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Weapons Speak, Humanity Suffers

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ABSTRACT

International humanitarian law is a niche area, it is that branch of international law that is underdeveloped and is still under construction. This essay tries to focus the attention of its audience towards the meaning and importance of this emerging branch of law. International humanitarian law is contradictory in its subject matter; it is an oxymoron because a situation of war can never be humanitarian. The essay also explains the objectives and principles of International humanitarian law. The essay opens up with the origin and development of IHL, how it has opened doors for humanization of warfare followed by the history and birth of international committee of the Red Cross and the Red Crescent. Further the role of ICRC as the protector and guardian of international humanitarian law is also presented. The legal aspects of the Hague conventions and the Geneva conventions are discussed focusing on the rules framed and agreed upon by the states during warfare. The main aim of this piece of writing is to sensitize the readers towards the need of such law that governs the acts and conduct of sovereign states and the parties to the conflict in the worst situations like a battlefield. In the end it is left open to the audience to ponder upon how to make IHL a more effective branch of law.

Keywords- International Humanitarian law, Red Cross, Geneva Conventions, ICRC and humanization.

MANUSCRIPT

Since time immemorial, efforts have been made to protect individuals and innocents from the aftermath of bloody wars. Battlefields have always been full of humans but at the same time they have been deprived of humanity. **War by definition is evil**, yet states and non state actors continue to wage war against each other. This evil is now an indispensable part of modern day arena. A mechanism was needed to put limitations on such deadly warfare and to prevent individuals to become victims at the hands of war. The increase in the number of battles among the sovereign states, barbaric violations of human rights, need for regulation, demand for justice, respect for humanity and earnest wish to establish peace among people gave birth to the institution of **International Humanitarian Law**. War is the basis of IHL, had there been

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no battles or conflicts then this branch of law would never have come into existence.

What exactly is IHL? It is a branch of Public International Law that governs relations among its subjects; it gives the rules applicable in armed conflict for the protection of civilians, POWs, soldiers and property. Special attention should be given to the applicability of IHL at this point of time, it only applies to the situation of armed conflicts whether international or non international non state armed conflict, it is not applicable to situations of communal riots and internal conflicts. International Humanitarian law was formed to mitigate the effects and consequences of war. Today due to the presence of UN Charter most of the conflicts are resolved without recourse to the use of force; **weapons are given a chance to speak when all efforts of peaceful settlement of disputes are exhausted.** This backdrop however, should not suggest that International Humanitarian Law prohibits, prevents or eliminates war, because it does not! That is not the job of IHL; it is the domain of Public International Law, UN Charter, Regional Organizations and Bilateral Treaties. Instead it gives answers to questions like What happened after war? What kinds of weapons were used? Who were targeted? Were POWs and detainees tortured? Were civilian objects destroyed? etc **.It is also wrong to suggest that if IHL does not prevent or prohibit warfare then it is in favor of warfare.** International Humanitarian Law is silent on the question of whether states should have recourse to force. Whenever a conflict breaks out , no matter for what reason or whether the application of force was justified or not what lies in the domain of IHL is whether the principles of IHL were being followed or not or whether the war was within limits prescribed by IHL or not. Therefore a clear understanding of IHL can be made now made out, it aims to prevent barbarity during conflicts. It prohibits unnecessary sufferings inflicted on people not involved in war; it restricts the use of certain kind of weapons and methods for conducting operations, and imposes a duty on the belligerent states to spare persons who are not the parties to conflict. It is often said **everything is fair in Love and War**, in love we all agree but there are limitations in war. IHL seeks to put rules and regulations in terms of battle field conduct. War is not an internal disturbance or emergency within a state where states enjoy unfettered power and authority to do whatever they wish to, instead warfare is an international issue and affects whole of the globe in different proportions. **Every game has rules**, be it wrestling or boxing where you are allowed to hurt your opponent but in a certain manner similarly in **a battle field who do you kill matters, it is not a blanket right.**

