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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HUMANITARIAN INTERNATIONAL LAW: A GLOBAL IMPERATIVE

AUTHORED BY - KRUPA JOSHI

ABSTRACT

International humanitarian law (IHL) has been understood as a component of international law that plays a critical role in safeguarding human dignity and rights during armed conflicts and humanitarian crises. This research paper provides an in-depth analysis of IHL as a global imperative, exploring its historical development, core principles, the role of international humanitarian organizations, contemporary challenges, effectiveness, and prospects. It reflects some fundamental principles such as distinction, proportionality and humanity which aim to alleviate suffering and safeguard citizens, combatants, and other vulnerable groups. The study also emphasizes the role of international humanitarian organizations, primarily the International Committee of the Red Cross, leading in the development and implementation of humanitarian law.

Furthermore, this paper analyses the challenges and controversies surrounding adoption of humanitarian law in current conflicts, including issues involving non-state armed actors and asymmetric conflicts, war, and the use of new technologies. This study offers insight into the efficiency of international humanitarian law in reducing casualties in armed conflict by looking at case studies and contemporary developments.

INTRODUCTION

What is a war crime?

According to the International Committee of the Red Cross, “state practice establishes that serious violations of international humanitarian law constitute war crimes in both international and non-international conflicts.” Similarly, the Rome Statute of the International Criminal Court defines war crimes as (inter alia) “serious violations of the laws and customs applicable in international armed conflict...” and “serious violations of the laws and customs applicable in armed conflicts not of an

international character...”¹

2. HISTORICAL BACKGROUND OF IHL EARLY CONVENTIONS AND ORIGIN OF IHL

IHL's earliest forms can be seen in prehistoric societies. There was a consensus that the use of force should be constrained even in antiquity. For instance, Chinese military strategist Sun Tzu advocated for the compassionate treatment of captive enemy in the fifth century BC. Similar principles for the humane treatment of prisoners of battle were found in ancient Hindu and Islamic literature.

Early Conventions:

Henri Dunant, a Swiss industrialist who saw the agony of injured soldiers during the Battle of Solferino in 1859, is substantially responsible for the present development of IHL. Due to Dunant's experiences, his book "A Memory of Solferino," which promoted the creation of nonprofit groups to aid injured troops, was published. The First Geneva Convention, which was ratified in 1864, and the founding of the Red Cross were both made possible by this concept.

First Geneva Convention (1864):

The "Convention for the Amelioration of the Condition of the Wounded in Armies in the Field," sometimes known as the First Geneva Convention, was a ground-breaking international treaty. It created guidelines for the compassionate care of injured and ill soldiers in combat. The convention served as the first official effort to formalize ethical guidelines for combat.²

Following the First Geneva Convention's success, additional agreements were ratified in 1906, 1929, and 1949. These accords broadened the application of IHL to include armed conflict victims who are civilians, as well as prisoners of war, injured and ill at sea. The 1949 Conventions also established universally applicable common provisions that emphasized the significance of safeguarding civilians and assuring their humane treatment throughout armed conflict.

¹ International Committee of the Red Cross, Customary International Humanitarian Law (2005), Rule 156, p.108.

² First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864, 75 UNTS 31 (entered into force 21 October 1950).

GROWTH OF IHL THROUGH CONVENTIONS AND TREATIES

Hague Conventions of 1899 and 1907:

To codify IHL concepts, the Hague Conventions, which were established during the Peace Conferences in 1899 and 1907, were crucial. The Permanent Court of Arbitration was formed by the First Hague Convention, also known as the Convention for the Pacific Settlement of International Disputes.³

The foundational document for IHL was the Second Hague Convention (1907), also known as the Convention with Respect to the Laws and Customs of War on Land. It established crucial guidelines for how land warfare should be conducted.

