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PENAL RESPONSIBILITY AND SANCTIONS FOR VIOLATION OF INTERNATIONAL HUMANITARIAN LAW RULES: AN APPRAISAL.

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Abstract

As the world continues to urbanize, armed conflicts are also increasing, leading to greater violation of the rules of armed conflict with devastating effect on civilians and infrastructure. Violations of International Humanitarian Law (IHL) often referred to as war crimes, carry significant penal responsibility and sanctions. Individuals and states can be held accountable for violation of rules of IHL, with sanctions ranging from individual criminal prosecutions to state responsibility for reparations. States are obligated to suppress all violations of IHL rules set out in the four Geneva Conventions and Additional Protocols. The Conventions and their additional Protocols require States to enact criminal legislation to punish those responsible for grave breaches. The aim of this research is to analyze the penal responsibility and sanctions for violations of International Humanitarian Law. The research adopted the doctrinal method of legal research. It found that the inadequate legislation during armed conflict undermines individual protection, leading to widespread violation of human right. This research concluded that Under IHL, States are legally required to take concrete measures to ensure the effective implementation of humanitarian law, however, the ineffectiveness of sanctions for serious violations of international humanitarian law (IHL) is evident and often stems from the complex nature of armed conflict. Lastly, it is recommended that international cooperation and strengthening of international criminal courts are crucial for ensuring accountability and effective implementation of sanctions for the violation of IHL rules.

Keywords: Armed Conflict, Geneva Conventions, International Humanitarian Law (IHL), Violations, Penal responsibility, Sanctions.

1.0. Introduction

Violations of International Humanitarian Law[1] often referred to as war crimes, carry significant penal responsibility and sanctions.[2] Individuals and states can be held

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[1] IHL.

[2] D Plattner, 'The Penal Repression of Violations of International Humanitarian Law Applicable in Non-International Armed Conflicts.' https://international-review.icrc.org/sites/default/files/S0020860400075938a.pdf retrieved on August 28, 2025.

accountable for breaches of IHL, with sanctions ranging from individual criminal prosecutions to state responsibility for reparations. The protection of civilians and persons no longer taking active part in hostilities among other things underscores the very spirit of International Humanitarian Law. This protection applies irrespective of whether the armed conflict is classified as international or non-international armed conflict. Armed conflict exists whenever recourse is had to armed force or belligerent occupation between states (international armed conflict) or when protracted armed violence takes place between governmental authorities and organized armed groups or between such groups (non-international armed conflicts).[3]

Generally, International Humanitarian Law [4] is the law that governs and regulates how armed conflict is conducted, it seeks to strike a balance between the emergencies of war and the protection of those not taking active part in hostilities be they civilians or persons placed *hors de combat*.[5] The primary objective of international humanitarian law in the course of an armed conflict is to limit the suffering caused by warfare and to alleviate its effects. Its rules are the result of a delicate balance between the exigencies of warfare, military necessity on one hand and the laws of humanity on the other.[6] Accordingly, international humanitarian law rules advocate that all persons not taking a direct part in hostility shall be treated humanely in all circumstances, without any adverse distinction.[7] The protection of civilian in armed conflict is the cornerstone of international humanitarian law. It is this shared humanity that gives International Humanitarian Law its relevance, its legitimacy, and its universal sense.[8]

The rules relating to international humanitarian law are set out in the four Geneva Conventions of 1949 and the Additional Protocols of 1977 wherein States are obligated to suppress all violations of these instruments. Grave breaches represent some of the

[3]N Melzer, International Humanitarian Law- A Comprehensive Introduction (International Committee of the Red Cross, 2016), 16.
[4]Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and Bacteriological Methods of Warfare, 1925.
[5] Geneva Convention Additional Protocol I, 1977, Article 41.
[6] K Amarasinghe 'The Shape of War in the 21st Century: An Analysis of the Challenges Posed by the Contemporary Armed Conflicts with Reference to International Humanitarian Law.' (2021) International Journal of Law, p. 1-6.
[7] Four Geneva Conventions 1949, Article 3, Fourth Geneva Convention of 1949, Article 27, Additional Protocol II of 1977, Article 4.
[8]E Fillion, International Committee of Red Cross ICRC, Head of Delegation for Nigeria. in Nigeria January to June 2019.

