

INTERNATIONAL HUMANITARIAN LAW: ISSUES AND CHALLENGES

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ABSTRACT:

International Humanitarian Law (IHL), often called the law of armed conflict, is a vital set of international rules. It aims to limit the harm from war by protecting people who aren't fighting or have stopped like civilians, wounded soldiers, and prisoners and by setting limits on how wars are fought. Despite its foundational role in upholding human dignity during war, IHL faces numerous challenges in today's complex global landscape. This Article examines the key issues confronting IHL, including the changing nature of warfare such as the rise of non-state armed groups, cyber warfare, and autonomous weapons as well as the persistent problem of non-compliance and accountability gaps. The role of international institutions, including the United Nations and the International Committee of the Red Cross, is analysed in the context of enforcement and advocacy. Furthermore, the paper explores the tension between state sovereignty and humanitarian intervention, the impact of asymmetric warfare, and the difficulties in applying IHL in internal armed conflicts. Through a critical analysis of case studies and legal instruments, this study underscores the urgent need for stronger mechanisms of implementation, enhanced international cooperation, and legal reform to address the evolving nature of modern armed conflicts.

INTRODUCTION

International Humanitarian Law (IHL) is a set of rules which seeks to limit the effects of armed conflict for humanitarian reasons. It consists of international rules from treaties and customs, specifically designed to tackle humanitarian issues that arise directly from international or non-international armed conflicts. It limits the right of parties to a conflict to use methods and means of warfare or protect persons and property that are

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or may be affected by the conflict⁶. International Humanitarian Law is a branch of International Law and the sources of International Law like treaties, customs and general principles of civilised nations apply to International Humanitarian Law. The main goal of International Humanitarian Law (IHL) is to protect civilians and combatants during armed conflicts especially those no longer fighting, like the wounded, sick, shipwrecked, or captured. Ultimately, it safeguards human life and dignity even in the chaos of war.

OBJECTIVE:

1. To find out the development in International Humanitarian Law.
2. To identify the role of International Committee of the Red Cross.
3. To examine the principles of International Humanitarian Law.
4. To analyse the implementation of International Humanitarian Law and the challenges faced by it.

The two recognised branches of International Humanitarian Law relating to military force are Jus ad bellum and Jus in bello. These two Latin words describe that Jus ad bellum means Law governing the last resort and Jus in bello means the law governing the conduct of hostilities. Jurist Walzer stated that war is always judged in two ways, first regarding the reasons for the State to have war and second the means and methods adopted by the States at the time of war.

The concept of Jus ad bellum was recognised only in the beginning of the 20th century after the First World War. The international community tried and prosecuted the individuals for the crime against peace. Treaty of Versailles mentioned in Article 228 – 230 regarding the prosecution of German combatants for the violation of the laws and customs of the war. This helped the United Nations Organisation to incorporate in the UN Charter Article 2(4) which provides that “All States shall refrain from the threat of or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of UN”. This Article prohibits the use of military force but has few exceptions. First exception is the United Nations Security Council may authorise the use of military force only if it determines that a threat to peace, breach of peace or an act of aggression is in existence. Second is the use of force in case of self-defence under Article 51⁷.

When the war begins, Jus in bello governs the conduct of hostilities. The belligerents are entitled to use the means and methods of war but there are certain restrictions. The officers and soldiers must be held responsible for their illegal acts in the war field under the branch Jus in bello. Jus in bello proposes that every individual, regardless of his rank or status is personally liable for any war of crime that may be committed.

HISTORICAL EVOLUTION OF INTERNATIONAL HUMANITARIAN LAW:

War was in existence early even from the King periods. The mode of victory was followed by massacres, warriors and win or die concept was followed. Only when both the kingdoms were ready, war would be declared. Few kings treated war as law which is governed by the state, and they declared war and at the end of the war peace treaty was entered. The regulation of war is also not a Western concept, but various cultures like Chinese, Japanese, Indian and Arabic have given birth to their respective tradition of rules of warfare. Although military practices were there in early time, International Humanitarian Law is mentioned in Mahabharat, the

⁶ “Advisory service on International Humanitarian Law”, ICRC (2004)

⁷ Puneet Pathak, International Humanitarian and Refugee Law, Eastern Book Company Pvt. Ltd., 2021

Bible, Quran, the Code of Hammurabi, Manu, etc⁸. Similarly, Cyrus I, King of Persia in the 7th century BC ordered that wounded soldiers from the war field should be treated even if he is enemy. The Laws of Manu and Mahabharat prohibited the killing of surrendered opponents who were no longer able to fight. Using of poisonous or burning arrows were also prohibited in the war field. During the Islamic period, the principle of precautionary, proportionality and limitation are the necessary elements to be followed at the time of war.