International Humanitarian Law addresses the issue of human dignity during an armed conflict, the branch of law extends protection to everybody caught in cross fire be it civilians, war journalists, detenus, non state armed groups, spies and even the military personnel. Principles

of humanity have fostered the development of laws of war. Warfare has existed since the dawn of human mankind and so is the desire to uphold the purity of human life, therefore in the attempt of reconciliation between these two opposite forces a new branch of law emerged with the main objective of protecting individuals during the times of conflict. However this process was not spontaneous as there is always a **tiff between Human Rights Law and World of war** but gradually there was a paradigm shift towards human rights. Usually people believe that there is no difference between International Humanitarian Law and Human Rights Law or one would say that the difference between the two is artificial as both the branches of law aim to protect the dignity of individuals or in broader terms protect the humans, however there is a slight difference between the two as IHL applies only in times of armed conflicts and HRs apply both in times of peace and war. Another point of difference is that Human Rights Law set limits to the powers of the state with respect to all persons, however IHL is a special law created for war and it regulates the relations between enemies for guaranteeing human rights to persons in the power of enemy. Until recently most of the states were monarchies and aristocracies so there was hardly any obligation on the states towards their citizens but after the atrocities of the World Wars and Cold War the pendulum shifted in the court of human rights rendering states as wielders of powers who are obligated to protect the individuals. This new concept of state responsibility along with increasing media propaganda and public opinion forced the international community to look at humanitarian law with a new perspective. Thus an effort was made to protect human dignity in the face of overwhelming disastrous wars. **Hence International Humanitarian Law is the child of devastating battles, calamities and other atrocities**; the greater the suffering more is the need of such regulatory system. So, development of IHL should not be seen as a restriction towards state sovereignty instead it ought to be regarded as manifestation of sovereignty. The landscape that prevailed in the earlier times only looked at sovereign states coming for a battle to protect their sovereignty; this contest between sovereign states gave another name to this branch of law which came to be known as **Laws of War**. Slowly and gradually the landscape of conflict has changed and now non state actors are also involved in international armed conflicts and therefore a new name is adopted as **Laws of Armed Conflicts**. Today they are just different nomenclatures for the same type of law. Therefore International Humanitarian Law is an expression to describe a part of Laws of War together with Human Rights Law.

International Humanitarian Law has gained ground because of its basic principles. Why does an army of a country goes to war? To vanquish the enemy, to win the war, to secure its territory, to exercise sovereignty or to overpower the enemy. The first principle of IHL is

related to the above mentioned objectives of the armies, this principle is called as **Principle of Military Necessity**. According to this principle armed forces have right to employ all those tactics that are required to win the battle. This principle allows you to kill, use weapons but within a certain prescribed limit. Since IHL does not prohibit or prevent war rather it deals with the subject of what happens after war and since the very basis of IHL is war, therefore this principle allows the armies to win the war with whatever means and methods deemed to be necessary to overpower the enemy. This principle if read in isolation stands in contradiction with the definition of IHL that seeks to safeguard the victims of war and hence the principle of military necessity should be read with **Principle of Humanity**. This principle says that it is forbidden to inflict suffering or injury which is not required to accomplish a legitimate military purpose. While applying principle of Military Necessity one needs to ensure that humanity is safeguarded. It is very important that a balance between the two is achieved. For example there is a conflict between two villages, and then the armies have two options, one to go to battle with the army of the second village or to bomb up the entire village. According to the principle of humanity no suffering should be caused which is not necessary for the military goal of the army therefore conceptually the second option is the right one. The third and the most important principle is the **Principle of Distinction** which says that parties to a conflict must distinguish between the civilian population and combatants, secondly between military and civilian objectives. As a rule attacks should be directed against military objectives and combatants and civilians should be spared. Next principle is the **principle of proportionality** which is often misunderstood by many. This principle talks about proportionality of consequences with the attack. The principle does not mean balance of power among the armed forces, neither has it said that armies of two states should be equal because as a fact armies will always be disproportionate in terms of economies, technologies, manpower etc. Principle of Proportionality allows use of any means of warfare as long as there are proportionate consequences. For example there is a situation where there are four tanks attacking two soldiers, is this situation a violation of the above mentioned principle? A layman would say yes however according to the principle the answer is no. The situation would have been disproportionate if those four tanks were attacking ten civilians, their properties and two soldiers. Another principle of IHL is **Principle of Superfluous Injury**. This principle is somewhat similar to principle of humanity; this principle says that the use of weapons, materials and methods of such nature that cause superfluous injury or unnecessary suffering are prohibited. Such means of warfare which intend or may be expected to cause widespread, long term severe damage are prohibited. For example Land mines, Laser guns etc. The most

fundamental and widely acceptable principle of IHL is **Hors De Combat**; this means that those persons who have been put out of action and those who are not direct participants in hostilities are entitled to protection and humane behavior. This principle is vast enough to include that all the sick and wounded persons in the battle field must be collected and cared. All the medical facilities, basic establishments must be supplied. Also it is forbidden to cause any injury or death to the enemy who has surrendered. International Humanitarian Law has stood firmly on these six pillars. These principles have acted as a building block to strengthen the foundation of IHL. All of these principles are based on the idea that equilibrium must be established among the cruel necessities of war and humanitarian ideals.

