

# Enforcement of international humanitarian law in Nigeria

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## Summary

*This article examines the implementation of international humanitarian law in Nigerian law. It is clear from Nigerian jurisprudence that a treaty remains unenforceable under domestic law unless it has been enacted into law by parliament. The four Geneva Conventions of 1949 have been incorporated into Nigerian legislation. This is, however, not the case with the Additional Protocols to the Geneva Conventions, which were adopted in 1977 and ratified by Nigeria in 1988. This poses a problem, especially with regard to the protection of international humanitarian law in an internal armed conflict.*

## 1 Introduction

Over the years, there have been moves to ensure that wars are waged in a humane manner. Nations involved in wars are consequently enjoined to protect the sick, the wounded, prisoners of war, civilians as well as civilian structures.<sup>1</sup> The questions that legal writers and humanitarians have posed are: To what extent can international humanitarian law be enforced<sup>2</sup> within a municipal jurisdiction; when may international humanitarian law be applied to a conflict; and was a crime against humanity committed within its jurisdiction?

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<sup>1</sup> T Osipitan *Nigerian criminal law and the Geneva Conventions. Current themes in Nigerian law* (1997) 376.

<sup>2</sup> For the purpose of this paper, the broad concept definition of enforcement, which includes 'the act of putting something, such as law, into effect', will be adopted. See *Black's law dictionary* 528.

A remarkable feature of present-day Africa is the proliferation of armed conflict, leaving in its wake an unimaginable carnage.<sup>3</sup> Therefore, the question to be answered is: Can fundamental international rules intended to resolve matters of humanitarian concern, arising directly from armed conflicts, remain unenforceable simply because a municipal jurisdiction would not so permit? Can a state enact laws which amount to a derogation of her obligations under international agreements?

This paper examines the existing municipal legal framework *vis-à-vis* the enforcement of international humanitarian law, its strength and weakness and the conflict presented thereunder, with the focus on Nigeria (being the most populous African state).

## 2 Constitutional limitation

International law norms in general, and of treaties<sup>4</sup> in particular, are not as a matter of course enforceable in Nigeria. For a very long time, the appropriate approach to be adopted by Nigerian courts as a matter of principle when faced with a situation of conflict between international law and Nigerian law remained unresolved. This is so because section 1 of the successive Nigerian Constitutions<sup>5</sup> usually suggests that the Constitution as a whole prevails over international law. For instance, section 1(1) of the 1999 Constitution provides that 'the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria'.<sup>6</sup> To this extent, '[I]f any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void'.<sup>7</sup>

However, the most important constitutional limitation in the applicability of a treaty or any such international instruments by Nigerian courts is to be found in section 12(1) of the Constitution,<sup>8</sup> which provides as follows:

<sup>3</sup> Such conflict spots include Burundi, the Democratic Republic of Congo, Liberia, Rwanda, Sierra Leone, Somalia and Sudan.

<sup>4</sup> The 1969 Vienna Convention on the law of treaties defines a treaty as an international agreement or by whatever name called, eg act, charter, concordant, convention, covenant, declaration, protocol or statute concluded between states in written form and governed by international law, whether embodied in a single instrument or in one or more related instruments and whatever its particular designation. See Halsbury's *Law of England* Vol 18 para 1769. See also *Black's law dictionary* 1502.

<sup>5</sup> 1963, 1979 and the current 1999 Constitution.

<sup>6</sup> Constitution of the Federal Republic of Nigeria 1999.

<sup>7</sup> As above, sec 1(3). See also eg sec 1(2) of the Constitution of Ghana 1992; sec 2 of the Constitution of the Republic of South Africa 1996; and sec 3 of the Constitution of Zimbabwe 2000.

<sup>8</sup> n 6 above.

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

This no doubt attests to the prevalence of the transformation theory<sup>9</sup> (with respect to treaty rules) in Nigeria.<sup>10</sup>

This position seems to have been effectively reaffirmed by the Supreme Court of Nigeria in the case of *Abacha v Fawehinmi*,<sup>11</sup> when the Court held as follows:

An international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, it has no such force of law as to make its provisions justiciable in our courts. This was the tenor of section 12(1) of the 1979 Constitution, now re-enacted in section 12(1) of the 1999 Constitution.

