chemical weapons. The Convention specifically prohibits the use of chemical weapons, including assisting, encouraging or inducing anyone to engage in any of the prohibited activities.[152]

The Convention on the Prohibition of the Use, Stock Piling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997

[148]UN Document, A/CONF. 95/15

[149]Protocol II prohibits and also restricts the use of mines, Booby traps and other devices. Booby traps cannot be used on historic monuments, works of arts or places of worship which constitute the cultural or spiritual heritage of peoples and animals. The CCW amended Protocol II of 1996 provides that in no circumstances may Booby traps and other devices be attached to or associated with protective emblems; signs or signals (such as the red cross); sick wounded or dead persons, burial or cremation sites or graves, medical facilities, equipment, supplies or transports; children's toys or other portable objects or products, specially designed for the feeding, health, hygiene clothing or education of children, food or drink, kitchen utensils or appliances (except those in military installations). Protocol III prohibits the use of incendiary weapons on the forests and other kind of plants cover, but an exception is allowed where such forests or plants are used to "cover, conceal or camouflage combatants or other military objects".

[150]Akpoghome, T.U., *supra note 145*, Pp. 75-78

[151] It was approved by the United Nations General Assembly on 30th Nov. 1992 and opened for signature on 13th January 1993. The Chemical Weapons Convention remained open for signature until its entry into force on 27th April 1997, 180 days after the deposit of the 65th instrument of ratification by Hungary.

[152]Article I (d) Chemical Weapons Convention 1993. For more information on prohibition contained in the Chemical Weapons Convention, see Akpoghome T.U., *supra note 142*, Pp. 78-80

The Convention on the prohibition of the use, stock piling, production and transfer of Anti-personnel mines and on their destruction was signed by over 120 countries in Ottawa in December 1997. This is another treaty that directly protects the environment in times of armed conflicts. States have noted the devastating effect of anti-personnel mines and would have nothing than its total prohibition and this was what led to the adoption of the convention. We observed that United State did not sign the convention as it believed that anti-personnel mines might be of use in certain circumstances, such as stemming a numerically superior North Korean attack on South Korea.[153] As at the time of our research we noted that the US promised to drop the use of Anti-Personnel Mines by 2003 and seek to develop alternatives that allowed their removal from Korea by 2006.[154]

After examining the treaties protecting the environment directly in times of armed conflicts, we observed that these treaties did not address all the concerns with respect to environmental protection during the conduct of hostilities and this led us to search for treaties indirectly protecting the environment at such times and we discovered a plethora of laws and these were articulated in another publication.[155] One of the challenges discovered is that most of the treaties did not have effective enforcement mechanisms to address breaches and this is a big problem as States cannot be held accountable for failing to observe these rules in combat. The international community is called upon to live up to their responsibilities by ensuring that environmental protection legislations are not ignored by States.[156] States must not see the observance of these treaties as an act of courtesy but an obligation for which the failure will attract appropriate sanctions.

We further examined some other IHL treaties and rules that indirectly protect the environment in times of armed conflict and the findings were documented in another

[153] See the White House Office of the Press Secretary, Fact Sheet: US Requirements on Land Mines in Korea; Sept 17, http://www.pub.whitehouse.gov/white-house-publications/1997/09/1997-09-17-landmines-factsheet.text/ (accessed 20 May 2011).
[154] See Akpoghome, T.U., *supra note 145*, Pp. 80 - 81
[155]Akpoghome T.U, "A Cursory Examination of the Legal Framework Indirectly Protecting the Environment in Situations of Armed Conflict", *Bayero Journal of International Law and Jurisprudence,* (2017), Vol. 2, No. 1, Pp. 31 – 44.
[156]Ohuruogu, C.C., and Akpoghome, T.U., "Observing Legal Restraints in Armed Conflicts: The Responsibility of States", *Base University Law Journal,* (2017), Vol. 1, Pp. 72 – 87.

publication.[157] We found that sometimes civilian objects and properties which ordinarily should not be attacked, becomes a military objective where military expediency demands it. This often happens where the civilian object has dual use. We noted that water, food, agricultural lands which are survival objects should not be targeted. In all, the laws protecting civilian objects indirectly protect the environment too as most of these objects are environmentally based. Works and installations containing dangerous forces are not to be attacked for any reason as such an attack would lead to the death of civilians. Cultural properties too should not be attacked.[158]

Impacts/Effects of Means and Methods of Warfare

We observed earlier in this lecture that any means of warfare (weapon) can be used in an unlawful manner and when this happens it produces devastating effects. We further observed that the only legitimate reason for warfare is to weaken the military forces of the adversary and that belligerents must at all times direct their attacks on military objectives[159] and not on civilians and civilian objects.[160] Therefore civilian objects may not be the object of attacks or reprisal.[161] Under International Humanitarian Law, there are objects and places that are protected and must not be attacked and they include: cultural property and places of worship and installation containing dangerous forces; objects indispensable to the survival of the civilian population; natural environment; non defended localities and demilitarized zones, medical units/hospitals[162] and medical transports (ambulances); medical aircraft; medical hospital ship and coastal rescue craft.

In our research we discovered that these places that ought to be protected have all been victims of armed conflict as a result of the wrongful use of weapons, (methods) in disregard of IHL core principles earlier discussed or by the use of prohibited or restricted means of warfare

[157]Akpoghome, T.U and Nwano, T. C., Revisiting the Legal Framework Indirectly Protecting the Environment in Situations of Armed Conflicts", *Ajayi Crowther University Law Journal,* (2016), Vol. 1 No 2, Pp. 1-21.
[158]*Ibid.* Pp. 20 -21
[159]Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military actions and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the line offers a definite military advantage. See Article 52 (2) API; CIHL Rule 8
[160]Civilian Objects are defined in the negative as "all objects which are not military objectives", Article 52(1) AP I; CIHL, Rule 9
[161]Article 33 GC IV; Art 52(1) and (2) API; and CIHL Rule 7
[162]The 1949 Geneva Conventions do not expressly specify the scope of protection afforded to hospitals, safety or neutralized zone and localities. It is generally accepted that attacks against such zones are prohibited under Customary IHL.-See CIHL Rule 35.

as prohibited by Article 35 (1) of AP I and these attacks have produced unprecedented consequences and some of these impacts which we discovered and documented in our research will be discussed hereunder to show our findings.

a. **Cultural Property and Places of Worship**

Cultural properties are part of the environment and are civilian objects. Armed conflicts have often resulted in the destruction of irreplaceable cultural property especially during the large scale aerial bombardment of World War II. Recognizing the significance of this loss to the cultural heritage of humanity, we discovered that the international community adopted the 1954 Hague Convention on Cultural property and its two Protocols of 1954 and 1999. AP I[163] and II[164] also contain provisions protecting cultural property. The breach of these provisions is treated as a war crime.

In our research[165] we discovered that prior to 1954; there were specific rules on protection of cultural property which were never heeded. Those who spared cultural property did so as a mark of honor and civility. Our research showed that when Totila the ruler of Goth in the middle ages laid siege on Rome and was about to set it ablaze, Belarus one of the Generals of Justinian wrote to him thus:

> Buildings, works of art in a city can only be the undertakings of wise men who know how to live with civility, whereas destroying existing ones can only be the works of lunatics who are not ashamed of going down in history as such….if you win this war, by destroying Rome, you will not have destroyed someone's property but your own, whereas if you preserve it, you will logically acquire the most precious of all artistic heritage.[166]

This advice was heeded and Rome was saved from destruction in 546AD. We discovered that contemporary internal armed conflicts have led to the destruction of cultural property. The wanton destruction of the Buddha statues in 2001 by the Taliban[167] may be cited as one of the worst examples of loss of cultural property due to fundamentalism and also as a

[163]Arts 38, 53 and 85 AP I
[164]Arts 16 AP II
[165]Akpoghome, T.U., "The Destruction of Cultural Property: A Challenge for International Humanitarian Law" *Nasarawa State University Law Journal,* (2016), Vol. VII, Pp. 18-44.
[166]*Ibid p 23*
[167]*Ibid p 34*

policy of holding cultural property as a means of bargain in international relations while prosecuting an internal armed conflict. We further discovered in our research that the Islamic State in Iraq and Syria (ISIS) had targeted and destroyed ancient and modern monuments of Iraq and Syria.[168] These attacks have raised a lot of concern as Iraq and Syria have played key roles in the development of World history as part of the cradle of civilization.

Presently in Syria historic buildings such as ancient mosques, government buildings and castles and schools have destroyed as a result of the ongoing conflict. All the six world heritage sites in Syria have been put on UNESCO's list of world heritage sites in danger. In Iraq, ISIS had blown up, bulldozed and destroyed Churches, Shrines, Mosques and archeological sites which it consider as idolatrous or heretical based on their strict salafi interpretation of Islam which sees the veneration of tombs and non-Islamic vestiges as idolatrous.[169]

We further noted that in 2015 March, the Islamic State of Iraq and the Levant (ISIL) destroyed the cradle of civilization at the Mosul Museum. The sect assaulted the City of Nimrud archeological sites thought by many to be the site of the Tower of Babel. The UNESCO had condemned this act of cultural cleansing and protested the systematic destruction of humanity's ancient heritage. The Boko Haram sect in Nigeria have also left on their trail woes of destruction of Churches, Mosques and other cultural heritage held dear by the inhabitants of the communities where they operate.

Our research noted that these destructions occur because the existing treaties are not clear enough for all to understand and follow; States are not willing to make definite commitments to protect or not destroy cultural property, the existing laws have not also been ratified by all States and the existing legal framework do not contain enforcement mechanisms. The research concluded by making several recommendations and called on all to strive and protect cultural property for the benefit of humanity.

[168] *Ibid*

[169] *Ibid* p35. There are speculations that ISIS plans to target Mecca, the pilgrimage site of Muslims, home to Al-masjid al-Haram Mosques, held by Muslims as the most sacred mosques worldwide

This photograph shows a view of a school destroyed as a result of fight not far from the center of Ukranian city of Kharkiv, located some 30 miles from Ukranian-Russian border, on Feb 28, 2022. Courtsey npr.org

Damaged Kharkiv's City Hall Tuesday, March 1, 2022. Courtesy Pavel Dorogoy/AP, npr.org

b. Works and Installations Containing Dangerous Forces

Some installation such as dams, dykes and nuclear power stations are specially protected from attacks because their partial or total destruction would likely have very devastating and destructive humanitarian effects for the surrounding civilian population and objects.[170] As long as they are civilian objects, they must not be attacked. These objects can in certain circumstances qualify as military objectives but they must not be attacked if such attack will cause the release of dangerous forces and consequently severe losses among the civilian

[170]Article 56 (1) AP I; CIHL Rule 42

population. In no case may such works, installations or military objectives be made the object of reprisals.[171] Where the special protection given to such works and other surrounding military objectives ceases; all practical precautions must be taken to avoid the release of the dangerous force.[172]

c. Objects Indispensable to Survival of Civilian Population

Starvation is prohibited under IHL as a method of warfare.[173] Therefore it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population such as foodstuff, agricultural areas, crops, livestock, drinking water and irrigation systems; for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whether in order to starve out civilians to cause them to move away or for other motives.[174] We observed in our research that the destruction of infrastructure and basic services as a result of armed conflict can wreak havoc on the local environment and public health, countries' water supply systems can be contaminated or shut down by bomb blast or bullet damage to pipes.[175] We found that in Afghanistan, destruction to water infrastructures combined with weakened public service during the war resulted in bacterial contamination, water loss through leaks and illegal use. The destruction of infrastructure by explosive weapons results in hazardous dust and debris; such debris remains in the area for long periods. In Aleppo alone 15 million tonnes of rubble was generated, which would take at least six years of continuous work to clear. Damage to infrastructure, including water supply and treatment infrastructure, often leaves water supplies contaminated, impacting the environment and human health. We further noted that water shortage can also lead to inadequate irrigation of cropland. Agricultural production may also be impaired by intensive bombings and heavy military vehicles travelling over farm soils. Such damage, in part led UNICEF to estimate that at least 750,000 children in eastern Ukraine are at risk of contracting water-borne diseases like diarrhea. The targeting and bombardment of essential and industrial

[171]Arts 56 (4) AP I; CIHL Rule 147
[172]Art 56 (3) AP I
[173] Article 54(1) API; CIHL Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited.
[174]Article 54 (2) AP I; CIHL Rule 54.
[175]Akpoghome T.U. 'Limiting the Effects of Weapons on Environment and Health: An Analysis of Article 36 of Additional Protocol I of 1977', *Bayero Journal of Public Law,* (2006) Vol. 4 No. 1, Pp. 40-66 at 44.

infrastructure and the displacement of key workers often results in the release of further toxic chemicals, causing water, air, and soil pollution.