Laws have always been silent amidst the clash of arms. However there were long histories of codes of warfare that have existed in pieces at different times and amongst different cultures. International Humanitarian Law has had rich historical background. It is very difficult to find documentary evidence of when exactly did the rules of humanitarian nature evolved, because some kinds of rules arose in every fight for the purpose of limiting the effects of violence without actually intending to put them together and develop a new branch of law. Laws of war have existed and proclaimed several millennial before this era. Pick up any religious book be it Mahabharata, Bible or Quran; each of these books contain some strict rules of fighting in the name of chivalry of the knights. Some of the customs have existed since the time immemorial to regulate the conduct of war such as not poisoning water bodies, no war before sunrise and after sunset or blowing of a shrank before starting of a war. Every country has had their traditions of rules of warfare. Thus lords, religious figures, wise men from all over the world have attempted to limit the consequences of war.

Two of these wise men who actually gave shape to IHL are **Henry Dunant and Francis Lieber**. Since the advent of human civilization to the beginning of modern IHL thousands of cartels and other texts were designed to regulate hostilities of war. One of such text was the Lieber Code that came up in April 1863 under the situation of American Civil War. It was considered to be the first attempt to codify existing customs of law and to bring all the traditions of war under one roof. However it did not acquire the status of treaty as this code was specially meant for the soldiers fighting for the union side in the American Civil War. Francis Lieber was the architect of this code. This marks the beginning of modern IHL. At almost the same time both of these men made contributions to the concept of contemporary international humanitarian law. However the initial contributions by these major figures did not extend protection to victims of war, rather their work was just an attempt to gather all the customs prevailing in the battlefield and put it into a written form. The codes and conventions which

they both developed were first expressed by **Jean Jacques Rousseau in The Social Contract**. In it he said that war is a relationship between states and not a relationship among men, these individuals are enemies only by accident, not as men but as soldiers. Rousseau said that force should be used only against the enemy who is resisting but once they surrender, or gets injured they should no longer be the target of military operation as they once again become mere men. The Lieber Code would be the first attempt to codify international humanitarian law, but the **Battle of Solferino** in 1859 is the most crucial moment in the history of IHL, because of this battle Henry Dunant came to be known as the **Father of Modern International Humanitarian Law**. In June 1859, somewhere in northern Italy: a Swiss Businessman named Henry Duanat went to meet the French Emperor Napoleon III for some business meetings. During his visit he came close to village Solferino where he finds French and Austrian armies caught up in bloody slaughter. He witnessed the sight of thousands of wounded, dying and dead soldiers. Instead of focusing on his business prospects he begins to organize help and devotes himself tirelessly to providing aid to these men. Shocked and disgusted he wrote a book named **A Memory of Solferino** about his experience which ends with two proposals, one to set up in every country volunteer groups to take care of casualties in wartime and second to get the states to agree to certain rules of battle field conduct. An idea is born. This battle hence led to the birth of Geneva Convention on one hand and **International Committee of the Red Cross** on the other. In 1863 he along with four other citizens of Geneva created an international organization that provides aid to the wounded.

What actually is ICRC? What is its importance? What are its objectives? What is its role in the development of IHL? International Committee of the Red Cross is a Swiss based private, neutral, impartial, independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence. Just like RBI is the custodian of foreign exchange in India similarly ICRC is the custodian of IHL. It is the guardian and protector of humanitarian laws and it looks whether the Geneva conventions are being followed properly or not. **It is not a part of UN nor it is an NGO**. It is Sui Generis- unique, one of its own kinds with no other comparative organization. ICRC aims to eliminate sufferings of individuals either caught up in conflict zones or caught up in humanitarian needs or in times of disasters. During the times of disasters and calamities ICRC provide assistance by channelizing through national and other local bodies. **What United Nations is to Public International Law, ICRC is to International Humanitarian Law**. It is the enforcer, regulator and protector of Humanitarian principles. Main objectives of ICRC include reducing the unnecessary sufferings, loss or damages, put in certain rules of law in

