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International Humanitarian Law  
war (International Law)

war crimes ( " " )

International Committee of Red Cross





**DEDICATED TO MY FAMILY**

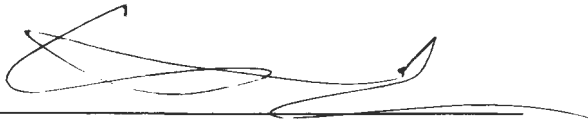


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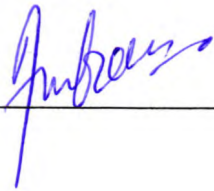
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This is to certify that we evaluated the thesis entitled "The implementation of IHL and responsibility of high contracting parties: Establishment of national IHL committee for Pakistan" submitted by Nusrat, Reg. no.163/FSL/LLMIL/S13 in partial fulfillment of the award of the degree of LLM International Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

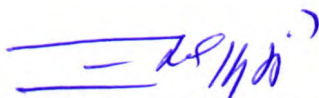
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## DECLARATION

I, **Nusrat**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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## ACRONYM

ICRC International Committee of Red Cross

IHL International Humanitarian Law

IHRL International Human Rights Law

IAC International Armed Conflict

NIAC Non International Armed Conflict

API Additional Protocol I

APII Additional Protocol II

LOAC Law of Armed Conflict

ICJ International Court of Justice

ILC International Law Commission

ICC International Criminal Court

ICTY International Criminal Tribunal for the Former Yugoslavia

GC Geneva Convention

## ACKNOWLEDGMENTS

Praise is to Allah, the sustainer of the worlds, the Merciful, the compassionate and may his everlasting blessings and peace be on Muhammad, the last of his Messengers!

I could not have accomplished the task of writing this thesis without the help and support of my teachers, colleagues and family.

Most of all, I feel indebted my respected teacher and my inspiration Dr. Sadia Tabassum, Assistant Professor of Law, who has always been very encouraging and helpful. It was her knowledge that inspired me to work in this area of law. It was initially difficult to focus on this topic but her famous quote "A lawyer is the one who can argue from both side" encouraged me to take the task as challenge and complete it.

My family members have been very supportive and encouraging. Allah bless them All.

## ABSTRACT

War is regulated by law known as International Law of Armed Conflict also known as International Humanitarian Law (IHL). International Humanitarian Law (IHL) is that branch of Public International Law, which performs two types of function: one to mitigate sufferings of those who do not take part in hostilities (i.e. civilians) or unable to participate (like prisoners of war and hors de combat); secondly, to regulate means and methods of warfare. The proceeding guide seeks to address the utility of and mechanisms for establishing a committee to implement International Humanitarian Law within Pakistan. The first part of this document will develop, in broad strokes, the general purpose, function and composition of such a committee, along with an overview of committees developed by other states. The second part of this guide will explore the various methods by which such a committee may be created within Pakistan. Employing examples of existing institutions of a similar nature, this second section will also provide concrete recommendations as to how exactly such a committee may be constituted and in association with which existing institutions. To establish a national committee on IHL there are several procedures that may be employed. The potential methods that may be employed for launching an IHL committee in Pakistan are; i. Creating a National Committee on IHL through Act or Amendment. ii. Creating a National Committee on IHL through Executive Action. iii. Creating a National Committee on IHL under the Societies Act. iv. Creating a National Committee on IHL through a Memorandum of Understanding.



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started to arrange a second segment of IHL that directed the methods and strategies for armed combats.<sup>20</sup>

Starting in 1866, the Geneva Convention demonstrated its value on the front line<sup>21</sup>. By 1882, 18 years after its reception, it had been ratified universally<sup>22</sup>. So with the vision and exertion of Dunant gave life to the idea of cutting (harsh) edge (Authority) IHL with a general approved Convention inside under ten years.

### 1.1.2 THE PEACE HAGUE CONFERENCES BETWEEN THE WORLD WARS

States around the world adopted the Saint Petersburg Declaration of 1868, which proclaimed that the engagement of such weapons as would uselessly worsen the misery of handicapped people, or render their death foreseeable would be contrary to the humanitarian laws. In result the Declaration made laws regarding definite shattering, explosive and flammable ammunition<sup>23</sup>.

The international community convened two Conventions at Hague, Netherlands, in 1899 and 1907 that includes the series of treaties and rules related to law of war and war crime in frame of international law. The regulations in the Hague Conventions were mostly adopted from Lieber Code<sup>24</sup>, which was made (on behalf of US President Lincoln) by Fancis Lieber, named 'General

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<sup>20</sup> Diane A. Desierto, "Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation Volume 3 of International Litigation in Practice", Martinus Nijhoff Publishers, USA, 2012, pp. 54-57.

<sup>21</sup> Oscar Riddle. *The Unleashing of Evolutionary Thought*, Vantage Press, p. 343, 2007.

<sup>22</sup> Antoine A. Bouvier. *International humanitarian law and the law of armed conflict*, Peace operation training institute p. 17, 2005.

<sup>23</sup> Barcroft, Stephen. "The Hague Peace Conference of 1899" Irish Studies in International Affairs, Vol. 3 Issue 1, p 55–68, 1989.

<sup>24</sup> Paul R. Bartrop and Samuel Totten. *Dictionary of Genocide*, 2007 and Burrus M. Carnahan *Lincoln on Trial: Southern Civilians and the Law of War*. University Press of Kentucky, 20 March 2008.

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## CHAPTER ONE:

### INTERNATIONAL HUMANITARIAN LAW: SOME BASIC ISSUES

#### INTRODUCTION

The start of humanitarian law was in 1864 with the main Geneva Convention; the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Affected by one of the bloodiest clashes of the 19<sup>th</sup> century in Solferino<sup>6</sup>, Henry Dunant in 1862 published "A Memory of Solferino"<sup>7</sup> and recommended that countries ought to frame help social orders to give consideration to the injured in wartime and prompted the foundation of the International committee Red Cross.

On 22 August 1864 twelve countries assent the first Geneva Convention<sup>8</sup>, consenting to ensure lack of bias to restorative staff, to speed up supplies for their utilization, and to embrace an extraordinary distinguishing symbol as a Red Cross. Creating close by the Geneva Conventions were The Hague Conventions made by states keeping in mind the end goal to oversee the behavior of war. The Hague Conventions are different universal bargains that rose up out of The Hague Peace Conferences in 1899 and 1907 in which restrictions on weapons were proposed. The

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<sup>6</sup> The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864.

<sup>7</sup> Dunant, Henri (1986), *A Memory of Solferino*, Geneva, Switzerland: International Committee of the Red Cross, ICRC.

<sup>8</sup> The Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

two Conventions<sup>9</sup> set up a model for unilateral meetings to form international laws, and therefore impacted the development of the League of Nations in 1919.

The Geneva Protocol to the Hague Convention is viewed as an expansion to the Hague Convention, in spite of the fact that it was not drafted in The Hague<sup>10</sup> and opposite to the Geneva Conventions, which are apprehensive with the treatment of work force and regular people, basically detailed the legitimate conduct for war. A noteworthy part of IHL is contained in the four Geneva Conventions of 1949 and its Additional Protocols of 1977, have been embraced by all countries on the globe<sup>11</sup>.

In short, IHL developed during the 19th Century. From then to now, the practice of putative rules of conflict mirrored the theories of priest or jurist with the local and international agreement. For instance, the "Lieber Code of 1863", a code of conduct promulgated<sup>12</sup> by the president of the United States during the US civil war is one of the great examples in this regard. However, there were no international or universal rules since the states were not formed.

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<sup>9</sup> International Committee of the Red Cross, for detail visit <https://www.icrc.org/>. Last accessed on 16/7/2016.

<sup>10</sup> International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, accessed from: <http://www.refworld.org/docid/4374cae64.html> Accessed on 16/7/2016.

<sup>11</sup> Development of IHL, *American Red Cross 2011*, see more at <http://www.redcross.org/>. Last accessed on 18/8/2016.

<sup>12</sup> Antoine. A. Bouvier, *International humanitarian law and the law of armed conflict*, peace operation training institute, p. 13, 2005.

## 1.1 THE BEGINNING OF THE INTERNATIONAL HUMANITARIAN LAW

It is important to provide details about the beginning of international humanitarian law and about its history.

### 1.1.1 BATTLE OF SOLFERINO AND FIRST GENEVA CONVENTION

Despite the fact that the thought of present day international humanitarian law was no current until nineteenth century when countries of the world started decisively to receive tying (binding) bargains and military codes to manage and represent armed clashes in 1859.

A Swiss businessperson, Henry Dunant<sup>13</sup>, going in Northern Italy through Solferino, where he saw a loathsome fight in the middle of French and Austrian constraints, an agent from Geneva saw a fight however it was not an astonishing for him. The thing what made him so much tragic was the edgy (tense) and hopeless circumstance of the injured left on the war zone. He attempted what he could the best. He enrolled close-by tenants (residents) and chose to give help to the injured of fight. After this awful experience Dunant came to Geneva and the recollections of hopeless circumstances were still in his psyche. He chose to compose a book that can clarifies the recollections of Solferino, so he write a short book in 1862 "A memory of Soferino" in which he distinctively delineated(defined) the detestations (hate)of the fight<sup>14</sup>.

Dunant not only described the battle, but also tried to propose and expose possible actions to improve the fate of war victims<sup>15</sup>. He presented three basic proposals designed to mitigate the

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<sup>13</sup> Henry Dunant, *A Memory of Soferino*, ICRC, Geneva, p. 41, 1986.

<sup>14</sup> Ibid.

<sup>15</sup> Masters, Peter, *"The Man Behind the Red Cross", Men of Destiny* (paperback ed.), London, 2008.



suffering of the victims of war which included establishing of voluntary societies in times of peace as well as war in all states that would serve as supporters to the military medical services, adoption of international treaties by states that guarantee legal protection to medical persons and military hospitals during the times of war and peace and the introducing special signs that would be adopted and respected by all during war times.