The modern concept of International Humanitarian Law was found in the writings of Dutch philosopher and the Father of International Law, Hugo Grotius in his book “De Jure Belli ac Racis” which discusses on the strict set of laws that must be followed at the time of armed conflict⁹. During the modern era two persons contributed to the International Humanitarian Law. One person is Henry Dunant, founder of International Committee of the Red Cross (ICRC) and another person is Francis Lieber, who drafted the Lieber Code.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

Henry Dunant, Swiss citizen and businessman from Geneva helped the wounded people in the Battle of Solferino. He also published a book named “A memory of Solferino” stating the horrors in the battle. Later Dunant along with his friends set up the International Committee for Aid to the Wounded to protect and save the people wounded at the time of War. This Committee was later termed as the International Committee of the Red Cross (ICRC). The idea of Dunant was accepted by many countries, and they started to establish national societies¹⁰. The flag of ICRC is white field with Red Cross. Few Islamic countries did not accept Red Cross, so they followed Red Crescent.

The primary role of ICRC was to coordinate and to involve in field operations. The ICRC is responsible for the implementation of the provisions of IHL. The Red Cross and the Red Crescent is the largest humanitarian network in the world. Beyond the ICRC, the other key players in the Movement are the International Federation of Red Cross and Red Crescent Societies (IFRC) and National Red Cross and Red Crescent Societies. Together, they follow core principles: preventing suffering, protecting life and health, and ensuring respect during armed conflicts and emergencies. The ICRC's preamble highlights its mission to fight disease, promote health and social welfare, inspire voluntary service, foster readiness to help, and build a universal spirit of solidarity for all who need protection and aid.

LIEBER CODE:

The US President Abraham Lincoln took steps to codify the Laws relating to war. He requested Professor of Columbia University, Mr. Francis Lieber to frame rules regarding conduct during war. Based on that Professor Lieber framed “Instructions for the Government of armies of the US in the field” which was called as the Lieber Code. The instructions were promulgated as General Order 100 by the US President. It contained 157 articles divided into 10 sections. It was considered as the code of conduct during war. The Lieber Code stands out as the most important theoretical breakthrough in modern war law. It introduced military necessity as a core legal principle to curb violence when no other rules apply. The Lieber code also established the conditions that were to be followed for the treatment of prisoners of war by the capturing force. All soldiers were to be treated equally regardless of their social, ethnic or economic origins. The Principles of Lieber Code got

⁸ H.P.Gasser, “International Humanitarian Law: An introduction” in Humanity for All: The International Red Cross and Red Crescent Movement (Henry Dunant Institute, Haupt 1993).

⁹ George Grafton Wilson, “Grotius: Law of War and Peace”, April 1941.

¹⁰ Puneet Pathak, “International Humanitarian and Refugee Law, EBC, first edition, 2021.

international recognition under the St.Petersburg Declaration of 1864¹¹.

INTERNATIONAL CONVENTIONS ON INTERNATIONAL HUMANITARIAN LAW:

Geneva Convention:

There are four Geneva Conventions relating to the International Humanitarian Law and 3 protocols. Geneva Conventions mainly aimed to protect the victims of war. The First Geneva Convention (1864) improves conditions for the wounded and sick in armed forces on land. The Second Geneva Convention (1949) does the same for wounded, sick, and shipwrecked members of armed forces at sea. The Third Geneva Convention (1949) sets rules for the treatment of prisoners of war. The Fourth Geneva Convention (1949) protects civilians during wartime. In 1977, two Additional Protocols strengthened safeguards for victims of both international and non-international armed conflicts.