battlefield situations, safeguard the fundamental human rights and dignity of persons. The organization which was born in the ground of war today is present in more than 90 countries. The institution has greatly developed in bringing medical assistance to civilians, visiting POWs and detention centers, forwarding family messages, reuniting families, teaching the rules of Geneva conventions to young minds, discussions and deliberations with soldiers and peace keeping forces, bringing out new laws with coordination of other international organizations. **The symbol Red Cross and Red Crescent are one and the same thing**, the symbol of Red Cross on the white background is the reverse of Swiss Flag to pay gratitude to Swiss for its contribution to the world. However there was some resistance by the Islamic countries for the acceptance of cross as the symbol as it would also signify Christianity therefore Red Crescent was adopted as an equally qualified emblem. During battlefield these emblems are placed on protected properties, also the staff of ICRC carry with them no guns and ammunitions but only these emblems and badges which denotes that they are in the battlefield just for the protection of humanitarian needs. Today there are nearly 190 National Red Cross and Red Crescent Societies all over the world that continues to work in the times of conflict as well as in times of peace. Thus ICRC has become the sole repository of humanitarian principles. This organization has been successful in providing umbrella coverage to the POWs, civilians, wounded soldiers and all other persons caught up in battlefields or calamities and disasters.

Battle of Solferino while producing the ICRC also produced the Geneva Conventions almost at the same time. In 1864 a diplomatic conference took place where the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted. This marked the beginning of modern international law in the form of treaties and conventions. The 1864 Convention was a multilateral treaty which brought together all the fragmented and scattered pieces of customs and rules relating to laws of war under one umbrella organization. After World War I it was evident that the conventions need to be modified, therefore Geneva Convention of 1929 came into being which extended protection to prisoners of war, the convention was based on the principle that prisoners of war should be treated with compassion. The convention also laid down rules to be followed to allow POWs to live in humane conditions. It contains principles related to protection of POWs from acts of violence, insults, humiliations, public curiosity etc. In this convention The International Committee of Red Cross was a neutral organization was designated as an official agency to collect and transmit information regarding prisoners of war. The atrocities and horrific acts of the World War II called for a change in the existing GC. So the convention was significantly updated after World War II. In times of war, certain humanitarian rules must be followed even

with regard to the enemy; the Geneva Conventions were thus expanded in 1949. The rules set out in the GC 1949 apply to international armed conflict between states and non international armed conflicts. The Geneva Conventions are founded on the idea of respect for individual's dignity and human rights. The most significant provision of this convention was the inclusion of those people who do not directly take part in war and those who suffer from injury and sickness during war. **At present there are Four GCs and Two Additional Protocols.** The convention imposes a general obligation of humane treatment. There are certain provisions that are applicable to all the four conventions; murder, torture, corporal punishment, taking of hostages, executions without trial etc are prohibited at all times and in all places. Further the renunciation of the right to be protected under this convention is not allowed. The four conventions and protocols are as follows:-

- Geneva Convention For The Amelioration Of The Condition Of The Wounded And Sick In Armed Forces In The Field – 12 August 1949
- Geneva Convention For The Amelioration Of The Condition Of The Wounded, Sick And Shipwrecked Members Of Armed Forces At Sea – 12 August 1949
- Geneva Convention Relative To The Treatment Of Prisoners Of War Of – 12 August 1949
- Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War - 12 August 1949
- Additional Protocol I – relates to international armed conflicts
- Additional Protocol II- relates to non international armed conflicts

The first two conventions provide that respect and protection should be provided to the sick, wounded and shipwrecked in all circumstances. Belligerents must care for them in the same way as they do for their own personnel, they should be identified and collected. The medical personnel units carrying basic amenities for serving such people should be respected and should be allowed to continue their duties. Civilians are obligated not to commit any act of violence against these people and treat them humanely. The third convention extends protection to POWs. Parties to a conflict involve armed forces, these personnel are called combatants and when they are captured by the enemy they are called Prisoners of War. POWs must be treated with dignity and honor; women must be respected with all regard due to their sex. All POWs must be treated alike. They are bound to disclose their name, age, rank but they should not be compelled to provide any other information. They are entitled to all of their belonging but for