The Supreme Court further explained that, where a treaty has been enacted into law by the National Assembly, such a treaty becomes binding and the court must give effect to it, as is the case with all other laws falling within the judicial powers of the courts. This is the case with the African Charter on Human and Peoples' Rights (African Charter or Charter), which is incorporated into domestic law via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.<sup>12</sup>

It is therefore manifest that, no matter how beneficial to the country or the citizenry an international treaty to which Nigeria has become a signatory may be, it remains unenforceable unless it is enacted into the law of the country by the National Assembly.<sup>13</sup> This is so because, in

<sup>9</sup> The application of international law in a municipal jurisdiction has given rise to two theories, namely the theory of incorporation and that of transformation. According to the transformation theory, a rule of international law will not *ex proprio vigore* (ie by its own force) apply in a municipal sphere: It has to undergo a transformation whereby it is admitted into the municipal corpus of law (ie domesticated). Whereas with the incorporation theory, international law automatically forms part of municipal law, without requiring any specific act of adoption; it applies directly and immediately in the municipal sphere so that the courts and other adjudicative agencies of the land can apply it.

<sup>10</sup> The same position also prevails in England: See *R v Chief Immigration Officer, Ex Parte Bibi* [1976] 1 WLR 976 where Lord Denning succinctly concludes that '... treaties and declarations do not become part of our law until they are made law by parliament'. See also the recent decision of the Privy Council in *Higgs & Another v Minister of National Security & Others*; *The Times* of 12 December 1999 where it was held that '[i]n the law of England and Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the crown. Treaties formed no part of domestic law unless enacted by the legislative ...'

<sup>11</sup> May (2000) 6 NWLR (Pt 660) 228 SC.

<sup>12</sup> Cap 10 Laws of the Federation of Nigeria 1990.

<sup>13</sup> Pursuant to this constitutional provision, the presidency has introduced ten separate bills, sent to the National Assembly in order to bring into effect the following international treaties: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Ratification and Enforcement) Bill 2002; (2) the Convention against Torture and other Cruel, Inhuman or Degrading

accordance with the Constitution, a person shall not be convicted of any criminal offence unless that offence is defined and the penalty prescribed in a written law. The same provision states that '... in this subsection a written law refers to an Act of the National Assembly or a law of the state, any subsidiary legislation or instrument under the provisions of the law'.<sup>14</sup> The above position is generally in accord with the practice in other countries.<sup>15</sup>

### 3 The Geneva Conventions and the Additional Protocols<sup>16</sup>

International humanitarian law<sup>17</sup> was significantly reviewed and updated in 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War. This conference was held in Geneva from April to August 1949, after which four conventions on the laws of war were adopted.<sup>18</sup> The four 1949 Conventions are:

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Treatment or Punishment (Ratification and Enforcement) Bill 2001; (3) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Bill 2001; (4) the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tomé and Príncipe on the Joint Development of Petroleum and Other Resources in the Areas of Exclusive Economic Zone of the Two States (Ratification and Enforcement) Bill 2001; (5) the United Nations Convention against Transnational Organized Crime (Ratification and Enforcement) Bill 2001; (6) the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Ratification and Enforcement) Bill 2001; (7) the Rome Statute of the International Criminal Court (Ratification and Jurisdiction) Bill 2001; (8) the Treaty to Establish the African Union (Ratification and Jurisdiction) Bill 2001; (9) the African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba) Bill 2001; (10) the United Nations Convention on the Carriage of Goods by Sea (1978) Bill 2001. See Assembly Watch (CRP) vol.3 No13, July 2002.

<sup>14</sup> Sec 36(12) Constitution of the Federal Republic of Nigeria 1999.

<sup>15</sup> Eg, sec 111B of the Constitution of Zimbabwe provides that '[a]ny convention, treaty or agreement acceded to, concluded or executed by or under the authority of the president with one or more foreign states or government or international organisations (a) shall be subject to approval by parliament, and (b) shall not form part of the law of Zimbabwe unless it has been incorporated into law by or under an Act of parliament'. Equally, sec 75 of the Constitution of the Republic of Ghana states that '[a] treaty, agreement or convention executed by or under the authority of the president shall be subject to ratification by (a) Act of parliament (b) resolution of parliament supported by vote of more than one half of all members of parliament'. See further sec 231(4) of the Constitution of the Republic of South Africa, the Constitution Sierra Leone Act 6 of 1991, etc.