The presence of land mines can render vast areas of productive land unusable. The degradation of human and natural environment can lead to shortage in food supply, cooking fuel and improper waste management during and after conflict.[176] During the Iraq war, civilians were forced to cut down city trees for use as cooking fuels. The creation of poorly located, leaky land fill sites resulted in contamination of water and ground water in Afghanistan.[177]

In Nigeria-north east, there are reports and cases of destruction of objects indispensable to the survival of civilian population. In the Niger Delta Region, oil facilities have frequently been targeted in bombardment during conflict which has lasting effects for local population and the habitats. In Sudan, sources of water for the civilian populations of Zaghawa, Masalit and Fur tribes were poisoned. We further found that Munitions can contaminate drinking water, soil, surface water and air, which can present a greater hazard than the actual explosion and can escalate up the food chain. France, Belgium and Germany are even today still affected by the soil contamination from WWII; with areas labeled 'red zones', and their surrounding land, still not used for agricultural purposes. In Syria, the amount of irrigated land had shrunk by 47% by 2015. Explosive weapons can kill livestock directly, force owners to butcher livestock early, force farmers and herders to flee or otherwise interrupt livestock production. Some 74,000 acres of farmland in Syria's Hasakah, Raqqa and Aleppo were burnt by ISIS in 2019. The use of explosive weapons harms agriculture; contaminating the land and displacing farmers and other civilians. Bombardment can force animals into other areas as they flee explosive violence or the consequences of displacement. Mountain gazelles which used to be seen in their hundreds before the conflict are now considered extinct in Syria.

When the population no longer has objects upon which their survival depends, there will be migration. These civilians will naturally be displaced while some will become refugees and these have attendant consequences. We noted that internal displacement is one of the resultant effects of these objects. Those displaced by explosive violence often rely on the local environment for resources such as firewood which can also have significant impacts on the

[176]*Ibid* p.45
[177]*Ibid.*

environment. In Idib, known as the Green Governorate, 70% of trees were thought to have been burnt or cut down by 2018, compared to pre-conflict levels. In Sudan over 2.7 million persons migrated as a result of the poisoning of water by the Janjaweed forces.

Destruction of Agricultural land in Vietnam Courtesy Britannica.com

Agricultural land destroyed by Agent Orange. Photo- gettyimages.com

Destruction of school and agricultural lands in Nigeria Courtesy getty

Destruction of civilian objects in Northeast Nigeria-Courtsey gettyimages.com

Destruction of civilian property in Ukraine

A civilian Natali Sevriukova reacts to a rocket attack on the city of Kyiv, Ukraine, on Friday, Feb 25 2022. Courtesy Emilo Morenatti/AP

In Nigeria, there were about 2.9 million IDPs as at early 2020 making us the country with the third largest number of internally displaced persons in Africa. These numbers were displaced by the Boko-Haram insurgency.[178] As at 31 December 2020, our research revealed that over 3.2 million people have been displaced, 2.9 in north-east Nigeria, over 684,000 IDPs in Cameroon, Chad and Niger and 304,000 refugees in the four countries. This comes with the attendant human rights abuses, wide spread sexual and gender based violence, forced recruitment and suicide bombings.

In another of my publication,[179] it was noted that armed conflict and some other reasons is one of the major causes of displacement especially the Boko-Haram insurgency and counter insurgency operations.[180] We examined the laws protecting this group of displaced persons and discovered that Nigeria only ratified the Kampala Convention in 2012 without domesticating it thereby leaving the group unprotected. The UN Guiding Principle which also made provisions for the IDPs is only a principle and lacks force. We found that there is a huge gap in Nigeria with managing IDP's. The issue of hunger in IDP camps across Nigeria is no longer news. We also examined this in another research and articulated steps that should be taken by the government to achieve zero hunger in the IDP camps.[181] Fortunately, the Ministry of Humanitarian Affairs has started the process but there is still so much to be done in this regard.

[178] UNHCR, 'Nigeria Emergency', https://www.ucher.org/nigeria-emergency.html (accessed 31 December 2020). See Jennifer Dathan, 'The Broken Land: The Environmental Consequences of Explosive Weapon Use', https://www.reliefweb.int/report/syrian-arab-republic/broken-land-environmental-consequences-explosives-weapon-use/ (accessed 20 January 2022).
[179] Akpoghome , T. U., "Internally Displaced Persons in Nigeria and The Kampala Convention", *Recht in Africa (RIA)*, (2015) Vol. 18 Vol.1 Pp. 58-77
[180] *Ibid, p.65*
[181] Akpoghome, T.U., and Oyemwense Esohe, 'Sustainable Development Goals and Victims of Armed conflict: Zero Hunger in DIP camps in Nigeria", *Common Wealth Law Review Journal*, (2021), Annual Vol. 7, Pp. 15-31.

Photos of internally displaced persons and an IDP Camp in Nigeria. Courtesy gettyimages.com

Faces IDP's in Maiduguri North-East Nigeria Courtesy amnesty.org

d. The Impact of Rape as a Method of Warfare

Another devastating consequence of armed conflict on the environment is wide spread sexual and gender based violence suffered by the civilian population. We have done quite some research in this filed and discovered that sexual violence or other forms of gender based violence leaves very sour taste in the mouths of the victims. Some that could not cope with the shame commit suicide while the survivors are left on their own to cope with the after effect of such acts. Victims are rejected by families, friends and their communities. Some married

women were abandoned by their husbands for being victims of rape. Some contracted HIV/AIDs or other sexually transmitted diseases and survivors are left to deal with post-traumatic stress disorders. The findings of our studies on sexual violence in times of armed conflict have been articulated in this lecture even though they are contained in several published journals.[182]

Rape has always been used as a method of warfare even when it is expressly prohibited in the numerous provisions under IHL. When armed groups conduct their hostilities with 'two guns', it simply means that in addition to using physical ammunition known as guns or other weapons that are permitted within the law of armed conflict, they also employ rape (the second gun) and other forms of sexual violence as a method of warfare.[183] The use of rape and sexual violence in times of armed conflict is classified as war crime and crimes against humanity. Our research found that sexual violence or rape in times of armed conflict have various effect on women and girls who are the primary targets even though we also found that men and boys have also become victims of this crime in this period where homosexuality has become increasingly rampant. The United Nation action against sexual violence in conflict noted that the vast majority of casualties' in today's wars are among civilian, mostly women and children. Women and girls have and continue to be the target of soldiers as they are considered as spoils of war and rape as a means of devastating the opposition.[184]

Our research noted the adverse effects of sexual violence or rape on the victims.[185] The research concluded that the psychological, physical and social effects of rape are intertwined. It observed that psychological illness results in physical illnesses which eventually lead to avoidance by families and the community on the social level.[186] We carried out a research on the legal, judicial and political framework prohibiting rape in times of armed conflict. We

[182]Akpoghome T.U., and Saliu Modupe Brenda "Gender Based Violence: The Dangers and Effects of Harmful and Unhealthy Practices against Women", *Journal of Private and Comparative Law*, Vols. 4 &5, Pp. 128-151; 0

[183] Akpoghome, T.U., and Aprioku Oredelema "Conducting Hostilities with Two Guns: Examining the Effects of Sexual Violence on Women in Times of Armed Conflict", *Nigeria Police Academy Law Journal*, (2015), Vol.1 No.1, Pp. 135-155.

[184]UN "Sexual Violence in Conflict" https://www.un.org.sg/.../senstraff-detailsasp (accessed 8 June 2015)

[185]Akpoghome, T.U., *supra note 183*, Pp. 142-154.

[186] It is clear that programmes to assist survivors are necessary because socio-cultural, socio-economic, physical and mental effects coupled with social exclusion, shame and rejection; have profound effects on the women's identities.

discovered that there are several legal frameworks prohibiting rape.[187] They include the Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment.[188] The Convention on the Elimination of all form of Discrimination against Women (CEDAW),[189] and African Charter on Human and People's Rights[190] also prohibits rape. The Hague Convention of 1907 prohibits rape; the Geneva Conventions also prohibit rape.[191] The Nuremberg Charter treated rape as a crime against humanity and the statute of the ICC also did so in article 7 and as war crime in article 8.[192]

Our research found that in many armed conflicts, women and children are raped. The DR. Congo has been declared the rape capital of the world and the worst place to be a woman. Sexual violence was noted in the Liberian conflict and the use of child soldiers.[193] The research also found that during the 1966 Nigerian genocide against the Igbos, thousands of Igbo women and children were raped and murdered by rampaging Northern Nigerians all over the cities and bushes of the north.[194]

The research also examined the jurisprudence of international courts and tribunals in this regard and found that all the established cases of rapes and sexual violence were condemned and punished by the courts. In fact the International Criminal Tribunal for Rwanda (ICTR)[195] redefined rape to include not only penile penetration of the vagina but penetration of any part of the body of the victim with any object without the consent of the victim and the offence includes public nudity and sexual mutilation. The response of the international community on sexual violence is understandable, given the systemic use of rape as a weapon of war.[196] The research noted that we must confront sexual crimes and find ways to understand and prevent them. We must also emphasise deconstructing the harmful stereotypes and

[187] Akpoghome, T.U., and Nwano T. C., "Appraising the Legal, Judicial and Political Framework, for the Prohibition of Rape as a Method of Warfare", *Unimaid Journal of Public Law*, (2006), Vol. 4, Pp.110-130
[188]Article 4 CAT, 1987
[189] Article 2 CEDAW 1979
[190]Article 5 ACHPR 1986
[191] Common Article 3, Article 27, 147 GCIV and Article 76 AP (1); Art 4 AP II
[192]Article 7 and 8 of the Rome statute 1978
[193]Akpoghome, *supra note 187*, p.118
[194]The northerners did not only use rape and sexual assault but enforced prostitution and humiliating and degrading treatment were also included.
[195]Akpoghome, *supra note 187*, Pp. 121-127
[196] *Ibid, Pp. 127 -130*

practices that have resulted in the endemic marginalization of women and a systemic indifference to the crimes committed against them.

In another publication, we examined the cases of child defilement in Nigeria. We discovered that children are sexually molested both in times of armed conflict and outside conflict and that these cases have a low rate of prosecution. In 2014 over 270 children from a secondary school in Chibok were abducted by armed men. Some managed to escape; some were released as part of an exchange for the insurgents being held by the government while some were saved by the Nigerian soldiers. Some of these girls came back with babies' evidence to the fact that they were sexually molested. Those that are still in custody for last 7 years and some months had become sex objects, either married off to armed men or kept as bush wives.[197] On February 19 2018, 110 schoolgirls aged 11-19 were again abducted by the Boko Haram sect from their school in Dapchi. Five out of this number could not make the journey as they died on the way. They were eventually released five weeks later except for Leah Sharibu who refused to convert to Islam. Reports about Leah revealed that she has had babies through sexual violence. Four years down the line Leah is yet to be rescued by the Nigerian Military forces and be re-united with her family.

The lack of prosecution of sexual crimes during armed conflict in Nigeria led us to another research. In this study,[198] we analysed the domestic legal framework prohibiting sexual violence in Nigeria and found that the entire existing legal framework are peace time legislations. The Violence against Person Prohibition Act (VAPPA) 2015 is the only domestic law that made mention of rape as sexual violence and expanded the definition of rape with punitive sentences. This is a positive step but unfortunately, the law is only applicable in Abuja. Federating states are expected to domesticate this law but not all have done so. Fortunately, Edo State has domesticated it and it is known as the VAP Law of Edo State although there is no armed conflict in Edo but we have cases of rapes by bandits and herdsmen. These perpetrators can be tried under this Law.

In one of my publications we considered and articulated the challenges in prosecuting sexual violence that are committed by belligerent as a method of warfare and suggested ways

[197] Akpoghome T.U. and Nwano T.U., "Examining the Incidences of Sexual Defilement of Children in Nigeria", *Donnish Journal of Law and Conflict Resolution,* (2016), Vol. 2, No.1, Pp. 01-09.
[198]Akpoghome T.U., "Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria", *Journal of Law and Criminal Justice,* (2016) Vol. 4, No.2 Pp. 15-28

of improving the legal system and noted that Nigeria must domesticate the Additional Protocols which it ratified in 1988 and the Rome Statute since the major challenge is the absence of appropriate legal framework in Nigeria.[199]

In 2021, we conducted a research on sexual violence in six African countries. We discovered that sexual violence in times of armed conflict was endemic in Kenya, DR Congo and Nigeria. We also found that lack of data and inability of the victims to access healthcare exacerbated the cases. Lack of DNA infrastructure also hindered prosecution. We also found that doctors most times were not willing to sign the rape forms brought to the hospitals for fear that the insurgents or armed groups will come after them. The research also found that most legal frameworks in the countries studied were inadequate. Extensive recommendations were made in order to address the issues. The findings and recommendations are documented and published as a report.[200]

Parents receiving their abducted daughters

A mother showing the dress of her abducted daughter

[199]Akpoghome, T.U., Awhefeada, U.V., "Challenges in Prosecuting Sexual Violence in Armed Conflict under Nigerian Law", *Beijing Law Review*, (2020), Vol. 11, No. 1, Pp. 262-276

[200]Akpoghome, T.U., Earp Erin and Jesse Gaudette-Reed "Sexual Violence on Sex African Nations- A Call for Investment", (Washington DC: RAINN; 2021) Pp. 1-88.

Women protesting the abduction of their daughters One came home with a baby, evidence of sexual abuse. Photos from gettyimages.com

Some rescued Chibok girls with President and Vice President.

e. **Impact of Means of Warfare on Natural Environment**

We have noted in several of my publications that war has resulted in environmental destruction and this is due to advancement in military technology used by combatants and armed groups which has resulted in increased environmental impacts. This can be seen by the devastations to forests and biodiversity. In my PhD Thesis, we noted that Military machineries and explosives caused unprecedented level of deforestation and habitat destruction and this has seriously, disrupted the ecosystem, including erosion control, water quality and food production. An example is the destruction of 35% of Combodia's intact forest due to two decades of civil conflict, and the bombings in and around the Sambisa forest of Nigeria. In Vietnam, bombs alone destroyed over 2 million acres of land. The threat to biodiversity from combat can also be illustrated by the Rwanda genocide of 1994. The risk to the already endangered population of mountain gorillas from the violence was of minimal concern to combatants and victims during the 90 days massacre.[201] In this research we studied the effects of certain weapons on the environment and health and the result is presented hereunder *albeit* briefly.

