

INTERNATIONAL LAW AND THE PROTECTION OF WAR VICTIMS

by M. GASIOKU*

INTRODUCTION

According to Drapper,¹ warfare being one of the oldest collective activities of mankind, it has, not surprisingly, attracted a considerable body of law governing its conduct. It is in fact almost the oldest part of International Law today. Yet cynics maintain that the very idea of legally regulating the use of force by one State against another is incongruous if not ridiculous. In the views of Sir Henry Lauterpatch² who devoted much time and attention to the laws of war, "if international law is at the vanishing point of law, the law of war is perhaps ever more conspicuously at the vanishing point of international law". He went further to hold that an understanding of the true character of the law of war was possible on the realisation that its objective was entirely humanitarian - to prevent and mitigate suffering and, in some cases, safeguard life from the savagery of battle and passion. This, generally, and not the technicalities of regulating hostilities, is its essential purpose.

The classical juridical definition of war is that it is a contention between two or more States through use of their armed forces and the imposition of such conditions of peace as the victor pleases. The law of war seeks to regulate such physical confrontations by imposing certain conditions and obligations upon both the States and the individuals who comprise them. Ironically, although the United Nations Charter prohibits armed conflict in international relations among States, the threat of the use of force in the international arena has remained ever present. In many cases, the legal definition of a conflict makes impossible the applicability of the rules of warfare. The emergence of a host of complex conflicts can thus be traced to the prohibition on the use of force at international level, the balance of power based on the nuclear deterrent, the ideological struggles accompanying decolonisation, the undetermined status of certain territorial entities and the contradictory acts of recognition; some of these resulted in actual armed conflicts producing war victims in their wake.

The competing interests in war are categorised as military necessity, humanity and chivalry, with a long standing effort to ensure that humanity was

* Lecturer in the Faculty of Law, University of Jos, Jos, Nigeria.