<sup>16</sup> The Conventions and the Protocols alone account for a total of about 560 articles and jointly remain the most prominent source of international humanitarian law.

<sup>17</sup> Also known as the law of armed conflict or law of war.

<sup>18</sup> The bitter experience of the Second World War, coupled with certain observable inadequacies in certain areas of the law and the growing regard for the rights of individuals informed the need for renewed efforts to codify and develop the law.

- 1 the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- 2 the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- 3 the Geneva Convention Relative to the Treatment of Prisoners of War; and
- 4 the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Although the central aim of all four the Conventions is the protection of victims of war, each Convention focuses on specific categories of victims of war in accordance with its title. The Conventions generally seek to introduce humanitarian rules as to the treatment of prisoners of war, the protection of the civilian population and the care of wounded and sick members of the armed forces. The four Geneva Conventions were intended primarily to apply to international or inter-state conflicts. However, certain minimal provisions are contained in article 3 (common to the four Conventions) which apply to armed conflict that is not of an 'international character'.

Nevertheless, the scheme of article 3 is skeletal and because of the increase in wars of liberation and other internal armed conflict (which abound in many African states),<sup>19</sup> the two Protocols,<sup>20</sup> additional to the Geneva Conventions signed in 1977, were intended to extend the scope of the Conventions.

Protocol I extends the provisions of the Conventions to armed conflict fought against colonial domination and alien occupation and against racist regimes in the exercise of the right to self-determination. While Protocol II, for example, aims at extending the humanitarian provisions of the Conventions to domestic armed conflicts, it makes the humane provisions of the Conventions applicable to non-international armed conflict that takes place in the territory of a party, between its armed forces and dissident armed forces.<sup>21</sup>

However, the question that often arises is whether these provisions apply only in cases of full-scale wars or whether they extend to other minor internal conflicts.

Conflicts envisaged under these provisions are genuine armed conflicts between the armed forces of a state and dissident armed forces

<sup>19</sup> Then, eg, internal armed conflicts in Angola, Ethiopia, Nigeria, South Africa, to mention but a few.

<sup>20</sup> Namely Protocol I; Protocol Additional to the Geneva Convention of 12 August 1949 and relating to the protection of victims of international armed conflicts; Protocol II, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts; both of 8 June 1977.

<sup>21</sup> Art 1(1) Additional Protocol II.

under responsible command.<sup>22</sup> They would not cover internal disturbances and tensions such as riots, isolated and sporadic acts of violence<sup>23</sup> and other acts of a similar nature.<sup>24</sup>

#### 4 Statutory status of the Geneva Conventions and the Additional Protocols in Nigeria

There is no gainsaying the fact that, as a contracting party to the Geneva Conventions and Additional Protocols, there is an obligation incumbent upon Nigeria<sup>25</sup> to respect and ensure respect for the humanitarian provisions of the Conventions and the Protocols.<sup>26</sup>

However, whether these provisions are binding on individuals or members of the armed forces engaged in armed conflict in Nigeria, depends on whether these international treaties have been embodied in Nigeria's municipal law. As noted earlier, section 12(1) of the Constitution<sup>27</sup> provides as follows:<sup>28</sup>

No treaty between Nigeria and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

While it is so that the four Geneva Conventions of 1949 have been incorporated into Nigeria's municipal laws via the Geneva Conventions Act,<sup>29</sup> the same cannot be said of the two Additional Protocols — despite their ratification by Nigeria.

<sup>22</sup> For instance, the conflicts in Liberia, Sierra Leone, Somalia, Sudan, etc, including Nigeria's civil war.

<sup>23</sup> Which may include communal and inter-communal clashes, civil strikes and other internal disturbances amounting to breaches of public peace. Of course, these are usually regulated by the municipal legal framework. In Nigeria, for instance, the criminal code (n 37 below) imposes criminal liability for offence against public order (which includes inter-communal war, inciting mutiny, etc) under ch 6, and for any breach of public peace (which includes riot, unlawful procession and threatening violence, etc) under ch 10.

<sup>24</sup> See art 1(2) Additional Protocol II. Also, the United Kingdom takes the view that for these conventions to be implicated in non-international conflicts, a 'high level of intensity of military operations' is required. See Shaw *International law* (1986) 582-583.

<sup>25</sup> Nigeria became a party to all four Conventions by accession on 9 June 1961, and ratified the Additional Protocols in 1988.

