International Humanitarian Law

E-Content for students of semester IV, Patna Law College, Patna University.

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Introduction, meaning and development of IHL

- Distinction between jus ad bellum and jus in bello
- What is IHL?
- The purposes of IHL
- Sources of IHL
- Protections under IHL
- Most important laws under IHL
- Ancient practices and IHL
- Historical development of IHL
- Relation between IHL and IHRL
Principles of International law, IHL and IHRL

**International law**

- **Jus ad bellum** (Principles of international law)
  - Rules governing the legality of the use of force
    - United Nations Charter (Arts 2(4), 51 & 42)

- **Jus in bello** (IHL)
  - Rules governing the conduct of hostilities
    - Hague Régulations, Geneva Conventions, Additional Protocols and other instruments

- **(IHRL)**
  - Rules governing individual and collective rights
    - UDHR, ICCPR, ICESCR and other instruments
Rules of International law relating to use of force

- One of the first treaties that attempted to limit the right of states to use force was the Covenant of the League of Nations. In Articles 10–16, the Covenant required states to exhaust a procedure aimed at the peaceful settlement of disputes before resorting to war.
- The Covenant did not prohibit all recourses to use of force.
- A further step towards prohibition of war was taken in 1928 by the Kellogg-Briand or Paris Pact or General Treaty for the Renunciation of War as an Instrument of National Policy (adopted 27 August 1928, entered into force 24 June 1929).
Rules of International law relating to the use of force

• UN Charter
  • Article 2(4)- “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”
  • Exceptions
    – Security Council’s authorization under chapter VII
    – Article 51- “Nothing in the present Charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a Mem10 her of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”
International Humanitarian Law

- Branch of international law that applies to situations of armed conflict.

- Set of rules which seeks, for humanitarian reasons, to limit the effects of armed conflict.
Other terminologies

- Law of Armed Conflict
- Law of War
- IHL
Objectives of IHL

- reduce the unnecessary suffering, loss & damage during armed conflict situations
- safeguard the fundamental human rights & dignity of persons
- facilitates the restoration of peace
Sources of IHL

Article 38 (1), Statute of International Court of Justice

• a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
• b. international custom, as evidence of a general practice accepted as law;
• c. the general principles of law recognized by civilized nations;
• d. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
Regulation

• Two ways
  – limits the choice of means and methods of conducting military operations.
  - protect persons who do not or no longer participate in hostilities
Most Important laws

• Hague Regulations of 1899 and 1907

• Four Geneva Conventions of 1949 and its three Protocols
  – Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I);
  – Geneva Convention I1 for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC I1);
  – Geneva Convention I11 Concerning the Treatment of Prisoners of War (GC I11);
  – Geneva Convention IV Concerning the Protection of Civilian Persons in Times of armed conflict (GC IV)
Most Important Laws

• Three Additional Protocols
  Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and Concerning the Protection of victims of International Armed Conflicts (AP I);
  Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and Concerning the Protection of victims of Non-International Armed Conflicts (AP II); and
  Protocol of 8 December 2005 Additional to the Geneva Conventions of 12 August 1949, Relating to the Adoption of an Additional Distinctive Emblem (AP III).
Ancient texts relating to warfare

• ‘There is no good in war, dear son, nor any holding together in the foundations of life. When can there be in war any happiness? Nor is there any certainty of victory in every war. Therefore, do not put in it your thoughts and expectations.’

  -Gandhari to Duryodhana, the Maharbharrata
Ancient texts relating to warfare

• “When he fights with his foes in battle, let him not strike with weapons concealed (in wood), nor with (such as are) barbed, poisoned, or the points of which are blazing with fire."

-Code of manu, chapter- vii, verse90 (around 2000 years ago, hindu law)
Ancient texts relating to warfare

- Refrain from betrayal, extravagance, perfidy or mutilation; never kill small children, old men or women; never cut or set fire to palm trees; never cut fruit-bearing trees; never slay a goat, a cow or a camel except for food. If you pass by people devoted to worship leave them to do.

-Khalif Abu Bakr Al-Siddiq, the first caliph after the prophet Muhammed, 6-7th century
Ancient texts relating to warfare

• In no circumstances shall women and children of the enemy be killed, even if they are used as human shields by soldiers.

-Malik ibn Anas ibn Malik ibn ‘Amr al-Asbahim, distinguished scholar of Islamic law, 8th century
Ancient texts relating to warfare

• The ethics of war were taught to every young nobleman for his future as a warrior. He was taught never to kill an enemy on the ground, because by falling, the enemy admitted his inferiority.

-Senegal, oral tradition
Ancient Texts relating to warfare

• *The use of non-traditional Greek infantry arms (e.g. projectile missiles) should be limited.*
  - *Koina Nomina*, the ‘common customs’ of warfare, Ancient Greece, 6th century BC
If any Pakeha [non-Maori person] being a soldier by name shall be travelling unarmed and meet me, he will be captured and handed over to the direction of the law.