most serious violations of international humanitarian law. They are specific acts listed in the Geneva Conventions and additional Protocol I.[9]The Conventions and Protocol made

it clear that grave breaches must be punished, they expressly require States to enact legislation to punish those responsible for grave breaches.[10]

The enforcement of penal sanctions in international humanitarian law (IHL) faces significant challenges and is not always carried out effectively. While IHL establishes the obligation to punish violations, particularly "grave breaches," it often relies on national courts for prosecution, which can be hampered by many factors. The international community has sporadically tried to establish sanctions mechanisms, a process culminating in the establishment of *ad hoc* International Criminal Tribunal and the International Criminal Court to make up for the deficiencies of the traditional mechanisms. While the establishment of a permanent International Criminal Court evidences the emergence of new political will, it cannot, on its own, solve all the problems if the majority of prosecutions are not effectively undertaken by the states parties.[11] The International Criminal Court (ICC) acts as a complementary mechanism, but its jurisdiction is limited to situations where national courts are unwilling or unable to act.

Penal Sanctions, in the context of IHL, are designed to deter violations and ensure accountability for those who commit grave breaches. However, their effectiveness is often undermined by several factors. Considering the numbers of violations that occur during armed conflict sanctions are rarely pronounced and, when they are, they generally appear to be lenient towards the perpetrators,[12]these points to the potential issues with the effectiveness of legal and regulatory frameworks both at the state and international level.[13]

2.0. Basic Rules and Principles of International Humanitarian Law

International humanitarian law is inspired by considerations of humanity and the mitigation of human suffering.[14] It comprises a set of rules and principles, which are established by treaty or custom, they seeks to protect persons and property/objects that

[9]*Ibid.*
[10]*Ibid.*
[11] *Ibid*
[12] X. Philippe, 'Sanctions For Violations Of International Humanitarian Law: The Problem Of The Division Of Competences Between National Authorities and between National and International Authorities .' (2008) International Review Of The Red Cross, p.359.
[13]*Ibid.*
[14] GSDRC, 'International Legal Frameworks for Humanitarian Action.' https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/overview-of-international-humanitarian-law/ accessed on the 20th of April 2025.

are or may be affected by armed conflict, and it limits the rights of parties to a conflict to use methods and means of warfare of their choice.[15] The principles of Humanitarian law include the principle of distinction, the principle of humanity, the principle of military necessity and proportionality and the principle of discrimination.

2.1 Principle of Distinction

The fundamental principles underlying the legal framework applicable to conduct of hostilities is that of distinction.[16] Parties to a conflict must at all times distinguish between civilian objects and military objectives and between civilians and combatants. Operations maybe directed only against military objectives and combatant, this principle was stated in the *ICTY Prosecutor v Boskoski* [17]where it was held that it is prohibited to target civilian objects in an armed conflict.[18]

The principle of distinction evolved from state practice and constitutes Rule 1 of Customary International Humanitarian Law which states as follows:

> The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. The principle has also been codified under Article 48 of additional Protocol 1 of 1977 and provides thus: In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives. [19]

Spaight recognises this principle as the cornerstone of International Humanitarian Law geared towards humanizing war.[20]This principle prohibits indiscriminate attacks. Indiscriminate attacks are attacks not directed against a specific military objective; or attacks that employ a means or method of warfare which cannot be direct against

[15] *Ibid.*

[16] Additional Protocol 1 of 1977, Article 48; Additional Protocol II of 1977, Article 13 Para 2.

