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A GLANCE AT THE EMERGENCE OF INTERNATIONAL HUMANITARIAN LAW

AUTHORED BY - DR. SIMMI VIRK*

Abstract

International Humanitarian Law is a branch of international law which governs the mutual relations of the States. It is the result of a compromise between the requirements of war and the laws of humanity. There was a need for international norms to reduce the impacts of war on human being and their property. Thus. In this paper, researcher simply tried to present a brief history of International Humanitarian Law in this paper.

Key words: International Humanitarian Law, warfare, International Committee of the Red Cross.

A glance at the emergence of International Humanitarian Law

Dr. Simmi Virk*

The International law that regulates the relations between the different States also includes International humanitarian law. For humanitarian grounds, it aims to lessen the effects of armed conflicts. It also tries to protect those persons who are no longer participating in hostilities as well as the sick and wounded, prisoners and civilians. It also specifies the rights and duties of the parties to a conflict in the conduct of hostilities.

The objective of international humanitarian law is to reduce and alleviate the suffering caused by conflict. The rules of international humanitarian law are the outcome of a delicate balance between the requirements of battle and the humanitarian laws. Humanitarian law is a very delicate subject and it is expected that, it must not be tampered with. It must be respected under all circumstances, in order to preserve the human being and their lives. Every one of us may contribute to a better

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understanding of its underlying principles and goals, paving the path for greater respect for them.

Initiative by Henry Dunant

Henry Dunant,¹ in response to the suffering of the battlefield of Solferino and the agony of so many wounded soldiers lying untended, proposed action on the following two levels²:

- 1st, he suggested to establish an organization to assist wounded military personnel, which is known as the Red Cross; and
- 2nd, he proposed to sign the 1st “Geneva Convention”, an international treaty that guarantees the protection of the wounded on the battlefield.

Dunant intended to lessen the misery brought on by war by taking these two actions. Later in his life, he only argued for an end to war. In this paper a small discussion is revealed on his second suggestion, namely the creation of humanitarian law.

The phrase “International Humanitarian Law” relates to the laws that govern the conduct of war. The International Committee of the Red Cross is considered as its guardian. According to this Committee,³ “*International Humanitarian Law is part of the body of International Law, which governs the relations among different states. Further, it aims to protect persons who are not or are no longer taking part in the hostilities, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.*”⁴

Till 1960s, word “International Humanitarian Law” was not used to define as a subject of law, and even in the 1960s, when it was first time used; it suggested a different view of the law in comparison to the existing view. Prior to this time, popular and scholarly use referred to the ‘Laws of War’, and in 1960s, to the ‘Laws of Armed Conflict’ in an attempt to understand *de facto* and internal conflicts.⁵ The term ‘Rules of War’ or ‘Armed Conflict’ did not only refer to a new name for the similar kind of legislation. Rather, it was an acceptable term for a separate legal notion and set of regulations. The ‘Laws of War’ were defined as ‘Rules of the Law of Nations governing Warfare.’⁶

¹ The man whose vision led to the creation of the worldwide Red Cross and Red Crescent movement. He was the witness of the battle of Solferino in 1859.

² Hans-Peter Gasser, “International humanitarian law and the protection of war victims”, Available at: <https://www.icrc.org/en/doc/resources/documents/misc/57jm93.htm>. (Last visited on 16th May, 2023).

³ “War and International Humanitarian Law”, Available at: www.icrc.org/eng/war-and-law/overview-war-and-law.htm (Last visited 15th May, 2023).

⁴ *Ibid.*

⁵ Schwarzenberger, “From the Laws of War to the Law of Armed Conflict”, *Journal of Public Law* 17 (1968) p.61.

⁶ Oppenheim, *International Law: A Treatise* (1921),p.84.

