

The Laws of Wars in Perspectives

Naheed Anjum Chishti¹

Abstract

The main objective of the research is to discuss the importance of the Laws of Wars. The research focuses on the role of the laws of wars to protect the human rights during state of war. War is not the mean to settle down the dispute according to the international law. In case of war, its intensity can be reduced by following the laws of wars. The involved parties believe in, "everything is fair in love and war." Laws of war prohibit the brutality and inhuman attitude against mankind. The law of war is considered distinct from other bodies of law-such as the domestic law of a particular belligerent to a conflict that may also provide legal limits to the conduct or justification of war. The research also focuses on the comparative study of different religion regarding the Laws of war. The approach is analytical and descriptive. Conclusion and references are in the end.

Keywords: Laws of Wars in Religious perspectives. Laws of Wars and International Humanitarian Law. Prohibitions.

Introduction

The Law of war is a legal term of art that refers to the aspect of public international law concerning acceptable justifications to engage in war(jus ad bellum) and the limits to acceptable wartime conduct (jus in bello or International humanitarian law). An effort to define and govern the conduct of individuals, nations, and other groups in war dates from antiquity. Modern laws of war address declarations of war, acceptance of surrender and the treatment of prisoners of war; military necessity, along with distinction and proportionality; and the prohibition of certain weapons that may cause unnecessary suffering.(The Program for Humanitarian policy and Conflict Research).

International humanitarian law (IHL) is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are no longer participating in the hostilities and restricts the means and methods of warfare.

Armed conflicts are as old as humankind itself. There have been customary practices in war, but only in the last 150 years have States made international rules to limit the effects of armed conflict for humanitarian reasons. The Geneva Conventions are the main examples. Usually called international humanitarian law, it is also known as the Law of war or the law of armed conflict.

Technological developments have given rise to new methods and means of warfare, such as cyber attacks, armed drones and robots, raising novel humanitarian and legal challenges. When developing any new weapon, it is important that a state assess whether it complies with international humanitarian law.

Terrorism, Direct participation in hostilities, Security detention, is the contemporary challenges for the International humanitarian law. International Law contains basic principles and rules governing the choice of weapons and prohibits or restricts the employment of certain weapons. International Law on the conduct of hostilities regulates and limits the methods and means of warfare used by parties to an armed conflict.

¹ Associate Professor, Department of Political Science, University of Balochistan, Quetta, Pakistan

International humanitarian Law is based on large number of treaties, in particular the Geneva Conventions of 1949 and their Additional Protocols. There is a substantial body of customary law that is binding on all States and parties to a conflict.

System of international jurisdictions, complementary to that of domestic courts, to try people accused of genocide, war crimes and crimes against humanity. This system is two-fold;

1. On one hand it relies on the establishment of adhoc and other internationalized tribunals set up after a conflict;
2. On the other, it counts with the newly created International Criminal Court.

International Humanitarian Law and the challenges of contemporary armed conflicts strengthening legal protection for victims of armed conflicts-States' consultations and way forward humanitarian law, Human rights and Refugee Law-Three Pillars Typology of armed conflicts in international humanitarian law: legal concepts and actual situations increasing respect for international humanitarian law in non-international armed conflicts.(War &LAW)2.

Historical Perspectives

In the early 7th century, the first Caliph, Abu Bakr, whilst instructing his Muslim army, laid down the following rules concerning warfare: "Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kills a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone."(Al-Muwatta) 3

In Quran says that in combat Muslims are only allowed to strike back in self-defence against those who strike against them, but ,on the other hand, once the enemies cease to attack, Muslims are then commanded to stop attacking.(Al-Quran)4

In medieval Europe, the Roman Catholic Church also began promulgating teachings on just war, reflected to some extent in movements such as the Peace and Truce of God. The impulse to restrict the extent of warfare, and especially protect the lives and property of non-combatants continued with Hugo Grotius and his attempts to write laws of war.

Attempts to define and regulate the conduct of individuals, nations, and other agents in war and to mitigate the worst effects of war have a long history. The earliest known instances are found in the Hebrew Bible (Old Testament).

According to Deuteronomy 20:19-20 limits the amount of acceptable collateral and environmental damage; "When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them.: for thou mayest eat of them, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege: only the trees which thou knowest that they be not trees for meat, thou shalt destroy and cut them down; and thou shalt build bulwarks' against the city that maketh war with thee, until it be subdued.(Hebrew Bible)5 marry the victors of a war could not be sold as slaves.(The Holy Bible)6..

Also, Deuteronomy 21:10-14 requires that female captives who were forced to The Mahabharata describes, "One should not attack chariots with cavalry; chariots warriors should attack chariots. One should not assail someone inn distress, nether to scare him nor to defeat him...War should be waged for the sake of conquest; one should not be enraged toward an enemy who is not trying to kill him."(Mahabharata)7.

There are two principle sources of the laws of wars;

1. Law –Making Treaties.
2. Customary Rules of International Law.

Law-Making Treaties directly affect the laws of war by binding consenting nations and achieving widespread consent. Most of the Customary Laws of war were explored at the Nuremberg War Trials. The Nuremberg War Trial judgment on “ the Law Relating to War Crimes and Crimes Against Humanity” held under the guidelines Nuremberg Principles, that treaties like the Hague Convention of 1907, having been widely accepted by all civilized nations.

