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CRITICAL EVALUATION OF PRISONER OF WAR UNDER IHL

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Abstract

This study aims to provide a comprehensive picture of prisoners of war. Following the World Wars, which caused considerable confusion and the deaths of many innocent people, the need for established norms in this area became even more pressing. International standards must be changed to prevent future violations of basic human rights. Following that, the Geneva Conventions were created for various time periods. This study article also seeks to clarify why the Geneva Conventions must be updated from time to time, as well as the treaty's key sections. The facts of the Indo-Pak conflict are thoroughly investigated, as is their relevance to the convention's rules. Finally, there is the infamous case of Wing Commander Abhinandan of the Indian Air Force.

Keywords Geneva Convention, Prisoner of war, Human rights, international law and Humanitarian law.

Introduction

“Everyone has the right of freedom and to live free and no one has the right to cage anyone for any reason “ -A Noble Of Ww-II

Any individual kidnapped or detained by a belligerent state during a conflict is referred to as a prisoner of war (POW)¹. In the strictest sense, it refers to members of formally constituted armed forces; nevertheless, a broader meaning has included guerrillas, civilians who publicly take up weapons against an adversary, and non-combatants linked with a military force. Fighters who fall into the clutches of their opponent have been held hostage for the majority of human history. Such individuals are known as prisoners of war in international armed conflict and have historically been particularly prone to mistreatment due to their association with the enemy and the fact that their detention generally happens against the backdrop of wartime enmity. Fortunately, the position of prisoners of war has changed dramatically through time, and we are no longer in a period when captured troops were either executed or enslaved. Efforts were made in the nineteenth century to improve the treatment of prisoners of war.

Then, in 1929, states adopted the Geneva Convention on Prisoners of War, expanding on the agreements made between countries to safeguard POWs during World War I. It was the first multilateral convention targeted primarily at defending prisoners of war, and it served as the forerunner to the 1949 Third Geneva Convention on Prisoners of War (GC III). During the Second World War, the 1929 Convention proved efficient in protecting captured fighters in the hands of States that were party to it, therefore the new GC III intended to reinforce and universalize that protection in 1949. The Third Geneva Convention was a watershed moment in the history of prisoners of war, establishing a firm legal foundation for their protection. Today, every government in the world is a signatory to the Third Geneva Convention, which also bestows a particular mission on the ICRC, tasked with ensuring the dignity and well-being of prisoners of war².

¹ Ramin Mahnad, *Prisoners Of War*, INTERNATIONAL COMMITTEE FOR RED CROSS (June. 01, 2022, 10:25 AM), <https://www.icrc.org/en/document/prisoners-war-what-you-need-know>. Accessed 08 Feb,2023.

² Geneva Convention Relative To The Treatment Of Prisoner Of War (Aug. 12, 1949). Accessed 09 Feb,2023.

Background

Capturing hostages during or after a war is now regarded as a long-standing habit that continues to this day. The distinction is in the legal safeguards afforded to such convicts. Previously, prisoners of war were either slaughtered or enslaved and forced to live in pitiful and cruel conditions. Such inmates are now protected. On the timeline, it is obvious that the situation did not alter significantly during the Middle Ages or the Renaissance. Several things were going on. For example, during the blockade of Paris in 1870, citizens begged the monarch to preserve the prisoners of war and not slay or enslave them, while religious conflict was also taking place. The purpose is to eradicate the opponent's faith. Until recently, prisoners of war were considered personal property of the country that kidnapped them; however, this is no longer the case. The current scenario is different. When officers were apprehended in France, they had to surrender their swords and were allowed certain privileges if they vowed not to be clever or leave the spot where they were seized. This is a significant improvement since prisoners of war are now treated humanely rather than just ill-treated. The legal reforms represent a progressive attitude that indicates the progression of society belief³.

Research Objectives

1. An insight on who qualifies as a prisoner of war.
2. An insight on the deep understanding on the kind of treatment POWs received.
3. An insight on legal and basic human right under International Humanitarian Law.
4. An insight on the role of International Organization over the right of POWs.

