The Legal Framework of International Humanitarian Law

Kirti Dahiya

Research Scholar, Faculty of Law, Maharshi Dayanand University, Rohtak, Haryana

ABSTRACT

International humanitarian law (IHL) has generally not been subject to the same debates and criticisms of "cultural relativism" as have international human rights. Despite the fact that the modern codification of IHL in the Geneva Conventions and the Additional Protocols is generally new, and European in name, the center ideas are not new, and laws identifying with warfare can be found in all societies. There are regions in which lawful standards and social practices conflict. Savagery against ladies, for instance, is as often as possible legitimized by contentions from culture, but then is disallowed in IHL and other global law. In such cases, it is imperative to guarantee that IHL isn't contrarily influenced.

Keywords: International Humanitarian Law (IHL), Cultural, Law, Human Rights.

I INTRODUCTION

International humanitarian law (IHL) is the law that regulates the conduct of war (jus in bello). It is that branch of global law which looks to restrain the impacts of furnished clash by ensuring people who are not taking an interest in threats, and by confining and managing the methods and strategies for warfare accessible to soldiers. IHL is motivated by contemplations of humankind and the relief of human enduring. "It contains an arrangement of tenets, built up by settlement or custom, that tries to secure people and property/questions that are (or might be) influenced by outfitted clash and confines the privileges of gatherings to a contention to utilize strategies and methods for warfare of their choice".[1] It incorporates "the Geneva Conventions and the Hague Conventions, and in addition ensuing bargains, case law, and standard universal law".[2] It characterizes the lead and duties of hawkish countries, nonpartisan countries, and people occupied with warfare, in connection to each other and to ensured people, generally meaning non-warriors. It is intended to adjust compassionate concerns and military need, and subjects warfare to the run of law by restricting its ruinous impact and alleviating human suffering.[3] Serious infringement of universal helpful law are called atrocities. Universal helpful law, jus in bello, controls the lead of powers when occupied with war or outfitted clash. It is particular from jus advertisement bellum which manages the direct of taking part in war or outfitted clash and incorporates wrongdoings against peace and of war of hostility. Together the jus in bello and jus advertisement bellum involve the two strands of the laws of war representing all parts of worldwide outfitted clashes.

II HISTORY AND EVOLUTION

Indeed, even amidst the bloodletting of history, nonetheless, there have been visit articulations and summon of helpful standards for the insurance of the casualties of furnished clashes: the injured, the debilitated and the wrecked. These go back to old times.[4]

In old India there are records (the Laws of Manu, for instance) depicting the sorts of weapons that ought not be utilized: "When he battles with his adversaries in fight, let him not hit with weapons hid (in wood), nor with, (for example, are) spiked, harmed, or the purposes of which are bursting with fire."[6] There is likewise the summon not to strike an eunuch nor the adversary "who creases his hands in supplication ... Nor one who dozes, nor one who has lost his jacket of mail, nor one who is bare, nor one who is incapacitated, nor one who looks on without partaking in the battle.

Customarily, worldwide helpful law has looked to control the lead of and harm caused by struggle between as opposed to inside States. The refinement depended on the commence that inside furnished savagery brings up issues of sovereign administration and not global direction.

On that basis, the 1899 and 1907 Hague Conventions respecting the Laws and Customs of War on Land applied solely to international warfare. The Geneva Conventions of 1949 continued to very heavily favour regulation of inter-State rather than domestic warfare, the vast majority of the substantive provisions contained in the Geneva Conventions of 1949 applying solely to:

"…all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."[1]

Although the scope of the article was more restrictive than some would have hoped, the wording marked an important departure from earlier conventions that had required more formalistic declarations of war. From the perspective of internationalized armed conflicts, which are often characterized by covert rather than direct military action, the change was critical. In addition, the international community's experience of the Spanish Civil War, which was in fact heavily internationalized, and the massive atrocities committed against minority groups within individual nations during the Second World War, contributed to a political willingness to at least superficially regulate some aspects of civil war. After considerable disagreement in giving that willingness form, Article 3

[1] Article 2 common to the four Geneva Conventions of 1949.

common to the four Geneva Conventions of 1949 extended the most rudimentary principles of humanitarian protection to those persons taking no active part in hostilities and placed hors de combat.[2]