<sup>26</sup> See eg art 1 Geneva Convention Relative to the Treatment of Prisoners of War.

<sup>27</sup> Constitution of the Federal Republic of Nigeria 1999.

<sup>28</sup> This constitutional provision was upheld by the Supreme Court of Nigeria in *Abacha v Gani Fawehinmi* (n 11 above), when it said: 'Suffice it to say that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly.'

<sup>29</sup> Cap 162 Laws of the Federation of Nigeria (LFN) 1990. See sec 2(1) of the Act.

The effect of the Act is that it incorporated the provisions of the Geneva Convention into Nigeria's municipal law. The Act also prescribes punishment for acts classified as grave breaches of the Conventions. It constitutes an offence for any person, whatever his or her nationality, to commit such grave breach of any of the Conventions as is referred to in the articles of the Conventions set out in the first schedule to the Act. These articles are:

- article 50 of the First Geneva Convention 1949;
- article 51 of the Second Geneva Convention 1949;
- article 130 of the Third Geneva Convention 1949; and
- article 147 of the Fourth Geneva Convention 1949.

Such person(s) shall on conviction, in the case of a grave breach involving the wilful killing of a person protected by the Convention in question, be sentenced to death. In the case of other grave breaches, the offender will on conviction be liable to imprisonment for a term not exceeding 14 years.<sup>30</sup>

The Act also allows a person to be tried in Nigeria and sentenced for an offence committed outside Nigeria as if that offence had been committed within Nigeria.<sup>31</sup> Section 3(2) of the Act provides that:

A person may be proceeded against, tried and sentenced in the Federal Capital for an offence under this section committed outside Nigeria as if the offence had been committed in the Federal Capital, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in the Federal Capital.

However, there is no domestic law which gives effect to the provisions of the Additional Protocols I and II to the 1949 Conventions. Consequently, the Additional Protocols lack the force of law in Nigeria.<sup>32</sup> However, some of the provisions of the Additional Protocol, for example those dealing with the right of an accused person to a fair trial, are protected under the Constitution of the Federal Republic of Nigeria 1999.<sup>33</sup> The Constitution, like the Additional Protocols, guarantees persons charged with an offence the right to be presumed innocent until proven guilty according to law<sup>34</sup> and to be fairly and publicly tried.<sup>35</sup> Furthermore,

<sup>30</sup> As above, sec 3(1).

<sup>31</sup> As above, sec 3(2).

<sup>32</sup> There is an urgent and compelling need for Nigeria's domestication of the Additional Protocols, in view of the alarming increase in local armed conflict within the country and their geographical spread, eg Ife/Modakeke in the West, Agulerie/Umulerie in the East, Zango Kataf/Fulani and Christain/Muslim in the North, Ijaw/Itshekiri in the Niger-Delta Area, etc.

<sup>33</sup> See sec 36(5)–(6). This is mainly a restatement of similar provisions contained in the 1979 and the stillborn 1989 and 1995 Constitutions.

<sup>34</sup> See sec 36(5) of the Constitution, which is *in pari materia* with art 6(1)(d) of Additional Protocol II.

<sup>35</sup> See sec 36(3) of the Constitution. See also, generally, the provisions of art 6 of Additional Protocol II.

persons accused of a crime are entitled to adequate time and facilities to prepare their defence, to defend themselves in person or to be defended by a legal practitioner of their choice, to cross-examine prosecution witnesses and to secure the attendance of those witnesses in court, on the same conditions as those applying to the prosecution's witnesses.

The Constitution (as is the case with the Additional Protocols) expressly prohibits retroactive penal legislation. Accordingly, no person shall be held guilty for a criminal offence on account of any act or omission that did not at the time it took place constitute an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.<sup>36</sup>

Nevertheless, it should be conceded that the absence of a municipal penal statute on the Additional Protocols is a fundamental drawback to the implementation of these Protocols. Nigeria, in view of her ratification of the provisions of the Protocols, is still duty-bound to respect and ensure respect for the humanitarian provisions of the Protocols.