Research Methodology

This research was conducted using a **Non- Empirical** method. This research includes a critical analysis of prisoners of war under International law, it will also deal with the working of International organization like U.N, ICRC, OHCHR, pertaining to prisoner of war. As, well as

³ Kathleen Sheetz, Prisoner Of War, BRITANNICA, THE EDITORS OF ENCYCLOPAEDIA (Nov 25, 2022,01:15 PM),<https://www.britannica.com/topic/prisoner-of-war>. Accessed 10 Feb, 2023.

the examination of various conventions, protocols, case laws, and existing material collected from different sources, including online journals, websites, etc.

Who Are The Prisoner Of War?

Prisoners of war are citizens, military/paramilitary officials, and other prisoners who are kept captive during a war, typically by the victors or other sides in an armed conflict. These captives have human rights and should not be subjected to cruel treatment. Prisoners of war, as defined by the current Geneva Convention, are those who have fallen into the hands of the enemy and fall into one of the following categories:

1. Article 4 Of The Geneva Convention iii⁴

- Members of the military forces of a Party to the Conflict, as well as militias or volunteer corps that are part of those forces.
- Members of other militias and volunteer corps, including organised resistance movements, who are members of a Party to the Conflict and operate in or outside their own territory, even if that territory is occupied, if such militias or volunteer corps, including such organised resistance movements, meet the following conditions:
 - Regular military troops who pledge loyalty to a government or authority not recognised by the Detaining Power.
 - Persons who accompany the armed forces without being members of the armed forces, such as civilian members of military aircraft crews, war correspondents, supply contractors, labour unit members, or members of services responsible for the welfare of the armed forces, provided they have received authorization from the armed forces they accompany, who shall issue them a permit for that purpose.
- Members of the parties' merchant marine and civil aviation crews, including masters, pilots, and apprentices, who do not get preferential treatment under any other provision of international law.
- Residents of a non-occupied nation who suddenly pick up guns to fight invading invaders without having had time to form organised military organisations, as long as they carry arms openly and respect war laws and conventions.

⁴ The Geneva Convention Of 1949

2. Article 42 Of The Additional Protocol I

All organized military forces, organisations, and units under a leadership responsible to that Party for the actions of its subordinates comprise a Party's armed forces in a conflict, even if that Party is represented by a government or an authority not recognised by an opposing Party. Such military forces will be subject to an internal disciplinary procedure that will, among other things, guarantee that international law norms applicable in armed conflict are observed.

3. Article 44 Of The Additional Protocol I

Any combatant who surrenders to an adverse Party, as defined in Article 43, becomes a prisoner of war. It further stipulates that a person's violation(s) of international law applicable to armed conflicts would not disqualify him from serving as a combatant or prisoner of war. However, if a combatant fails to distinguish himself from a civilian as required by Article 44 during a military operation, he forfeits his right to be kept as a prisoner of war.

World Wars And Armed Conflict

Another important feature of International Humanitarian Law in terms of human rights may be traced back to World War I. The war was atrocious, and the Briand-Kellogg Pact of 1928 was forged in the aftermath of this horribly unfair and lethal struggle. Under this pact, an endeavour was ultimately undertaken to halt and avert any armed conflict, but another critical component that could not be neglected was war in the event of self-defense. How will a person or state use their human right to self-defense if all conflicts are forbidden? As a consequence of the discussions, it was determined to ban all armed confrontations while leaving a small window open to defend nations' and people's rights to self-defense.⁵ Another important feature of International Humanitarian Law in terms of human rights may be traced back to World War I. The war was horrible, and the

⁵ Convention Relating to the Treatment of Prisoners of War, July 27, 1929

Briand-Kellogg Pact of 1928 was forged in the aftermath of this terribly unfair and deafening conflict. This appears to be the reason why International Humanitarian Law has become such an important part of international law. He or she would not have been accorded human rights if there had been no norms controlling the military battle between countries, and mass executions of innocent people would have continued.