[17]Casebook, ' ICTY, The Prosecutor v. Boskoski.' https://casebook.icrc.org/case-study/icty-prosecutor-v-boskoski accessed on August 29, 2025.

[18] First Additional Protocol, Article 51, Second Additional Protocol of 1977, Article 13. .International Criminal Tribunal for the Former Yugoslavia ICTY.*The Prosecutor V Boskoski* ICTY Trial Chamber Case No 1t-04-82 110th July 2008 Australian International Laws Journal 2009. 259.

[19] Protocol I, *note.*

[20] J M Spaight, *War Right on Land*, 1911, 265 cited in J V Dillon, 'The Genesis of the 1949 Convention Relative to the Treatment of Prisoners of War' (1950) *Miami Law Quarterly*, 73.

specific military objective; or attacks which employ method or means of warfare that cannot be limited as required by law.[21]

This principle seeks to achieve the protection of the disarmed man which constitutes the crust of International Humanitarian Law. It prohibits directing attacks against civilians not taking active part in the hostilities[22] and persons who have been placed *hors de combat* such as prisoners-of-war.[23]Thus any targeting operations directed at a civilian object or civilian is prohibited,[24] unless they are entitled to have been suspended due to the civilians directly participating in hostilities or a civilian object is used to engage in acts that are harmful.[25]

2.2 Principle of Humanity (Unnecessary Suffering)

This principle is also known as the principle of 'unnecessary suffering'.[26] The principle of humanity is to the effect that 'all humans have the capacity and ability to show respect and care for all, even their sworn enemies'. It demonstrates that even during armed conflict, there is common sense and respect for humanity.[27]Persons who are *hors de combat* or, those who are not taking part in hostilities in a situation of armed conflict shall be protected in all circumstances.

Modern International Humanitarian Law is not naïve and accepts that harm, destruction and death can be lawful during armed conflict, it however simply looks to limit the harm and the principle of humanity is very much at the heart of this ambition. In the vision of principles of humanity, all human beings who suffer must be helped;[28] the principles generally represent doing what can be done to make a world not so unjust or vicious.[29]It's generally endeavors to avoid the effect of armed conflict which could mean a threat to people that don't take part in the war, exposure to excessive pain or even death of the people without protection.[30]

[21] Protocol I, *note,* Article 51(4)(a)(b) & (c).
[22] Protocol I, *note* Article 51.
[23]*Ibid*, Article 41.
[24]*Ibid.*
[25]Rules 9 International Committee of the Red Cross Customary International Humanitarian Law Study 2005.
[26] L Blank, "After Up Gun": How Drone Strikes Impact the Law of War', (2012) *U. Pa.J. Int'l L.*, 70.
[27]M O Ugwu, 'Protection of Victims of Armed Conflict *vis-a-vis* Vulnerable Group through Respect for the Rules of International Humanitarian Law in Nigeria: An Appraisal.' (2021) International Journal of Comparative Law and Legal Philosophy, p. 139.
[28]*Prosecutor V. Boskoski (2004)* Case No IT-95-14-A p. 101-115.
[29]International Criminal Tribunal for the Former Yugoslavia ICTY the *Prosecutor V Radovan Karadize* www/http/ICRC case book study org accessed on the 30th August. 2025.
[30]*Ibid.*

2.3 Principle of Military Necessity and Proportionality

Military necessity, as understood by modern civilised nations, consists in the necessity of those measures which are needful for securing the end of the war and which are lawful according to the modern law.[31]Under IHL, a belligerent may apply only the amount and kind of force necessary to defeat the enemy. Further, attacks on military objects must not

cause loss of civilian life considered excessive in relation to the direct military advantage anticipated.[32] Every feasible precaution must be taken by commanders to avoid civilian casualties. The principle of proportionality has also been found by the International Committee of Red Cross to form part of customary international law in international and non-international armed conflicts.[33]Its specific rules integrate both military necessity and the dictates of humanity.[34]