Additional Protocols of 1977:

With the addition of the Additional Protocols to the Geneva Conventions in 1977, IHL continued to develop and improve. These agreements updated IHL by addressing contemporary issues and conflicts, especially non-international armed conflicts that had not been sufficiently addressed by prior conventions.⁴

Protocol I emphasized the humane treatment of civilians and combatants who have ceased participating in hostilities, expanding rights for victims in international armed conflicts. It outlawed some weapons and methods that damage people excessively or have unintended consequences, such as attacking civilian targets or items.

IHL was expanded by Protocol II to include victims of non-international armed conflicts, such as civil wars. Even under these situations, it was emphasized how crucial humanitarian treatment and the separation between soldiers and civilians are.

³ Hague Convention Respecting the Laws and Customs of War on Land of 29 July 1899, 32 Stat. 1803 (entered into force 4 September 1900).

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

3. CORE PRINCIPLES OF IHL

DISTINCTION: SEPERATING COMBATANTS FROM CIVILIANS

A key component of International Humanitarian Law (IHL) is the principle of distinction, which requires parties to armed conflicts to make a distinction between combatants and civilians. Its main objective is to reduce damage to civilians and non-combatants during military operations.

The Principle of Distinction:

The premise that in times of armed conflict, parties must distinguish between those who are directly engaged in hostilities (combatants) and those who are not (civilians) is the foundation of the principle of distinction. To safeguard civilians from the impacts of conflict and guarantee that combatants are subject to legitimate targeting, this distinction is crucial.

Challenges in Contemporary Conflicts:

Non-State Actors: Traditional conflicts between states often featured uniformed military forces, making it relatively straightforward to identify combatants. However, contemporary conflicts frequently involve non-state armed groups that may not wear uniforms or have easily recognizable insignia. Distinguishing between combatants and civilians in such situations becomes more challenging.

Urban Warfare: Urban locations with high densities of people are seeing an increase in conflicts, where civilians and fighters may live side by side. In such circumstances, the risk to civilians is increased, and the sides to the fight must be more careful to distinguish between combatants and non-combatants.

Technological Advancements: The distance from which military operations can be carried out has been increased thanks to technological advancements like remotely piloted drones and long-range precision weapons. The potential for disproportionate harm to civilians if these technologies are not handled with discretion raises concerns even though they can improve precision.

Cyber Warfare: Cyber operations are a relatively new area of conflict, and recognizing combatants and telling them apart from civilians there poses special difficulties. The idea of "cyber combatants" asks for a reevaluation of the notion of distinction in the digital era and blurs the lines between traditional lines of battle.

PROPORTIONALITY: BALANCING MILITARY NECESSITY AND HUMANITARIAN CONCERNS

According to the principle of proportionality, an attack's anticipated military benefit cannot outweigh the harm it causes to civilians and civilian property. The assessment of proportionality is still a complicated and divisive topic that calls for careful analysis of competing interests, especially in modern asymmetric combat scenarios.

HUMANITY: A GUIDING PRINCIPLE

The humanity principle underscores the humanitarian nature of IHL, emphasizing the paramount importance of prioritizing the well-being of individuals affected by hostilities. It places an ethical and legal obligation on parties to conflicts to provide humanitarian assistance to those in need, even in the middle of armed conflict.

INTERNATIONAL HUMANITARIAN ORGANIZATIONS AND THEIR ROLE **INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)**

Since its founding in 1863, the International Committee of the Red Cross (ICRC) has played an important role in the creation and application of international humanitarian law (IHL). The ICRC is a key player in reacting to armed conflicts around the world due to its extensive presence, strong dedication to humanitarian aid, and critical role in ensuring IHL compliance. In times of crisis, its objectivity and commitment to maintaining IHL standards are crucial.