[201]Akoghome T.U., *supra note 175*, p45. See Akpoghome, T.U. "Judicial and Political Mechanisms for Environmental Protection in Armed Conflict: Half a Loaf or Simply a Pie in the Sky", *University of Benin Law Journal* (2013), Vol. 14, No. 1, Pp. 237-261

Effects of Agent Orange on Plants and the environment, photo from gettyimages.com

i. **Chemical Weapons**

Chemical weapons of warfare are bio-specific i.e. they only attack living organisms. Chemical weapons exploit the toxic properties of certain chemical substances. These weapons include gases containing volatile liquids or oils that disperse over vegetation and cling to and are sucked into the objects that they come in contact with; or liquid drops which evaporate, when it comes to destroying human lives, nerve gases are however the most effective. They are two to four times as toxic as their predecessors among the war gases. Nerve gases like tabun sarin and soman, which enter the body through the lungs, digestive system or skin, kill quickly.[202] Mustard gas, which was used during World War I and in Iran-Iraq war, 1980-88, is an oily dark coloured ethylene based liquid that penetrates clothes and injures the skin and eyes.

Chemical weapons were used on a large scale in WW I and the Vietnam War. In Vietnam more than 90,000 tons consisted of herbicides while the remaining portion consisted of irritants

[202] *Ibid* p49. Even more toxic is the oily non-volatile VX which was produced as a means of warfare by the US between 1961 and 1967. Inhalation of half milligram can be fatal as can one milligram that comes in contact with the skin compared with sarin VX which has the military advantage of a more penetrating and resistant toxicity which translates into long-term environmental contamination. See Bring, O., "Arms Control and International Environmental Law 1952-2009", Stockholm Institute for Scandinavia Law, Pp.397- 417 at 402 https://www.scandanavianlaw.see/pdf/39-18.pdf/ (accessed 19th November 2014).

like teargas.[203] Agent Orange that was sprayed over Vietnam brought an array of health challenges which includes birth defects, spontaneous abortions, chloroacne, skin and lung cancers, lower IQ and emotional problems for children. In 2001 Scientists documented extremely high levels of dioxin in blood samples taken from residents born years after the end of Vietnam War.[204] Studies attribute high level of food chain contamination to soil contamination when dioxin becomes river sediment, which is passed to fish, a staple of the Vietnamese diet.[205] With such dangerous effects, Chemical Weapons Convention 1993 placed responsibilities on State Parties to stop the development, production, transfer, stock piling or retention of chemical weapons and while destroying chemical weapons States must undertake the highest priority to ensure safety of people and to protect the environment.[206]

U.S. Helicopter spraying defoliant in dense jungle during the Vietnam War, 1969. Courtesy Brian K. Grisby, Department of Defense/The National Archives- Britannica.com

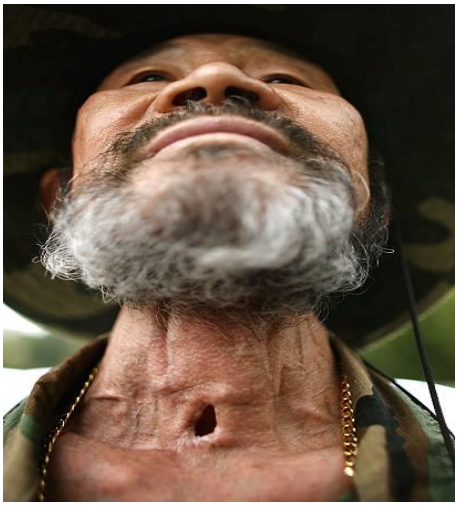
[203]*Ibid, 50*
[204]*Ibid*
[205] Gochfled M. "Recent Dioxin Contamination from Agent Orange in Residents of a Southern Vietnam City" *Journal of Occupational Medicine* (2001) Vo. 43, No. 5, Pp.433-34
[206]Article 4 (10) Chemical Weapons Convention 1993; Article 5 (11) and 7 (1) of the same Convention contains similar provisions.

A mother and father grieving over the body of their child, who was killed in chemical weapons attack in the suburbs of Damascus, Syria on August 21, 2013. Courtesy Britannica.com

Reactions on the skin due to exposure

A child born without hands writing with his toes

Congenital malformation



A man born with a hole in the neck

Effects of chemical weapons on health in Vietnam, courtesy:gettyimages.com

ii. **Biological Weapons 1972**

The United Nations since 1948 have classified chemical, biological and nuclear weapons as "weapons of mass destruction",[207] biological weapons when used in conflicts pose a serious threat to the ecosystems natural balance. A disturbance of that balance can result in a rapid deterioration of the human environment and the essential conditions of life.[208] The use of biological weapons could spread toxins and diseases among the enemy's armed forces or

[207] The definition of weapons of mass destruction was established for the first time by the UN Commission for Conventional Armaments in a Resolution of 12 August 1948 which set forth the commissions mandate. UN Document S/C 3/30, 3 August 1948.

[208] Robinson J.P., *The Effects of Weapons on the Ecosystems* (Oxford: UNEP; 1979).

civilians, the enemy's livestock or crops and vegetation which protect those enemy armed forces.[209]

Bacteriological means of warfare are based on the infectious properties of pathogenic micro-organisms. A single gram of any substance can contain more than one trillion bacteria. Biological weapons convention forbids the development, production, stockpiling or any other possession of microbial agents, toxins and weapons as well as equipment or means of delivery designed to use these agents or toxin for hostile purposes or in armed conflict.[210] Nine months after the Convention entered into force, all High contracting parties to the Biological Weapons Convention (BWC) agreed to destroy all biological agents, weapons and equipment. Vice Chancellor sir, permit me to assume that the current threat of Corona Virus with all the mutations may be a form of biological warfare of our time.

iii. **Nuclear Weapons**

The example of Bikini bomb illustrates the damage that can be inflicted on humans and the environment as a result of radioactive fallout from atmospheric nuclear weapons test. Several of the crew members of the "lucky dragon" seemed to have died as a consequence of the fallout. The American tests on Bikini and Eniwetok were terminated in 1958. In August 1975, it was observed that Bikini was still uninhabitable, due to radioactive contamination of drinking water and vegetable. It was not until 1977, after nearly two decades, that Eniwetok reached a safe level.[211] The UN Scientific Committee on the Effect of Atomic Radiation (UNSCEAR) regularly calculates the doses of radiation that have been and will be emitted by nuclear weapons test. The Committee has also calculated the doses received by the earth's population through successive contamination of the biosphere.[212]

Human beings receive doses of radioactive particles on the grounds as well as from radio nuclide that enter the body through food and inhalation and continue to emit radiation in

[209] Bring, O., *supra note 202*, p 401.
[210] Fleck, D., "Current Legal and Policy Issues" In Dehlitz (ed.) *Future Legal Restraints on Arms Proliferation* (New York: United Nations; 1996)
[211] Westing, A.H., "*Weapons of Mass Destruction and the Environment* (London; SIPRI; 1977), p.23
[212]SIPRI, Yearbook, World Armaments, Disarmament and International Security (Stockholm; SIPRI; 1997) Pp.434-435

the body for as long as they remain active.[213] The radiation can cause mutations in plants and animals which could in turn cause incalculable alterations of the ecosystem, although researches in this area have not produced any conclusive result. As to humans, we discovered in our research that radiation can have delayed somatic effects which include: blood cancer diminished fertility; increased frequency of still birth, and probably genetic effects as well.[214]

The secondary effect of nuclear weapons explosions affects the earth climate. Climate alteration will also be caused by the depletion of the Ozone layer in the stratosphere, a likely effect if many nuclear explosions of megaton forces are detonated.[215] Such explosions will result in the spread of nitrogen oxides in the atmosphere.[216] The International Court of Justice in its Advisory Opinion noted the dangers of nuclear weapons and advised for its prohibition.[217] Fortunately a convention banning nuclear weapons negotiated in 2017 and it came into force in 2021 even though most nuclear weapon States are yet to sign up to the treaty.[218]

[213] Bring O., *supra note 202*, p.400
[214]Akpoghome, *supra note 175*, p53-55
[215]*Ibid.*
[216]*Ibid.*
[217]ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July, 1996, ICJ Report 1996, Paras. 78-9.
[218]The Treaty on the Prohibition of Nuclear Weapons (TPNW) was adopted by a United Nations Diplomatic Conference on 7 July, 2017 and opened for Signature on 20 September 2017. The Treaty entered into force on 22 January 2021, after the 50th ratification instrument was deposited on 24 October 2020. Treaty on the Prohibition Nuclear Weapons UNODA, https://www.un.org/disarmament/wmd/nuclear/tpnw/ (accessed 12 February, 2021).

Graphic Images of Nuclear Weapons, courtsey of istockphoto.com

Nuclear Missiles- Weapons of Mass Destruction

Nuclear weapons on the environment

Graphic Images of Nuclear Weapons, courtsey of istockphoto.com

iv. **Incendiary Weapons**

These are weapons that can set the environment on fire. We found in our research that ecosystem withstand fire to varying degree. In areas with a relatively high fire frequency, the local ecosystem has developed and ability to survive wild fires. Plants in fire prone areas thus have good prospects of recovering after a fire, whereas plant in other areas will be decimated.[219] In forest areas, the offspring of young trees will readily succumb. Damage to the top soil can arise and wild fire can be damaging.[220]

Incendiary weapons such as flame throwers, napalm or white phosphorus are not generally designed to produce self-spreading fires. This can however readily be the result if the target area is sufficiently susceptible to catching fire. The so called flame weapons which often burn through jelly like substances are extremely injurious to the environment. Even more dangerous to the environment are certain high intensive incendiaries, which are specifically designed to ignite objects that are not otherwise readily susceptible to catching fire.[221] The natural environments that are most vulnerable are easy to identify and the most susceptible areas are those where the risk of natural wild fire is greatest.[222]

Consequently the tropical savannah is particularly vulnerable during the dry season whereas the tropical rain forest scarcely constitutes a risk area. Once wildness fires have gotten a foothold, they can smolder during entire winter under a blanket of snow, only to later become a full-fledged forest once summer arrives.[223]

Vice Chancellor Sir, we have just discussed the impacts of weapons but permit me to say that the analysis above is not complete as it does not represent the impact of all the means or methods of warfare. One of the greatest challenges of IHL is the spread of technology and this also affects weapons and their productions and usages in armed conflict. In 2008, the international community banned the use of cluster munitions'. Today, we are no longer talking about cluster munitions; we are discussing autonomous weapons, cyber warfare, artificial intelligence, drones, autonomous robots, and predator aircrafts that are unmanned. There are

[219] Robison, J.P., The Effects of Weapons of Ecosystems, (Oxford: UNEP.1979), p 17
[220] *Ibid*
[221] *Ibid*
[222] *Ibid*
[223] *Ibid*

serious concerns on the abilities of these new means to recognize and implement IHL principles in warfare. These concerns are still being studied. There are no conclusive answers yet.

v. **Land Mines**

Mines used in military and naval operations are a stationary explosive device that is designed to destroy personnel, ships, or vehicles when they come in contact with it.[224] Landmines come in two varieties: anti-personnel and anti-vehicle mines. Both have caused great suffering in the past decades.[225] The use of mines as weapons of war is a global humanitarian tragedy. The indiscriminate use of these weapons has long-lived consequences and has aroused immense distress all over the world.[226] There is a global ban on the manufacture, use, stock-piling and transfer of anti-personnel mines.[227] Mines continue to kill and maim even though the war is over. And the victims are mainly civilians. Anti-personnel mines leave a long-term legacy of death, injury and suffering. Stepping on mine will often kill one or more people, usually children. Mine contamination puts vast areas of valuable land out of use, compromising food production and destroying livelihoods.[228]

As noted earlier, mines are scattered throughout the world, killing or maiming 24,000 people every year, mostly civilians. In October 1996, the estimated number of known un-cleared mines exceeded 113 million. The United Nations Department of Humanitarian Affairs Landmine database recorded the presence of over 44 million mines in Africa, 33 million in Asia, 26 million in the Middle East, 13 Million in Europe and 2 million in Central and South America. Between 2 and 5 million new mines are laid each year.[229] Of the five countries most severely affected by mines, two are in Europe and they are Croatia and Bosnia-Herzegovina, where approximately 6 million mines currently litter the landscape and obstruct reconstruction.