The proposed set of rules seemed very simple to adopt but they have had deep consequences<sup>16</sup>. His book got great popularity in Europe and it was the aspiration of his idea that leads to establishment of special committee few years later from Solferino in 1863<sup>17</sup>.

The Committee assembled military and therapeutic specialists to inspect the practicability and plausibility (probability) of the proposition made by Dunant. The aftereffects of the meeting were empowering, and the individuals from the Committee influenced the Swiss Federal Council to assemble a conciliatory meeting, whose errand (duty) would be to give an authoritative document to Dunant's recommendations.<sup>18</sup>

In order to achieve this aim, a political meeting was held in 1864 in Geneva<sup>19</sup> and the 16 states spoke to at long last receive the "Geneva Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field. Containing 10 articles indicating that International bargain for consideration (respect)(attention) of injured and wiped (spread) out warriors on the combat zone and Red Cross image embraced as while the Geneva Convention controlled the treatment of the injured, the countries of the world in the meantime

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<sup>16</sup>Moorehead, Caroline. *Dunant's dream: War, Switzerland and the history of the Red Cross* (hardcover ed.), London, 1998.

<sup>17</sup>Boissier, Pierre and Henri Dunant. *International Committee of the Red Cross, ICRC*, Geneva, Switzerland, 1974.

<sup>18</sup> Helen Durham, Timothy L. H. MacCormack, "The Changing Face of Conflict and the Efficacy of International Humanitarian Law Volume 2 of International Humanitarian Law Series", Martinus Nijhoff Publishers, USA, 1999, pp.32-35.

<sup>19</sup>Boissier, Pierre. *History of the International Committee of the Red Cross: From Solferino to Tsushima* (2<sup>nd</sup>ed.), Geneva, Switzerland: International Committee of the Red Cross, ICRC, 1985.

started to arrange a second segment of IHL that directed the methods and strategies for armed combats.<sup>20</sup>

Starting in 1866, the Geneva Convention demonstrated its value on the front line<sup>21</sup>. By 1882, 18 years after its reception, it had been ratified universally<sup>22</sup>. So with the vision and exertion of Dunant gave life to the idea of cutting (harsh) edge (Authority) IHL with a general approved Convention inside under ten years.

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The international community convened two Conventions at Hague, Netherlands, in 1899 and 1907 that includes the series of treaties and rules related to law of war and war crime in frame of international law. The regulations in the Hague Conventions were mostly adopted from Lieber Code<sup>24</sup>, which was made (on behalf of US President Lincoln) by Fancis Lieber, named 'General

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<sup>20</sup> Diane A. Desierto, "Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation Volume 3 of International Litigation in Practice", Martinus Nijhoff Publishers, USA, 2012, pp. 54-57.

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<sup>23</sup> Barcroft, Stephen. "The Hague Peace Conference of 1899" *Irish Studies in International Affairs*, Vol. 3 Issue 1, p 55–68, 1989.

<sup>24</sup> Paul R. Bartrop and Samuel Totten. *Dictionary of Genocide*, 2007 and Burrus M. Carnahan *Lincoln on Trial: Southern Civilians and the Law of War*. University Press of Kentucky, 20 March 2008.

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## INTRODUCTION

A set of rules that pursue humanitarian reasons to bind the effects of armed conflict are known as Humanitarian Law. Humanitarian law is also termed as law of war or law of armed conflict. These rules are published by treaties or customs which are specifically intended to solve humanitarian problems that arise directly from international or non-international armed conflict.

For humanitarian reasons these guidelines secure persons and property which is or might be influenced by constraining conflicting parties, right to pick their strategies and method for fighting. The expression 'international humanitarian law applicable in armed clashes' is frequently curtailed to international humanitarian law or humanitarian law. In spite of the fact that the military has a tendency to incline toward the expressions "Laws of weaponry clashes or armed conflict (LOAC)" or "Laws of War (LOW)", these two expressions ought to be comprehended as synonymous with IHL. International law in some cases also termed as public international law to separate it from private international law. In past times, international law was referred to as the Law of Nations<sup>1</sup>.

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<sup>1</sup> J. Brierly, *The Law of Nations*, 6th edn, Oxford, 1963, esp. pp. 1-40 on the origins of international law.

## LITERATURE REVIEW

There is very limited literature available on the issue. Following is some of the leading literature available on the subject:

The author Gary D. Soli in his article "An American War Crime" Discussed about the four Conventions place obligations upon the state parties' three fundamental obligations under Common Article 49/50/129/146 of the Four GCs. These are to enact special legislation; to search for any person accused of violations; and obligation to try such person. The author is silent about case of Pakistan.

The author Gray solis in his article, An American War Crime described the Geneva Conventions requires states to incorporate penal provisions with regards to the grave breaches (Article 49 GCI, Article 50 GCII, Article 129 GCIII, and Article 146 GCIV) in their domestic legislation. The author did not provide a complete detail that how the States should incorporate penal legislation and what would be the procedure and methodology at a National level.

The author Frits Kalshoven and Liesbeth Zegveld in their article Constraints on the Waging of War, ICRC", Geneva explained of all the methods for improving implementation of humanitarian law, instruction and education are probably the most promising ones. This paper lacks to provide that for the dissemination of information about IHL how people at large should be informed by different means for which the contribution of government is very vital at national Level.

The author Alison Wiebalck in his International humanitarian law and the ICRC in the Republic of the Sudan described that little attention has been paid in international humanitarian law circles to the war in the Sudan, yet its struggles put the very heart of that branch of international law to the test. For the last forty-eight years the country has been dogged by internal

conflict. For the past twenty-five years the ICRC has sought to discharge its internationally-mandated humanitarian duties in the Sudan by calling the attention of the warring parties to their responsibilities and, in the course of the war, by helping the victims thereof. This paper failed to explain that what precautions should be taken further in the field of IHL to achieve its credibility and fame and to enhance its role in the rest of the countries where a situation like Sudan if happens in the future.<sup>2</sup>

The author Christopher Herland described in his Basic Documents on IHL-South Asia Collection, Geneva to date, that Pakistan has fully implemented International Humanitarian Law treaty, that being the Chemical Weapons Convention. In addition, the Geneva Conventions have been partially implemented by virtue of legislation in 1936 and 1963. However, it appears that one of the most important sections of the Geneva Conventions, that dealing with grave breaches, has not yet been incorporated. As there is a direct obligation to do so in Article 49, paragraph 1 of the First Geneva Convention, it is recommended to consider the domestic incorporation of these grave breaches as crimes. This paper lacks to provide details that how Pakistan could do further legislation on IHL for its implementation and enforcement.<sup>3</sup>

The author in his article The ICRC Advisory Service on IHL The domestic implementation of IHL norms: The Light Treatment of International Humanitarian Law stressed two main points. First, military necessity forms an integral part of many norms of IHL. Examining conformity with such norms is a complicated task that must be based on in-depth analysis of the concrete facts in a specific situation. Second, even if one concedes, that the facts available to the International Court were sufficient for it to conclude that Israel had violated various norms of

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2 Jean-Marie Henckaerts, Louise Doswald-Beck, Carolin Alvermann, "Customary International Humanitarian Law: pt. 1-2. Practice", Cambridge University Press, UK, 2005, p.155-157.

3 Timothy McCormack, Avril McDonald, "Yearbook of International Humanitarian Law - 2003, Volume 6; Volume 2003", Cambridge University Press, UK, 2006, p.208-211.

IHL, no attempt was made to explain why these violations would result in the illegality of the whole barrier, or specific segments of it. This paper lacks to explain that what would be the punishment for those states that deny the verdict of ICJ or violate the norms of IHL?

The author Anthony E. Cassimatis in his article *International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law* International tribunals and legal scholars have been considering the relationship between International Humanitarian Law ('IHL') and International Human Rights Law ('IHRL') for a number of years. The International Court of Justice famously or infamously considered their relationship in its Nuclear Weapons Advisory Opinion in 1996. The Court concluded that while IHRL did apply in times of armed conflict, when it came to the prohibition of arbitrarily taking human life in Article 6 of the International Covenant on Civil and Political Rights 1966, the content of that prohibition had to be found in the *lexspecialis* of IHL.<sup>4</sup> This paper lacks to provide details about the how the lacunas of International Humanitarian law and International Human Rights law could be further improved under the guidance of International Law and what steps should the high contracting parties can take initiatives for the proper implementation of IHL and IHRL within their own countries.

The author Michael H. Hoffman in his article *Rights and Duties, as Captives and Captors, of Nonstate Interveners During International and Internal Armed Conflicts* If we consider the nature and structure of the international legal regulation of the recourse to force (*jus ad bellum*) and the waging of warfare (*jus in bello*). As represented in the UN Charter, the laws of the *jus ad bellum* proceed from the general prohibition of the threat or use of force by member states of the United Nations "in their international relations" (Article 2 (4)), while the *jus in bello* of the Geneva

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<sup>4</sup> Anthony E. Cassimatis "International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law" *The International and Comparative Law Quarterly*, Vol. 56, No. 3 (Jul., 2007), p. 623-639 Published by: Cambridge University Press, Available at <http://www.jstor.org/stable/4498092> .Last accessed on 07/06/2014.



Conventions of 1949 and their 1977 Protocols "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the high contracting parties, even if the state of war is not recognized by one of them" (Article 2). Within this arrangement, the laws of the jus ad bellum and/as in Bello "operate in quite distinct spheres. The paper lacks to explain the rights and duties of the high contracting parties in the enforcement and execution of IHL in their own territory.<sup>5</sup>

The authors Prof Dr. Umesh Kadam and Mr. Alexander Faite in their article "Implementation of international humanitarian law in Japan: The ICRC Perspectives" have given details about the government of Japan that have taken number of initiatives in the field of IHL. The learned authors have focused only the government of Japan in terms of legislation and implementation of IHL at national level and did not discussed the other government like Pakistan who have taken measures for the decimation of IHL in collaboration with ICRC.

