

Revisiting International Humanitarian Law

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Abstract:

International Humanitarian Law (IHL) is a very important part of public international law. It mostly refers to international armed conflict. Armed conflict means fighting between the armed forces of at least two countries. It can also involve non-international armed conflicts. Internal conflicts are not characterized as armed conflicts. The goal of IHL is that people who no longer take part in the hostilities are entitled to respect for their lives, and they must be protected and treated with humanity without any distinction. Humanitarian law began with the first Geneva Convention and evolved over time, often after serious and tragic events that proved its necessity. The first world war witnessed the methods of warfare that were completely new, along with new weapons, including flamethrowers, warplanes, tanks, poison gas etc.¹ machine guns, grenades.² The Second World War saw civilians and military personnel killed in equal numbers. The alarming effects of war had on mankind led people to adopt a new instrument: the Geneva Convention for the protection of all human beings. In 1874, a peace conference at the Hague was convened in Brussels and adopted an international Declaration on the laws and customs of war. In 1934, the 15th International Conference of the Red Cross met in Tokyo. The Convention of the Red-Cross approved the text of the convention on the condition and protection of people. The Tokyo draft was not applied during the second world war. The devastating consequences of war gave birth to another new framework, The Geneva Convention I of 1949.

Keywords: Humanitarian law, armed conflicts, red cross and ICRC, jus ad bellum, and jus in bello.

Introduction:

Law is basically required to maintain law and order and peace in society. To fulfil the above objectives, the law has created different rights and duties for the citizens. Rights automatically create a duty on others. When one does not follow his legal duty, it disturbs the rights of others, which gives rise to any injury. Law begins where the injury starts. Injury means any harm, whatever illegally caused to any person, in body, mind, reputation, or property.³

It is evident that effective administration depends on a strong punishment system. Humanitarian law is a part of the public international law. Public international law is a law but it is a weak law in the true sense of the term. International law is not as effective as state law is. There are many reasons observed by jurists that the rules of international law are based on custom and treaties; it is not as powerful as state machinery. There is no court, no enforcement measures, etc. Rules of international law are frequently violated by states, especially during war, and for some self-interest, the state takes the law into its own hands. Even

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² Tucker, Spencer C. (1998) The Great War: 1914-18. Bloomington: Indiana University Press 11

³ Sub Section (14) of Section 2 of The Bharatiya Nyaya Sanhita, 2023

though the UN Charter has curtailed the scope of self-help, public international law is still far from being fully effective.⁴

Though International humanitarian law as a part of the public international law, its intention of law is to protect people during armed conflict so it is not that extent weak. There is an absence of a strong legislature, executive, and judiciary. A significant drawback is that there is no single authority to enforce law. Despite certain weaknesses, it has many positive aspects, that it protects civilians especially those who are vulnerable including women, the elderly, children, disabled persons and during wartime, guides the conduct of armed forces, promoting peace and security.

Origin of International Humanitarian Law (IHL):

The humanitarian law developed in the second half of the nineteenth century when the need for the protection of the victims of armed conflicts arose. In 1949, the term international humanitarian law was not used; it only mentioned in reference to “humanitarian activities which the international committee of the red cross or any other impartial and humanitarian organization”⁵ provided. The term IHL was used first time in Vienna Convention, 1965.

The formation of the IHL is to restrict the brutality of war and protect war victims. It emerged from the harsh experiences of previous wars. The modern high-tech warfare results in massive destruction of human life as well as the environment. Before any codification of law, there were unwritten laws and customs that regulated armed conflicts. Additionally, over the passage of time, several bilateral treaties were formulated to regulate armed conflicts. The rules were also regulations that state issued to their troops. As per the nature of law it varied depending on the period, place, morals, and civilization.⁶ Two vigilant persons played a vital role in its creation; Henny Dunant⁷ and Guillaume Hanri Dufour⁸.

General provisions of humanitarian law.