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[224] Britannica, "Mine", https://www.britannica.com/print/articles/383644 (accessed 20 February 2020)
[225] Fehr Lisbeth and Clerfayt Georges, "Anti-Personnel Landmines and their Humanitarian Implications", http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID-7822&lang-en (accessed 20 February 2020)
[226] *Ibid*.
[227] The 1997 Anti-Personnel Mine Ban Convention prohibits the use, production, stockpiling and transfer of these weapons and requires action to be taken to prevent and address their long-lasting effects.
[228] ICRC, "Anti-Personnel Mines", https://www.icrc.org/en/document/anti-personnel-mines/ (accessed 30 May 2018)
[229] Lisbeth *supra note* 225, p.6

Around 500 mines infest Azerbaijan, and there are mines in Cyprus, Denmark, Georgia, Latvia, and Ukraine.[230]

Anti-personnel mine cost between 3 and 30 dollars. Mines are so cheap that it is difficult for manufacturers to make a big profit from mine sale alone. Mines are often given away as a bonus when major arms contracts are concluded.[231] On the other hand it costs between 300 and 1000 dollars on average to clear mines. Most countries affected by mines are poor and do not have enough resources to cope with the huge financial burdens of clearing the millions of mines in their soil and the mine producing States do not take responsibility for paying for the clearance of mine they have sold.[232]

People injured by landmines and other explosive remnants of war usually require lifelong care. More than three-quarters of the world's countries have now joined the Anti-personnel Mine Ban Convention and clearance is ongoing in 30 States.[233] To address the challenges, the Third Review Conference of the Convention held in Maputo, Mozambique, in 2014, demonstrated the dynamic and result-oriented attitude of the States that have joined the treaty.[234] The Conference adopted the Maputo Action Plan, which sets out strong commitment to improve work in the fields of victim assistance, stockpile destruction and mine clearance, and a clear commitment to meet key goals of the convention by 2025.[235]

The shoe comes on anti-personnel fragmentation mine

[230] *Ibid*, p. 7
[231] *Ibid*.
[232] *Ibid*.
[233] ICRC, supra note 228, p.2
[234] *Ibid*.
[235] *Ibid*. Reversing commitment to anti-personnel mine ban endangers civilian lives.

Anti-personnel mine in the ground

Picture of land mines

The devastation of land mine

Minefield sign

Anti-personnel mine in the ground

Danger Mine field sign

Unexploded Motar Bullets Graphic images of land mines courtesy of istockphotos.com

vi. **Vacuum or Thermobaric Bomb**

A vacuum bomb, also known as aerosol bomb or fuel air explosive, is made up of a fuel container with two separate explosive charges. It can be launched as a rocket or dropped as a bomb from aircraft. When it comes in contact with target, the first explosive charge opens the container and widely scatters fuel mixture as a cloud. This cloud can penetrate any building openings or defences that are not completely sealed.[236] The second charge detonates the cloud, resulting in a huge fireball, a massive blast wave and a vacuum which sucks up all surrounding oxygen. This weapon can destroy reinforced buildings, equipment and kill or injure people.[237] In 2003, the United States tested a 9,800kg bomb, nicknamed "Mother of all bombs". In 2007, Russia developed a similar device, 'the Father of all bombs'. This created an explosion equivalent to a 44-tonne conventional bomb- making it the biggest non-nuclear explosive device in the world.[238]

We found in our research, unfortunately that, there are no international laws specifically banning their use, but if a country uses them to target civilians in built up areas, schools and hospitals, then such a country would be held liable for war crime under the Hague Conventions.[239] This bomb can be traced back to WWII when they were deployed by the German soldiers but they were not widely developed until the 1960's when the US army used them in Vietnam. The US also deployed them in the war against Afghanistan in 2001 to destroy

[236] BBC News "Ukraine Conflict: What is a Vacuum or Thermobaric Bomb?" https://www.bbc.com/news/business-60571395.amp/ (accessed 1 March 2022).
[237] *Ibid*. This bomb when it strikes a target small explosion releases a cloud of explosive material and the second explosion ignites cloud, causing a massive blast that is capable of vaporizing human bodies. They are used for a variety of purposes and come in a range of sizes-including weapons for use by individual soldiers such as grenades and hand-held rocket launchers. Huge air-launched versions have also been designed, specifically to kill defenders in caves and tunnel complexes. The effects of this weapon are at their most severe in enclosed spaces.
[238] *Ibid*, p. 2
[239] Hague Conventions of 1899 and Hague Regulations of 1907

al-Qaeda forces hiding in the caves of the Tora Bora Mountains, and in 2017, against Islamic State forces.[240] Russia used them in 1999 against Chechnya and this act was condemned by Human Rights Watch. Russian made thermobaric weapons were reportedly used in the Syrian Civil War by the regime of Bashar al-Assad.[241]

Vacuum Bomb Courtesy bbc.com

[240] BBC, *supra note* 226, p.2
[241] *Ibid*.

vii. **Bombardments of Oil Pipelines and Facilities**

We noted earlier that environmental degradation occurs when military personnel and armed groups resort to bombing of oil facilities and infrastructure. During the Gulf war the Iraqi soldiers set ablaze at least 150 of Kuwait's oil wells as part of a 'scorched earth policy' and this blanketed a quarter of the occupied nation with smoke and cut off electricity and water to the estimated 300,000 Kuwaitis living under occupation and destroyed the small nation's main desalination plant.[242] The fires produced vast plumes of greasy, black smoke which towered thousands of feet into the air from the oil facilities. Pushed by high winds, wisps from noxious pall drifted as far as Riyadh, the Saudi Arabia capital 250 miles to the south.[243]

In the Niger Delta region of Nigeria, there were cases of damage to oil pipelines and installations by the various armed groups that operated in the region. In a recently concluded research[244] we found that on August 9, 2016, Niger Delta Greenland Justice Mandate (NDGJM) declared its existence and threatened to destroy refineries in Port Harcourt and Warri within 48 hours, as well as a gas plant in Otu Jeremi within a few days.[245] The next day, the group reportedly blew up a major oil pipeline operated by the Nigerian National Petroleum Company (NNPC) in Isoko.[246] The group also warned that they will blow up additional oil installations in the future.[247] This they did on August 19, 2016, the group reportedly blew up

[242] Michael Kennedy J., and Healy Melissa, "Iraqis Torch Scores of Oil Facilities in Kuwait: Gulf War: At Least 150 of the Emirate's Wells are set Ablaze. Allies Continue to Hammer Enemy Forces", https://www.latimes.com/archieves/la-xpm-1991-02-32-mn-1492-story.html?_amp-true/ (accessed 20 June 2014)
[243] *Ibid.*
[244] Akpoghome, T. U., Akpoghome, G. U. and Igbogbo P, "Examining the Effects of Internal Armed Conflict on the Nigerian Environment and the Response of Government", *Journal of Environmental Law and Policy (JELP)*, (2022), Vol. 2, Issue 1, Pp. 22-54.
[245]"Niger Delta: Another Militant Group Emerges, vows to bring down refineries in Port Harcourt, Warri within 48 hours" *Daily Post*, (Lagos, 17 September 2016) https://www.dailypost.ng/2016/08/09/niger-delta-anothermilitant-group-emerges-vows-bring-refineries-porthacourt-warri-within-48-hours/ (Accessed 5 December, 2021).
[246] "New Niger Delta militant group, Greenland blows up Oil Pipeline in Delta", *Daily Post* (Lagos, 17 September 2016), https://www.news24.com.ng/national/new/niger.delta-militants-issue-another-deadly-warning-20160812 (Accessed 5 December, 2021).
[247] "Niger Delta militants issue another deadly warning" *News24*. (Lagos, 7 September 2016),

two pipelines belonging to NPDC in the Delta State.[248] On August 30, 2016, the group blew up the Ogor-Oteri oil pipeline.[249] On 4 September, the group claimed it had rigged all marked oil and gas facilities with explosives and warned residents living near them to evacuate[250]

Apart from the foregoing, these spills sometimes result in fire incidents leading to loss of many lives, For example, the fire incidents in Egborode in 1998,[251] Jesse in Delta state in 2000[252] and the Onicha-Amiyi Uhu fire incident in Abia State in 2003.[253] In addition, discharge from refining activities into fresh water sources and farmlands devastate the environment and threaten human lives because they contain excessive amounts of toxic materials. Similarly, constant gas flaring affects wildlife and human life negatively. Badly constructed canals and causeways for the purpose of mining activities have adversely affected the hydrology of the region, causing floods in some areas and inadequate water in others. These artificial waterways allow saline water into sources of fresh water, resulting in scarcity of drinking water and the killing of many plants and aquatic animals.[254]

Extensive research has shown that one and a half million tons of oil has been discharged into the Delta's farms, forests, and rivers since oil drilling began in 1956. Hundreds of kilometers of rain forest have been destroyed by the oil spills. When petroleum is discharged into the soil, the soil becomes acidic, which disrupts photosynthesis and kills trees because their roots are not able to get oxygen. Moreover, the fish population has also been negatively

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https://www.news24.com.ng/national/new/niger.delta-militants-issue-another-deadly-warning-20160812 (Accessed 5 December, 2021).

[248]"Suspected Niger Delta militants blow up two NPDC pipelines in Delta". *Daily Post*. (Lagos, 7 September 2016), https://www.dailypost.ng (Accessed 5 January, 2022).

[249]"Militants strike again, blow up NPDC facility" *Niaja News* (Lagos, 31 August 2016) 4 https://www.naij.com/948223-breaking-news-militants-blow-another-npdc-facility-launch-operation-crocodile-tears.html. (Accessed 5 January, 2022).

[250] "Militants tell residents to vacate oil facilities" *Naija News* (Lagos, 6 September 2016) 4. https://www.naij.com/955371-militants-set-to-bomb-more-oil-facilities-as-it-prepare-to-attack-army.html. (Accessed 25 January, 2022).

[251]Ola, D and Eighemheberio D., "Wasting lives: Official negligence results in grave tragedy at Idjerhe, Niger Delta of Nigeria." Report in Dateline, Idjerhe, Delta State, Nigeria, 20 October 1998.

[252]*The Guardian*, (Lagos 23 March 1999).

[253]*Daily Champion*, (Lagos 26 June 2003).

[254]Okeke-Uzodike U and Ojakorotu V., "Oil, Arm Proliferation and Conflict in the Niger Delta of Nigeria" African Centre for the Constructive Solution of Disputes, https://www.oil,%20Arms%20Proliferation%20and%20Conflict%20in%20the%20Niger%20Delta%20of%20Nigeria%20–%20ACCO (Accessed 20 December, 2021).

affected by oil drilling. The region is a habitat to over 250 different fish species, and 20 of these species are found nowhere else in the world.[255] If oil spills continue at this rate, the entire species will become extinct and the whole Nigerian fishing industry will be decimated. The oil spills in the Niger Delta also have negative implications on local human health. In 2016, the Niger Delta Avengers, another militant group noted that it blew up three trunk lines carrying 300,000 barrels of oil. Destruction of oil installations by successive militant groups have severely disrupted crude oil production[256]

Large swaths of land destroyed by oil, courtesy www.alamy.com

[255] World Wildlife Fund., "Fishing on the Niger River" in https://www.panda.org/news_facts/multimedia/video/index.cfm?unewsid=611211 (Accessed 22 December, 2019).
[256] BBC, "Nigeria Militants Bomb Oil Pipelines in Niger Delta", https://www.bbc.com/news/world-africa-37999388/ (accessed 12 January 2022).

Oil spill and destruction of the environment in the Niger Delta, Courtesy www.alamy.com and dreamtime photos.

A militant group in the Niger Delta Region of Nigeria, Photo bbc.com/news

Effects of Means and Methods of Warfare on Hospitals, Safety Zones and Medical Transports

Medical facilities, transports and hospitals have also not been spared by the armed groups in the conduct of their hostilities. Under IHL, hospitals, medical transports and facilities are protected until such a time that they are used by belligerents in furtherance of their war efforts.[257] They are not to be directly attacked or used to shield military objective from attacks. To avoid incidental harm to hospitals and military medical units, the belligerents should endeavor to locate such units at a safe distance from military objectives and notify each other of their locations. Failure to notify the adverse party on locations does not exempt armed groups from their duty to respect and protect medical units.[258]

The premises, material and stores may not be diverted from their purposes as long as they are required for the care of the wounded and sick irrespective of their allegiance.[259] Where civilian hospitals fall into the power of the enemy, the enemy power may not requisition their resources as long as they are needed for the civilian population and for the wounded and sick under treatment.[260] Even where there is a requisition, it should be for the immediate treatment of the wounded and sick members of the armed forces including prisoners of war.[261] They must not be used to commit harmful acts to the enemy.[262]

Our research revealed that with the invasion of Boko Haram sect and other groups in Nigeria, the health sector came under siege and have been grappling with serious security breaches by the insurgent and the bandits.[263] Attacks on medical facilities and personnel have put the Nigerian healthcare in danger. This situation is not peculiar to Nigeria as other countries under attack by armed groups have suffered the same fate. This is also a violation of the rights

[257] The special protection of medical unit ceases when they are used to commit, outside their humanitarian function acts harmful to the enemy. See Art 21 CGI, Art 19(1) GCIV; Art 13(1) API: CIHL Rule 28
[258] Article 19 GC 1, Art 18 GCIV, Art 12 API; CIHL Rule 28
[259] Article 33 (2) GCI
[260] Art 14 (2) API
[261] Art 14(3) API
[262] IHL did not define acts harmful to the enemy but the commentary on Geneva Conventions indicated that such acts would include: military actions or serving as a military observation posts. These acts are sufficient for the medical unit or hospital to lose its protection even though they were not used for offensive combat action.
[263]The security breaches include the invasion and destruction of hospitals, kidnapping and abduction of medical personnel and patients, invasion of the hospital with arms thereby terrorizing the medical staff and the destruction of roads making it difficult for the ambulances the access the health facilities in emergencies even the patients are not spared.

of the medical personnel, patients and civilians generally. We also articulated these infractions and ways to address them in another publication.[264]

In response to this, the International Red Cross Launched the "Healthcare in Danger" programme. This programme began in 2008 with a study to look at how violence affects health care delivery in 16 countries. Reports of incidents were collected from a variety of sources including health organizations, Red Cross and Red Crescent Staff and the media. Data collected were analyzed to identify the most serious forms of violence and the report was presented in an ICRC document.[265] With the incessant attacks on health facilities and personnel coupled with the denial of access to hospital due to curfews imposed by the military and government more persons died.[266] This led the ICRC again to bring the healthcare in danger programme to Nigeria. The programme was launched in 2016 during the IHL workshop for University teachers in Abuja and I was a participant at the launch.