The author Antoine A. Bouvier in his article "International humanitarian law and the law of armed conflict" has given details about the IHL its aim and objective in detail but didn't focus the implementation and dissemination at national level.

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<sup>5</sup> John Carey, William V. Dunlap, R. John Pritchard, "*International Humanitarian Law: Origins, Challenges, Prospects (3 Vols)*", BRILL, USA, 2005, p. 101-103.

## CHAPTER ONE:

### INTERNATIONAL HUMANITARIAN LAW: SOME BASIC ISSUES

#### INTRODUCTION

The start of humanitarian law was in 1864 with the main Geneva Convention; the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Affected by one of the bloodiest clashes of the 19<sup>th</sup> century in Solferino<sup>6</sup>, Henry Dunant in 1862 published "A Memory of Solferino"<sup>7</sup> and recommended that countries ought to frame help social orders to give consideration to the injured in wartime and prompted the foundation of the International committee Red Cross.

On 22 August 1864 twelve countries assent the first Geneva Convention<sup>8</sup>, consenting to ensure lack of bias to restorative staff, to speed up supplies for their utilization, and to embrace an extraordinary distinguishing symbol as a Red Cross. Creating close by the Geneva Conventions were The Hague Conventions made by states keeping in mind the end goal to oversee the behavior of war. The Hague Conventions are different universal bargains that rose up out of The Hague Peace Conferences in 1899 and 1907 in which restrictions on weapons were proposed. The

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<sup>6</sup> The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864.

<sup>7</sup> Dunant, Henri (1986), *A Memory of Solferino*, Geneva, Switzerland: International Committee of the Red Cross, ICRC.

<sup>8</sup> The Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

two Conventions<sup>9</sup> set up a model for unilateral meetings to form international laws, and therefore impacted the development of the League of Nations in 1919.

The Geneva Protocol to the Hague Convention is viewed as an expansion to the Hague Convention, in spite of the fact that it was not drafted in The Hague<sup>10</sup> and opposite to the Geneva Conventions, which are apprehensive with the treatment of work force and regular people, basically detailed the legitimate conduct for war. A noteworthy part of IHL is contained in the four Geneva Conventions of 1949 and it's Additional Protocols of 1977, have been embraced by all countries on the globe<sup>11</sup>.

In short, IHL developed during the 19th Century. From then to now, the practice of putative rules of conflict mirrored the theories of priest or jurist with the local and international agreement. For instance, the "Lieber Code of 1863", a code of conduct promulgated<sup>12</sup> by the president of the United States during the US civil war is one of the great examples in this regard. However, there were no international or universal rules since the states were not formed.

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<sup>9</sup> International Committee of the Red Cross, for detail visit <https://www.icrc.org/>. Last accessed on 16/7/2016.

<sup>10</sup> International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, accessed from: <http://www.refworld.org/docid/4374cae64.html> Accessed on 16/7/2016.

<sup>11</sup> Development of IHL, *American Red Cross 2011*, see more at <http://www.redcross.org/>. Last accessed on 18/8/2016.

<sup>12</sup> Antoine. A. Bouvier, *International humanitarian law and the law of armed conflict*, peace operation training institute, p. 13, 2005.

## 1.1 THE BEGINNING OF THE INTERNATIONAL HUMANITARIAN LAW

It is important to provide details about the beginning of international humanitarian law and about its history.

### 1.1.1 BATTLE OF SOLFERINO AND FIRST GENEVA CONVENTION

Despite the fact that the thought of present day international humanitarian law was no current until nineteenth century when countries of the world started decisively to receive tying (binding) bargains and military codes to manage and represent armed clashes in 1859.

A Swiss businessperson, Henry Dunant<sup>13</sup>, going in Northern Italy through Solferino, where he saw a loathsome fight in the middle of French and Austrian constraints, an agent from Geneva saw a fight however it was not an astonishing for him. The thing what made him so much tragic was the edgy (tense) and hopeless circumstance of the injured left on the war zone. He attempted what he could the best. He enrolled close-by tenants (residents) and chose to give help to the injured of fight. After this awful experience Dunant came to Geneva and the recollections of hopeless circumstances were still in his psyche. He chose to compose a book that can clarifies the recollections of Solferino, so he write a short book in 1862 "A memory of Soferino" in which he distinctively delineated(defined) the detestations (hate)of the fight<sup>14</sup>.

Dunant not only described the battle, but also tried to propose and expose possible actions to improve the fate of war victims<sup>15</sup>. He presented three basic proposals designed to mitigate the

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<sup>13</sup> Henry Dunant, *A Memory of Soferino*, ICRC, Geneva, p. 41, 1986.

<sup>14</sup> Ibid.

<sup>15</sup> Masters, Peter, "The Man Behind the Red Cross", *Men of Destiny* (paperback ed.), London, 2008.

suffering of the victims of war which included establishing of voluntary societies in times of peace as well as war in all states that would serve as supporters to the military medical services, adoption of international treaties by states that guarantee legal protection to medical persons and military hospitals during the times of war and peace and the introducing special signs that would be adopted and respected by all during war times.

The proposed set of rules seemed very simple to adopt but they have had deep consequences<sup>16</sup>. His book got great popularity in Europe and it was the aspiration of his idea that leads to establishment of special committee few years later from Solferino in 1863<sup>17</sup>.

The Committee assembled military and therapeutic specialists to inspect the practicability and plausibility (probability) of the proposition made by Dunant. The aftereffects of the meeting were empowering, and the individuals from the Committee influenced the Swiss Federal Council to assemble a conciliatory meeting, whose errand (duty) would be to give an authoritative document to Dunant's recommendations.<sup>18</sup>

In order to achieve this aim, a political meeting was held in 1864 in Geneva<sup>19</sup> and the 16 states spoke to at long last receive the "Geneva Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field. Containing 10 articles indicating that International bargain for consideration (respect)(attention) of injured and wiped (spread) out warriors on the combat zone and Red Cross image embraced as while the Geneva Convention controlled the treatment of the injured, the countries of the world in the meantime

<sup>16</sup>Moorehead, Caroline. *Dunant's dream: War, Switzerland and the history of the Red Cross* (hardcover ed.), London, 1998.

<sup>17</sup>Boissier, Pierre and Henri Dunant. *International Committee of the Red Cross*, ICRC, Geneva, Switzerland, 1974.

<sup>18</sup> Helen Durham, Timothy L. H. MacCormack, "The Changing Face of Conflict and the Efficacy of International Humanitarian Law Volume 2 of International Humanitarian Law Series", Martinus Nijhoff Publishers, USA, 1999, pp.32-35.

<sup>19</sup>Boissier, Pierre. *History of the International Committee of the Red Cross: From Solferino to Tsushima* (2<sup>nd</sup>ed.), Geneva, Switzerland: International Committee of the Red Cross, ICRC, 1985.

started to arrange a second segment of IHL that directed the methods and strategies for armed combats.<sup>20</sup>

Starting in 1866, the Geneva Convention demonstrated its value on the front line<sup>21</sup>. By 1882, 18 years after its reception, it had been ratified universally<sup>22</sup>. So with the vision and exertion of Dunant gave life to the idea of cutting (harsh) edge (Authority) IHL with a general approved Convention inside under ten years.

### 1.1.2 THE PEACE HAGUE CONFERENCES BETWEEN THE WORLD WARS

States around the world adopted the Saint Petersburg Declaration of 1868, which proclaimed that the engagement of such weapons as would uselessly worsen the misery of handicapped people, or render their death foreseeable would be contrary to the humanitarian laws. In result the Declaration made laws regarding definite shattering, explosive and flammable ammunition<sup>23</sup>.

The international community convened two Conventions at Hague, Netherlands, in 1899 and 1907 that includes the series of treaties and rules related to law of war and war crime in frame of international law. The regulations in the Hague Conventions were mostly adopted from Lieber Code<sup>24</sup>, which was made (on behalf of US President Lincoln) by Fancis Lieber, named 'General

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<sup>20</sup> Diane A. Desierto, "Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation Volume 3 of International Litigation in Practice", Martinus Nijhoff Publishers, USA, 2012, pp. 54-57.

<sup>21</sup> Oscar Riddle. *The Unleashing of Evolutionary Thought*, Vantage Press, p. 343, 2007.

<sup>22</sup> Antoine A. Bouvier. *International humanitarian law and the law of armed conflict*, Peace operation training institute p. 17, 2005.

<sup>23</sup> Barcroft, Stephen. "The Hague Peace Conference of 1899" *Irish Studies in International Affairs*, Vol. 3 Issue 1, p 55-68, 1989.

<sup>24</sup> Paul R. Bartrop and Samuel Totten. *Dictionary of Genocide*, 2007 and Burrus M. Carnahan *Lincoln on Trial: Southern Civilians and the Law of War*. University Press of Kentucky, 20 March 2008.

Order No 100 for the US armies in the Fields', this was initially called committee of five. But it soon called itself ICRC –International Committee of the Red Cross.<sup>25</sup>

The Hague Conventions barred a number of other weapons and methods of war and set forth rules for the humanitarian treatment of prisoners of war<sup>26</sup>, occupied territory, and neutral parties. The law also took principles of the 1864 Geneva Convention and adapted them to naval war.<sup>27</sup>

The international committee of ICRC, who was collected the experience from battlefields after the Conventions and Declarations, struggled to convince the states regarding the necessity of rules and laws to be implemented in the field of battle for securing the victims of war<sup>28</sup>. In this effort, during World War I, International Committee of the Red Cross (ICRC) worked on behalf of sufferers of war and after that proposed provision of international treaties<sup>29</sup> to further define the status of war prisoners.