Although the IHL rules is founded on international law, the customary and treaty rules are articulated to solve the matters of armed conflicts, whether national or international nature. It is meant for all aggressor. IHL has two branches: the “law of Geneva” and the “law of The Hague. The law of Geneva (GL): it originated with first Geneva Convention and underwent significant revisions in 1949.

It is Geneva is designed to safeguard military personnel those who are no longer taking part in the fighting and people not actively involved in hostiles, such as civilians, prisoners of war, the wounded and seek soldiers. It is the law outside battlefield.

The law of the Hague (HL): It establishes the rights and obligations of belligerents during the conducting military operations. It is the law of the battle field. Initially, there were two branches of IHL, and draw their names from the cities where they were originally codified.

⁴ Dr. H O Agarwal, International Law and Human Rights- 9, Ed.13th, (2006).

⁵ Chapter 1 of General provisions, Article 9, The Geneva Conventions of August 12, 1949

⁶ The Lieber Code, it was the first modern codification of the laws of war. Written by Francis Lieber, professor at Colombia College, it addressed issues like military necessity. It is a official code which says about the instruction of the Government of armies of the limited states in the field was a fundamental document for modern inter humanitarian law.

⁷ He was social activist, humanitarian and promoter-founder and father of the red cross.

⁸ He was a Swiss military officers, Co-founder of the International Committee of the red cross

With the adoption of the Additional Protocols of 1977, relating to the protection of victims of armed conflicts, which deal with both the branches and combined them, the distinction has now lost its relevancy. IHL is a set of rules that which seeks to limit the effects of armed conflict.

The International Committee of the Red Cross has, formed the outset, been the promoter of the Geneva Convention with the object of the protecting injured military personnel, and the humanitarian conventions that supplement it. The basic aim is inspired by respect for human personality and dignity. There shall be no discrimination to whether they are merely suffering and defenseless persons or those wounded, captured, or shipwreck, etc.

The Convention provide for

1. All places and medical centers for wounded and sick soldiers and their personnel are protected from capture and destruction;
2. the impartial reception and treatment of all participants;
3. the protection of civilians rendering aid to the wounded; and
4. the recognition of the Red-Cross symbol as a means of identifying persons and equipment covered by the agreement.⁹

Role of International Committee of the Red Cross (ICRC):

The International Committee of Red Cross originated by five great personalities from Switzerland in 1863, namely, Henry Dunant, Guillaume-Henry Dufour, Gustave Moynier, Louis Appia and Theodore Moynier. It was adopted by the first Geneva Convention in 1864. Which is considered the starting point of international humanitarian law. These rules strike a careful balance between humanitarian concerns and the military requirements of states.

The ICRC is active in about eighty countries. It has provided special shield to the civilians; no military personnel will attack civilians and injure them. The purpose of its activities is directed towards the recognizing and explaining the enduring needs of humanity. It objects to endorsing help and protection by recognized rules based on fundamental human rights which must be respected and not disobeyed. Since its inception, the ICRC has always helped to prevent and alleviate suffering.¹⁰ The ICRC provides protection to those injured, sick, suffering from illness, infirm, facing death, torture, ill treatment, etc.

The ICRC is working during non-international armed conflicts. Civil wars, civil strife, and threshold internal conflicts are included in non-international armed conflicts. The provisions of the convention¹¹ constitute no obstacle to the humanitarian activities that the international committee of the red cross or any other impartial humanitarian organization may, subject to the consent of the parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel, and chaplains, and for their relief.¹² ICRC is present in every conflict around the world.

Aid and Assistance for Victims:

⁹ Dr. H O Agarwal, International Law and Human Rights- 9, Ed.13th, (2006) p. 869

¹⁰ The first and the seven Fundamental principles of the International Red cross and Red Crescent Movement is humanity. Its purpose is to protect life and health and to ensure respect for human beings.

¹¹ Article 9 of the Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 12 1949.

¹² Activities of the international committee of the red cross (Article 9 of the Geneva convention).