All the Four Geneva Conventions contain Common Article 3 extending to “conflicts not of an international character”, and the definition of Non-International Armed Conflict (NIAC) offered herein reflects the International Committee of the Red Cross (ICRC)’s understanding based on practice and international case-law. The category of NIAC includes:

- Armed conflicts between a State Party and one or more organised non-State Parties.
- Armed conflicts which do not include a State Party but are between two or more organised non-State Parties.

Confrontations must involve organized parties with structured armed forces. While non-international armed conflicts (NIACs) typically happen within a single state, they can have extraterritorial elements and even become internationalized if foreign states get involved to support one or more sides.

Armed violence must meet a minimum threshold of intensity that distinguishes it from situations not considered NIAC, including the following:

- “Internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”¹²
- “Banditry, unorganized and short-lived insurrections, or terrorist activities”.

We assess the intensity of violence on a case-by-case basis, looking at the buildup of evidence from objective factors. The International Criminal Tribunal for the former Yugoslavia (ICTY) created a non-exhaustive list of “indicative factors” to help gauge the seriousness of attacks (ICTY, 2008).

Hague Convention:

The First Hague Peace Conference took place in the year 1899. It was initiated by Tsar Nicholas II of Russia, who was concerned about the escalating arms race in Europe. Around 26 countries participated in the Conference which was held in the Hague, Netherlands. The main purpose of the conference was to Promote disarmament, Prevent armed conflicts through diplomacy, Codify the laws of war and establish rules for the conduct of hostilities and to Settle international disputes peacefully.

The main achievements of the Hague Conference were the establishment of the Permanent Court of Arbitration (PCA) for resolving international disputes through arbitration rather than war, which is still functioning. It set rules for humane conduct in land warfare and Covered treatment of prisoners, protection of civilians, and

¹¹ B.M.Carnahan, “Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity” (1998)

¹² Article 1 of Additional Protocol II

conduct during occupation. It passed Declarations banning certain weapons. It prohibited the use of projectiles that diffuse asphyxiating gases and banned expanding bullets.

The Second Hague Peace Conference was held in 1907, following up on the First Hague Conference of 1899. It expanded on efforts to codify international law and promote peaceful resolution of conflicts between nations. It was initiated by U.S. President Theodore Roosevelt. The main purpose of this Convention is to Broaden and refine the conventions and declarations from 1899, Strengthen mechanisms for peaceful dispute resolution, Address naval warfare, which had not been fully covered in 1899, Continue discussions on arms reduction. A total of 13 conventions and one declaration were adopted, including:

Pacific Settlement of International Disputes

Opening of Hostilities — required formal declaration before war

Laws and Customs of War on Land (updated from 1899)

Rights and Duties of Neutral Powers

Naval warfare — blockades, hospital ships, neutral goods, laying of mines, etc.

It was decided to have a Third Hague Peace Conference to Codify International and to establish a Permanent International Court. However, the Third Hague Conference could be initiated due to the outbreak of the First World War.

There are many other Hague Conventions in different areas and to mention a few:

- Hague Convention on the Civil Aspects of International Child Abduction (1980)
- Hague Convention on Service Abroad of Judicial and Extrajudicial Documents (1965)
- Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).
- Hague Convention on the Law Applicable to Trusts and on their Recognition (1985)

Principles of International Humanitarian Law:

IHL rests on two key principles: humanity and military necessity. The principle of humanity works to make war less brutal by restricting weapons and tactics, protecting vulnerable people, and minimizing unnecessary suffering. The principle of military necessity permits a belligerent to overpower an enemy to use lawful means and methods of war. The other two principles of IHL are principle of proportionality, principle of distinction. Principle of proportionality states that any harm caused by military action should be proportionate to the anticipated military advantage¹³. Principle of distinction is where the parties to the conflict should always distinguish between civilians and Combatants. Such distinction has been recognised under various international instruments of Humanitarian law¹⁴.

Under the Geneva Convention, the sick and wounded, medical personals, civilians and prisoners of war are called protected persons. International Humanitarian Law protect the following persons and property:

1. Sick, wounded, ship wrecker and hostilities.

¹³ N.Tsagourias and A.Morrison, International Humanitarian Law: Cases, Materials and Commentary (Cambridge University Press 2018).