## 1.2 IHL IN THE POST-WORLD WAR-II ERA

Following World War II, that had proven the worst experience in terms of war casualties and victims, internationally efforts were made to assess the period of war to experience and amend the existing international rules. Aftermath of war encouraged the ICRC to submitted revised draft of the Geneva Conventions that laid the foundation for Geneva Conventions 1949.

<sup>25</sup> Frauke Lachenmann, Rüdiger Wolfrum, "The Law of Armed Conflict and the Use of Force: The Max Planck Encyclopedia of Public International Law Volume 2 of The Max Planck encyclopedia of public international law", Oxford University Press, UK, 2017, pp.638.

<sup>26</sup> Michael Haas. *International Human Rights: A Comprehensive Introduction*. Routledge, 2008.

<sup>27</sup> Development of International Humanitarian Law, available at: [www.redcross.org/ihl](http://www.redcross.org/ihl). Last accessed on 27/8/2016

<sup>28</sup> Telford Taylor. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. Little Brown & Company, 1993.

<sup>29</sup> Judgement: *The Law Relating to War Crimes and Crimes against Humanity*, The Avalon Project at the Yale Law School.

### 1.2.1 THE FOUR GENEVA CONVENTIONS OF 1949

The exertion of ICRC<sup>30</sup> in persuading the governments to set up Conventions and meetings to secure casualties of war and to manage the demonstration the act of parties in war in 1949, the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War approved<sup>31</sup> a fourth Geneva Convention on civilians and joined the past treaties into the Geneva Conventions of August 12, 1949. Interestingly with the 10 articles of the first Geneva Convention of 1864, the four 1949 Conventions contain 429 articles. The ICRC, bolstered (supported) by national societies, met with extensive accomplishment in persuading governments to acknowledge the 1949 Geneva Conventions. The Geneva Conventions is adopted<sup>32</sup> by most of the States in the world.<sup>33</sup>

The first Geneva Conventions secures injured and debilitated (weakened) troopers ashore amid war. This tradition speaks to the fourth upgraded rendition (version) of the Geneva traditions on the injured and debilitated after those embraced in 1864, 1906. It contains 64 articles<sup>34</sup> that provide the assurance to the injured and sick, additionally for medicinal and religious persons, therapeutic units and medical transports. The Convention additionally perceives the particular symbols(emblems). It contains a draft agreement identifying with healing center zones and a model character vehicle for medical and religious individuals in its annexure.

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<sup>30</sup>ShabtaiRosenne. *Practice and Methods of International Law*, New York, p. 50-1, 1984.

<sup>31</sup> Jean Pictet, *The Geneva Conventions 1949: Commentary*, Geneva, 1952-60.

<sup>32</sup> States/Parties who ratify the Convention (III) relative to the Treatment of Prisoners of War: *Geneva*, 12 August 1949 details at <https://www.icrc.org/applic/ihl/ihl.nsf/States>. Last accessed on 28/7/2016.

<sup>33</sup> "State Parties / Signatories: *Geneva Conventions of 12 August 1949*". International Humanitarian Law, International Committee of the Red Cross, ICRC.

<sup>34</sup> Article 1-64 of the First Geneva Convention.



The second Geneva Convention<sup>35</sup> guardinjured, sick and shipwrecked military personnel's at sea during war time. The Convention substituted Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention. It thoroughly trails the provisions of the first Geneva Convention in structure and content. It contains 63 articles, precisely valid to war at sea. For instance, it defends Hospital ships etc. It comprises one annex (extension, addition) containing an exemplary identification card for religious and medical personnel<sup>36</sup>.

Similarly the third and fourth Geneva Convention applied to the prisons of war and protection to civilians including in occupied territory respectively. Third Convention contains 143 articles<sup>37</sup> and replaced the Prisoners of War Convention of 1929 that majorly focused that prisons of war shall be released and deported without delay after the stoppage of active hostilities.<sup>38</sup> The fourth Convention<sup>39</sup> focuses on the protection of civilian during war. It comprises a short section regarding the general protection of people against definite consequences of war, without talking the behavior of hostilities, as such, which was future inspected in the Additional Protocols of 1977.

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<sup>35</sup>Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949. Last accessed on 14/6/2016 from <https://www.icrc.org>

<sup>36</sup>Ibid.

<sup>37</sup> Geneva Convention, *the Treatment of Prisoners of War*, 75 U.N.T.S. 135, entered into force Oct. 21, 1950, Human Rights Library, University of Minnesota.

<sup>38</sup> Abdulrahman Muhammad Alsumaih, "Prisoners of War and Their Treatment Under Islamic Law", University of Newcastle upon Tyne, UK, 1995, pp.30-32.

<sup>39</sup>Bugnion, Francios. "The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium", International Affairs (Royal Institute of International Affairs 1944-76: p.41-51, 2000.

### 1.2.2 THE TWO ADDITIONAL PROTOCOLS OF 1977

Supplementing the Geneva Convention of 1949 the Protocols I and II are international treaties that were adopted on 8 June 1977<sup>40</sup>. They meaningfully advance the legal protection casing(covering) civilians and the injured, and surely for the first time laid down the detailed humanitarian rules that apply in civil wars.

They were accepted and implemented by States to make international humanitarian law more comprehensive and more widespread, and to become accustomed it better to modern conflicts. The Geneva Conventions of 1949 yielded chief enhancements in the legal protection of the wounded of armed conflict. Though, they relate principally to international conflicts – wars between states. Article 3 is common in all four Conventions deals with internal conflicts. The adoption of Protocol I was itself a great step onward but the rules limited in the Article are chiefly of a wide-ranging type.

The Additional Protocol I<sup>41</sup> place down rules on, how wars may be fought. Fighters must take all possible precautions in selecting arms and means of combat in order to avoid incidental damage of life, harm to civilians and injury to civilian stuffs while Additional Protocol II<sup>42</sup> was the first-ever universal treaty dedicated entirely to protecting people pretentious(affected) by non-international or domestic armed conflicts, or civil wars.

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<sup>40</sup>Protocols I and II additional to the Geneva Conventions and Geneva Conventions of 1949 and Additional Protocols, and their Commentaries, Last accessed on 12/7/2016 from <https://www.icrc.org/eng/resources/documents/misc/additional-protocols-1977>.

<sup>41</sup> "Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, Last accessed on 03/7/2016 from <http://treaties.un.org>

<sup>42</sup> Ibid.

### 1.2.3 OTHER SIGNIFICANT CONVENTIONS

The development of International Humanitarian Law since the adoption of Geneva Convention 1864 majorly based other vital Conventions as well<sup>43</sup>. The Cultural Property Convention 1954 was ratified by 127 states that provide protection to the property during armed conflict<sup>44</sup>. It forbids acts of resentment against cultural belongings and requires parties to cease from using cultural property in a manner likely to expose it to demolition of damage in armed battle. The Convention entails parties to avert the loot, stealing, or destruction of cultural property<sup>45</sup>.

The Biological Weapon Convention on the other hand prohibits the production and storage of biological and toxic weapon<sup>46</sup>. It is effective from 1975 and ratified by 22 states and has 109 signatories and 173 parties till 2015. The Convention prohibits the production, development, stockpiling (storing), acquisition or transfer of weapons containing biological or toxic matter<sup>47</sup>.

The Convention on Certain Conventional Weapons 1980 deals with the prohibition of use of certain conventional weapons which may be considered to be disproportionately harmful and have inequitable effects<sup>48</sup>. The fundamental reason behind this Convention was to defend military troops from heartless injuries and non-combatants from by chance being hurt or killed by certain type of weapons. The convention has 50 signatories and 122 parties and signed in April, 1981<sup>49</sup>.

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<sup>43</sup> The III Hague Convention -1899, The Geneva Convention 1906, The Xth Hague Convention 1907, The Geneva Protocol 1925 and the Geneva Conventions 1929.

<sup>44</sup> State Parties of the Convention 1956. Last accessed on 07/7/2016 from <http://www.unesco.org/eri/la/convention>.

<sup>45</sup> Patrick J Boylan. *Implementing the 1954 Hague Convention and its Protocols: legal and practical implications*, City University London, UK, 2006.

<sup>46</sup> BWC Implementation Support Unit, *Text and Documents of the Convention*.

<sup>47</sup> Article 1 of Biological Weapons Convention.

<sup>48</sup> 1980 Convention on Certain Conventional Weapons – *Factsheet*, International Committee of the Red Cross, March 2014.

<sup>49</sup> United Nations Office for Disarmament Affairs: *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects: Status of the Treaty*

Another significant Convention namely the Convention on Cluster Munitions 2008 has 108 signatories, 98 parties and 98 have ratified it as of October 2015<sup>50</sup>. It prohibits the transfer, use and stockpile of cluster bomb that scatters sub munitions cause mass destruction<sup>51</sup>.

#### 1.2.4 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW

Customary law is recognized and known source of law within authorities of the civil law custom, where it may be secondary to both statutes and regulations.

In addressing custom as a source of law it is given in bookish works is prodigious, its importance is "slight and decreasing"<sup>52</sup>. In the contrary, in various countries around the globe, one or more kinds of customary law exist along with official law.

The Customary international law must be illustrious from 'customary law'. The custom term more often not alludes(refer) to domestic law which is an essential part of the law of a few States and arrangements to a great extent with family matters, land and suchlike. In international law, a standard of custom advances from the act of States, and this can take an impressive or a brief time-frame. There must first be proof of considerable consistency of practice by a significant number of States. In 1974, the ICJ found that a standard of custom (now superseded) that States had the selective right to angle inside of their own 12 nautical mile zone had developed<sup>53</sup>.

State practice can be communicated in different courses, for example, administrative activities in connection to different States, enactment, discretionary notes, clerical and other authority articulations, government manuals (as on the law of armed conflict), certain consistent or

<sup>50</sup> United Nations Treaty Collection: *Convention on Cluster Munitions*.

<sup>51</sup> Article 22, Article 23, Article 1 of the Convention on Cluster Munitions.