security reasons some of their liberties could be suspended. POWs suffering from serious diseases or who are severely wounded should be directly repatriated and other should be released once the active hostilities come to an end. Whatever be the parameters be it nationality, sex, age, territory; all the civilian population must be exempted from the atrocities of war. Since they have no role to play in the battlefield they should be protected against any form of indecent assault. Fourth convention talks about the protection of these civilians. Common people are entitled to their fundamental rights, religion, honor, dignity has to be respected. Civilians in enemy territory must be allowed to leave. The civilian population of an occupied territory must be allowed to live as usual; civilian property should not be destructed. Under all circumstances their physical and mental integrity, family rights, customs, religion must be respected. Civilians have the right of free recourse to ICRC or other National Red Cross or Crescent Societies of the country where they are located. Additional Protocol 1 expands the concept of armed conflicts against colonial domination or alien occupation in the exercise of self determination. Additional Protocol II applies to situations of non international armed conflicts; it extends protection to victims of internal armed conflicts that occur within the borders of a state. These two protocols have done away with the distinction between civilians and combatants as these protocols focus on the situation of the victim of conflict because even a combatant can be a civilian if he is sick, wounded or detained.

The Geneva Conventions and additional protocols largely focus on the protection of victims of war; however there lies another source named as the **Hague Conventions**. Hague conventions of 1899 and 1907 focus on the conduct of hostilities, Hague law deals with means and methods of combatants and describes the rights and duties of belligerents. In short it gives rules to be followed while conducting war. A distinct feature of these conventions is that the Geneva conventions are universally ratified yet there is no universal compliance. Last of it was South Sudan who ratified it in 2018.

With every passing second, grave violations of IHL continue to take place. Switch on a TV or pick up a newspaper, one can easily find situations where hospitals are burnt, people go missing, water connections are stopped, civilians become victims of sexual violence – all in the name of war. **History is the witness that war has never been kind to either party to the conflict.** We have witnessed a history in which military necessities have also trumped over humanitarian needs. Today the typology of conflicts has undergone a major change, earlier we have always seen states being pitted against each other with the help of their armies but today there are modern means of conflict, modern means of actors, the global landscape is of conflicts where organized armed groups fight against its own state. This scenario makes IHL more

important than ever. The main aim to IHL is to sensitize all the parties to the conflict that war is not the only answer to the conflicts and even if it is the same should be regulated. Every law is made with the intention to influence human behavior. IHL will only be a successful branch of law if the laws of war are implemented. It is the perfect amalgamation of the Geneva Conventions, Hague Conventions and Human Rights Law.

States are the primary movers and shakers, until and unless states accept their obligation under IHL the branch of law could never develop. The primary obligation for implementation of IHL lies with the States. The conditions should already be created during times of peace to ensure that the principles of humanitarian law are fulfilled during times of war. Even after all of these violations there is always someone who reaches out to a wounded soldier, civilians or any other person who is in need. Humanitarian laws are usually followed because of the reason of reciprocity as if one party to the conflict violate the laws then the other party will do the same , which could be detrimental to the nationals of both the parties. Humanitarian Law needs to stand the test of practical implementation, without it the conventions and the standards have no meaning. **There is a paradigm shift in the international sphere towards humanitarianism; this has given IHL a strong backing and a heavy boost.** There is rise in public opinion both domestically and internationally and no states wish to go against the popular opinion of the public by violating these principles of humanity during times of war. **The main goal of IHL has always been human survival in times of war and protection of human dignity in times of peace.** But, with change in nature of conflict where appalling violence against civilians of South Sudan and Syria is common , where the lines between combatants and civilians is often blurred , where there is persistent obstruction of humanitarian principles, where wounded soldiers are treated as soft targets, implementation of International Humanitarian Law remains a significant challenge. However International Humanitarian Law have successfully humanized the battlefield, the situation has never been better before. Even after the tremendous progress we have made in humanizing the warfare yet we will never be able to make war a safe place. There is still a sharp contrast between promises made in conventions and treaties and actual practice of barbaric violation during warfare. **There is a constant tiff between some who show compassion for the injured and some who torture and slaughter the helpless.** International Humanitarian Law is of paramount importance to reconcile the difference between these two approaches. It must be remembered that if these violations continue to happen and if these principles are not adhered to what is at stake are considerations of humanity which is the biggest virtue of mankind.

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