With the foundation established in 2016, I was invited by the ICRC to present a paper on the legal framework protecting healthcare in Nigeria to a group made up of military commanders, medical and allied medical personnel, the police and representative from the Federal Ministry of Justice. It was a delightful experience as that marked the beginning of my research in this area of IHL. The paper[267] which I presented articulated the laws that protects healthcare in Nigeria but observed that there is no direct legal provision in our domestic laws in this regard. The Constitution which is the *grund norm* addressed healthcare in section 17(3)(c)(d) and states that: 'the health, safety and welfare of all person in employment are safeguarded and not endangered or abused; there are adequate medical and health facilities for all persons'.

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[264]Akpoghome, T. U., "Application of Human Rights Law and International Humanitarian Law in Armed Conflict" A Case of Complementarity or Strange Bed Fellows?" University of Maiduguri Law Journal, Vol. 11, Pp. 272-295.

[265] ICRC, *Healthcare in Danger: Making the Case-Violence against Healthcare Must End, It's a matter of Life and Death*; (Geneva: ICRC; 2011) Pp.1-22.

[266]"20 Doctors have been Kidnapped in Nigerian in 2021: NMA Cries for Help", https://www. pulse.ng/news/local/20-doctros-how-been-kidnappped-in-nigeria-in-2021-nma-cries-for-help/7yvff7g6.amp/ (accessed 2 November 2021).

[267]Akpoghome T.U and Nwano T.C "The Legal Framework for the Protection of Healthcare in Times of Armed Conflict in Nigeria", In Badaiki A.D (ed.) *Sowing Seeds of Justice and Legal Development, Readings in Honour of Hon Justice Esohe Frances Ikponmwen* (Lagos: University Law Publishing Co. Ltd; 2019) Pp. 68-92.

Unfortunately this provision is addressed under Chapter II of the constitution tagged "Fundamental Objectives and Directive Principles of State Policy". This places the right to healthcare under the social objectives of the State. The interpretation of the above is that the right to health in Nigeria in not justiciable. No one can challenges the government in any court for not being able to access healthcare and the government has over the years paid lip service to the health sector. Yearly budgetary allocation to this sector is less than 5% and NHIS coverage is also less than 5%. Other laws were examined and we discovered that no single legislation in Nigeria addressed the issues of destruction to healthcare facilities or healthcare in general. The Geneva Conventions and Additional Protocols Bill which would have provided a solution were not ready to be presented by the Attorney General's office to the Senate during the 8th Assembly. The 9th Assembly is gradually coming to a close and the Bills have not been mentioned. We found that there is no right to healthcare for anyone in Nigeria. This was an eye opener to all. The research therefore recommended that Nigeria should fall back on customary international humanitarian law rules[268] as the Rome Statue has not been domesticated and cannot be used by Courts in Nigeria to prosecute those who destroy hospitals.

The research further suggested/advised that Nigeria should domesticate international treaties she had signed in this regard such as the Additional Protocols to the Geneva Conventions were ratified in 1988- thirty four year ago. The research did not end in 2017 as I had to further identify the gaps in the law and how to plug same. In November 2021, I was again invited with others by the ICRC to address medical personnel and the police and to present the findings of our research to the Minister of Health and the findings of my presentation is documented too.[269]

In order to drive home the point on the need to have an effective legislation, the research noted that 788 health facilities in the northeast have been destroyed by Boko Haram and the few that are still existing lacks the basic facilities to handle any case. The UN observed

[268]CIHL Rules 25, 26, 28, 29, 30, 109, 110, and 111 protect healthcare facilities and personnel including medical transports and units in times of armed conflict and applies both in international and non-international armed conflict situations.

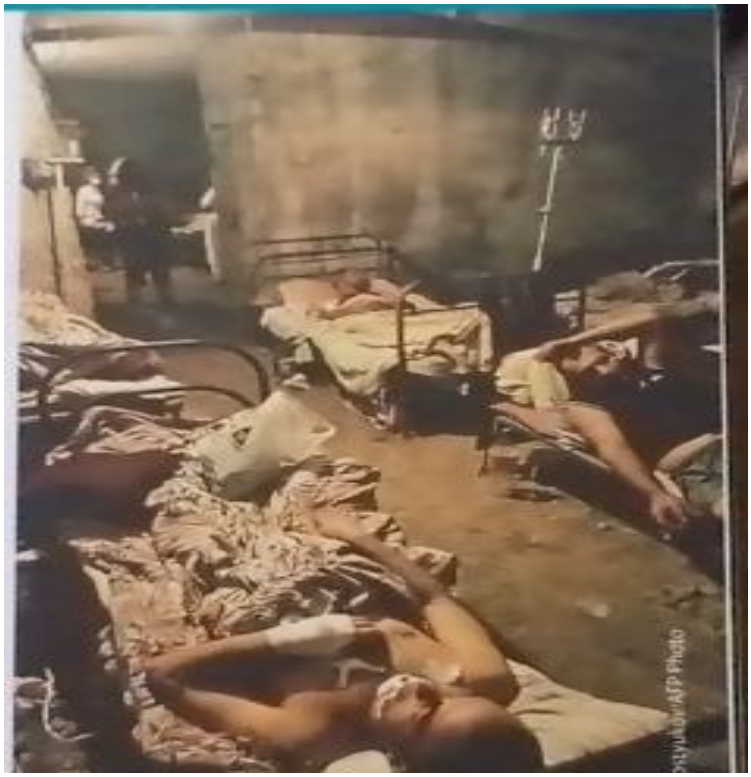
[269]Akpoghome T.U., "Healthcare in Danger: Closing the Legislative Gaps" 2nd Roundtable on the Protection of Healthcare in Nigeria, 15-16 November 2021, Bolton White and Sheraton Hotels Abuja, organized by the International Committee of the Red Cross, Pp. 1-29.

that 5.4 million people are in need of healthcare in the affected localities in the North. The research presented the gaps and suggested that there should be a legislation specifically dedicated to the protection of healthcare. I know that some people would ask the question- "What about the National Healthcare Act of 2014? It is interesting to note that not a single provision of NHA 2014 had anything to say about protecting healthcare and health personnel in times of armed conflict. The NHA did not even mention the provision of ambulance which should be basic. It is our earnest hope that the outcome of the roundtable with the Hon Minister of Health - Dr. Osagie Ehanire will yield the desired results. In 2018, I also presented another paper[270] and articulated the challenges to access to healthcare in Nigeria despite the fact that the National Health Act is operational.

Ambulance set ablaze by armed men. Courtesy ICRC Healthcare in Danger

[270] Akpoghome, T.U., "Examining the Protection of Access to and Delivery of Healthcare by the National Health Act 2014", *Advances in Social Sciences Research Journal*, Vol. 5, Issues 6, Pp. 521 – 535.

A doctor surveys the rubble left in the Adnan Khairallah Hospital in Baghdad after it was hit by missile. Courtesy ICRC healthcare in Danger



Patients had to be moved to the basement of a hospital after the building was partly destroyed. Courtesy ICRC Healthcare in Danger.

Mothers tend to their children undergoing cancer treatments on Saturday, February 26, in the bomb shelter of the oncology ward at Okhmatdyt Children's Hospital in Kyiv, Ukraine. Courtesy Sergei Supinsky/AFP via Getty Images.

Reviewing the Legality of Means and Methods of Warfare

It is trite to note that many weapons that are created have the potential to cause very devastating effects to infrastructure and the environment which would further create displacement and refugee crises. UNEP noted that "very little has been achieved" in so far as the enforcement of the law of The Hague is concerned.[271] Consequently most instances thus far have pertained to the law of Geneva which is intended to protect certain categories of persons, including civilians and civilian objects. Therefore it became necessary to institute a mechanism for the review of weapons (means) and strategies (methods) of warfare. The first instrument that referred to the importance of reviewing the legality of new weapon was the St. Petersburg Declaration. It addressed the development of future weapons in the following terms:

> The contracting or acceding parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armaments of

[271]The Fourth Hague Convention Respecting the Laws and Customs of War on the Land 1907

> troops, in order to maintain the principle which they established and to conciliate the necessities of war with the laws of humanity.[272]

It is safe to say that the utility of St-Petersburg Declaration is not lost because it formed the foundation for the 1899 and the 1907 Hague Conventions and Regulations on the means and method of warfare and currently the reference in international law to such reviews can be found in Additional Protocol I.[273] Consequently, we undertook another research on the analysis of article 36 of API. Article 36 is titled 'New Weapons' and it provides that:

> In the study, development, acquisition or adoption of a new weapons means or methods of warfare, a High Contracting party is under an obligation to determine whether its employment would in some or all circumstances be prohibited by this Protocol or by any other rules of international law applicable to the High Contracting party.

In our research,[274] having the above prescription in mind we sought to present a brief overview of the principal elements of the provision of article 36 AP I including the rule and factors that must be considered by States to ensure that the means and methods of warfare comply with the relevant rules of international law. We reiterated that the right of combatants to choose means and methods of warfare is not unlimited.[275] We observed that the rules of IHL have been developed and codified over the last 158 years in international treaties notably the 1949 Geneva Convention and the Additional Protocols of 1977, complemented by a number of other treaties dealing with specific matters such as cultural property, child soldiers, international criminal justice and the use of certain weapons.[276]

We observed that reviewing the legality of weapons, means and methods of warfare is not a new concept.[277] The aim of Article 36 is to prevent the use of weapons that would violate international law in all circumstances and to impose restrictions on the use of such weapons.

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[272] Doust, I., "New Wars, New Weapons, the Obligations of States to Assess the Legality of Means and Method of Warfare", *International Review of the Red Cross (IRRC*), (2002), Vol. 84, No 846, p. 346
[273]Article 36, Additional Protocol I, 1977
[274]Akpoghome T.U., *supra note 175,* Pp. 57-66
[275] Article 35(1) AP I
[276] ICRC, "A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Article 36 Additional Protocol I of 1977, " International Review of the Red Cross (IRRC), (2008) Vol. 88, No. 864, Pp. 931-956 at 923 https://www.icrc.org/assets/file/other/irrc_86icrc_general.pdf (accessed 7 January 2014).
[277] It was first discussed in 1868 during the St. Petersburg conference and documented as the Declaration from the conference.

The requirement that the legality of all new weapons, means and methods of warfare be systematically assessed is arguably one that applies to all States regardless of whether or not they are party to Additional Protocol I.[278] It flows logically from the truism that States are prohibited from using illegal weapons, means and methods of warfare or from using weapons, means and methods in an illegal manner. The faithful and responsible application of this international obligation would require a State to ensure that new weapons and methods of warfare it develops or acquires will not violate these obligations.[279] We noted that carrying out legal review of new weapons is of particular importance today in the light of the rapid development of new weapons and technologies and must be adhered to by all States and sanctions imposed for failure to carry out these reviews.

Article 36 AP I is complemented by article 82 of the same instrument and it requires that Legal Advisers be available at all times to advise military commanders on IHL and on the appropriate instructions to be given to the armed forces on this subject. The requirement of Article 36 is that new weapons, means and methods of warfare be reviewed but our research discovered that the article did not specify how a determination of the legality of weapons, means and method of warfare is to be carried out. A plain reading of article 36 indicates that a State must assess the new weapon, means and method of warfare in light of the provision of API and any other applicable rule of international law.

We noted in our research that this is a great *lacuna* and efforts should be made to address this situation by providing how the legal review should be carried out. Fortunately, the ICRC has provided a tool to assist in establishing weapons review mechanism. This they documented as the Guide to the Legal Review of New Weapons, Means and Method of Warfare.[280] This Guide was prepared in consultation with close to thirty military and international law experts, including government experts from different countries. The Guide advises on the substantive and procedural questions to be considered in taking such action.[281] The procedural guide given is articulated thus - the first thing to be done by a State is to have in

[278]ICRC, *supra note 265*, p 933.
[279]The United State of America and Sweden had established formal weapons Review Mechanism as early as 1974, three years before the adoption of Additional Protocol I of 1977.
[280] Leewand, K. *et al, A Guide to the Legal Review of New Weapon, Means and Method of Warfare; Measures to Implement Article 36 of Additional Protocol I* (Geneva: ICRC, 2006) Pp. 1-54
[281]*Ibid* Pp. 10-17 and 20-27

place some form of permanent procedure to that effect, i.e. there should be a standing mechanism that can be automatically activated anytime that a State is developing or acquiring a new weapon, and such a procedure should be made mandatory by law or by administrative directive. The Guide emphasized that a new weapon will suggest, a proposed means in which it is to be used that is without also taking into account the method of warfare associated with it. This raises three fundament questions:

1. Whether the reviewing authority should consider only the proposed or intended use of the weapons or whether it should also consider the foreseeable uses and effects? The weapons effect resulting from a combination of its design and the manner in which it is used?