<sup>52</sup> Merryman, John Henry. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (3rd ed.). Stanford University Press. p.24, 2007.

<sup>53</sup> Fisheries Jurisdiction (UK v. Iceland; Germany v. Iceland), *ICJ Reports*, p. 3, at pp. 23–6; 55 ILR 238, published in 1974.

agreement resolutions of the UN General Assembly and, progressively, in delicate law instruments. The main such determination(purpose) was likely Resolution 95(I) of 11 December 1946 which avowed(declared) consistently(regularly) the standards of international law perceived by the Charter of the Nuremberg International Military Tribunal<sup>54</sup> and its judgment.

At the point when has an interest for the matter is silent, it will by at large a State that be viewed (noticed) as submitting in the practice. Be that as it may, if the new practice is not reliable with a built up principle of custom, and a State is a steady objector (complain) to the new practice, the practice either may not be viewed as proof of new custom or the industrious(active) objector might be viewed as having set up a special case to the new lead(principle) of custom. This is a questionable matter<sup>55</sup>but to amount to a new law of custom, in addition to repetition there must also be a universal acknowledgment by States that the exercise is established enough to amount to an obligation binding on States in international law.

### 1.3 HUMANIZING WARFARE

International humanitarian law is branch of global laws that has the significant role in humanizing the warfare. Although, IHL is a composing of numerous treaties and customs, but four Geneva conventions play vital role in international humanitarian law<sup>56</sup>. These Conventions are reflection of very significant character to regularize armed conflicts and war. They determine procedures and

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<sup>54</sup> H. Caminos and M. Molitor, 'Progressive Development of International Law and the Package Deal' AJIL 871-90, 1985.

<sup>55</sup> Bernard Shaw, *International Laws*, p. 77-81, 1971.

<sup>56</sup> Muhammad Mushtaq Ahmand, *Jihad, Muzahamataur Baghawwat*, (Gujranwala: Al-Shari'ah Academy, 2008), 299.

restrictions to the parties during war. All the modern states in the world are signatory of these four Geneva Conventions<sup>57</sup>.

Modern IHL defines rules and defend rights as well as provide protections about all relevant persons to the war including sick and wounded combatants, war prisoners and civilians. It also debates guidelines, defines methods and means for armed conflict, according to its nature whether it is international armed conflict or non-international weaponry conflict.

Modern IHL rules are meant to be followed by all parties during the armed conflict. The violation or breach of any of the rules of IHL is conceived as war crime and for that, there are defined punishments in international humanitarian law.

The necessity for restrictions during war is vibrant (exciting). The threat of civilian death and criminal mishandling is larger than ever before. Progressions in military expertise, the explosion of weapons, and exemption for war crimes have made it informal (relaxed) for states and armed groups to pact (deal) death and destruction without consequence. Today's battles are being fought in compactly (closely) occupied urban settings, positioning civilians at great risk of collateral (guarantee) damage. Over the last century noncombatant sufferers during armed conflict has enlarged exponentially (increase become quicker and quicker) and as a result now account for nearly 90 percent of overall wartime casualties<sup>58</sup>.

Knowing the fear of war on civilian populations and military recruits (worker), the international community of states has taken on the challenging task of forming international standards to regulate the behavior of soldiers. Thrust at the turn of the 20<sup>th</sup> century for the arrangement of humanitarian codes into hard law led to the acceptance of a number of international treaties which remain at the footing of IHL today; nevertheless it was the fears of

<sup>57</sup>Ibid.

<sup>58</sup> The United Nations Children's Fund (UNICEF), Information: *Impact of Armed Conflict on Children, 1996*. Last accessed on 22/7/2016 from <http://www.unicef.org/graca/patterns.html>

World War II which led to the formation of an international criminal justice regime and speeded a push for a general set of rules principal conduct in war<sup>59</sup>.

The Geneva Conventions, which today serve as the establishment for present day IHL, are the main global treaties that have been acknowledged by each country in the world<sup>60</sup>. Their all-inclusive(broad, complete) acknowledgment shows the significance of this body of law as a foundation of universal relations. Taking into account four focal occupants, military need (just targets offering a conclusive military favorable position can be assaulted), refinement (contenders must at all times recognize military targets and regular citizen persons and structures), proportionality (assaults can't bring about inadvertent blow-back which is unreasonable to the military point of preference picked up from the assault), and the counteractive action of pointless enduring (belligerents must not utilize means and strategies for fighting which cause pointless harm or superfluous enduring), IHL is a basic roof on the utilization of power amid outfitted conflict<sup>61</sup>. But present day clashes have not just changed the element of warfare, they have additionally changed the motion of the law. Non-state armed groups, undefined from the regular citizen populace, frequently act outside of the law, murdering aimlessly and utilizing terrorism to endeavor military asymmetries. Countries additionally work in the dim space of the law as they look to increase any military favor position conceivable over contradicting strengths and utilize cutting edge weaponry not envisioned when the Geneva Conventions were adopted 64 years ago.

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<sup>59</sup> Joan Policastri and Sergio D. Stone, *International Humanitarian Law*, American Society of International Law, 2013 Last Accessed on 22/7/2016 from <http://www.asil.org/erg/?page=ihuml#id.utnofdl7zmb5> ; International Committee of the Red Cross, *What is International Humanitarian Law?* Advisory Service on International Humanitarian Law, 2004. Last accessed on 22/7/2016, from [http://www.icrc.org/eng/assets/files/other/what\\_is\\_ihl.pdf](http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf)

<sup>60</sup> International Committee of the Red Cross, South Sudan: *World's newest country signs up to the Geneva Conventions*, July 19, 2012. Last accessed on 22/7/2016 from <http://www.icrc.org/eng/resources/documents/news-release/2012/southsudan-news-2012-07-09.html>.

<sup>61</sup> LOAC Deskbook, *supra* note 4, pg. 135; Gary Solis, *"The Law of Armed Conflict: International Humanitarian Law in War"*, Cambridge University Press, 2010, p. 250-286.

### 1.3.1 SICK AND WOUNDED COMBATANTS

The Geneva Conventions of 1949 documented that “military necessity” has its restrictions and that fighters, as well as noncombatants, who are injured or held as detainees of war “*hors de combat* (the person who are incapable of performing their ability to wage war)”<sup>62</sup> should not be military targets and should be treated with dignity at all times. The Conventions also identify that both combatants’ and civilians who are wounded and sick should be treated equally, and that neither should be given differential treatment<sup>63</sup>.

The sick and wounded, Article 12 communal to the First and Second Geneva Conventions of 1949 states<sup>64</sup>, “shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subject to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.”

History is a wash (overprovided) with the explanations of sick and wounded civilians and combatants who have been materially and mentally abused by their imprisoners.

The most terrifying account of the abuse of war prisoners was witnessed during the Second World War<sup>65</sup> that occurred in a Japanese<sup>66</sup> germ warfare factory on the Manchurian Plain. Whom had been injured in fight, with bubonic plague, syphilis, cholera and other deadly microbes

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<sup>62</sup> Michael Bothe, K.J. Partsch, W.A. Solf, “*New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949. Second Edition. Reprint revised by Michael Bothe*”, 2<sup>nd</sup> Ed., Martinus Nijhoff Publishers, USA, 2013, pp.118.

<sup>63</sup> Eric Stover. *Crimes of War Project Sick and Wounded*, 2011. Last accessed on 23/7/2016 from <http://www.crimesofwar.org/a-z-guide/sick-and-wounded/#sthash.xq7ewa43.dpuf>

<sup>64</sup> Article 12, 1949 Geneva Convention I and Geneva Convention II.

<sup>65</sup> Williams Peter. *Unit 731: Japan's Secret Biological Warfare in World War II*. Free Press, 1989.

<sup>66</sup> Barenblatt Daniel. *A Plague Upon Humanity: the Secret Genocide of Axis Japan's Germ Warfare Operation*. Harper Collins, 2004.



to Japanese medics at the undisclosed facility vaccinated seized Chinese and Korean soldiers, many of equate the resistance to sickness of various races and nationalities. In result of this biological experiments, hundreds of prisoners of war died and hundreds more were killed by the Japanese when they escaped the laboratory<sup>67</sup>.

### 1.3.2 PRISONERS OF WAR

The Third Geneva Convention is relates to prisoners of war that had replaced the Prisoners of War Convention of 1929. It comprises 143 articles where categories of persons eligible to prisoner of war status were extended in accordance with Conventions I and II. The circumstances and places of imprisonment were more specifically defined, predominantly with respect to the labour of prisoners of war, their monetary resources, the liberation they get, and the judicial proceedings set up against them. The Convention establishes the standard that captives of war shall be unconfined and send home without delay after the ending of active hostilities.

International law has accepted just two status for those who are been seized during the war including the 'prisoners of war' and 'internees'<sup>68</sup> that is just given to the combatant. The Third Geneva Convention states that combatant is the 'member of armed forces of a party to a conflict are combatant, that is to say, they have right to participate directly to hostility'<sup>69</sup>.

The set of rules and regulations in Convention regarding prisons of war provides that within short time of period names and other relevant information of prisoners of war shall be provided to the committee of Red Cross<sup>70</sup>. The prisoners of war have been given permission to

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<sup>67</sup> Harris Sheldon H. *Factories of Death: Japanese Biological Warfare 1932-45 and the American Cover-Up*. Routledge, 1994.

<sup>68</sup> Ahmad, Muhammad Mushtaq, "*Jehad, Muzahimat Aur Baghawat*", Al Shariya Academy, Hashmi Colony kangni Wala Gujrawala, Est Publication, December 2008, pp.264-265. Also Available on <http://www.alsharia.org/matbooa/>

<sup>69</sup> Addition Protocol I, Article, 43/2, 1949.