Foundation and Mission:

Henry Dunant and Gustave Moynier founded the ICRC in reaction to the suffering they saw during the Battle of Solferino in 1859. Its primary goals are to protect and offer humanitarian help to armed conflict victims as well as to advance and strengthen adherence to IHL. The organization can conduct business in some of the most hazardous and complicated war zones due to its impartiality, neutrality, and independence.⁵

Global Reach and Humanitarian Assistance:

The ICRC's global reach is a testament to its commitment to assisting those affected by armed

⁵ Dunant H, 'A Memory of Solferino' (International Committee of the Red Cross 1862).

conflicts. It operates in more than 80 countries, often in collaboration with National Red Cross and Red Crescent Societies.

Detainee Visits: To supervise the treatment and living conditions of detainees, the ICRC pays frequent visits to places of incarceration. These visits aid in ensuring that detainees are handled in conformity with IHL and global human rights norms.

Advocacy: The ICRC advocates for the importance of IHL and its respect by states and non-state actors, both in public and private forums. It engages in diplomatic efforts to promote the implementation of IHL principles.

NON – GOVERNMENTAL ORGANISATIONS AND THEIR CONTRIBUTIONS

The field of international humanitarian law (IHL) has seen the emergence of non-governmental organizations (NGOs) as significant players. IHL principles are promoted, enforced, and upheld in large part by groups like Human Rights Watch and Médecins Sans Frontières (Doctors Without Borders). Their contributions cover a wide range of endeavors, such as providing humanitarian aid, identifying IHL violations, and fighting for the upholding of human rights in times of war.

5. CHALLENGES AND CONTROVERSIES IN THE APPLICATION OF IHL

NON-STATE ARMED ACTORS: LEGAL STATUS AND ACCOUNTABILITY

Non-state armed players, such as rebel groups, insurgent forces, and militias, who contest the conventional state-centric concept of warfare, are regularly involved in contemporary wars. It is a difficult and developing task to determine these non-state actors' legal standing and responsibility under international humanitarian law (IHL). This article discusses the nuances of defining their obligation under IHL, which frequently results in problems with violations going unpunished.

Legal Status of Non-State Armed Actors:

The legal status of non-state armed actors in armed conflicts is not uniform and depends on various factors, including their level of organization, control over territory, and adherence to IHL principles.

Armed Groups: Rebel groups may receive some level of legal recognition if they engage in organized military action against a state. IHL rules, in particular Common Article 3 of the Geneva Conventions, which governs armed conflicts that are not international, bind them. This legal standing

entails responsibilities to uphold IHL guidelines and safeguard civilians.

Insurgent Forces: IHL, including Common Article 3, may also apply to insurgent forces fighting a recognized government in a non-international armed conflict. However, because it frequently depends on elements like their degree of territorial authority and compliance with IHL standards, their legal status might be less definite.

Unrecognized Entities: Non-state armed actors may create their own governance systems when they achieve de facto control over a region. Such entities' legal standing is frequently up for debate, and how accountable they are under IHL will depend on how widely recognized they are.

International Responses:

The following actions have been taken to address the responsibility and legal standing of non-state armed actors:

Peace negotiations: Peace processes frequently include clauses that allow non-state armed organizations to be integrated into the political and security environment. Measures for reconciliation and accountability may be included in such agreements.

International Criminal Tribunals: The International Criminal Court (ICC) and other international criminal tribunals have taken action to address transnational crimes. For instance, the ICC has jurisdiction over specific crimes committed during both international and domestic armed conflicts.

National Legislation: To deal with the prosecution of individuals connected to non-state armed groups, some governments have passed legislation. These laws aim to guarantee that IHL infractions can be prosecuted in domestic courts.

6. EFFECTIVENESS OF INTERNATIONAL HUMANITARIAN LAW CASE

STUDIES ASSESSING IHL IN ACTION

Syrian Conflict:

One of the worst humanitarian catastrophes of our time is the Syrian crisis, which broke out in 2011. It offers as a challenging case study for analyzing how international humanitarian law is used in a protracted and complex conflict.