2.4 Principle of Non-Discrimination

The principle of non-discrimination is a core principle of IHL. Adverse distinction based on race, sex, nationality, religious belief or political opinion is prohibited in the treatment of prisoners of war,[35] civilians,[36] and persons *hors de combat*.[37] All protected persons shall be treated with the same consideration by parties to the conflict, without distinction based on race, religion, sex or political opinion.[38] Each and every person affected by armed conflict is entitled to his fundamental rights and guarantees, without discrimination.[39] The prohibition against adverse distinction is also considered by the ICRC to form part of customary international law in international and non-international armed conflict.

IHL also emphasises, in various provisions of the Geneva Conventions and Additional Protocols, the concept of formal equality and non-discrimination. Protections should be provided "without any adverse distinction founded on sex". For example, with regard to female prisoners of war, women are required to receive treatment "as favourable as that

[31]S. K. Khamari, 'Fundamental Principles of International Humanitarian Law.' Blog-Ipleaders.In/International-Humanitarian Law accessed on the 30th of August, 2025.
[32]Additional Protocols, Arts 35, 51(5).
[33] AP 1, Arts 57, 58.
[34] The listed IHL rules are drawn from Additional Protocol I (1977) to the 1949 Geneva Conventions (hereafter AP I) and rules of customary IHL as stated in J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law Vol. 1, Cambridge University Press, 2005 (hereafter ICRC CIHL Study).
[35]GCIII, Art 16.
[36]GCIV, Art 13, common Article 3.
[37]Common Article 3.
[38]Common article 3, GCIV, Art 27.
[39]GCIV, Arts 24, 27; API, Arts 76-78; APII, Art 4(3).

granted to men".[40] IHL also mandates special protections to women, for example providing female prisoners of war with separate dormitories from men,[41]and prohibiting sexual violence against women.[42]

3.0. Penal Sanctions for the Abuses of International Humanitarian Law Rules

Firstly, it must be pointed out that not all violations of IHL involve a penal liability. The Geneva Conventions of 1949 and Additional Protocol I of 1977 which applies to international armed conflict list the acts which incur penal sanctions, they qualified as 'grave breaches' and come within the category of war crimes.[43]

Acts like wilful killing, torture, inhuman treatment, biological experiments, wilfully causing great suffering, causing serious injury to body or health, destruction and appropriation of property not justified by military necessity.[44] These acts are specified in the four Geneva Conventions and are grave breaches which will incur penal sanction when committed during armed conflict. These provisions are aimed specifically to protect human dignity and to protect civilian property from unnecessary destruction during armed conflict.[45]

The Third and Fourth Geneva Conventions also made provision for other specific violations like, compelling a prisoner of war or a civilian protected by the Fourth Geneva Convention to serve in the armed forces of the hostile Power, wilfully depriving a prisoner of war or a civilian protected by the Fourth Geneva Convention of the right to fair and regular trial, prescribed in the Third and Fourth Geneva Conventions, unlawful deportation or transfer, unlawful confinement, taking of hostages as specifically provided in the fourth Geneva convention.[46] Under the Geneva

Convention, it is prohibited to compel prisoners of war or civilians to serve in armed conflict of the detaining power, the purpose of this provision is to protect prisoners of war and civilians from being forced into conflict against their will,[47]and to ensure that Civilians and prisoners of war are also entitled to fair and regular trial with due process and judicial guarantees.[48]

[40]GCIII, Arts 14, 16.
[41]GCIII, Arts 14, 16.
[42]GCIV, Art27; API, Art 76(2); APII, Art 4(2).
[43] Additional Protocol I, Art. 85, para.1 which assimilates grave breaches to war crimes.
[44] Fourth Geneva Convention1949, articles 32, 53, and 147; Third Geneva Convention, article 130.
[45]*Ibid.*
[46] The Third Geneva Convention, articles 23 and 99; Fourth Geneva Convention, articles 34,49,51 and 71.
[47]*Ibid.*
[48]*Ibid.*