Protocol II of 1977, the protocol provides its substantive field of application and clarifies the basic concept of non-international armed conflict.¹³ Practically, this protocol does not cover all types of armed conflicts as stated in Article 1 of the protocol Additional to the Geneva Convention of 12 August.¹⁴ In non-international armed conflicts and the internal disturbances, the role of ICRC is important for any state of affairs, assuming a wide range of activities to develop international humanitarian law. International humanitarian law is basically appropriate in two circumstances; it means there are two systems of protection:

1. In those situations, the Geneva Conventions and Additional Protocol I apply.

It primarily for the individuals who involves in the conflict and protect them and of every class of persons those are no longer actively involved in the conflict

2. Non-International armed conflicts.

The events of a non-international conflict. Article 3¹⁵ common to the four conventions and protocol II apply.

In the case of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply.

Article 3¹⁶ obliges the above state parties to a non-international armed conflict to respect certain minimum humanitarian laws. It also prohibits certain following acts:

- a) Act of violence against a person's life, particularly all kinds of murder, mutilation, inhuman and cruel treatment, and torture.
- b) The unlawful detention of people as hostages.
- c) Outrages upon or humiliation of personal dignity, particularly in the case of treatment.
- d) The passing of the sentences and their execution without due process of law, and the judgment also pronounced without judicial determination by a court established in accordance with the law or by the incompetent court.

The protection shall be given in every circumstance to wounded or sick persons. They shall be treated humanely without any distinction founded on sex, race, nationality, religion, political opinions, or other similar criteria.¹⁷

The protection given to the wounded and sick belonging to the certain categories, those are:

- Members of armed conflict
- Members of militias or voluntary crops.
- Members of other militias and members of other volunteer corps, members of the party conflicts, and operating in or outside their own territory.
- Members of regular armed forces who acknowledges adherence to a government.
- Those are only accompanied with the armed forces but not actual members.

¹³ Article 1 para 1 of Protocol II of 1977.

¹⁴ Part 1 of General provisions, Article 1 - This protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to the Article 2 common to those Conventions.

¹⁵ Article 3 common to the Geneva Conventions, 1949

¹⁶ Article 3 of the Geneva Conventions, 1949 of August 12, Conflicts not of an international character. P-24. or see www.icrc.org.

¹⁷ Chapter II, Article 12 of the Geneva convention on wounded and sick. The Geneva Conventions of August 12 1949, p- 28

- Members of crews.
- Members of civil air craft of the parties to the conflict.
- Inhabitants of the non-occupied territory who on the approach of the enemy.¹⁸

Other different types of conflict, today's new conflicts come under the humanitarian law. It is called "anarchic conflicts". This means "a state of society without government or law,"¹⁹ general lawlessness and disorder because of failure or lack of government. The government is uncertain and no longer able to exercise its duties and due to the presence of many internal disturbances. The IHL applies in the 'anarchic and identity-related conflicts. Anarchic conflicts threats to international peace and security and may give rise to humanitarian crisis.

In armed conflict, separated family members should be brought together again. It is a common consequence of every armed conflict. Prisoners of war and civilian hostages are separated from their loved ones and families and some people go missing. The rules concerning missing people are primarily found in IHL. To minimize these types of issues the international humanitarian law and human rights law require warring practices to take certain measures. Measures can be taken during a conflict to prevent people from going missing.²⁰ There are several provisions provided by the Geneva Conventions and Protocol I, for the protection of victims who have separated from their family members. The ICRC to carry out the following responsibilities:

- Conveying family messages and other information between separated family members.²¹
- Conducting inquiries to ascertain the location and condition of missing person.²²
- Reuniting dispersed families.²³

Jus in bello and jus ad bellum:

To achieve the goal of IHL, it provides globally binding and fundamental rules of warfare and the limits the suffering caused by war by protecting and assisting its victims as far as possible. Its aims are to uphold peace and guard the humanity at large. The IHL, generally known as the "law of war", seeks to guard, preserve, and support the humanity and all the aspects of conflict that are of humanitarian concern. It is known as jus in bello (law of war); it represents the "law in waging war" and it means 'right conduct within war'. IHL is intended to protect war victims and their fundamental rights without any discrimination. That is why jus in bello must retain independent of jus ad bellum or jus contra bellum. It is encompassed in the Geneva Conventions and the Hague Conventions, and other subsequent treaties as well. It expresses the demeanor and responsibilities of belligerent nations, natural nations and individuals involved in conflict in relation to each other and to the protection of individuals.²⁴

Where jus in bello regulates the conduct of forces that are involved in war or armed conflict. It means the right to go to war. It lays down the legal status of belligerents and regulates their conduct during armed conflicts between nations. It is dissimilar from Jus ad bellum (Law of engaging in war), which governs

¹⁸ Chapter II, Article 13 of the Geneva convention on wounded and sick. The Geneva Conventions of August 12 1949, p- 29

¹⁹ <https://www.collinsdictionary.com/dictionary/english/anarchy>.

²⁰ <https://www.icrc.org/en/law-and-policy/protected-persons-missing-persons>

²¹ Article 25, Forth Convention.

²² Article 33, Protocol I, and Article 26, Forth Convention.

²³ Article 74, protocol I; and Article 26, Forth Convention.

²⁴ International Humanitarian Law, p- 14

behavior related to breaches of peace and acts of waging of aggressive war, but together they regulate all aspects of international armed conflicts. *jus contra bellum* it means “the law against war” or “law to control war. The UN charter says that countries should not threaten or use force against the territorial integrity or political independence of another state.”²⁵

Current Conflict and International Humanitarian law.

The inter-state war conflict is not a new issue. Current major wars include Russia -Ukraine, Israeli - Palestine, China- Taiwan, India-Pakistan etc. In the armed conflict between Israel and Gaza, thousands of Palestinians have been displaced from Gaza City following the ground offensive launched last week.²⁶ There are more than forty-five armed conflicts are presently taking place. The affected countries are, except for the above states Cyprus, Iraq, Syria, Turkey, Yemen, and Morocco. This is the condition of Middle east and North Africa.

In Africa there are thirty-five armed conflicts. The affected states are Mali, South Sudan, Ethiopia, Nigeria, Somalia etc., in Asia, there are twenty-one armed conflicts, which are described as the theatre of armed conflict. In Europe, there are seven armed conflicts that are taking place. ²⁷The active participant of war is terrible, and the figure of the civilian's death would be significantly higher, if we counted them.

Due to war conflicts, no one can give a complete account of what the people are truly experiencing. Every war leaves behind several common and endless hardships, including death, displacement, starvation, mental problems, creates refugee crisis, forced displacement, terrible and heinous crimes, financial instability.

War conflicts often see war crimes, crime against humanity, genocide, homicide, suicide, torture, and sexual offences, are very common. It not only affect human beings but also animals, climate change, deforestation, land degradation.

Current conflicts affect not just the countries involved but also create a global humanitarian crisis. Continuous conflict is leading to widespread displacement and hunger in the country. The internal armed conflict in Myanmar is the longest ongoing armed conflict in the world. Citizens of India continue to face innumerable difficulties. Instability in Myanmar has adversely affected India. Many army personals and the civilians from Myanmar are fleeing to India.

The problems of undocumented migrants are not a new issue. It is not the first time that refugees from Myanmar have entered India; previously several other states migrants have also come to India. It is not possible to say the exact data of illegal refugees who have entered Indian territory. According to Government data in 2024, from Bangladesh, as many as 1, 049 people were caught by the BSF until July 3,536 from Bangladesh.²⁸ When many uncountable refugees entered India, it creates several new tensions and causes various problems. Due to several security problems, Pakistani refugees travel to India frequently. India is facing several unending social economic and extreme instability only because of Pakistan's warlike nature. Operation Sindoor will never be forgotten by any Indian; it was an unforgettable chapter of grief and injury for India. Pakistan is always in the news because of its terrorism, Kargil conflict,