In the response to the above, we found that article 36 appears to support a broader approach since it requires a State to determine whether the use of a new weapon would be prohibited in some or all circumstances. The commentary on the Additional Protocol I interpret this as meaning that a State should determine whether the normal or expected use of the weapons would be prohibited, but it is not required to foresee or analyze all possible misuse of a weapon.

2. What should the reviewing authority do if some, but not all, expected method of use of weapons is found to be unlawful?

   The Guide suggests on the basis of State practice, that in such cases, the reviewing authority should place restrictions on the weapon use.[282]

3. On the issues of IHL conduct of hostilities rules to be considered by the reviewing authority, the Guide further suggested that in addition to the 'cardinal rules' of IHL applicable to weapons, the reviewing authority would also take into account or consideration other rules of IHL relating to the conduct of hostilities, for instance those calling for proportionality and precaution in attacks.[283]

[282]It is essential to incorporate any conditions governing a weapons used into the operating procedures or 'user's manual' or those to use the weapons should be fully aware of its operational restrictions.

[283]Although these rules are primarily intended to be applied at filed level by military commanders on a case by case basis they would none the less be relevant at the review state of a new weapon is so far as the weapons design, characteristic and foreseeable effects, enable the reviewing authority to determine whether or not the weapons and users will be capable of employing it in conformity with them.

Our research finally submitted that the ICRC Guide has closed the gap earlier noted and further submitted that IHL is not the only body of law relevant to weapons review as reference was made to "this Protocol or any other international law applicable to the High Contracting parties". The research posited that the recommendation is broad enough as no State will be excused for failing to carry out a review of new weapons on the ground of non-ratification of the Additional Protocol I.

Judicial and Political Mechanisms

This lecture will be incomplete without observing that there are mechanisms put in place to ensure compliance with the rules of IHL and the doctrine of State responsibility in international law. In the conduct of hostilities, states are expected to observe legal restraints. It is axiomatic that states have a responsibility in international law to observe and ensure the observance of treaties they have ratified or acceded to. IHL is not an exception. By the provision of Article 1 common to the Geneva Conventions, States undertake to respect and ensure respect for the Conventions in all circumstances. The goal of IHL is to limit the effects of warfare on people and property and to protect particularly vulnerable persons. To achieve this, parties are limited in their choice of weapons as well as in the ways and manner they conduct themselves in war. We articulated these legal restraints in another publication.[284] We noted in our research that States have a responsibility to observe those legal restraints in armed conflict and that when they breach treaty provisions which they have signed or ratified, such a breach will give rise to reparations or other forms of compensation as the Court or other institutions[285] will deem fit to award in the circumstance.

Our research showed that IHL would hold a State strictly responsible for acts of members of its armed forces against protected persons and their objects and encourages states to observe treaty obligations. The need to respect and ensure respect[286] for international humanitarian law is not a matter of politics, but rather a matter of law. Violations do have consequences, not only humanitarian consequences for victims which we have carefully

[284]Ohuruogu, C.C and Akpoghome, T.U., "Observing Legal Restraint in Armed Conflicts: The Responsibility of States," *Baze University Law Journal*, (2017) Vol. 1, pp. 72 – 87.
[285]Akpoghome, T.U, "Judicial and Political Mechanisms for Environmental Protection in Armed Conflict: Half a Loaf or Simply a pie in the sky," *University of Benin Law Journal* (2013), Vol. 14, No. 1, Pp 237 – 261.
[286] This is the due diligence provision, "pacta sunc servanda".

articulated in this lecture but also legal consequences for the responsible States and individuals involved in these violations.[287] The International Court of Justice (ICJ)[288] has been very instrumental in interpreting the rules and actions of States and holding States responsible where necessary while the International Criminal Court (ICC) and the various ad-hoc tribunals[289] have the jurisdiction to try individuals who committed grievous crimes during the conduct of hostilities.

This is usually at the end of hostilities but we noted that people should be taught the rules before the eruption of armed conflict as they can only apply or observe rules that are known them (*Nemo dat quod non habet*). To ensure compliance and observance of the rules of IHL, the Geneva Conventions mandated States to teach these rules to their population as part of civil instruction and to the members of the armed forces of their States. We articulated the roles of academic institutions in achieving this mandate in another research detailing the roles of all stake-holders particularly academic institutions such as ours and the findings have been published.[290] Some of the recommendations of that research forms part of the general recommendations of this lecture.

Recommendations

Mr. Vice Chancellor Sir, it would not be out of place to make some recommendations in this lecture. From the discussions so far, the following recommendations are respectfully put forward:

1. To improve the effectiveness of Article 35 and 55 of Additional Protocol I, clear definitions are imperative for the terms – widespread, long-term and severe. The ENMOD Convention had set a precedence which should serve as a minimum standard. The ENMOD defined 'widespread' to encompass an area on the scale of several

[287]Akpoghome, T.U and Okoli, C., "Individual Criminal Responsibility in Armed Conflict Situations: From Impunity to Accountability," *Nigerian National Human Rights Commission Journal* (NNCHCJ)) (2012), Vol. 2, Pp. 134 – 161.
[288]Ohuruogu, C.C and Akpoghome, T.U, "International Humanitarianism Law in the Jurisprudence of International Court of Justice," in Ernest Ojukwu and Nwankwo, C.K (eds.) *Law and Social Development: Essays in Honour of Chief Echeme Ermole* (Abuja: Helen-Roberts, 212) Pp. 481 – 508.
[289]Akpoghome, T.U, "Prosecution and Punishment of International Crimes by Ad-hoc Tribunals in Africa," *Nassarawa Journal of Public and International Law* (NJPIL), Vol. 4, No. 1, Pp. 1 – 26.
[290]Ohuruogu, C. C and Akpoghome, T. U., "The Role of Academic Institutions in Promoting Respect for International Humanitarian Law in Nigeria", In Erugo, S. and Adekoya, C. O., (eds.), *Lawyering with Intergrity: Essays in Honour of Ernest Ojukwu, SAN*, (Raleigh, NC; Lulu Press Inc.: 2018), Pp. 219-234.

hundred square kilometers; ‘long-term’ is a period of months or approximately a season; and ‘severe’ involves serious or significant disruption or harm to human life, natural economic resources or other assets. AP I should do the same because ENMOD is a peace time treaty.

2. In view of the rapid transformation and technological advancements in the methods and means of warfare, as well as the increase in non-international armed conflict, updating the ICRC Guidelines will be a step in the right direction. Once it is approved by the UN General Assembly, States would have to adopt and reflect the guidelines in their military manuals and national legislations. These revised guidelines should in particular explain how damage to the environment affects human health, livelihoods and security and undermines effective peace building.
3. The International Law Commission, as a leading UN body with expertise in international law, should be mandated by the UN General Assembly to examine the effectiveness of the existing international legal framework for environmental protection, during armed conflict. This inquiry should include an explanation of options for clarifying and codifying the body of law, an inventory of the legal provisions and the identification of *lacunae’s* and barriers to enforcement and the consideration of the applicability of Multilateral Environmental Agreements (MEA’s) during armed conflicts as part of its current analysis of the effects of armed conflicts on treaties.
4. The guideline should address the continued application of international environmental laws during armed conflicts, it should explain how damage to the environment can be considered a criminal offence under international criminal law that would be enforceable in national and international courts and should also address environmental destruction during non-international armed conflict as most contemporary armed conflicts are non-international in character.
5. To enrich the body of case law which appears to be very few currently, judges, prosecutors and legal practitioners should be trained on the content of the laws that are applicable in prosecuting environmental violations during armed conflict. The case law development would bring clarity to existing provisions and deterrence by providing a credible threat of prosecution for violators.

6. There is need for States to ratify and domesticate provisions of international law that specifically protects the environment in times of armed conflict and incorporate them into their domestic legislations.
7. There's need for the UN Member States to consider setting up a permanent body to be overseen by the General Assembly or the Security Council of the United Nations. The mandate of this body should include: to investigate and decide all alleged violations of international law committed during any type of armed conflict, handle and process compensation claims relating to environmental damages and loss of economic opportunities including remediation activities and processes, and develop mechanisms and norms to assist victims which would include international assistance and co-operation to assess and redress the environmental consequences of armed conflict.
8. The role of the Permanent Court of Arbitration should be strengthened to address disputes relating to environmental damage during armed conflict. In 2002, the Permanent Court of Arbitration adopted the optional rules for conciliation of disputes relating to the environment. These rules happens to be the most comprehensive set of environmentally designed dispute resolution procedural rules presently available and could be extended to disputes arising from environmental damage in times of armed conflict.
9. The massive and vindictive environmental damage by Iraq during the Gulf War is a clear violation of the existing laws of armed conflict. International law supports criminal responsibility and accountability. Effective deterrence demands criminal responsibility and State accountability. Aside the demand for reparations, those involved in environmental destruction should be criminally held responsible. The United Nations must put in place a mechanism that will establish a forum and ensure that decisions made by political and judicial mechanisms reflect the international community sense of equity and conscience.
10. There is need to incorporate environmental standards into the full spectrum of contemporary military operations. Military commanders need to be given appropriate guidance on environmental standards for all types of military operation, including so-called operation other than war which has taken on added significance since the end of

the Cold War. This is required to implement the admonition of the ICJ in its Advisory Opinion on the Legality of the Threat of Use of Nuclear Weapons where the ICJ opined that States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principle of necessity and proportionality.

11. International humanitarian law regulating non-international armed conflict is few and has gaps with respect to environmental protection during such conflicts. There is a need to strengthen and consider how best to extend IHL provisions on environmental protection during NIAC. The ICRC should consider how to build capacity to adopt, implement and enforce international criminal law in the domestic legislations of State parties.
12. The UN Secretary-General should submit annual reports on the environmental impacts of armed conflicts. This report should incorporate the direct, indirect and institutional environmental impacts caused by ongoing, new international and non-international armed conflict in a particular year. The UN Secretary-General should recommend how the various threats to human life, health and security from environmental damage in each country can be addressed.
13. There is a need for States to obey the provisions of the 1954 UNESCO Convention and their Protocols on the preservation of cultural property. Cultural properties should be identified and shielded from hostilities. States should have a refuge for cultural property and a list of all existing cultural property within their territory. The use of protective emblem – the Blue Shield should be encouraged.
14. States must in accordance with Article 26(2) of the Convention, once every four years produce a report stating therein information on the measure they have taken, prepared to take or contemplate towards the protection of cultural property. This report must be submitted to the Director-General of UNESCO.
15. States must be encouraged to prohibit the destruction of cultural property. Prohibition of destruction is contained in Article 16 of Additional Protocol II to the Geneva Conventions. Once this is done, cultural property will be safeguarded and respected.

16. States must safeguard and respect cultural property by making necessary preparations in time of peace. All refuges meant to shelter moveable cultural property and centers containing monuments and other immovable cultural property of great importance should be placed under special/enhanced protection.
17. Nigeria should domesticate the Geneva Conventions and the Additional Protocols and incorporate their provisions into the respective domestic legislations. This would help to develop the framework on environmental protection and other issues that have arisen as a result of the Boko Haram insurgency.
18. Comprehensive framework protecting healthcare and health personnel should be enacted. Attacks on hospitals and staff should be criminalized and offenders punished.
19. Before the new legislation, there is a need to make the right to healthcare justiciable and gaps in the legal frameworks should be addressed.
20. The use of rape and other forms of sexual violence as a method of warfare should be prohibited and criminalized. States must ensure that those who perpetrate sexual violence should be punished and the victims should be sheltered and provided with medical and psychological assistance.
21. The manufacture; use, transfer and stockpiling of anti-personnel mines should be condemned and the international community should instruct the competent authorities to draw up, and publish a list of companies producing anti-personnel mines.
22. There should be a total ban on the manufacture, use, transfer and stockpiling of anti-personnel mines worldwide and the adoption of legislations for a total ban on anti-personnel mines in their territory, as a first step towards a total ban. Additionally, they should suspend or take other restrictive measures against anti-personnel mines.
23. Apply criminal sanctions against the use of anti-personnel mines in violation of the rules of international humanitarian law.
24. Impose on those who lay mines the responsibility of financing or carrying out clearance of mines which they have laid.
25. All States must commit to improve work in the field of victims' assistance, stock pile destruction and mine clearance, and a clear commitment to meet the key goals of the Mine Convention by 2025.

26. Oil pipelines and facilities must be protected against attacks by armed groups and criminal sanctions imposed on those who bomb oil facilities in times of armed conflict.
27. Intensive clean up measures must be put in place to ensure immediate attention is given to the environment once a spill occurs. Budgetary allocation must be made for this if we want to save the environment.
28. There is an urgent need to study the effects of vacuum bombs in line with the laid down rules and if the weapon fails the three prong test, it should be banned and legislation should be enacted in that regard like in other cases.
29. The High Contracting Parties should observe the due diligence provision of Common Article 1 to the Geneva Conventions. States also have obligation to, in times of peace as in time of war to disseminate the text of the Geneva Conventions as widely as possible. This entails the inclusion of the rules in both military and civilian academic programmes so that the principles will become known to the entire population. Academic institutions have a great role to play in this regard and we gladly want to observe that Benson Idahosa University is one of the universities in Nigeria offering IHL as a standalone course at 400 Level in Faculty of Law and as part of Public International Law at 500 level. The students have also participated in the dissemination of IHL by participating in moot competitions in this subject area. They won the competition in 2016 and represented Nigeria in Arusha, Tanzania under my supervision as the IHL teacher and their coach.
30. To disseminate the text of the Convention, the National Universities Commission should include IHL to be taught as a compulsory course in our tertiary institutions and probably as a GST course bearing in mind that anyone, whatever his discipline or field of study can occupy a sensitive position in government or the armed forces and would need to make decisions in respect of armed conflict. Where this is not possible, students of Political Science and Public Administration, International Studies and Diplomacy should be made to offer IHL as one of their courses.
31. Apart from creating awareness among students and civil societies, the importance of IHL can be reinforced by academics when they have the opportunity to discuss Environmental Law, Constitutional Law, Administrative Law, Human Rights Law,

International Criminal Law and Health Law or Law and Medicine including Criminology.