Targeting of Civilians: The systematic targeting of civilians during the Syrian conflict, particularly the use of indiscriminate weapons like barrel bombs in densely populated areas, has been an egregious violation of international humanitarian law. IHL guidelines require parties to draw a difference between combatants and civilians and to take all reasonable efforts to lessen harm to the latter. These

actions are in violation of the guidelines.

Siege Warfare: Besiegement strategies used by different parties to the conflict have had disastrous humanitarian effects. Food, medical supplies, and other basics have been in short supply for civilians trapped in besieged locations. Parties are required under IHL to permit the delivery of humanitarian aid to populations in need.

Yemeni Civil War:

The Yemeni civil war, which was belched in 2014, is another case study that sheds light on IHL's application and its limitations in contemporary conflicts.

Aerial Bombardment: The Saudi-led coalition's aerial bombardment of Yemen has raised concerns about the proportionality and targeting of military operations. IHL requires parties to conduct attacks in a manner that minimizes civilian harm, and precautions must be taken to avoid or minimize collateral damage.

Blockades and Access Restrictions: Civilians in Yemen have been severely affected by the blockades and limits placed on the flow of humanitarian aid into the country. Parties are required by IHL to grant unhindered access so that humanitarian aid can reach people in need. **Child Soldiers:** There are serious violations of IHL when different armed factions in Yemen recruit and use young soldiers. It is against the law for parties to the conflict to enlist minors under the age of 15 in their armed services.

Humanitarian Imperative: The necessity of IHL's essential principles, particularly the notion of humanity, has been brought home by the catastrophic humanitarian situation in Yemen. It highlights how important it is to put civilians' safety and the defense of their fundamental rights first, especially when there is hostility.

ACCOUNTABILITY MECHANISMS

The International Criminal Court (ICC):

The Rome Statute established the International Criminal Court (ICC) in 2002. The most heinous crimes of international concern, which include war crimes, crimes against humanity, and genocide, are under its purview. On the international stage, the ICC is crucial in advancing IHL breaches' accountability.

Prosecuting Individuals The primary responsibility of the ICC is to prosecute those who commit serious crimes of international humanitarian law, such as indiscriminate attacks on people, sexual

assault, and the use of child soldiers. Its authority covers situations that are reported to it by governments, the UN Security Council, or on its own initiative.

Deterrence: The ICC acts as a powerful deterrent by sending a clear message that those who commit atrocities during armed conflicts will be held accountable. This can potentially dissuade individuals and groups from committing such crimes in the first place.

FUTURE PROSPECTS OF INTERNATIONAL LAW ADDRESSING

EMERGING CHALLENGES

IHL must change to accommodate new problems like climate-induced migration, where individuals are uprooted because of climatic conditions, and cyberwarfare, which offers special dangers to infrastructure used by the public. The dynamic character of conflicts necessitates proactive actions to maintain the applicability and efficacy of IHL.

UPHOLDING HUMAN DIGNITY: A LONG-TERM IMPERATIVE

The ethical foundations of IHL underscore the enduring importance of protecting human dignity during armed conflicts and humanitarian crises. As conflicts evolve and new challenges emerge, upholding human dignity and rights remains a central and timeless imperative for the international community.

CONCLUSION

In conclusion, international humanitarian law is not simply a set of regulations and conventions but also evidence of humanity's continuous efforts for a more humane world.

Its historical development, its fundamental principles and the unwavering dedication of international humanitarian organizations have emphasized its vital importance.

In a world where conflicts persist and new challenges emerge, IHL remains an indispensable framework for promoting peace, justice, and the protection of human rights.

This demonstrates our shared commitment to protecting humanity, even in the darkest moments of armed conflict.

As the global community continues to grapple with the complexities of modern warfare, the relevance and importance of IHL persists, offering hope for a more humane future.

International humanitarian law constitutes a global imperative in an interconnected and conflict-ridden world.

As the international community grapples with growing challenges, a commitment to upholding dignity and human rights through IHL remains essential to reduce suffering and promote peace in our globalized societies.

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