In 1968, the 'International Conference on Human Rights' in Teheran was held to mark the 20th anniversary of the 'UN Declaration of Human Rights'. Its aim was to promote human rights implementation. This Conference culminated in the adoption of the significant Resolution XXIII on human rights in armed situations. Although, this Conference did not achieve its stated objectives, it established the 1st recognized link between human rights and the 'Rules of Armed Conflict'.⁷

In 1968, the UN General Assembly passed the Resolution on 'Respect for Human Rights in Armed Conflicts', emphasizing the significance of upholding humanitarian principles in all armed conflicts and directing the Secretary-General to look into the need for additional humanitarian conventions at international level. The issue was discussed further at the UN General Assembly's 24th, 25th, and 26th sessions.⁸ In 1969, report on 'Respect for Human Rights in Armed Conflict' was presented by the Secretary-General. It included a 'historical study of international humanitarian instruments pertaining to armed conflict. It also examined the relationship between the Geneva Conventions and UN human rights instruments and evaluated methods to ensure the respect of humanitarian principles in all armed conflicts.'⁹

As requested by Resolution 2597 (XXIV), the Secretary-General issued a report during the 25th session. In this report, a special attention was given to the need for protection of civilian and combatant rights in conflicts arising from peoples' struggles for liberation. Apart from this, the better application of existing Humanitarian International Conventions and Rules to such conflicts was also highlighted in this report.¹⁰ Further, ICRC also decided to hold a meeting on the reaffirmation and development of International Humanitarian Law.' At 26th session, two more resolutions on the similar terms were also adopted.¹¹

As a result, UN General Assembly emphasized upon promoting the specific subject of human

⁷ Amanda Alexander, "A Short History of International Humanitarian Law", *The European Journal of International Law* 26(2015) p. 119. Available at: <https://academic.oup.com/ejil/article/26/1/109/497489>. (Last visited on 09 May, 2023).

⁸ Respect for Human Rights in Armed Conflict, UN General Assembly Resolution 2444 (XXIII) (1968). Available at: [file:///C:/Users/Arrow%20IT/Downloads/A_RES_2444\(XXIII\)-EN.pdf](file:///C:/Users/Arrow%20IT/Downloads/A_RES_2444(XXIII)-EN.pdf) (Last visited on 16th May, 2023).

⁹ Report of the Secretary-General, Agenda Item 61, UN Doc. A/7720 (1969). Available at: file:///C:/Users/Arrow%20IT/Downloads/A_7720-EN.pdf . (Last visited on 23rd April, 2023).

¹⁰ Report of the Secretary-General, Agenda, Item 79, UN Doc. A/8052 (1970). 8. Available at: <https://digitallibrary.un.org/> (Last visited on 16th May, 2023).

¹¹ Respect for Human Rights in Armed Conflicts, UN General Assembly Resolution 2853 (XXVI) (1971). Available at: <https://digitallibrary.un.org/record/192150?ln=en> (Last visited on 29th March, 2023).

rights in armed conflict. States had not yet considered or discussed "international humanitarian law.'

Role of International Committee of Red Cross

When the 'International Committee of the Red Cross' involved in the discussion at the UN General Assembly, the changes of human rights in armed conflict into 'International Humanitarian Law' was happened. Both the ICRC and UN Secretary-General emphasized upon the importance of partnership between the two organisations. In 1969, the International Committee of Red Cross convened the Conference and passed the Resolution XIII, which emphasized upon the necessity and urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds. This Conference was basically convened in order to strengthen the affective protection of fundamental rights and was in accordance with the Geneva Conventions of 1949."¹²

Thus, by broadly interpreting the term 'humanitarian', the International Committee of the Red Cross expanded the scope of Red Cross law to cover concerns involving the means and techniques of conflict. Nonetheless, still it was not referred as "International Humanitarian Law". In 1971, ICRC convened its Conference of Government experts by naming 'Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts'. The ICRC explained it, now that International humanitarian law would refer to rules and principles of the law of armed conflict that are clearly humanitarian in nature, namely those rules which protect human beings and their property.¹³ Thus laws of war had been replaced by international humanitarian law.