The Additional Protocols to the Geneva Convention also provided that making the civilian population the object of attack, launching an indiscriminate attack, or an attack against works or installations containing dangerous forces in the knowledge that such an attack will cause excessive damage to civilian objects in relation to the military advantage anticipated, making non-defended localities and demilitarized zones the object of attack, making a person the object of attack in the knowledge that he is *hors de combat*, making perfidious use of the protective emblem of the red cross or red crescent are all grave breaches and will incur penal sanctions, when committed during an armed conflict.[49]

In the same way, any unjustifiable delay in the repatriation of prisoners of war or civilians, practices of apartheid and other inhuman and degrading practices based on racial discrimination, attacking and causing large-scale destruction of clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and which are under special protection, acts committed against persons in the power of an adverse Party, protected under Articles 44, 45 and 73 of the additional Protocol I,[50] constitutes grave breaches and violation of the Geneva Conventions when committed.

International law and particularly humanitarian law establish rules and standards to ensure a fair and equitable trial and other judicial guarantees. They set forth precise rules regulating the administration of justice and punishment in times of armed conflict. Sanctions must be imposed by an impartial and "regularly constituted" court in the

context of an international armed conflict [51] or at least by a court offering the essential guarantees of independence and impartiality in a non-international armed conflict.[52]

Geneva Conventions made it mandatory to enact national legislation providing for "effective penal sanctions.[53] The choice of sanctions is left to the States, which can set up a penal system in line with their own national legislation. They must, however, duly act on their competence in this respect so that the mechanism of penal responsibility can be fully brought into play.

[49] Additional Protocol I, article 51 and Additional Protocol II, article 13.
[50] Protocol I of the Geneva Convention, articles 44, 45 And 73.
[51] Additional Protocol1, Art. 75.4).
[52] Geneva Conventions I–IV, Common Art. 3, Additional Protocol II Art. 6. J. Mäkinen , 'Sanctions as a tool for Compliance a Quantitative Study on Violations of International Humanitarian Law and Imposition of Economic Sanctions .' https/www/diva-portal.org/smash/diva 2;127761 full text pdf accessed on the 30th of August, 2025.
[53] Articles 49, 50, 129 And 146 of the First, Second, Third and Fourth Geneva Conventions Respectively.

The notion of 'grave breaches' was introduced into the Geneva Conventions of 1949 under the heading 'Repression of Abuses and Infractions' (of the Conventions). It began with article 49 of the First Convention which provides as follows:

> The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

The same provision appears in identical terms in article 50 of the Second Convention, article 129 of the Third Convention and article 146 of the Fourth Convention. The objective of this common provision was to suppress 'abuses and infractions' of the Geneva Conventions. The two primary methods employed to achieve this aim were:

1. Requiring States Parties, through their undertakings, to proscribe such abuses and infractions in their domestic criminal codes; and

2. Obligating States Parties to search for within their territories and prosecute culprits found therein, under a regime of universal jurisdiction, or to extradite the culprits to other States Parties with sufficient jurisdictional links to the violations.

The international community has also sporadically tried to establish sanctions mechanisms, a process culminating in the establishment of ad hoc international criminal tribunaland international criminal court to make up for the traditional mechanisms.

The International Criminal Court and International War Crimes Tribunals are courts of law established to try those accused of committing atrocities and crimes against humanity in wartime. Since 1945 several tribunals have been held. Some, like the

Yugoslavia Tribunals, have proceeded under United Nations authority. Others, such as the Nuremberg Trials of 1945, were held under the authority of the Allied forces after World War II.

The aim of a tribunal is to offer victims an opportunity to confront the accused and allow the accused an opportunity to explain his or her actions in front of victims, their families, and the media. The ultimate goals are to achieve justice, promote peace building, encourage reconciliation, and begin healing.