²⁵ <https://www.icrc.org/en>, viewed on 27th September.2025 at 2.21 pm

²⁶ <https://www.bbc.com/news/topics/c2vdnvdg6xxt>, viewed on 27th Sept.2025 at 2.21 pm

²⁷ <https://geneva-academy.ch/galleries/today-s-armed-conflicts>, viewed on 29th Sept 2025 at 10.12pm

²⁸ <https://www.thehindu.com>. viewed on 1st Oct 2025 at 9.09 pm

the Pulwama attack many cruel acts that threaten the world at large. All these acts happen because of ongoing war and conflicts.

Conclusion.

The development of international humanitarian law is the collective effort of nations to protect humanity and human dignity of world at large. To protect human life and preserve humanitarian principles is the core objective of the IHL. The Geneva Conventions as a series of international treaties, provide certain general principles for the protection of peoples.

“The high contracting parties proclaim their earnest wish to see peace prevail among peoples.”²⁹ The treaties of Geneva conventions were adopted for the protection of victims of war. These treaties generally apply to all signatories. The conventions have been developed due to some acrimonious experiences; World War II is one of them. The role of the Red Cross Movement can never be overemphasized. Another significant role is played by Universal Declaration of Human Rights of Dec 9, 1948.³⁰ The UDHR is the first document of human rights. It covers the rights of all peoples and all nations. The ICRC was founded by only five Swiss citizens in 1863 but now its role is very substantial and crucial in the promotion and enforcement of IHL. It safeguards non-international armed conflict and internal disturbances. It implements a wide range of activities to expand IHL by taking all sorts of safety measures to protect civilians.

It has become common and every day's news to here that one state attacks another. Today's headline of all most all-news channels is reports that Pakistan has attacked Afghanistan. The Taliban government has confirmed that Pakistani soldiers attacked and 58 Pakistani military personnel have been killed in what it called “an act of retaliation”.³¹ The cause of the war may be based on valid reasons, but the suffering due to war cannot be justified on humanitarian grounds. Although there are several laws made for protection for the people but it is not enough and it not cover the whole of the world populations. The adverse results of the war not know the religion, race, caste, color, creed.

Today's world is witnessing frequent wars, the principles of international law seem like mere daydreams. To maintain any branch of a state, it is essential to have a strong and effective legal system. Where the state laws are strong and healthy, the country functions efficiently. Similarly, in relation to the International Humanitarian Law (IHL), a strong legal framework is necessary to achieve its objectives. Spreading the knowledge about the IHL is a demanding necessity of the contemporary period. It is an obligatory duty of the state to adopt certain recommended measures to promote IHL and implement it effectively. Those are: Promoting responsiveness of International Humanitarian Law; Spreading education, training by the qualified personnel to facilitate the implementation of IHL; in armed forces the efficient legal adviser shall be required to trained the armed forces.; passing rules and regulations to promote compliance with IHL. Effective implementation of any law, states must be aware of all the provisions of IHL.

All wars end in tragedy. The rapid development of weapon technology bearings a serious and grave threat to global peace. It is solemn duty of every civilized state to support the rules and regulations of warfare and comply with international humanitarian law, to prevent future possible conflicts. Once Albert Einstene

²⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977.

³⁰ <https://www.in.org>

³¹ <https://www.bbc.com/news/articles/cgmzmn4971zo>, Afghan Taliban says Pakistani troops killed in ‘retaliatory’ border attack on 12 October 2025

spoke about the destructive potential of new and modern armaments, particularly nuclear weapons, stating that:³² “ I know not with what weapons World War III will be fought, but World War IV will be fought with sticks and stones”.

³² Albert Einstein was born at Ulm, Germany. He was a physicist, philosopher, mathematician, Nobel-prize winner, violinist, and scientist. <https://thedecisionlab.com/thinkers/philosophy/albert-einstein>