<sup>70</sup> 3<sup>rd</sup> Geneva Convention, Article 122-123, 1949.

contact with their families<sup>71</sup> and shall be provided clean place to live<sup>72</sup>. Additionally, the Convention covers the complete care of their health and food<sup>73</sup> and they can be asked for any sort of service other than military on the basis of good numination<sup>74</sup>. However, no one can be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.<sup>75</sup> According to Convention, hostage of war can be given death sentence in some special cases<sup>76</sup> and the member of Red Cross Committee or any of international organization is eligible to visit them any time they want<sup>77</sup>.

### 1.3.3 CIVILIANS

Who is civilian? Fighter by night, Farmer by day. International humanitarian law provides shelter to both the individual and the civilian population.<sup>78</sup>

Modern IHL says civilian population and individual civilian shall enjoy general protection against dangers arising from military operation. To give effect to this protection there is a set of rule to be observed in all circumstances including that a civilian shall not be the object of attack, threat and terror, he will enjoy the protection until they take a direct participation in hostilities.

Nothing will release them from legal obligation and the indiscriminate attacks on civilian are prohibited<sup>79</sup>, they are protected against reprisals and the places of civilians shall not be used for military purposes. It is the legal obligation of all parties to conflict to observe these prohibited acts.

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<sup>71</sup> 3<sup>rd</sup> Geneva Convention, Article 48, 1949.

<sup>72</sup> 3<sup>rd</sup> Geneva Convention, Article 29-30, 1949.

<sup>73</sup> Ibid.

<sup>74</sup> 3<sup>rd</sup> Geneva Convention, Article 49, 50-62, 1949.

<sup>75</sup> 3<sup>rd</sup> Geneva Convention, Article 82-108, 1949.

<sup>76</sup> 3<sup>rd</sup> Geneva Convention, Article 100, 1949.

<sup>77</sup> 3<sup>rd</sup> Geneva Convention, Article 9-10, 1949.

<sup>78</sup> Addition Protocol I, Article, 50/2 and 3, 1949.

### 1.3.4 MEANS AND METHODS OF WARFARE

The parties in armed conflict are prohibited to use various means and methods described by modern international law. Such as Riot Control Agents<sup>80</sup>, Expanding Bullets<sup>81</sup>, Under Cover Operations<sup>82</sup> and Employing plain cloth commandos. They do not have unlimited option to choose mean and method of warfare. It is prohibited to employ Weapons, Projectiles and Materials or method to cause superfluous injury or unnecessary suffering<sup>83</sup>.

Each state involved in hostility should embrace such means and methods which are recognized under modern IHL. It also covers the behaviors of military action by affirming and providing guidelines of what mean and military tactics can be used in armed conflict.

The lone valid object during war is to abate (stop) military armies of the enemy so that using of mass destructive artilleries(weapons), whose destructive power can result in the death of thousands of people with a single use, is fully prohibited including biological, chemical and nuclear weapons<sup>84</sup>.

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<sup>79</sup> Additional Protocol I, Article 51/4A, 1949.

<sup>80</sup> Art 1 (5) CWC

<sup>81</sup> Hague Declaration concerning Expanding Bullets (1899); Art. 8 (2) (b) (xix) ICC Statute. The prohibition is also contained in Section 6.2 of the UN Secretary General's Bulletin. Affirming the customary nature of this prohibition in international and non-international armed conflict: J.-M. Henckaerts and L. Doswald-Beck (eds.), "Customary International Humanitarian Law", Vol. 1, Cambridge University Press, UK, 2006 (hereinafter CIHL, Rule 77).

<sup>82</sup> Art. 37 (1) (c) AP 1. In contrast to the prohibition of perfidy in Art. 37 AP 1, the prohibition of treachery in Art. 23 (1) (b) Hague Reg refer only to 'killing' and 'injuring', but not to 'capture'. According to ICRC the prohibition of perfidy as expressed in Art. 37 AP 1 has attained customary nature in both international and non-international armed conflict (CIHL, above, n.65, Rule 65).

<sup>83</sup> Addition Protocol I, Article 35, 1949.

<sup>84</sup> Nur Muhammad Azami. *Means and methods of warfare*, ASA, University review, July – Dec (2011), p.5:2.

## 1.4 APPLICABILITY OF IHL

International humanitarian law differentiates two types of armed conflicts, namely: international armed conflicts, contradictory to two or more States, and non-international armed conflicts, between governmental forces and non-governmental armed groups, or among such groups only. IHL treaty law also sets up an eminence between non-international armed conflicts in the meaning of common Article 3 of the Geneva Conventions of 1949 and non-international armed conflicts subsiding(falling) within the definition provided in Article 1 of Additional Protocol II.

### 1.4.1 INTERNATIONAL ARMED CONFLICTS

The common Article 2 to the Geneva Conventions of 1949 states that:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

According to this provision, IACs are those which oppose "High Contracting Parties", meaning States. IAC ensues (arises) when one or more States have option to armed force in contradiction(conflict) of another State, irrespective of the motives or the concentration of this conflict. Applicable rules of IHL may be valid even in the absence of open hostilities. Additionally, no prescribed declaration of war or recognition of the condition is requisite. The existence of an IAC, and as a concern, the possibility to apply International Humanitarian Law to this state, depends on what actually happens on the ground. It is based on factual conditions, for example, there may be an IAC, even though one of the fighters does not recognize the government of the opposing party. The Commentary of the Geneva Conventions of 1949 confirms that:

[A]ny difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place.<sup>85</sup>

Besides regular, inter-state armed conflicts, Additional Protocol I covers the explanation of IAC to include armed conflicts in which peoples are hostile contrary to colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation).<sup>86</sup>

## 1.4.2 NON- INTERNATIONAL ARMED CONFLICTS

Two core legal cradles must be inspected in order to regulate what a NIAC under international humanitarian law is: a) common Article 3 to the Geneva Conventions of 1949; b) Article 1 of Additional Protocol II.

The common Article 3 applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties". These embrace armed conflicts in which one or more than one non-governmental armed parties are engaged. Liable on the condition, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only. As the four Geneva Conventions have commonly been ratified now, the requirement that the armed conflict must occur "in the territory of one of the High Contracting Parties" has lost its significance practically. Indeed, any armed conflict between governmental armed forces and armed groups or between such groups cannot but occurred on the territory of one of the parties to the Convention.

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<sup>85</sup> Jean Pictet. *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, p. 32

<sup>86</sup> Additional Protocol I, Article 1, Para 4, 1949.

In order to differentiate an armed conflict, in the meaning of common Article 3, from less serious forms of violence, such as internal conflicts and pressures, riots or acts of violence, the situation must reach a certain verge of hostility. It has been generally recognized that the minor threshold found in Article 1(2) of APII, which omits internal disorders and tensions from the definition of NIAC, also applies to common Article 3. Two criteria are usually used in this regard;<sup>87</sup>

First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces.<sup>88</sup>

Second, non-governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations.<sup>89</sup>

A more protective meaning of NIAC was accepted for the specific purpose of Additional Protocol II. This tool applies to armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident (rebel)s armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained(constant) and concerted military operations and to implement this Protocol".<sup>90</sup>

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<sup>87</sup>ICTY, *The Prosecutor v. DuskoTadic*, Judgment, IT-94-I-T, 7 May 1997, p. 561-568; see also ICTY, *The Prosecutor v. FatmirLimaj*, Judgment, IT-03-66-T, 30 November 2005, p. 84

<sup>88</sup>Ibid.

<sup>89</sup>David Schindler. *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, 1979, p. 147.

<sup>90</sup>Additional Protocol II, Article 1, p 1, 1949.

In this context, it must be reminded that Additional Protocol II "develops and supplements" common Article 3 "without modifying its existing conditions of application".<sup>91</sup>

## 1.5 GENERAL PRINCIPLES OF IHL

Rules of international humanitarian law (IHL) attempt in broad terms to regulate conflict in order to minimize human suffering. IHL reflects this constant balance between the military necessity arising in a state of war and the needs for humanitarian protection.

There are different basic principles of IHL, each should be found within the specific rules and norms of IHL itself, but the principles may also help clarification of the law when the legal matters are indistinct or controversial. Depending on the issue, the balance between the principles and interest shifts. For example, during hostilities, military necessity may limit the concept of mortality by allowing for obliteration (destruction), but in other situations such as the protection of the wounded and sick, the principle of humanity is at the heart of the legal rules.

### 1.5.1 DISTINCTION

The principle of distinction specifies that combatants must distinguish themselves from civilians.<sup>92</sup> As a result, combatants must neither deliberately target nor indiscriminately or

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<sup>91</sup>Ibid.

<sup>92</sup> Rule 1 of the Study on CIHL. See Henckaerts, J.-M. Study on customary international humanitarian law: a contribution to the understanding and respect for the Rule of Law in Armed Conflict. 2005, 857 IRRC 198; see also Protection of Civilian Populations against the Dangers of Indiscriminate Warfare, Res. XXVIII, adopted by the XXth International Conference of the Red Cross, Vienna, 1965. While the principle of distinction is equally applicable in international and non-international armed conflicts, this discussion focuses on international armed conflicts. Indeed in non-international armed conflict the concept of combatant does not exist.

disproportionally harm civilians.<sup>93</sup> The definition of who falls within the categories of combatants or civilians is therefore of crucial importance in IHL. The concept of "civilian" is "defined in contra-distinction to combatants: civilians are those who are not combatants".<sup>94</sup> In essence, whoever does not fulfill the criteria of a combatant is considered as a civilian. The principle of distinction stems from the Preamble to the 1868 Declaration of St Petersburg<sup>95</sup> and was later incorporated into the Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land.<sup>96</sup> In contemporary treaties, the principle is enshrined in Articles 48, 51 and 52 of Additional Protocol I<sup>97</sup> in relation to international armed conflicts and in Article 13 of Additional Protocol II in relation to non-international armed conflicts.<sup>98</sup>

### 1.5.2 PROPORTIONALITY

The principle of proportionality limits and protects potential harm to civilians by demanding that the least amount of harm is caused to civilians, and when harm to civilians must occur it needs be proportional to the military advantage. The article where proportionality is most prevalent is in Article 51(5) (b) of API concerning the conduct of hostilities which prohibits attacks when the

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93 Rule 1 of the Study on CIHL. See Henckaerts, *supra* note 19, at 198.