Humanitarian Law And Human Rights

Article 3 of the Geneva Conventions addresses internal armed conflicts, or concerns concerning the internal affairs of states. Because the control of internal affairs is essentially the prerogative of the sovereign State, the decision to incorporate Article 3 in the four Geneva Conventions in 1949 was a watershed moment. It should be noted, however, that the Universal Declaration of Human Rights was approved by the United Nations General Assembly one year before, in 1948. That text represented rising worldwide concern over a critical part of states' internal affairs. Indeed, international human rights law requires states to acknowledge and respect a number of fundamental human rights and to assure their preservation. In times of armed conflict, humanitarian law serves the same purpose. It requires warring parties to protect and maintain the lives and dignity of captured enemy troops or civilians under their authority. So, what differentiates humanitarian law from human rights law? Or are they the same thing? Human rights and humanitarian law have aims that overlap. Both humanitarian law and human rights are intended to limit the authority of state authorities in order to protect the individual's fundamental rights. Human rights treaties (backed by customary law) achieve this goal in a comprehensive fashion by covering nearly all elements of life.⁶ Their rules must be applied to all people and followed in all situations (although a number of rights may be suspended in time of emergency). Humanitarian law, on the other hand, is only applicable during times of armed war. Its regulations are written in such a way that they account for the unique circumstances of conflict. Under no circumstances may they be revoked.⁷ Typically, they apply "across the front line," which means that the armed forces must follow humanitarian law in their encounters with the adversary (and not in the relations with their own nationals). Human rights law and international humanitarian law, on the other hand, apply concurrently in internal armed conflicts. In other

⁶ Article 5 (2) GC III on the independent tribunal that must be established in case of doubt.

words, humanitarian law is a subset of human rights legislation that is tailored to times of armed conflict. Some of its provisions, particularly the limits on hostilities and the use of weapons, have no analogue in human rights law. Human rights law, on the other hand, encompasses various sectors that fall outside the purview of humanitarian law (e.g. the political rights of individual persons). Human rights law and humanitarian law, despite their overlap, are different aspects of public international law.

Rights Of Prisoners Of War

- The legal basis for dealing with prisoners of war is now the Third Geneva Convention. A noteworthy characteristic of the agreement, aside from its applicability to all other armed conflicts, is its mention of internal wars. The treaty defined prisoners as anybody who was likely to be kidnapped during a conflict.⁸
- The only and primary obligation for the treatment of prisoners of war rests with the detaining power, not the people. The Detaining Power has an overarching duty to treat prisoners humanely and to keep them safe. They must be provided with food, clothes, and medical care. They should be shielded from public scrutiny. They are also entitled to rigorous due process safeguards, such as a trial before tribunals that follow the same justice standards as courts that would prosecute the detaining state's military. Experiments in medicine and science are banned. Prisoners must be treated equally regardless of their colour, country, religious convictions, or political beliefs.
- The prisoner is expected to provide little information throughout his or her custody. He is not to be tortured and may keep his personal stuff. The prison camp's conditions must fulfil the convention's criteria. The task that the prisoner is expected to do must not be intrinsically hazardous, humiliating, or directly related to military activities.
- Contact with his family and correspondence rights must be granted to the prisoner. Procedures for filing complaints against the detention camp's administration must be developed. The treaty specifies penal and disciplinary punishments, as well as processes

⁸ Article 3 GCIII

for evaluating culpability. The pact also states that prisoners' property should not be disposed of when they are arrested. POWs must be returned after hostilities have ended.

- The convention establishes the notion of a Protecting Power, who is selected by mutual agreement and is in charge of ensuring that the conditions of the convention are observed. If the belligerents cannot agree on such a replacement, the detaining power must propose that the Protecting Power be replaced by a neutral state, an impartial organisation, or a humanitarian organization. Each contracting party promises to penalise anybody who breaks the regulations. Parties to the conventions are obligated to pursue anybody accused of breaking them.
- Many of the main rules of the Third Geneva Convention on POWs are incorporated into the First and Second Geneva Conventions in relation to injured and sick armed personnel in the field or at sea.
- Prisoners of war are entitled to particular protection and treatment under Article 4 of the Geneva Convention and Article 44 of the Additional Protocol I. Prisoners of War are granted this status in acknowledgment of the fact that soldiers are acting in the best interests of their nation and are entitled to protection once the conflict has ended.⁹ The treatment of prisoners of war is controlled by international humanitarian law requirements. According to Geneva Convention III 143 Article, prisoners of war must be treated humanely, housed properly, and provided with enough food, clothing, and medical treatment (s). Its provisions also provide standards for work, punishment, entertainment, and criminal trials.