32. Nigeria should domesticate the Kampala Convention on Internal Displacement, address the root causes of displacement and work towards ensuring durable solutions to displacements as these IDP's are also exposed to a whole lot of dangers.

33. Finally and most importantly, States must endeavor to address the root cause of wars or armed conflicts at the earliest opportunity. Armed conflicts do not just happen; they are a direct response to unmet or unsatisfied agitations. No threat of war or armed conflict should be ignored.

Conclusion

Mr. Vice Chancellor Sir, distinguished ladies and gentlemen, armed conflict is an institutional disaster and has caused untold hardship to all. We have all seen the despair, dismay, and the disaster of war. What happens when the armed conflict is over? It may be a time for peace, but there will often be pockets of hostilities, rougue forces, continuing damage, unexploded weapons that have not been removed and lives that cannot go back to so-called normality because the environment is drenched in blood. The environment is bleeding and we are also bleeding for whatever affects the environment directly or indirectly also affects us. There is need to protect the environment upon which we all depend. We need to mitigate the hardship to civilian and their objects who are the primary victims of armed conflict.

We have in this lecture deliberated on a whole lot of issues. It is quite glaring that those who make decisions in the battle field have neglected or failed to obey and comply with extant rules of IHL thereby painting a picture to show that this beast cannot be tamed. But this is not true. Strict observance and application of IHL will produce the much sought after effect for all including our environment.

From the discussions, we have seen that IHL has provided enough rules but the international community and State parties must be ready and willing to adopt and implement these rules in addition to addressing violations by prosecuting offenders and imposing strict economic and diplomatic sanctions on erring States. States must be made accountable for their actions. Even where IHL is silent on an issue, other international law instruments such as

human rights law and international criminal Law have stepped in as gap fillers to provide an answer. The United Nations Environmental Programme (UNEP) has done so much in articulating laws and mechanisms under IHL and other international legal framework that addresses environmental destruction in times of armed conflict.

The Laws of war in 189 years of its existence has remained very effective and the Geneva Conventions in its 73 years remains relevant. The beast can be tamed but we must all rise, act and speak with one voice. The State actors, non- state actors, peaceful civilian population and international and non-governmental organizations' must answer the clarion call. Let the recommendations of this lecture be implemented and if this is done, the fountain of blood will dry up and in its place we would have fresh dews and water to nourish our environment which would in-turn yield peace and abundance of the wealth that God has deposited in it. When we eat fresh food, drink water and breathe in air devoid of toxic chemicals and poison from weapons of warfare, then we are sure of the continuation of life. Let us all go home with the mind-set that the beast can and should be tamed and spread the news wherever we find ourselves.

Mr. Vice Chancellor Sir, as I end this lecture, I humbly seek your leave to end with a passage from the Scriptures: "Lord, You have done many good things for me, just as you promised." (Psalm 119:65) The Lord has been faithful and good to me and whatever I have achieved is by His Grace and I say may His name be praised forever in Jesus name, Amen.

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Special mention must be made of my father in the legal profession – Mr. Kenneth Oladipo Longe, a Life bencher. Thank you sir, for all you did for me. You decided that you would no longer employ female lawyers because of their numerous excuses and laxity. When you were approached to hire me after I lost my daughter, you reluctantly agreed but when I resumed, you found a different specie of the female gender. I never gave any excuses. I was always in the office even during pregnancy. Severally, you would call me and ask me to slow down. I remember that in 2005 before I had my son, you didn't want me to go to Court again because my EDD had passed but I insisted on going to Court. On the 26th of October 2005, you felt that I would go into labour but you said nothing to me. I had gone to Court and was to open our case that day, little did I know that you sent Mr. Godspower Idahosa, the Chamber's Admin staff to come to Court and see how I was faring. I was on my feet taking the witness when the labour pangs came. I threw the Court into confusion but I quickly asked for an adjournment which the Court granted when I could no longer help myself, I saw Godspower by my side. I thought he came to file papers but he said and I quote, "Oga said I should come and wait in Court because he suspects you will go into labour." I was deeply touched. With the help from Godspower, I was able to leave the court that day.

You were so much interested in my growth and development as a lawyer that you encouraged me to go for my Masters. When I completed the programme, you were very happy and you said to me, "Theresa, I do not want you to remain in my chambers, you need to go and teach in the University where you will make greater impact. Practice is good and you are doing very well but you will be better in academics." I didn't know how to go about it but you took it upon yourself to be scouting for a teaching job for me. Your first choice was Benson Idahosa University because the young Faculty of Law was opposite your residence at Esezobor Longe Street, off Ugbor Road. When it was not possible to reach the Ag Dean of the Faculty, you went over to UNIBEN. Unfortunately, you had to travel to the United States for a surgery and

the plan was stalled. God who saw your heart and desires for me raised Dr. Mrs. Dele Ogboghodo to continue from where you left off. Through her and her husband Prof. Abraham Ogboghodo, I was introduced to the Vice President of Benson Idahosa University, Prof. John Okhuoya and the rest is history.

I am grateful to God that he has kept you alive and strong all these years. I am particularly grateful that He made it possible for you to see me reach the pinnacle of the profession you desired for me. I thank the Lord for raising Mr. K. O. Longe and I pray that God will use me to identify others and raise them to where He wants them to be. I also want to say thank you to Osakpanwan Ogieriakhi Esq., Jessica and Mr. Godspower Idahosa.

I want to specially appreciate all my colleagues from the fourteen universities offering IHL and Members of the Society of International Humanitarian Law Teachers – The SIHULAT – Prof. A.D. Badaiki SAN, (President), Prof. E.E Essien SAN, (former President SIHULAT and immediate past Vice Chancellor, UniUyo) Prof. Isa Chiroma SAN, (The DG of the Nigerian Law School), Prof. Sam Erugo SAN, (Dean, Faculty of Law, Abia State University), Prof. M.T Ladan – DG NIALS, others include: Prof. Okere, Prof. Chris Ohuruogu, Prof. Mike Ibanga, Prof. Kamal, Prof. I. Omoruyi, Prof. Williams Igwe, Prof. Oyelade Olutunyi, Prof. G. Okwezuzu, Dr. A.J Suleiman, Dr. Stella Peters, Dr. Nnamdi Ikepeze, Dr. Bariyima, Dr. Folake, Dr. Debo Olagungu, Dr. Rufus Olaoluwa, Dr. Omolade, Dr. Olaseni, Dr. Idorenyin Eyo, Dr. Okebukola, Dr. Emmanuel. Ibezim, Dr. Haglar Okorie, Dr. Ufuoma Awhefeada, Dr. Brown Umukoro, Dr. Chizoba Okeke, Dr. Chinwe Okoli, Dr. Safiya Ahmed (Ambassador of Nigeria to Romania), Dr. Fatima Alkali, Dr. Halima, Mallam Idris AbdulKadir, Dr. Nonso Attoh, Dr. Chukwudumebi Joseph-Asoh, Mr. Ibrahim Abdullahi SAN, Mr. Chairman Ihua, Mrs. Ndidi Edeoghon, Mr. Andrew Emwanta (Alumni of Faculty of Law BIU and Commissioner for Information, Edo State), Mr. Shaba Sampson, Ms. Keseme Odudu, Mr. Okanga Okanga and others. I want to thank all participants from the Nigerian Institute of Advanced Legal Studies, Abuja. I specially appreciate the International Committee of the Red Cross, Nigeria Delegation –Yann Bonzon, Head of Delegation ICRC, the Queen Mother – Ms. Sybil Sagay, Anne Lardy-Legal Coordinator, Leonard Blazeby, Head of Prevention, Elvina Pothelet, ICRC Regional Legal Adviser, Mrs. Juliet Kelechi Unubi; Halimat Temitope Edun, Sechie Philip, Erica Momoh, Bianca Ogbu, Chinelo and all the ICRC Nigeria Delegation. Thank you ICRC for

investing in me. I am truly grateful. Just know that I am ever ready to support the work of the delegation in Nigeria and elsewhere.

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I started my teaching career at the Faculty of Law of Benson Idahosa University but I spent few months before then as the Law Librarian. I want to appreciate Mrs. Grace Sanni, Mr. Igbafe, Mr. Henry Okosun, Mr. Charles Eruanga, Mr. Jerome Idiegbonye-Ose, Mrs. Mary Idahosa, Mr. Andrew Ayenomo, Mr. Smart, Mrs. Lilofa Ogiamen, Mrs. Caleb, Mrs. Idehen, Mrs. Philo, Mrs. Imasua, Mrs. Florence Enusike, Dr. Mrs. Rosemary Odiachi, Mrs. Gladys Nonye Osajie, Mrs. Sadaat Ereiyi, Mr. Keith Igbinigie, Mr. Dennis, Mr. Charles Chukwuedo, Mr Vincent Okponaviobo, Mr. Clifford Igbinosa (the Law Librarians), Miss Florence, Mrs. Harriet, Mrs. Gloria, Mr. Emeka and all the staff of the University Library.

Distinguished audience, please permit me to acknowledge and appreciate all the teaching and non-teaching staff in the Faculty of Law both past and present. I will start with our Baba, Prof. M.O. Adediran, (The Ag. VC and Dean of Faculty of Law 2007) Prof. Chris Ohuruogu, Prof. Borokini (the first inaugural lecturer of Faculty of Law), Prof. Ernest Ojukwu (Teacher), Prof. O. K. Edu, Prof. Timothy Yerima, Prof. Lawrence Atsegbua, Prof. Violet Aigbkhaevbo, Prof. Obehi Alegimelen, Prof. (Mrs.) Onuoha, Prof Arishe, Prof. J.E Idugboe, Prof. Laide Gbadamosi, Prof. Gaius Okwezuzu, Prof. Yalaju and Dr. Abila of blessed memories, Dr. J. Madubuike-Ekwe, Dr. S O. Idehen, Dr. S. Ojogbo, Dr. Theo C. Nwano, Dr.

Timothy Umahi, Dr. S. O. Daudu, Mr. I.O Adewoye, Mr. J.B Bello, Mrs. Josephine Obasohan, Mr. E. Ojeifoh, Mr. C.C. Okoro, Mrs. Lilian Akhirome-Omonfuegbe, Mrs. E.U. Oyemwense, Mrs. Edeko (Commissioner for Social Development and Gender Issues, Edo State), Dr. Nkechi Worluh-Okoli, Dr. Dumebi Okoye Joseph-Asoh, Mr. Kelly Isichei, Dr. D Ejere, Dr. S. Alabi, Dr. E.E Akhigbe, Mrs. Ifeoma Elijah-Ojete, Mr. Ikechukwu, Mr. O. Omonuwa, Mr. L. Obadan, Mrs. J. Okani, Mr. Ndubuisi Nwokeocha. All the past Faculty Officers – Mr. J. Ogbeide, Mr. Emma Awipi, Mrs. A. Udochi, Mr. Ralph Aimua, Mrs. Anthonia Aziegbhemin and currently Mrs. Eseiwi-Edokpolor. The Secretaries – Mr. Friday Urhoghide, Mrs. Rose Ojobor, Mrs. N. Esunamunjor, Mrs. Faith Ebhalemen, Mrs. Esther Omonudo, Mrs. Joyce Idehen, Mrs. Kelechi Ezirim, Mrs. Omon Justice, Mrs. Isowanwen Aimurie, Mrs. Vera Akpeji, Miss Bridget, Pastor Miracle Agbi, Mr. Samuel Egbehi, Mr. Victor and others. Thank you and God bless you all.

I want to appreciate all the cleaners in the University and their supervisor Ms. Chrystabel Ojukwu, may God reward your labour of love. I have a lot of friends who have inspired and encouraged me in life. They are too numerous to mention, may God bless you all.

I will not fail to appreciate all the students of the Faculty of Law both past and present. A lot of them are doing wonderfully well outside the University. Thank you for bringing out the best in me as a teacher. Thank you for all your support during my tenure as the Dean. To all the IHL students and the Oralists from 2010-2019 especially, Vickram Ikhuenbor, Abu Michael, Udoema Ubong, Osike Edward, Babajide Love, Iheaturu Jane, Imuesiri Tracy, Nkwor Larry, and Chisom. I want to thank the following persons for assisting in my research: Umukoro, Nyerhovwo Godstime, Okwe Millicent Nwamaka, Tony-Ikiba, Tamunotonye, Alile Desmond, Chukwu Chidimma, Asiegbu Cynthia, Sotonye-Oga Soala, Diachi Richard and Ereku Mary Tsola, I say thank you. I want to recognize Hon. Tidi Michael, Hon Timi Guwor, Hon Onoriode Agofure, Mr. Alex Imuetiyan Erhahon, Pastor Cosfinney Udoka, Dr. Sunday Ogadu, Dr. Okeja Thaddeus, Mr. Paulic Dikachi, Engineer Ndo Tombari, Mr. Rapheal Eme, Mr. Aribogha Stephen Layefa, Mr. Ediare Cliffson, Mr. Donald Igbinosa Eboigbe, Mr. Otomodo Jacobson and Mr. Lucky Delekpe. All past and present LAWSA Executives, I salute you all for without you there will be no Faculty of Law and we would not be here today.