The problematic issue of defining internal armed conflict was circumvented by a negative definition that rendered common Article 3 applicable in "armed conflicts not of an international character," even if "one of the most assured things that might be said about the words 'not of an international character' is that no one can say with assurance precisely what they were intended to convey." Although the substance of common Article 3 defines principles of the Conventions and stipulates certain imperative rules, the article does not contain specific provisions. In addition, the scant principles enumerated in it apply only where the intensity of hostilities reaches the level of "protracted armed violence between governmental authorities and organised armed groups or between such armed groups."[3]

III ADDITIONAL PROTOCOLS OF 1977

The Additional Protocols to the Geneva Conventions continued the distinction between international and non-international armed conflicts "leaving unresolved the troublesome question of the law to be applied to armed conflicts in which there are both international and non-international elements."[4] Additional Protocol I sought to reaffirm and develop the rules affecting victims of international armed conflicts, specifically indicating in Article 1 that "this Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions." Tellingly in relation to internationalized armed conflicts, Article 1(4) of Additional Protocol I also explicitly provides that "…armed conflicts in which peoples are warfare against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" automatically qualify as international armed conflicts for the purposes of the Protocol. Although the subject of some considerable criticism, the inclusion of such conflicts within the scope of Article 1(4) confirms that the dichotomy between international and non-international conflict is far from strict or principled: international armed conflict is not a synonym for inter-State warfare, nor does the full extent of international humanitarian law presuppose that the collective belligerents must be States.

Protocol II of the Geneva Conventions defines an armed conflict as those conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups

[2] The principles include prohibition of: "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples". Common Article 3(2) also stipulates that "the wounded and sick shall be collected and cared for".

[3] Prosecutor v. Tadic, IT—94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70 (hereinafter Tadic Jurisdiction Appeal).

[4] R. Baxter, "The duties of combatants and the conduct of hostilities (Law of the Hague)" in International Dimensions of Humanitarian Law, Henry Dunant Institute / Unesco, 1988, p. 100.

which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."Also, Protocol II of the 1949 Geneva Convention states that: "Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflict [8]."

Therefore, unlike common Article 3 of the Geneva Conventions, Additional Protocol II will not apply to conflicts between two warring dissident groups. It will also only apply in conflicts that in fact approximate to traditional conceptions of inter-State warfare, namely where an organized dissident armed force exercises military control over a part of the territory of a State Party. In the context of internationalized armed conflicts, which by definition contain both international and internal elements, determining which set of rules applies and to what aspect of the conflict is critically important. Yet somewhat ironically given the staunch opposition to explicitly assimilating the laws of war applicable in internal and international armed conflict, there is now extensive literature that suggests that customary international law has developed to a point where the gap between the two regimes is less marked.[5] The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Tadic Jurisdiction Appeal held that customary rules governing internal conflicts include: “protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities.”[6]

Thus, the struggle to determine the law applicable in armed conflicts that as a matter of fact involve both international and internal elements, becomes a complex but important task [9].

Convergence between IHL and the laws of war

With the adoption of the 1977 Additional Protocols to the Geneva Conventions, the two strains of law began to converge, although provisions focusing on humanity could already be found in the Hague law (i.e. the protection of certain prisoners of war and civilians in occupied territories). The 1977 Additional Protocols, relating to the protection of victims in both international and internal conflict, not only incorporated aspects of both the Law of The Hague and the Law of Geneva, but also important human rights provisions [10].

IV BASIC RULES OF IHL

Persons who are “hors de combat (outside of combat)”, and those who are not taking part in hostilities in situation of armed conflict (e.g., neutral nationals) shall be protected in all circumstances [11].

[5] J-M. Henckaerts, “The conduct of hostilities: Target selection, proportionality and precautionary measures under international humanitarian law”, in The Netherlands Red Cross, Protecting Civilians in 21st-Century Warfare: Target Selection, Proportionality and Precautionary Measures in Law and Practice, 8 December 2000, p. 11.

[6] Tadic Jurisdiction Appeal, para. 127.

The wounded and the sick shall be cared for and protected by the party to the conflict which has them in its power. The emblem of the "Red Cross", or of the "Red Crescent," shall be required to be respected as the sign of protection.

Captured persons Caught people must be secured against demonstrations of savagery and responses. They might have the privilege to relate with their families and to get alleviation.

Nobody might be subjected to torment or to merciless, brutal, or corrupting treatment or discipline.

Gatherings to a contention don't have a boundless selection of techniques and methods for warfare.