¹⁴ M.A.Velasquez-Ruiz, "The Principles of Distinction and Proportionality under the Framework of International Criminal Responsibility-Content and Issues" (2009) 14 International Law 15-42

2. Prisoners of war.
3. Civilian persons who because of a conflict or occupation are in the power of a party whose nationality they do not possess.
4. Medical and religious personnel.
5. Parliamentarians
6. Civil defence personnel.
7. Personnel assigned to the protection of Cultural property.
8. Civilian objects, hospitals and safety zones, demilitarised zones, neutralised zones, natural environment, etc.

The United Nations General Assembly in its Resolution 2444(XXIII) of 1968) stated that IHL strictly prohibits attacks on civilian populations. It requires always distinction between combatants actively taking part in hostilities and civilians, so the latter can be spared as much as possible¹⁵. The same was adopted in the International Conference of the Red Cross in Vienna in 1965. Second optional protocol of Hague Convention adopted the cultural property, and the first optional protocol of Geneva convention adopted the civilian population and military objectives.

Role of UNO under International Humanitarian Law:

The UNO plays important role in the International Humanitarian Law. The Security Council involves in protecting civilians in armed conflict, promoting human rights and protecting children on wars. The UN Charter empowers the General Assembly to launch studies and make recommendations that advance the development and codification of international humanitarian law. Many of its subsidiary bodies focus on specific areas of international law and report their findings back to the full Assembly. The main Role of UNO under IHL are as follows:

1. Promoting and Upholding IHL Principles

The UN General Assembly and UN Security Council regularly adopt resolutions that reaffirm the principles of IHL. These bodies urge parties to conflicts to respect IHL, especially regarding the protection of civilians, the wounded, and humanitarian personnel.

2. Monitoring Compliance and Responding to Violations

The UN Security Council takes action under Chapter VII of the UN Charter to address serious violations of IHL (e.g., war crimes, crimes against humanity, and genocide). It may impose sanctions, authorize peacekeeping operations, or refer situations to the International Criminal Court (ICC)¹⁶.

3. Peacekeeping Operations

UN peacekeeping missions are often tasked with supporting the implementation of IHL by:

- Protecting civilians,
- Monitoring ceasefires,
- Assisting in the disarmament of combatants,
- Supporting the safe delivery of humanitarian aid.

4. Establishing International Criminal Tribunals

The UN has established tribunals to prosecute violations of IHL, such as:

¹⁵ UNGA Resolution 2444(XXIII), "Respect for Human Rights in Armed Conflict".

¹⁶ UNSC Resolution 827

- International Criminal Tribunal for the former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)

These tribunals have played a key role in developing jurisprudence related to crimes against humanity, war crimes, and genocide.

5. Supporting the Work of the ICRC and Other Humanitarian Agencies

The UN supports and coordinates with the ICRC, UNHCR, UNICEF, and OCHA to facilitate humanitarian access and assistance. The Office for the Coordination of Humanitarian Affairs (OCHA) coordinates the response to humanitarian emergencies in accordance with IHL.

6. Advocacy and Capacity Building

The UN helps build capacity in member states to implement IHL through training, technical assistance, and awareness campaigns. UN bodies promote the ratification of IHL treaties like the Geneva Conventions and their Additional Protocols.

7. Reporting and Investigations

The UN may appoint independent commissions of inquiry or fact-finding missions to investigate alleged IHL violations. These findings can inform international prosecutions or lead to recommendations for international action.

The UNO acts as a key facilitator, enforcer, and advocate of International Humanitarian Law. While it does not have a direct enforcement mechanism like a court, its political influence, peacekeeping infrastructure, and humanitarian network play an essential role in promoting compliance with IHL, protecting victims of armed conflicts, and holding violators accountable.

Challenges in implementing IHL in contemporary conflicts:

The main Challenges that are faced in implementation IHL are fragmentation of non-State armed groups, the rapid development of private military and security companies, the necessity of limiting the use of certain weapons, and to fight against present terrorism.