94 Kleffner, J. K. From "belligerents" to "fighters" and civilians directly participating in hostilities. On the principle of distinction in non-international armed conflicts one hundred years after the Second Hague Peace Conference. 2007, p. 315-321.

95 "[T]he only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy". 1868 St Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight in Roberts, A. & Guelff, R. (eds.). Documents on the Laws of War. 2nd ed., 1995, p. 30.

96 Regulations Respecting the Laws and Customs of War on Land annexed to The Hague Convention (IV) Respecting the Laws and Customs of war on Land, 18 October 1907 in Roberts & Guelff, *supra* note 22, at 44.

97 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I) 1977, 1125 UNTS 3.

98 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (AP II) 1977, 1125 UNTS 609.



civilian harm would be excessive in relation to the military advantage sought. This is an area of hostilities where we often hear the term 'collateral damage'.

### 1.5.3 LIMITATION

The Statute of the International Criminal Court provides that the crimes within the jurisdiction of the Court are not subject to any statute of limitation, and this provision was not a matter of controversy, in part because the International Criminal Court only has jurisdiction in relation to acts committed after the Statute enters into force for the State concerned.<sup>99</sup> UNTAET Regulation No. 2000/15 for East Timor also states that war crimes may not be subject to any statute of limitation.<sup>100</sup>

TH: 182228 The principle that statutes of limitation do not apply to war crimes is set forth in many military manuals and in the legislation of many States, including those of States not party to the UN or European Conventions on the Non-Applicability of Statutory Limitations to War Crimes or Crimes against Humanity.<sup>101</sup> There are also official statements to this effect. For example, in 1986, the United States wrote a note to Iraq (also not party to the UN Convention) to the effect that individuals guilty of war crimes could be subject to prosecution at any time, without regard to any statute of limitations.<sup>102</sup> In a letter to the UN Secretary-General in 1993, Yugoslavia stated that war crimes were not subject to statutes of limitation.<sup>103</sup> In 2000, upon signature of the Statute of the International Criminal Court, Egypt stated that it was a "well established principle that no war crime shall be barred from prosecution due to the statute of limitations".<sup>104</sup> There is also case-law of States not party to the UN or European Conventions in which the courts concerned ruled that

<sup>99</sup> ICC Statute, Article 29 (cited in Vol. II, Ch. 44, p. 767).

<sup>100</sup> UNTAET Regulation No. 2000/15, Section 17(1) (ibid., p. 772).

<sup>101</sup> the military manuals of Australia (ibid., p. 773)

<sup>102</sup> United States, Department of State, Diplomatic Note to Iraq (ibid., p. 861).

<sup>103</sup> Yugoslavia, Deputy Prime Minister and Minister of Foreign Affairs, Letter to the UN Secretary-General (ibid., p. 865).

<sup>104</sup> Egypt, Declarations made upon signature of the ICC Statute (ibid., p. 768).

statutes of limitation do not apply to war crimes.<sup>105</sup> It is significant that several States that objected earlier to a prohibition of statutory limitations, or whose legislation was not clear on this point, have now ratified the Statute of the International Criminal Court or the UN Convention on Non-Applicability of Statutory Limitations thus recognizing the principle that statutes of limitation do not apply to war crimes.<sup>106</sup>

### 1.5.4 MILITARY NECESSITY

A dominant notion within the framework of IHL is military necessity, often the principle which clashes most with humanitarian protection. Military necessity permits armed forces to engage in conduct that will result in destruction and harm being inflicted. The concept of military necessity acknowledges that under the laws of war, winning the war or battle is a legitimate (valid) consideration (concern). However, the concept of military necessity does not give the armed forces the freedom to ignore humanitarian considerations altogether and do what they want. It must be interpreted in the context of specific prohibitions and in accordance with the other principles of IHL.<sup>107</sup>

It is important to note that the notion itself is to be found within the rules of IHL. For example, those objects that can be subject to lawful attack. The notion cannot be applied to override (prevail) specific protections, or create exceptions to rules where the text itself does not provide for one.<sup>108</sup>

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<sup>105</sup> Italy, Supreme Court of Cassation, Hass and Priebke case (ibid., p. 832).

<sup>106</sup> France, Penal Code (ibid., p. 795)

<sup>107</sup> *Basic Principle of IHL*, diakonia: International Humanitarian Law – Resource Center, 2013. Last accessed on 12/8/2016 from <https://www.diakonia.se/en/ihl/the-law/international-humanitarian-law-1/introduction-to-ihl/principles-of-international-law>

<sup>108</sup> Additional Protocol I, Article 52, 1949.

### 1.5.5 HUMANITY

The principle of humanity, and its absence during the battle of Solferino of 1859, was the central notion that inspired (encouraged) the founder of the International Committee of the Red Cross (ICRC), Henry Dunant. The principle stipulates that all humans have the capacity and ability to show respect and care for all, even their sworn enemies. The notion of humanity is central to the human condition and separates humans from animals.

IHL, the principles of which can be found in all major religions and cultures, set out only basic protections, but ones which look to demonstrate that even during armed conflict there is some common sense of and respect for humanity. Modern IHL is not naïve (inexperienced) and accepts that harm, destruction and death can be lawful during armed conflict. IHL simply looks to limit the harm, and the principle of humanity is very much at the heart of this ambition. Many rules of IHL are inspired by this notion, specifically those setting out protections for the wounded and sick.<sup>109</sup>

This defines who is a combatant and a military object that can be lawfully attacked. Any direct attack against a civilian or civilian object is not only a violation of IHL but also a grave breach. Direct attacks against civilians and/or civilians' objects are categorized as war crimes. Additionally, any weapon which is incapable of distinguishing between civilians/civilian objects and fighters/military objects is also prohibited under IHL.<sup>110</sup> The principle is also a rule of customary international law, binding on all states.

The prohibition to attack any person *hors de combat* (those who are sick and wounded prisoners of war) is a fundamental rule under IHL. For example, while a soldier could be targeted

<sup>109</sup>Ibid.

<sup>110</sup> Additional Protocol 1, Article, 48-52, 1949.

lawfully under normal circumstances, if that soldiers surrenders or is wounded and no longer poses a threat, then it is prohibited to attack that person. Additionally, they may be entitled to extensive protections if they meet the criteria of being a Prisoner of War. One rule that has been established based on this principle is the prohibition on the use of blinding laser weapons.

## CONCLUSIONS

The associated relationship that the distinctive sources of international humanitarian law keep up with each other is significant to the system continuing as an incorporated (united) and rational(coherent, balanced) system of law. Given chapter analyzed how a percentage (part, section) of the principle sources of international humanitarian law identify with each other and how that relationship adds to keeping up such an organized and coordinated framework. Especially, the part of treaty law, customary international law, and a portion of the fundamental standards of humanitarian law has been discussed in this chapter.

A noteworthy part of international humanitarian law is contained in the four Geneva Conventions of 1949. About each State on the planet has consented to be bound by them. There is a stern need for measures to be taken to guarantee respect for these laws. States have a commitment to show its rules to their military and the general population. it is the responsibility of state to anticipate(in advance) infringement or impose punishments for their violations within its jurisdictions. Specifically, state should order laws to punish the most genuine infringement of the Geneva Conventions and Additional Protocols, which are viewed as war crimes. The States should likewise pass laws securing the Red Cross and red emblems. Likewise measures should be taken at a global level: tribunals have been made to rebuff (refuse) acts conferred in armed clashes. The rules provide great variety of laws that could be used to minimize the drastic effects of war and

armed conflicts around the globe by simply implementing these law with true letter and spirit domestically.

## CHAPTER 2

# IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW AND STATE RESPONSIBILITY

### INTRODUCTION

International humanitarian law also called the law of war confine the impacts of weapon equipped clashes or armed conflicts and ensures the individuals who are not, or didn't really, participating in the battling, and pose limits on the methods and techniques for warfare<sup>111</sup>. The implementation of these laws covers approximately all measures that should be taken to guarantee that the principles of IHL are completely regarded.

These measures are important to guarantee that both regular people and the military work force are acquainted with the guidelines of humanitarian law. States have a reasonable commitment to embrace and do measures executing humanitarian law. May be these measures ought to be taken by one or more government departments, the courts, the legislators, the military, or any other body or bodies of the State designated for this purpose<sup>112</sup>. There might likewise be a part for expert and instructive bodies, the National Red Cross or Red Crescent Society or other

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<sup>111</sup> *Implementing International Humanitarian Law: from Law to Action*, Advisory Service on International Humanitarian Law Legal Division, International Committee of the Red Cross, Geneva. 2002.

<sup>112</sup> *Ibid*, p.2

intentional associations. Measures have additionally been taken at a global level to manage infringement of humanitarian law.

Tribunals have been established to manage infringement submitted amid the late clashes in Rwanda and in the former Yugoslavia<sup>113</sup>. The principle measures in such manner are to have the Conventions and Protocols deciphered into the national language(s) as well as to spread information of their provision as broadly as possible under both circumstances i.e. inside of the military and the masses<sup>114</sup>. In addition, it might aid to curb all infringement recorded in that capacity in the aforementioned instruments and more specifically to embrace criminal enactment that rebuffs atrocities and war crimes. Additionally, to guarantee that protected persons appreciate legal, judicial and other principal assurances amid armed conflict and to designate and prepare persons qualified in international humanitarian law, specifically lawful counselors inside of the military. The foundation and regulation of National Red Cross and Red Crescent Societies and other intentional aid societies, civil defense organizations, National Information Bureaux<sup>115</sup> and to make note of IHL while selecting military destinations security zones and neutral territories as well as demilitarized zone etc. Numerous States have set up national humanitarian law boards of trustees or comparable bodies for this reason<sup>116</sup>. They unite government officials and others with obligations in implementation process.