Gatherings to a contention might constantly recognize warriors and non-soldiers. Assaults might be coordinated exclusively against genuine military targets [12].

Examples

Understood examples of such guidelines incorporate the preclusion on assaulting specialists or ambulances showing a red cross. It is additionally disallowed to flame at a man or vehicle bearing a white banner, since that, being viewed as the banner of détente, demonstrates expectation to surrender or a want to impart. In either cases, the people ensured by the Red Cross or the white banner are required to look after impartiality, and may not take part in warlike acts themselves; participating in war exercises under a white banner or a red cross is itself an infringement of the laws of war.

These cases of the laws of war address:

- assertions of war;
- acknowledgment of surrender;
- the treatment of detainees of war;
- the shirking of barbarities;
- the preclusion on intentionally assaulting non-warriors; and
- the preclusion of certain obtuse weapons.

It is an infringement of the laws of war to participate in battle without meeting certain prerequisites, among them the wearing of a particular uniform or other effectively identifiable identification, and the conveying of weapons straightforwardly. Imitating warriors of the opposite side by wearing the adversary's uniform is permitted, however battling in that uniform is unlawful treacherousness, similar to the taking of prisoners [13].

V CONCLUSION

International humanitarian law now includes several treaties that outlaw specific weapons. These traditions were made generally on the grounds that these weapons cause passings and wounds long after clashes have finished. Unexploded land mines have caused up to 7,000 passings per year; unexploded bombs, especially from group

bombs that diffuse some little "bomblets", have additionally murdered many. An expected 98% of the casualties are regular citizen; ranchers working their fields and youngsters who discover these explosives have been normal casualties. While it is basic not to be politically guileless as to the genuine worries that administrations refer to against stretching out wartime captive status to inner clash or concurring warriors in such clashes insusceptibility for waging war, there is almost no other impetus for radical gatherings to consent to the laws of war on the off chance that they are not ready to assert those benefits. Also, allowing the benefits to agitators may advance more noteworthy correspondence on their part, especially when they hold countless detainees. Besides, even detainees of war can be arraigned for hostility, violations against humankind, atrocities and genocide, additionally countering the worry that bearing such people wartime captive status in inward equipped clashes will advance unmitigated inside revolt.

REFERENCES

[1]. Kalshoven, Frits; Liesbeth Zegveld (March 2001). Constraints on the waging of war: An introduction to international humanitarian law. Geneva: ICRC. p.40

[2]. Christopher Greenwood in: Fleck, Dieter, ed. (2008). The Handbook of Humanitarian Law in Armed Conflicts. Oxford University Press, USA. ISBN 0-19-923250-4. p. 20.

[3]. "Fritz Munch, History of the Laws of War, in: R. Bernhardt (ed.), Encyclopedia of Public International Law Volume IV (2000), pp. 1386–8.

[4]. Grotius, Book 3, Chapter 1:VI.

[5]. Bernhardt, Rudolf (1992). Encyclopedia of public international law. Amsterdam: North-Holland. ISBN 0-444-86245-5., Volume 2, pp. 933–936

[6]. II Kings 6:21-23

[7]. The Laws of Manu VII.90

[8]. The Laws of Manu VII.91-92 See also, Singh, Nagendra: "Armed conflicts and humanitarian laws of ancient India," in C. Swinarski (1985). Studies and Essays on International Humanitarian Law and Red Cross Principles. The Hague: Kluwer Law International. pp. 531–536. ISBN 90-247-3079-1.

[9]. Khadduri, Majid (2006). War And Peace in the Law of Islam. New York, NY: Lawbook Exchange. ISBN 1-58477-695-1.pp. 103–4.

[10]. Hashmi, Sohail H. (2002). Islamic political ethics: civil society, pluralism, and conflict. Princeton, N.J: Princeton University Press. ISBN 0-691-11310-6. p. 211

[11]. McCoubrey, Hilaire (1999). International Humanitarian Law. Aldershot, UK: Ashgate Publishing. ISBN 1-84014-012-7. pp. 8–13

[12]. Khadduri, Majid (2006). War And Peace in the Law of Islam. New York, NY: Lawbook Exchange. ISBN 1-58477-695-1.pp. 105–106.

[13]. Christopher Greenwood in: Fleck, Dieter, ed. (2008). The Handbook of Humanitarian Law in Armed Conflicts. Oxford University Press, USA. ISBN 0-19-923250-4. p. 22.