Steps towards formal recognition of International Humanitarian Law

Despite the fact that, the term 'International Humanitarian Law' may have been coined by the beginning of the 1974, but its actual principles were debated throughout the Conference and even after the conference was over. In this Conference all the delegates expressed different views

¹² ICRC, *Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, Geneva, ((Geneva, 24 May - 12 June 1971) p. 11. Available at: https://library.icrc.org/library/docs/CD/CEG_1971_RAPPORT_ENG.pdf (Last visited on 16th May, 2023).

¹³ *Ibid.*

about what international humanitarian law was and should be. Some delegates contended that the principle of distinction should forbid the use of some contemporary weaponry, while others said that it could not. Some argued that the principle of proportionality should not be included in international humanitarian law since it provided military commanders an unrestricted authority to launch an assault if they believed it would provide a military advantage. In response, the United Kingdom, Australia, and the United States contended that the proportionality concept should be preserved.¹⁴

By adopting imprecise, confusing wording in the final text, the delegates finally managed to reconcile, or overlook, their disagreements.

The phrase proportionate was removed from the relevant articles, which alleviated worries regarding proportionality. The regulations concerning indiscriminate strikes remained vague. Many of the concerns about the consequences of Additional Protocol II on national sovereignty were resolved. In Article 50, civilians were defined for the first time and granted exceptional protection. Protocol I was a response to the new codification of the 'principles of proportionality and discrimination', This Protocol demanded that precautions be taken to protect civilians and prohibited reprisals against civilians and civilian starvation, which had previously been permitted under the laws of war. Civilians are now protected during internal armed conflicts under the Additional Protocol II.

The ICRC continued to promote Additional Protocol I, urging governments to ratify the Protocol and put its principles into action, it met with lot of resistance. Many judicial and military critics questioned Additional Protocol I's worth and authority.

As a result, the Additional Protocol I's status was unknown at the beginning of the 1990s. However, this ambiguity had been overcome by the adoption of Additional Protocol I as customary law and by embracing of international humanitarian law's humanitarian ideals. This shift occurred as rapidly and the term 'international humanitarian law' first at the beginning of the 1990s emerged. The new focus was on war victims and the crimes perpetrated against them, including crimes against humanity, sexual brutality, and genocide. Although the issue of the validity of Additional Protocol I had been dormant for many years, it was reawakened when North

¹⁴ *Supra* note 7 at 124.

Atlantic Treaty Organization invaded in Kosovo in 1999.

Protocol I, an addendum to the 1949 Geneva Conventions, serves as the foundation for this assessment of North Atlantic Treaty Organization bombardment. Most of the North Atlantic Treaty Organization (NATO) nations have accepted this Protocol, and the US government said that it recognises all essential requirements. The essential principle of Protocol I, and of war rules in general, was the civilian population and individual civilians are entitled to universal protection from military actions. This is largely determined by the necessity that attackers must take all reasonable steps to avoid or minimise injury to civilians, and may not attack both combatants and civilians indiscriminately. Thus, by the end of the twentieth century, it had become a genuinely international humanitarian law, one in which humanitarian concerns superseded military necessity. Indeed, military necessity was rarely emphasised in the Kosovo discussion.¹⁵

Thus, in the twenty-first century, international humanitarian law evolved additional characteristics, most notably a more explicitly stated relationship with human rights law. As a result, the history of international humanitarian law was shaped by two eras of rapid development. It all started in the 1970s, when it was suddenly recognised as a legal profession. By the end of the 1990s, Additional Protocol I was widely acknowledged as the basis for the strict understanding of international humanitarian law as the *ius in bello*.

As of a result, the United Nations Charter clearly forbids using force or threatening to use force against other countries. Since 1945, states can no longer settle their differences through the use of war. Thus, International conventions were required lessen the impacts of war on people and property, and also to protect the vulnerable people. That is the purpose of International Humanitarian Law, which finds its expression in the Geneva Conventions and their Additional Protocols, as well as in substantial body of customary law as a key supplemental source of law.

¹⁵ “Civilian Deaths in the NATO Air Campaign (2000)”, Available at: www.hrw.org/reports/2000/nato/index.htm . (Last visited on 21st March, 2023).