The International Criminal Court (ICC) was established as the first ever permanent, treaty-based international criminal court. It was created, through a treaty signed by 120 countries, to address war crimes and other international crimes. The ICC is designed to complement existing national judicial systems, although it can also exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute such crimes. The court has jurisdiction over four categories of crimes under international law:

1. genocide, or the intent to destroy in whole or in part a national, ethnic, racial, or religious group;
2. War crimes, or grave breaches of the laws of war, which include the Geneva Conventions' prohibitions on torture, the use of child soldiers, and attacks on civilian targets, such as hospitals or schools;
3. Crimes against humanity, or violations committed as part of large-scale attacks against civilian populations, including murder, rape, imprisonment, slavery, and torture; and
4. Crimes of aggression, or the use or threat of armed force by a state against the territorial integrity, sovereignty, or political independence of another state, or violations of the UN Charter.[54]

The court can open an investigation into possible crimes in one of three ways: a member country can refer a situation within its own territory to the court; the UN Security Council can refer a situation; or the prosecutor can launch an investigation into a member state on one's own initiative. The court can investigate individuals from non-member states if the alleged offenses took place in a member state's territory, if the non-member state accepts the court's jurisdiction, or with the Security Council's authorization.[55]

[54]C. Klobucista *and* M. Ferragamo, 'The Role of the International Criminal Court Council on Foreign Relation

[55]*Ibid.*

While the establishment of international criminal tribunals and permanent International Criminal Court evidences the emergence of new political will, it cannot on its own solve all the problems if the majority of prosecutions are not undertaken by the states parties.[56] The findings are derived from the implementation of obligations under the Geneva Conventions of 1949, which require States to implement sanctions mechanisms in their national penal systems in the event of grave violations of international humanitarian law.[57]

In non-international armed conflict, international humanitarian law applicable in non-international armed conflicts can be found under Article 3 common to all four Geneva Conventions of 1949 and in Additional Protocol II of 1977. IHL applicable to non-international armed conflicts does not provide for international penal responsibility of persons guilty of violations. While the Common Article 3 of the Geneva Conventions applicable to non-international armed conflicts doesn't explicitly detail a specific prosecution mechanism for violations like that of international armed conflicts, there is a consensus that individuals can be held responsible for violations. Customary international humanitarian law and international criminal law play crucial roles in establishing individual responsibility, even in non-international conflicts.

Customary IHL rules, developed through state practice and do impose individual responsibility for violations of IHL in all armed conflicts, including non-international ones. The ad hoc criminal tribunal and International criminal court also extends jurisdiction to war crimes committed in non-international armed conflicts, by holding individuals accountable for their actions. States also have a responsibility to investigate and prosecute violations of IHL, regardless of whether they occur in international or non-international armed conflicts. The responsibility for taking preventive measures also rests with the State party to the relevant treaties and, in practice, its organs. In essence, while the treaty framework for non-international armed conflicts might be less explicit regarding individual criminal responsibility, customary IHL and international criminal law provide the necessary legal basis for holding individuals accountable for war crimes committed in these conflicts.[58]

States have a general obligation to promote respect for International Humanitarian Law during armed conflicts, both through national-level actions and by fulfilling specific duties outlined in Geneva Conventions. In order to respect their obligations under international humanitarian law, States must incorporate punishment for international crimes into their domestic criminal law. Penal sanctions are indispensable to ensure respect for IHL, it is therefore the responsibility of the States to adopt penal

[56] *Ibid.*
[57] *Ibid.*
[58] Y Sandoz, "Implementing international humanitarian law", in The International Dimensions of Humanitarian Law, UNESCO, 1988. pp. 259-282, at pp. 261-262.

measures to punish persons who have committed grave violations of international humanitarian law during armed conflict. This obligation is a core principle of international humanitarian law, ensuring accountability for war crimes. States are expected to actively seek out individuals suspected of committing grave breaches and bring them to trial, either in their own courts or by handing them over to another state for prosecution. They must at all times endeavour to prosecute and try, or arrange for the trial of persons who have committed grave violations of international humanitarian law as this will serve as a deterrent to others involved in armed conflict,[59]its therefore their legal duty to ensure that those who violate the laws of war face consequences for their actions.