The biggest challenge we face today is that warring parties often lack the political will to respect international humanitarian law (IHL). We've seen horrific violations during conflicts in places like Yugoslavia, Rwanda, and many others. That's why public opinion is so crucial it helps the international community figure out how to stop these atrocities. NGOs have pushed hard for stronger global action, and the ICRC has joined them in supporting the creation of an International Criminal Court. They believe it would finally put an end to impunity and make humanitarian law truly effective. The ICRC also informed the governments of their collective responsibility, as mentioned in the 1949 Geneva Conventions and Additional Protocol I, to “ensure respect for these Conventions under all circumstances” and to “act jointly or individually, in cooperation with the United Nations, and in accordance with the United Nations Charter” in cases of serious violations (Article 89, Additional Protocol I). Over the past decade, notable progress has been made in these areas, but much more need to be done. Although more UN peace-keeping missions are deployed in trouble spots, and although some of them are strong enough to have a direct protective impact on the civilian population, the ambitions of many missions are not adequately supported by the necessary resources, material and human. The Secretary-General regularly keeps informed about the conditions affecting civilians in armed conflicts throughout the world to the UN Security Council.

The collective role of private military and security companies, as established by the extraordinary number

of such companies operating in Iraq, is, equally, a challenge to the application of international humanitarian law. While Iraq may be an exceptional case that is unlikely to be replicated in the same way elsewhere, multinational coalitions, peacekeeping forces, and organizations like NATO are likely to continue relying on private contractors to support their operations. Even though private military and security company personnel must follow international humanitarian law (IHL) just like anyone else in armed conflicts, few countries have rules to oversee them like clear conduct standards in contracts. There's also a big gap in holding them criminally accountable. This raises real worries that some firms might hire people with past IHL violations or those untrained for the job. To tackle this, the ICRC, backed by the Swiss government, is teaming up with experts from 18 countries. They're creating best practices for contracting states, host states (where these companies operate), and home states (where they're based). The goal? To make sure international law sticks to these private players and boosts IHL's real-world impact in this vital area.

The use of poisonous gas during the World War I, the ICRC actively urged for the creation of an international treaty that would outlaw such weapons. The Hague Convention in the year 1899 had prohibited the use of such poisonous gases. The ICRC is deeply worried about the potential use of any weapons of mass destruction nuclear, radiological, biological, or chemical. They're equally concerned about the devastating humanitarian effects of certain conventional weapons.

Another big challenge for humanitarian law is combating modern terrorism. The horrific 9/11 attacks in 2001 and the global response to them have sparked tough questions about whether international humanitarian law can effectively handle today's forms of violence, especially terrorism. A core principle of international humanitarian law (IHL) is distinguishing between civilians and combatants, and between civilian objects and military targets. It also bans deliberate attacks on civilians or civilian sites, indiscriminate attacks, using "human shields," and taking hostages. Unlike many areas of international law, IHL thoroughly regulates "terrorism" by explicitly prohibiting acts against civilians and civilian objects during armed conflicts—acts that would clearly qualify as terrorism in peacetime.

Conclusion

In conclusion, we need to look at every instance of organized armed violence in its specific context, basing our judgment on the facts to determine if it legally counts as war. The laws of war were developed precisely to address armed conflicts, both in legal terms and in practice. International Humanitarian Law (IHL) remains a cornerstone of global efforts to limit the brutality of armed conflict and protect human dignity during war. However, its relevance and effectiveness are increasingly challenged by the evolving nature of warfare. The rise of non-state actors, urban and hybrid warfare, rapid technological advancements, and the politicization of enforcement mechanisms all expose serious gaps in both the application and enforcement of IHL.

Despite a well-established legal framework, implementation remains inconsistent, and accountability mechanisms are often weak or absent. Civilians continue to bear the brunt of conflicts, and violations frequently go unpunished. To uphold the humanitarian ideals at the heart of IHL, the international community must adapt legal norms to modern realities, strengthen enforcement, and promote universal compliance—especially among non-state actors and technologically advanced militaries.

Ultimately, the future of IHL depends on the political will of states, strengthened global institutions, and continued advocacy by civil society and international organizations to ensure that the laws of war are

respected even in the most complex and asymmetric conflicts. Without this commitment, the foundational principle of IHL is to protect those who are not, or no longer, participating in hostilities and risks becoming a legal ideal rather than a lived reality.

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