Moreover, it cannot be concluded that Nigeria's municipal penal laws are criminally silent on inhumane conduct during conflict. The Nigerian Criminal Code,<sup>37</sup> for example, outlaws some inhuman conduct similar to that outlawed by the Conventions and the Additional Protocols. The code prohibits murder,<sup>38</sup> arson,<sup>39</sup> rape,<sup>40</sup> assault,<sup>41</sup> indecent assault,<sup>42</sup> slave dealing,<sup>43</sup> kidnapping,<sup>44</sup> attempts to destroy property by explosives,<sup>45</sup> and others.

The Nigeria Army Act,<sup>46</sup> which applies to members of the Nigerian Army, contains offences relating to the conduct of warfare and peace-time activities of the army. For instance, looting,<sup>47</sup> conduct prejudicial to military discipline,<sup>48</sup> scandalous conduct,<sup>49</sup> disgraceful conduct<sup>50</sup> and mutiny<sup>51</sup> are proscribed.

<sup>36</sup> See sec 36(8) of the Constitution, which is *in pari materia* with art 6(2)(b)–(c) of Additional Protocol II.

<sup>37</sup> Cap 77 Laws of the Federation of Nigeria (LFN) 1990.

<sup>38</sup> As above, secs 306 & 315.

<sup>39</sup> As above, sec 443.

<sup>40</sup> As above, sec 358.

<sup>41</sup> As above, secs 351 & 355.

<sup>42</sup> As above, secs 352, 353 & 360.

<sup>43</sup> As above, sec 369.

<sup>44</sup> As above, sec 364.

<sup>45</sup> As above, sec 452.

<sup>46</sup> Cap 294 Laws of the Federation of Nigeria (LFN) 1990.

<sup>47</sup> As above, sec 36.

<sup>48</sup> As above, sec 71.

<sup>49</sup> As above, sec 66.

<sup>50</sup> As above, sec 68.

<sup>51</sup> As above, secs 37–38.



The Act also makes provision for 'civil offences'. It provides that any person subject to military law under the Act, who commits a civil offence, whether in Nigeria or elsewhere, shall be guilty of a 'civil offence'.<sup>52</sup> In the Act, the expression 'civil offence' means any act or omission punishable by any law enacted by the National Assembly or having effect as if it were so enacted.<sup>53</sup> A person convicted by court martial of an offence against this section shall, if the corresponding civil offence is treason or murder, be liable to suffer death.<sup>54</sup>

Varieties of punishment for the violation of provisions contained therein are prescribed in the Act. These include death, imprisonment, cashiering, dismissal from the service, reduction in rank, fine and severe reprimand.<sup>55</sup>

No doubt, these penal provisions of the Army Act (which are similar to those contained in the Navy<sup>56</sup> and Air force Acts<sup>57</sup>) are limited in scope and thus fail to meet the aspirations of the framers of the Additional Protocols *vis-à-vis* the humane prosecution of wars. Nevertheless, the Nigerian Armed Forces have always consciously acknowledged the importance of humane waging of war. For instance, the few cases involving members of the Nigerian Army who were tried on the basis of the 'Operational Code of Conduct of the Nigerian Armed Forces'<sup>58</sup> clearly reveal a trend towards criminalisation of certain types of conduct that violate the rules of humanitarian law (especially applicable in internal conflicts).

## 5 International obligation and municipal law

As the activities of people become increasingly internationalised and as international co-operation increases, there is a growing interaction between the internal and external policies of states. This in turn produces a growing interaction between municipal law and international law.

However, in the quest to fulfil the reasonable expectation of the citizenry, to assure and guarantee their worth as human beings within the territorial jurisdiction of states (both in peace time and conflict time), states are presumed to submit themselves to an international legal order under which they assume various obligations for the common good.

<sup>52</sup> As above, sec 72(1).

<sup>53</sup> As above, sec 72(2).

<sup>54</sup> As above, sec 72(3)(a)(b).

<sup>55</sup> As above, sec 73.

<sup>56</sup> Navy Act Cap 288 Laws of the Federation of Nigeria (LFN) 1990.

<sup>57</sup> Air Force Act Cap 15 Laws of the Federation of Nigeria (LFN) 1990.

<sup>58</sup> Adopted in 1967 during the civil war against the Biafran military group. See also paras 106, 125 & 130 of the *Tadic* case decision.