However, Weak Institutional mechanisms and lack of willingness of state parties to prosecute offenders constitute bane in the appropriate sanctions for violation of the rules of IHL. Such mechanisms span across, the executive, the legislature and the judiciary and include the Army, the Police, and the Prisons. These mechanisms which ought to be the basic institutional framework for the protection of war victims in times of armed conflicts hardly serve as such due to corruption, indiscipline and general lack of sufficient professionalism. For instance, in Nigeria, while there hardly seems to be any record of these institutions protecting women in the war against Boko Haram insurgency, Amnesty International claims to have received consistent reports that women have been raped or sexually abused by the Police, while in custody or in the internal displaced person's camps.[60]

The reports further states that rape and other forms of sexual violence or the threat of torture and ill-treatment have been used against women during armed conflict.[61] The fact that there are no much records of government ordering investigations into these allegations or seem to be any sanctions to the perpetrators of this acts or prosecutions in the country for war crimes and crimes against humanity in the war against Boko Haram underscores the weakness of existing mechanisms.[62]

4.0. Challenges of Enforcing Penal Sanction:

1. National courts may be reluctant to prosecute individuals for IHL violations. Their reluctant may be due to political considerations, lack of capacity, or unwillingness to investigate and prosecute their own nationals, they may be hesitant to prosecute

[59] See Geneva Convention (GC) I, Article 49; GC II, Article 50; GC III, Article 129; and GC IV, Article 146.
[60] Amnesty International, Nigeria, *Boko Haram and Nigerian Military committing crimes under International Law in North east Nigeria"* (Amnesty International written statement of the 28th session of the UN Human Rights Council) (2-27 March, 2015). Amnesty international http//www. Amnesty.org accessed on the 5th of March 2025.
[61] *Ibid.*
[62] *Ibid.*

individuals for IHL violations, especially if the alleged crimes involve their own nationals or were committed during conflicts involving their country. This can manifest as inaction, weak investigations, or the application of national laws that fail to fully address the complexities of international crimes. Some states may prioritize national interests, political stability, or maintaining alliances over prosecuting individuals for war crimes, especially when those individuals are part of their own military or allied forces. Even when states have laws in place, they may lack the resources, political support, or commitment to conduct thorough investigations and effective prosecutions. International court like the International Criminal Court (ICC) may also face limitations in jurisdiction and resource constraints in prosecuting individuals for violations of International Humanitarian Law (IHL).The ICC has faced criticism and challenges in its investigations and prosecutions due to political interference and reluctance from some states to cooperate. While the

2. International Criminal Court (ICC) exists to address war crimes, they rely on state cooperation for investigations and arrests. If states are unwilling to cooperate, it becomes difficult to pursue justice. In essence, while national courts have the primary responsibility to prosecute IHL violations, their limitations and reluctance can create a space for the ICC to step in, but the ICC itself faces its own set of challenges in terms of jurisdiction and resources, making the effective prosecution of IHL violations a complex undertaking.

3. Collecting evidence in conflict zones, especially in non-international armed conflicts, can be inherently challenging and hazardous due to factors like restricted access, safety concerns for both researchers and informants, and the inherent secrecy of armed groups. These challenges are amplified in non-international conflicts where the rules of engagement and the parties involved are less clearly defined compared to international conflicts. Conflict zones are often dangerous and difficult to access, limiting the ability to gather information from all relevant parties and locations.