-Maori Warrior Code,
New Zealand, 1864
Historical development of IHL

- Ancient rules of warfare
- With the passage of time, the rules became law
- The Lieber Code
  - In 1861 President Lincoln asked Francis Lieber (1800-1872), a German-American professor of political science and law at Columbia University, to prepare a manual based on international law relating to warfare.
  - put into effect for the first time in 1863 by the United States armed forces in the American Civil War (1861-1865).
The contribution of Henry Dunant in the development of IHL

- Henry Dunant, the Swiss businessman witnessed brutalities of warfare during his trip to Italy in 1859 wherein the battle of Solferino was being fought
- In the Italian War of Unification, 40,000 Austrian, French, and Italian soldiers were wounded
- Henry Dunant served the wounded soldiers in the company of a nurse in a damaged church and therefore was able to directly witness the pain and sufferings of the blooded soldiers
The contribution of Henry Dunant in the development of IHL

• When he returned back to his native place, he published his impressions in his book 'A Memory of Solferino'.

• Two ideas which he shared and which brought revolutionary change were-
  – creation of an organization of trained volunteers ready to assist wounded in war in every country. (led to the establishment of the ICRC in 1863)
  – promotion of an international agreement for protection of wounded soldiers in war and those who care for them (led to the adoption of the Geneva Convention of 1864)
  – Henry Dunant for his pioneer work is referred to as ‘the father of IHL’.
Further development of IHL

- 1864: First Geneva Convention (Wounded on the battlefield)
- 1868: St Petersburg Declaration - outlawing of certain projectiles
- 1899/1907: Hague Conferences
- 1906: Second Geneva Convention (Wounded etc at sea)
- 1925: Geneva Gas Protocol
- 1929: Third Geneva Convention (Prisoners of War)
Recent development of IHL

• 1949: Four Geneva Conventions
• 1954: Hague Cultural Property Convention
• 1972: Biological Weapons Convention
• 1977: First and Second Additional Protocols
• 1980: Conventional Weapons Convention
• 1993: Chemical Weapons Convention
• 1997: Anti-personnel Landmines Ban
• 1998: International Criminal Court
• 2000: Optional Protocol Child Soldiers
• 2005: Customary Law Study
• 2008: Cluster Munitions Convention
General understanding of IHL and IHRL

**International Humanitarian Law**
- Rules governing the conduct of hostilities
- Hague Regulations, Geneva Conventions, Additional Protocols and other instruments

**International Human Rights Law**
- Rules governing individual and collective rights
- UDHR, ICCPR, ICESCR and other instruments
International Human Rights Law

• A branch of international law different from IHL
• Protects individuals and groups against violations of their civil, political, economic, social and cultural rights
• Primarily concerned with how a government treats its own citizens
• Largely influenced by political considerations
Important rules under IHRL

Charter of the United Nations (1945)

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)


International Convention on the protection of the Rights of All Migrant Workers and Members of their Families (1990)


Similarities between IHL and IHRL

• Share a common purpose – protecting human dignity

• Guarantee respect for life – physical and mental well being

• Both technically apply during armed conflict situation
Distinction between IHL and IHRL

• Although both technically apply in armed conflict but they are designed to apply to different kinds of situations:
  – Human rights law is mainly designed to govern in peacetime
  – IHL applies only in situations of armed conflict

• Protections under IHL can never be derogated from and apply equally to all parties to the conflict

• Human rights can be derogated from in certain circumstances

• IHL offers more protection in armed conflict than general non-derogable human rights
Derogation of Human Rights

International Covenant of Civil and Political Rights (ICCPR)

Article 4.1- In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
Non-derogable human rights (ICCPR)

The right not to be arbitrarily deprived of life (Art.6)

Prohibition against torture and other cruel, inhuman or degrading treatment or punishment (Art.7)

Prohibition of slavery and servitude (Art.8.1-2)

Prohibition against detention for debt (Art.11)

Prohibition against retroactive criminal laws (Art.15)

Recognition of legal personality (Art.16)

Freedom of thought, conscience and religion (Art.18)
Enforcement of IHL & HRL

• IHL:
  – Enforced by domestic courts or an international tribunal/court by prosecution (as War Crimes)
  – All individuals (government officials and/or private citizens) may be held responsible for violations

• Human rights:
  – Injured party institutes legal proceedings – against government officials & agencies
  – Reports of international committees

• ICC
IHL and human rights law

HUMAN RIGHTS
- Freedom of Expression
- Freedom of Assembly
- Right to Marry

COMPLEMENTARY PROVISIONS
- Right to Life
- Prohibition against Torture
  - Prohibition against Ill-treatment
  - Fair Trial

IHL
- Protection of wounded, sick and shipwrecked members
- Protection of POWs and civilian internees
- Conduct of Hostilities
Relationship between IHL and IHRL

• Complementarity
  lex specialis (special law)
  lex generalis (general law)

• *lex specialis derogat legi generali.*
  – Human rights law remains applicable even during armed conflict.
  – It is applicable in situations of conflict, subject only to derogation.
  – When both IHL and human rights law are applicable, IHL is the lex specialis.
THANK YOU