The period from 1856 to 1909 was the epoch of highest repute according to Historian Geoffrey Best. (Geoffrey Best) 8 The defining aspect of this period was the establishment by states of a positive legal or legislative foundation (written) superseding a regime based primarily on religion, chivalry, and customs. It is during this era that the international conference became the forum for debate and agreement between states and the multilateral treaty served as the positive mechanism for codification. Interpretations of international humanitarian law change over time and this also affects the laws of war.

The Universal Declaration of Human Rights, the Charter of the United Nations, the Genocide Convention, the United Nations Convention Against Torture, the Geneva Conventions including Protocol I the Convention on Conventional Weapons of 1980, the Chemical Weapons Convention, and the Convention on the Physical Protection of Nuclear Material were the development in the laws of war. (Human Rights and weapons of Mass Destruction) 9.

Rules of Distinction between Civilians and Combatants;

- The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.
- Acts of threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
- All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel.
- The armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates.
- Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians.
- Civilians are protected against attack, unless and for such time as they take a direct part in hostilities.
- Civilians are protected against attacks, unless and for such time as they take a part in hostilities.

Rules Regarding Civilian Objects and Military Objectives

- The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.
- In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action

and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

- Civilian objects are all objects that are not military objectives.
- Civilian objects are protected against attack, unless and for such time as they are military objectives.
- Indiscriminate attacks are those;
 - a. Which are not directed at a specific military objective;
 - b. Which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited.
- Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.
- In the conduct of military operations, constant care must be taken to spare the civilian population, civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.
- Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage.
- Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives,
- Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, also harmful to the enemy.
- Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.
- Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.
- Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. Medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their harmful to the enemy.
- Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.
- Humanitarian relief personnel must be respected and protected.
- Objects used for humanitarian relief operations must be respected and protected.

- Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited.
- Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.
- Directing an attack against a Zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited.
- Directing an attack against a demilitarized Zone agreed upon between the parties to the conflict is prohibited.
- Each party to the conflict must respect cultural property. A special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, Science, education, and charitable purposes and historic monuments.
- The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory.
- Particular care must be taken if works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population.
- No part of the natural environment may be attacked, unless it is a military objective. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment, In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.
- The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited.
- Attacking persons who are recognized as hors de combat is prohibited.
- A person hors de combat is;
 1. Anyone who is in the power of an adverse party;
 2. Anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness;
 3. Anyone who clearly expresses an intention to surrender provided he or she abstains from any hostile act and does not attempt to escape.
- The parties to the conflict may seize military equipment belonging to an adverse party as war booty.
- The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity.
- The use of starvation of the civilian population as a method of warfare is prohibited.
- Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited.
- The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right.
- Pillage is prohibited.

- The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.
- The improper use of the white flag of truce is prohibited.
- The improper use of the flags or military emblems, insignia or uniforms of neutral or other States not party to the conflict is prohibited. (J.M. Henckaerts) 10.

Conclusion

It is concluded in the end that war is not the solution of any dispute. It is prohibited in the International Law. If the parties are indulged in the state of war, they must follow the rules and regulations of humanitarian international law to avoid the consequences of War. There are also peaceful means to settle the disputes. International community believes in dialogue, negotiations, mediations. Most of the religions give the teachings of non-violence. There is no room for extremism which is a threat towards international peace.

The states should start the programs to motivate the peoples towards peace. In the governmental levels, workshops and seminars should be conducted to create the sense about the Laws of War. The Course of humanitarian International Laws of war should be compulsory in the college and University levels. Minor courses should be conducted for the combatants in this regard.

References

1. "Brief Primer on IHL" The Program for Humanitarian Policy and Conflict Research at Harvard University. Retrieved on (07/09/2013)
<http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewpage&pageid=2083>
2. "War and International Humanitarian Law" (07/09/2013) retrieved from
<http://www.icrc.org/eng/war-and-law/index.jsp>
3. Al-Muwatta; Book 21, Number 21.3.10. Retrieved on (07/09/2013)
http://en.wikipedia.org/wiki/Laws_of_war
4. Al- Quran, Sura Al-Baqara 2:190-193. Retrieved on (07/09/2013)
<http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/quran/02.qmt.html#002.190>.
5. Hebrew Bible (Old Testament) Deuteronomy 20:19-20. retrieved on 06/07/2013 from
<http://etext.virginia.edu/etcbin/toccernew2?id=KjvDeut.sgm&images+images/modeng&data=/text/english/m/modeng/parsed&tag=public&part=20&divisionS>
6. Deuteronomy from the holy Bible, King James Version. Retrieved on (06/07/2013)
<http://etext.virginia.edu/etcbin/toccernew2?id=KjvDeut.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=tag=public&part=21&division=div1>.
7. Mahabharata. "Laws of Wars" (Retrieved on(07/09/2013)
http://en.wikipedia.org/wiki/Laws_of_war
8. Geoffrey Best (1980) *Humanity in Warfare*.p.129.
9. Human Rights and Weapons of mass destruction.
10. J.M. Henckaerts. Downloaded (30/04/2011) *Study of Customary International Law*.
<http://humanrightsinvestigations.org/the-laws-of-war>