4. Effective implementation of IHL requires widespread dissemination and training on the rules of armed conflict, which can be a challenge in conflict zones. Thus, Effective implementation of International Humanitarian Law (IHL) is significantly hampered by the challenges of disseminating and training on these laws in conflict zones. While widespread dissemination and training are crucial for ensuring compliance and protecting victims, it is often difficult to reach all relevant actors, including combatants, civilians, and other parties involved in the conflict. Conflict zones often have limited access due to security concerns, damaged infrastructure,

and active hostilities, making it difficult to conduct training and disseminate materials.

5. The rise of non-state armed groups poses a significant challenge to IHL enforcement, as these groups often operate outside the traditional legal framework. . This means that many of the rules and principles of IHL, which are typically applied to states and their armed forces, are difficult to apply and enforce when dealing with non-state armed groups (NSAGs). Monitoring and verifying compliance with IHL by NSAGs is challenging due to their clandestine nature, lack of transparency, and often limited access to conflict zones.

5.0. Conclusion

International Humanitarian Law being unique in its rules, compassionate and humane in its operation is aimed at protecting victims of war by ensuring the observance of its fundamental principles. However, most armed groups involved in contemporary armed conflict do not comply with International Humanitarian Law rules, sometimes state parties are also not concerned with the rules of International Humanitarian Law when dealing with some of this non-state armed group and this affect the daily lives of many civilians caught up in these conflicts. The deliberate targeting of civilians, looting and destruction of civilian property, forced displacement of the population, use of civilians as human shields, destruction of infrastructure vital to civilians, rape and other forms of sexual violence, torture, indiscriminate attacks, murder, forced disappearance, have become a common occurrence during armed conflict. Civilians have remained the primary victims of violations of International Humanitarian Law.

IHL establishes individual criminal responsibility for violations, particularly of grave breaches, during armed conflict. This responsibility extends beyond direct perpetrators to include those who fail to prevent or punish violations, In essence, IHL aims to create a system where those who violate the laws of war are held accountable, whether they are individuals directly involved or those who failed to prevent or punish such violations. While the principle of penal sanctions in IHL is established and IHL provides a framework for penal responsibility and sanctions, its practical application faces significant hurdles. Addressing these challenges requires an approach involving legal clarification, strengthening enforcement mechanisms, and promoting cooperation among states and other actors.

6.0. Recommendations

1.Strengthening enforcement mechanisms, particularly through international cooperation and the enhancement of international criminal courts, is vital for ensuring accountability for serious crimes. This involves bolstering the capacity of courts like the International Criminal Court (ICC) and fostering collaboration among nations to investigate, prosecute, and ultimately deter such crimes.

2. States need to provide legal assistance to one another, such as facilitating arrests, gathering evidence, and transferring individuals for trial. States should cooperate in extraditing individuals accused of international crimes to face justice, either in their own courts or at the ICC. Facilitating cooperation between states and international bodies, such as the International Criminal Court, can enhance the effectiveness of sanctions and ensure that perpetrators are held accountable at the international level.
3. Supporting the development and strengthening of national institutions responsible for investigating, prosecuting, and adjudicating IHL violations can improve the effectiveness of domestic legal systems in holding perpetrators accountable. This also includes the development of strong and independent judicial systems that can impartially and effectively adjudicate IHL violations which is essential for ensuring that sanctions are fair and proportionate. Similarly the establishment and strengthening of independent fact-finding and monitoring mechanisms can improve the documentation and reporting of IHL violations, which is crucial for holding perpetrators accountable.

4. Efforts should be made to engage with non-state actors to promote respect for IHL and encourage them to adhere to its principles. This is crucial for promoting respect for International Humanitarian Law (IHL) and ensuring adherence to its principles. The non-state armed group play a significant role in armed conflicts and their actions can significantly impact civilians. By engaging with them, efforts can be made to influence their behaviour, encourage them to adopt IHL standards, and ultimately protect civilians during conflict. By influencing the behaviour of non-state actors, there is a greater chance of reducing civilian casualties and suffering during armed conflict.