Thus, anything done under a municipal system which undermines the guaranteed rights under an international legal order becomes nugatory. This view is buttressed by the Vienna Convention on the law of treaties, which provides that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.<sup>59</sup>

The Nigerian courts in certain instances have attempted to draw a clear distinction between international law and municipal law<sup>60</sup> in order to situate the fundamental rights of the citizenry and to shield them from the whims and caprices of municipality. This commendable attempt was bolstered by the court's decision in *Oshievire v British Caledonia Airways Ltd*<sup>61</sup> when it stated that:

An international treaty is an expression of agreed compromise principles by the contracting states and in general autonomous of the municipal laws of contracting states as regards its application and construction. It is useful to appropriate that an international agreement embodied in a convention or treaty have submitted themselves to be bound by its provisions which are thereafter above domestic legislation.

This position, when viewed in the light of article 1,<sup>62</sup> common to all the four Geneva Conventions and Additional Protocol I, suggests that the aim of these fundamental international agreements is to ensure respect for human personality and dignity. As this is the very essence of humanity, the interest of the citizens therefore becomes a common objective, either under international or municipal jurisdiction. Thus neither of the jurisdictions should be allowed to constitute a clog in the pursuit of the common objective.<sup>63</sup>

<sup>59</sup> Art 27 Vienna Convention on the Law of Treaties 1969.

<sup>60</sup> This is akin to the dualist theory with respect to the relationship between international law and municipal law. Dualism holds the view that international law and municipal law are two separate and different legal systems, in both their contents and scope. The Appeal Court of Nigeria in *Fawehinmi v Abacha* (1996) 9 NWLR (Pt 470) 710 exemplified this theory when it held that 'no government will be allowed to contract out by local legislation international obligations and that ouster clauses cannot affect the operation of the African Charter on Human and Peoples' Rights in Nigeria'. See for comparison the subsequent position of the Supreme Court, *May* (2000) 6 NWLR (Pt 660) 228 (n 11 above).

<sup>61</sup> (1990) 7 NWLR (Pt 163) 489.

<sup>62</sup> Which states that 'the high contracting parties undertake to respect and to ensure respect for the present Convention in all circumstances'.

<sup>63</sup> The trend, especially in the area of human rights, is that 'the citizen of a particular state is no less a citizen of all other states and each citizen is entitled to equal protection of laws from all state governments'. See IO Smith 'Enforcement of human rights treaties in a military regime: Effect of ouster clauses on the application of the African Charter on Human and Peoples' Rights in Nigeria' in the review of the African Commission on Human and Peoples' Rights Vol 9 Pt2 2000 202. Although, when confronted with the problem of enforcement of human rights, one has to rely on the well established fact that implementation of human rights is achieved best through agency of municipal or national law of each state member of the world community of nations. See M Singh *Human rights and future of mankind* (1981) 66.

## 6 Conclusion

Nigeria, like many other Commonwealth countries, inherited the English common law rules governing the municipal application of international law. The practice of the Nigerian courts on the subject matter is still in the process of being developed, and the courts will continue to apply the rules of international law, provided they are found not to be overridden by clear rules of the domestic law, especially the Constitution, although section 12(1) of the 1999 Constitution is clear and the interpretation adopted by the court in *Abacha v Fawehinmi*<sup>64</sup> apposite. However, in view of the reality of our world today, and in accordance with modern trends, a more responsive approach seems to be favoured by the Nigerian courts. Such an approach is envisaged by Wali JSC in *Ibidapo v Lufthansa Airlines*,<sup>65</sup> when he said:

Nigeria, as part of the international community, for the sake of political and economic stability cannot afford to live in isolation. It shall continue to adhere to, respect and enforce both multilateral and bilateral agreements where their provisions are not in conflict with our fundamental law.

Therefore, mindful of the fact that in this century millions of children, women and men have been victims of unimaginable atrocities that deeply shocked the conscience of humanity, and recognising that such grave crimes threaten the peace, security and well-being of the world, there is a compelling need to ensure that the enforcement of international humanitarian law is positively liberated from the shackles of national limitations.<sup>66</sup> In this way, an end may be put to impunity by ensuring that the most serious crimes of concern to the international community do not go unpunished.<sup>67</sup>

<sup>64</sup> n 11 above.

<sup>65</sup> May (1997) 4 NWLR (Pt 498) 124 SC 136.

<sup>66</sup> Especially on the continent of Africa. This will prevent leaders with despotic tendencies from stultifying the application of international humanitarian law via municipal legislation.

<sup>67</sup> See Preamble to the Rome Statute of the International Criminal Court of 17 July 1998.