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choosing to be a part of the movement to disseminate the information on the need to end wars. I am particularly happy because your present positions in your offices is an indication that you will become policy makers and judges tomorrow and I pray that you will not forget what you have been taught. I will not fail to acknowledge the M.B.A classes I have taught over the years particularly the MBA 2 of 2020/21 and the current class of 2021/22 sessions. Thank you all for always bringing out the best in me. I have taught you but I also learnt so much from you. You always come with the real life experiences from your offices and we apply the laws to them. The classes are always very interactive. Thank you for teaching me too.

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Jerome Idiagboyen-Ose and Mr. Azubuike Ibekwe. Thank you for being there always. I also want to appreciate Dr. Solomon Momoh of the UN High Commission for Refugees (UNHCR), his wife and Alison.

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I also want to appreciate the PRO CGMI Rev Alex and Rev (Mrs.) Felicia Iduh, Prof Omokhua and Mrs. Vicky Adeleye, Prof. (Mrs.) Faustina Idu, Prof. and Mrs. Martins Aisien, Prof. Abraham and Dr. (Mrs.) Dele Ogboghodo, my pastors at Miracle Center, my special pastor, late Rev. Jerome Iyekekpolor (of Ekehuan Zonal headquarters as it then was) and Dr. Peter and Mrs. Judith Osagie.

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I come from a very large family. The family is large enough to constitute a town of its own. Thanks to my grandparents for having so many sons and daughters. They had their quiver full and were never afraid of the enemy. Today, no one dares to trespass into my family. I want to appreciate all members of the Okafor's family ably represented today by the eldest of the sons and the head of the family now, Mr. Ejike Okafor who rose to the echelon of his career at the Central Bank of Nigeria, the Nwangwus' represented by Mr. Oforzor Nwangwu, the Okongwus' represented by Mr. Sunday Okongwu, the Ekwerekwus' represented by Mr. Innocent Ekwerekwu and Mrs. Ngozi Okeke, the Offiahs' represented by Ms. Ifeyinwa and Mr. Ikechukwu Offiah, the Ogbukas' represented by Mr. Obinna Ogbuka, my nieces and nephews at home and in diaspora, thank you for being a part of my story. You celebrate me for being the

first lawyer, academic doctor and Professor in the family, it is my earnest prayer that many more will come after me in Jesus name, amen.

I want to appreciate my father and mother in law Dr. Benjamin Akpoghome and Mrs. Mary Akpoghome of blessed memories. I also have wonderful brothers and sisters-in-law very dear to my heart, Mr. and Mrs. Steve Akpoghome, Prof. Osi and Mrs. Maria Akpoghome, Mrs. Eunice Imoagene, Mr. and Mrs. Paul Akpoghome, Mrs. Comfort Ebalu, Mrs. Theresa, Mrs. Philomena Solomon, Mrs. Elizabeth and Ikechukwu Unogbo, Mrs. Ogbaki (Mama Anthonia), Franca, Anthonia, Macqueen, Daniel, Sunny, Somine, Ulelu, Dan, Jude, Moses, Augustina, Mercy, Daniel, Christopher and others. Thank you for accepting me into your wonderful family.

I want to thank the family of Rev. Morah Okoye and his wife of blessed memory, this family is the extension of my immediate family. I must specially thank their children- Chizoba, Emeka, Chukwudumebi, Obiajulu, Ifeanyi, Ogochukwu (who selflessly nursed my first child Onoso) and Ekene. Thank you for being my family in Benin. I must not also forget the Momoh's family- Dcness Momoh and her husband, Esther, Isii, Osariemen and Itohan. Mrs. G. U Omere and family, thank you.

I thank the Chairman of the Inaugural Lecture Committee, Prof. Clara Igeleke and her team for making today possible. I also want to appreciate all the members of the University Ceremonials Committee and the CBSU. Thank you for making today a success. I thank all the members of Committees I belong to in the University, thank you all.

Finally, it may have been impossible to become a Professor if not for the support from my husband. I remember that my former Dean Prof. Olu Adediran once told us in the Faculty that if it takes a man 10 years to become a professor, it would take a woman 20 years. He was not saying that women were in any way inferior but he was telling us that we need to work harder because of our peculiar roles both in the family and place of work. Women play more than double roles. I was determined not to spend 20 years before becoming a Professor and God honoured me by giving me a wonderful man as my husband, my one and only, the love of my life, my head and the father of our lovely children, Rev. Godwin Akpoghome who stood by

me through thick and thin, upholding me in prayers and taking up chores that most men would ordinarily not attempt.

Thank you for supporting me and taking care of the home and the children in my absence. I remember on several occasions you would wake me up and ask 'have you completed that paper'? Or 'are you not writing today'? You provided a complete workstation at home- desktop, printer, photocopier and regular internet services from four networks- MTN, GLO, ETISALAT and Airtel. May the Lord bless and keep you for me. Together, we have grown, will continue to grow and enjoy the fruits of our labour in Jesus name, Amen. I also want to specially thank my children Idanesi Nzebuchukwu and Oshiobugie Oluebube. God used both of you to wipe away my tears. Thank you for your love, sacrifices and patience. May the good Lord keep and preserve you. I also remember my amiable late daughter Onoso Ozioma Akpoghome. You are alive in my thoughts and mind and to live in the hearts of those who love you is not to die. Sleep on my daughter till the resurrection morning.

Ladies and gentlemen, I know that I have taken enough of your time but permit me to specially thank our Vice Chancellor, Prof. Sam Guobadia once again for making today possible, thank you sir. I want to profoundly thank every one of you for your time and patience in listening to this lecture. Please remember that the environment is all that we have, therefore we must protect it. Go and spread the message on environmental protection, speak against wars and the proliferation of weapons. As you do this, you are protecting the environment. May God help us to live up to this daunting responsibility.

Thank you for listening and May God bless you all and grant you journey mercies back to your respective destinations.

CITATION OF PROFESSOR THERESA UZOAMAKA AKPOGHOME

Professor Theresa Uzoamaka Akpoghome was born on the 17th day of August 1968 in Ogidi, the headquarters of Idemmili North Local Government Area, Anambra State to the family of late Chief Daniel Anonye Okafor of Ogidi-Ani Etiti and Mrs. Cecilia Obiageli Okafor Nee Obiora of Umuru Ogidi both in Ogidi, Idemmili North Local Government Area, Anambra State. She started her primary education at St Patrick's Primary School Kpiri-Kpiri Abakaliki before transferring to Station Urban Primary School, Abakaliki from 1974-1981. She proceeded to Girls High School, Azu-Iyiokwu in Abakaliki in 1981 for her secondary education which she successfully completed in 1986 having cleared her papers at a sitting in WAEC. She wrote JAMB and passed but her dream of going to the University was aborted by the gas fire accident she had in 1986. Upon her recovery she proceeded to Anambra State Polytechnic (now Federal Polytechnic Oko for her National Diploma. She finished her ND with double award as the best graduating student in the School of Information Technology and the Department of Library and Information Science.

Upon the completion of one year Industrial Training, she went back for her Higher National Diploma and finished with a Distinction and once again with double award as the best graduating student in the School of Information Technology and Department of Library and Information Science. She proceeded for her National Youth Service Corps in Benue State and was posted to the Federal Government Girls College Gboko for her primary assignment. She was the school librarian in addition to teaching literature and government. She completed the NYSC programme in 1993.

Upon the completion of national service, she secured a job with DHL Int'l (Nig.) Ltd, a multi-national courier company in Calabar. In 1995 she applied to the University of Calabar and was accepted to study law, an ambition she started nursing at the NYSC orientation camp. She completed the law degree programme as the best graduating student in Faculty of Law in 2001/2002 academic session. She immediately proceeded to the Nigerian Law School, (Lagos Campus) for her Bar Part II. She completed the Bar Part II and passed with a Second Class Honours (Upper Division) and was called to the Bar on 12th of October 2004.

Thereafter, she gained admission into the University of Benin in 2005 for her Master's Degree in Law and earned an LL.M in 2006/2007 session. She was employed in the Law Firm

of K.O. Longe and Co where she practiced law from 2005- 2007 before she moved to Benson Idahosa University in August 2007. She served briefly as the Law Librarian from August 2007-May 2008 and moved over to the Faculty of Law fully as a Lecturer II.

In 2008 she applied to University of Leicester for her Ph.D. she was given an unconditional admission but the dream of going to Leicester was shattered for lack of funds. In 2009 during the Nigerian Association of Law Teachers (NALT) Conference at Umuahia, she met two professors from the University of Jos that changed her story - Professors Dominic Asada and FC Nwoke who encouraged her to apply to UNIJOS for her Ph.D. In 2010, she applied for the PhD programme and was accepted and was supervised by Professor Dominic Asada. The PhD programme was completed within three years but the defence was stalled due to ASUU strike, she finally defended her PhD Thesis in June 2014 to the admiration of all. Due to her wonderful performance, she was announced as a Doctor of Law and was asked to consider joining the University of Jos as a lecturer an offer she turned down.

She became the first female lecturer in the Faculty of Law, BIU to earn a PhD, the first female Professor of law and the first female substantive Dean. She is also the first female Professor of International Humanitarian Law in Nigeria. At Benson Idahosa University, She has served in over forty-three committees and still serving. She has served as a member of the University Senate from 2008 when she was elected as the Congregation Rep to today 2022 (a period of 14 years). She was appointed the Ag. Head of Department of Public Law 2016-2018, HOD Public Law, 2019, Dean Faculty of Law 2018- October 2021. During her tenure as the Dean, the Faculty received full accreditation for the undergraduate programme (LL.B) and also received approval from the NUC for the Masters programme in Law (LL.M) which has commenced. She attracted investments to the Faculty including the three vehicles for the office of the Dean and the Heads of Department. She has seventy four (74) publications to her credit in reputable Local, National and International journals.

She has also attended short courses abroad. In 2013, she was sponsored by the International Committee of the Red Cross (ICRC) to attend the all Africa Course on International Humanitarian Law at the Institute of Human Rights and Humanitarian Law, University of Pretoria, South Africa. In 2015, she received another training grant, once again from the ICRC to attend the Advanced Training Course on IHL at the Geneva Academy of

Human Rights and International Humanitarian Law, Geneva, Switzerland. She has presented several papers at local, regional and international conferences as she would not attend a conference as a mere participant.

It is worthy to note that she has been on Konrad Adeneur Stiftung (KAS) Rule of Law Conference sponsorship in Africa since 2017. KAS Rule of Law Program is a German Based Institute with research interest in Africa. Every year, she is sponsored to research on an issue and presents the findings of her research in any African country that is chosen by the Institute. This Year, she is researching on the role of the International Court of Justice (ICJ) in ensuring security in Africa. The research findings will be presented in Tanzania.

In 2021, she had another breakthrough in her research as she was selected by the Rape, Abuse and Incest National Network (RAINN), the largest anti-sexual violence organization in United States of America to conduct a research on the incidences of sexual violence in six African countries.

She also receives invitations to give career talks to the youth in secondary schools in Edo State. Prof Theresa Uzoamaka Akpoghome surrendered her life to Christ in 1993 during the National Service and has remained in faith ever since. She has severed in different capacities in church but currently she is a Sunday school teacher and a member of the Marriage Counseling Committee and has ministered in some branches of CGMI as guest speaker. She is a member of CWFI and PAWA of Church of God Mission International.

She was a Statute Review Editor, BIU Law Journal 2012, Case Review Editor, BIU Law Journal 2016-2018, Editor-in-Chief, BIU Law Journal, 2018-2021, Member, Editorial Board, Journal of Environmental Law and Policy (JELP) Canada 2021-2023, Member Peer Review Committee on the Updated Commentary to the Third Geneva Convention of 1949, 2017-2019 representing Nigeria. She was the external examiner for PhD candidates at Igbinedion University Okada and Utrecht University in the Netherlands. She has also examined LL.M students at Ambrose Alli University Ekpoma and Delta State University Abraka and has served as external assessor for professional appointments for some universities. She is a multiple award winner and belongs to the following professional and academic associations- Nigerian Bar Association, Benin, Nigerian Association of Law Teacher (NALT); Society of International Humanitarian Law Teacher (SIHULAT) and International Federation of Women

Lawyers (FIDA). She has just been appointed as the external examiner to the Faculty of Law, Niger Delta University (NDU).

Professor Theresa Uzoamaka Akpoghome is happily married to Rev. Godwin Akpoghome (the District Presbyter of CGMI Upper Igun) and the marriage is blessed with three children- Onoso (Deceased), Idanesi and Oshiobugie.

Benson Idahosa University

Previous Inaugural Lectures and the Topics Treated

1. Professor Johnson Olajide Oyedeji, "Bricks with Little Straws: How Efficient are the Meat of Egg Type Chicken", July 27th 2010.
2. Professor R. A. Masagbor, "Language: A Complimentarity of Being", April 17th 2012.
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9. Professor Onyero Norah Omoregie, "Educational Administration and the Quality of Products of School System", April 8th 2021.
10. Professor Duze, Chinelo Ogoamaka, "Nigeria's Legacy in Education, Nigeria's Education System and Sustainable National Development: Thought for Food". July 13 2022.