General Protection Of Prisoners Of War

It is important to remember that prisoners of war are in the hands of the enemy, not the individual or military unit(s) that have seized them. Prisoners of war must always be handled with dignity. Any unlawful act or omission by the detaining power that causes death or seriously endangers the health of a POW in its custody, including subjecting the prisoner to physical mutilation or medical or scientific experiment(s) of any kind that is not justified by the prisoner's medical, dental, or hospital treatment and is not carried out in his interest, is prohibited and

⁹ Article 17 GC III

would be considered a war crime.¹⁰ Retaliatory actions against prisoners of war are prohibited. Prisoners of war have the right at all times to have their person(s) and honour respected. Women will be treated with all reverence due to their dignity and will be treated equally to males in all situations. Prisoners of war have the right to retain their full civil capacity when imprisoned. The State holding Prisoners of War is obligated to provide free of charge for their upkeep and medical assistance as determined by their state of health. All prisoners of war will be treated equally, regardless of race, nationality, religious belief, political perspective, or any other distinction based on comparable traits.

Specific Provision For Treatment Of Prisoners Of War In Captivity

When asked about their identification, POWs are only needed to reveal their surname, first name, rank, date of birth, and army, regimental, personal, medical, or mental condition. They will be turned over to the medical service if they are unable to do so.¹¹ Prisoners of War must not be subjected to physical or mental torture, or any other kind of coercion, in order to collect any type of information. If a prisoner of war refuses to answer, he or she may not be intimidated, humiliated, or subjected to any unfavourable or inhumane treatment.

Officers and inmates of comparable standing must be treated with respect based on their rank and age. Personal property of prisoners of war, such as mental helmets, gas masks, and other equipment supplied for personal protection, shall remain in their possession.¹² Only armament, including arms, military equipment, and valuables stolen from POWs in return for money impounded, will be considered.

The Case Of Wing Commander Abhinandan Varthaman

Wing Commander Abhinandan was apprehended during an airstrike between India and Pakistan. The most essential issue in this case was whether the Geneva Convention norms applied in this

¹⁰ Article 82-88 GC III

¹¹ Article 51,52 and 56 GC III

¹² Article 18 GC III

circumstance because, in general, neither country had declared a formal war on the other. This worry was heightened since the nations had accepted the 1949-51 Geneva Convention, which addressed concerns such as the treatment of prisoners of war and what should be done if a prisoner is harmed. The Geneva Treaty's requirements were finally deemed to apply in this case since Article 2 of the treaty specifically states that the countries participating in a conflict do not have to be at war. This agreement would most likely apply even if two countries engaged in military conflict. This clearly says that Abhinandan would be Pakistan's obligation under the Geneva Convention in any circumstance and that his interests could not have been jeopardised since anything erroneous would have been viewed as a violation of the convention's norms.

Suggestions And Conclusion

- Prisoners of war must be treated decently at all times.
- Any unlawful act or omission by the Detaining Power that causes the death or gravely endangers the health of a prisoner of war in its custody is banned and will be considered a serious violation of the present Convention.
- United Nations should take necessary steps to preserve the basic Human Rights of POWs just like it was done by giving legal assistance to accused of 26/11 Ajmal kasab.
- International court of justice should act as binding authority over country which violates the laws and peace of the nation just like was done in case of Kulbushan Yadav. ICJ being an independent body of the U.N should give time and check the activities of the nations.

This study concluded that humanitarian law and human rights law are closely intertwined. Finally, the protection of individuals' basic rights in the event of armed conflict is the most important battleground for international humanitarian law, because no matter what the circumstances between two countries are during a state of war or armed conflict, the rights of the people living in those countries cannot be abridged, and their safety and well-being cannot be jeopardized. Furthermore, the Geneva Conventions state unequivocally that just because officers of the armed forces are participating in a conflict does not mean they do not have rights of their own. Once the conflict is proclaimed officially over, the fighting sides must ensure that everyone, regardless of status, is protected and that nothing unlawful occurs at any cost. It is in everyone's best interests to follow all of the Geneva Convention's regulations. The globe will

remain peaceful and harmonious as long as the general people of diverse nations is respected and safeguarded.

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