This chapter explains the mechanism of enforcing international law within the national legal systems of states, particularly in Pakistan. It first explains theories about the relationship of

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<sup>113</sup> Daniel Dormoy, 'Recent developments regarding the law on participation in international organisations', in Karel Wellens (ed.), *International Law: Theory and Practice – Essays in Honour of Eric Suy*, Martinus Nijhoff, The Hague, 1998, p. 323.

<sup>114</sup> Marco Sassoli, *Transnational Armed Groups and International Humanitarian Law*, Harvard University Occasional Paper Series, 2006.

<sup>115</sup> Jean Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law*, Cambridge: Cambridge University Press, 2005.

<sup>116</sup> *Additional Protocols to the Geneva Conventions of 1949* – International Committee of Red Cross – ICRC, 2013.

international law and municipal law, such as monism and dualism. Then it elaborate the provisions of IHL, particularly the Geneva Conventions, about implementation of IHL, which make the ground for asking Pakistan to fulfill its obligations in this regard.

## 2.1 RELATIONSHIP OF INTERNATIONAL LAW AND MUNICIPAL LAW

International law and municipal law have generally inclined (liable) to moderately (reasonable) distinctive issues. International law is by a great extent concerned with connection among States while municipal law controls relations between people inside the state and between the State and its citizen. Likewise, they contrast (distinction) out in their legal procedures both are typically connected by national court. Which brings about complete decentralization (devolution) of the legal capacity in international law and viably (feasible) centralization in municipal law<sup>117</sup>.

There is no strict rule that must be followed in order to ratify/accede (agree) to IHL treaties<sup>118</sup> but with the objective to provide protective covering to victims during the times of armed conflict these rules provide regulating handles of hostilities and furnish protection to those who do not want to participate or no longer have any will to directly participate in hostilities with the aim to establish the requisite juridical foundation that safeguards the lives and dignity of victims of armed conflict.

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<sup>117</sup> D. N. Palmer and C. H. Perkins, *International Relations: The World Community in Transition*: Third Revised Edition (India: A.I.T.B.S Publishers & Distributors, 2007) p. 274.

<sup>118</sup> *Ratification and Accession, Treaties, States Parties and Commentaries*: <https://www.icrc.org/applic/ihl/ihl.Last> accessed on 12/8/2016.



What is vital here that the State concerned formally pronounces its consent to be bound by the arrangement as per its national strategies for adhesion (union) to universal bonds. This regularly requires consent by parliament of the State. Once the formal choice to be bound has been brought as per national methods, the State stores an instrument of ratification/accession (agreement) with the depositary (as a rule the United Nations or a State). The documenting (recording) of this instrument is the bustle (activity) that gives international power to the State's dedication and makes settlement relations, incorporating rights and commitments as for other parties<sup>119</sup>.

The connection between international law and municipal law is quite debatable in today's era. For one school, the dualists, civil law prevails if there should be an occurrence of contention; for the other school, the monists, global law prevails<sup>120</sup>. There are two extraordinary elements about the level headed discussion which warrant notice: in the first place, that while the disputants don't generally contrast in a definitive arrangement of practical issues<sup>121</sup>, they do vary significantly in their real premises and in the subsequent hypotheses. Secondly, the endeavor of different nations once in a while to get away from the restrictions of international law convinces them to discover a supporting theory in its supposed constrained degree and in a remunerating(rewarding) accentuation(notice, stresses) upon State power<sup>122</sup>. The individuals who have kept up the dualism of the two frameworks and the prevalence of municipal law have found some hypothetical backing in the assumed shortcoming of international law as a legal framework. The claimed availability with which the guidelines have been violated in time of war loans extra quality to this perspective. The

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<sup>119</sup> *The Domestic Implementation of International Humanitarian Law*, ICRC national implementation database. Last accessed on 12/8/2016 from <http://www.icrc.org/ihl>.

<sup>120</sup> Picciotto. *The Relation of International Law to Tile Law of England and of The United States*, 1915.

<sup>121</sup> Scott. *The Legal Nature of International Law*, 1907.

<sup>122</sup> Westlake. *Is International Law A Part of the Law of England*, 1906.

undue damage made on international law as an assumed preserver of peace<sup>123</sup> and the inability to consider the addition of politics further exasperates(irritate) adjusted judgment.

The law that applies within a state is depicted(illustrated) diversely as 'National', "Internal" or "Municipal" law<sup>124</sup>, however most worldwide lawyers now seem to bolster(boost) 'domestic law'. For global legal advisers, the most basic part of domestic law is its association with International law. Yet international law exists on the entire world, a considerable amount of it is as of now anticipated (predicted) that would accomplish significant into the internal legal solicitation of states hence work in local or domestic law. International law does not allow a State to invoke(appeal) its domestic law to legitimize its powerlessness to perform an agreement. The way in which domestic courts deal with an issue of international law is vital accompanied to it.

How ideal international law is associated by local courts is absolutely dependent on the constitution and law of each State. Most see international law as a part of local law and along these lines does not be shown by expert confirmation, yet is by at large a matter that monetizes(convert or express in the form of money) the contention. The refinement of philosophy is between those constitutions that provides International law is applicable law<sup>125</sup> (e.g. Germany), and those where it is unquestionably not. In the last case, if there is a conflict between International Law and the constitution, the constitution would prevail (e.g. the United States), or Legislation, the enactment would prevail<sup>126</sup> (e.g. the United Kingdom and most commonwealth states that includes Pakistan as well).

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<sup>123</sup> Ibid, p.35

<sup>124</sup> OnyekachiDuru. *International Law Versus Municipal Law: A Case Study of Six African Countries; three of which are Monist and three of which are Dualist*, 2011. p. 3-9.

<sup>125</sup> Ibid, p.7

<sup>126</sup> Anthony Aust, *Handbook of International Law*. Cambridge University Press, 2005. p. 12-13

### 2.1.1 MONISM AND DUALISM

States may be generally described as either monist or dualist. According to monism, the national and international law establish expressions of a single universal system. Eventually regulating the behavior of individuals is what the theory proposes for all rule of law, whether those guidelines originate from national or international law. Consequently, the two systems are unified measure of a solitary structure.

Most of the monists, who belong to natural law school including Herschel Lauder Patch, Hugo Grotius and Hans Kelsen<sup>127</sup> who argued the notion that international legal order is only noteworthy as part of a universal legal order which also contains the national legal order. The monist school contends that not only do international legal rules<sup>128</sup> and several national legal orders establish a lone universal system but national legal orders take a subordinate position during conflicts.

On the other hand in the doctrine of transformation or dualism, identifies national law and international law as two discrete and autonomous legal orders, each having an innately (naturally) and operationally different character<sup>129</sup>. Both legal orders are distinct and constituting a complete and independent unit in and of themselves fields of legal action, and ideally there should be no argument of conflict between these two orders. As they are unconnected legal systems,

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<sup>127</sup> Jaycee Dugard. *International Law: A South African Perspective* Third Edition (Kenwyn: Juta, 2006) p. 53-58.

<sup>128</sup> L. J. Kunz. 'The Nature of Customary International Law', *American Journal of International Law* 47, 1953. p. 662-669; See also H. Kelson, and O. Thosa, *National Law and International Human Rights Law: Cases of Botswana, Namibia and Zimbabwe* (Aldershot: Ashgate, 2001).

<sup>129</sup> Maluwa T. "The Role of International Law in the Protection of Human Rights under Malawian Constitution" *Africa, 1996 Year Book of International Law*, p. 53. Morgenstern, F., "Judicial Practice and Supremacy of International Law" *A British Year Book of International Law*, p. 27-42, 1950.

international law would intrinsically (basically) not custom part of the municipal law of the state<sup>130</sup>.

Dualism argues that the two legal systems are distinct in nature.

In monist States, treaties naturally take undeviating outcome in domestic law without distinct instigating of legislation. Most of the states, in their national system<sup>131</sup> are partly monist as well as dualist in their definite solicitation of international law. In UK, the dualist view is prevalent as compare to USA who has a system consists on mixture of monist and dualist where international laws are directly applied in courts in some cases while in other cases they are not<sup>132</sup>.

As part of the treaty accord system, the practice of passing law by the parliament of state is known as "ratification law"<sup>133</sup>, who after adoption orders it to be published in the official gazette. ICRC pursues the domestic application of 27 principal treaties which included the 1949 Geneva Conventions and their Protocols of 1977 and 2005<sup>134</sup>. Conversely, most provisions in international humanitarian law treaties involve the application of more than what an archetypal "ratification law" comprehends. IHL treaties entail the enactment of various definite provisions including the implementation of emblem protection measures, or the establishment of a national information bureau.<sup>135</sup>

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<sup>130</sup> Hegel, Anzilotti and Triepel, 'the two legal systems are distinct in nature'.

<sup>131</sup> Pieter Kooijmans. *International publication in vogelvlucht*, WoltersNoordhoff, Groningen, 1994, p. 83.

<sup>132</sup> Michael Akehurst. *Modern Introduction to International Law*, Harper Collins, London, 1989, p. 45.

<sup>133</sup> *West's Encyclopedia of American Law*, Edition 2.

<sup>134</sup> Christopher Harland. *The Domestic Implementation and Application of International Humanitarian Law Norms*, Geneva, p 2-4.

<sup>135</sup> Article 32, Additional Protocol I (AP-I), Articles 32-33, AP-I and Articles 136 to 141, the Fourth Geneva Convention (GC-IV).

## 2.1.2 THE NEED OF INCORPORATING LEGISLATION

State is responsible to implement IHL and it is the sole responsibility of the state to take practicable and legal measures both in armed conflict and peacetimes to ensure full compliance<sup>136</sup> with international law. States have vowed (promised) obedience with all the mechanisms that structure International Humanitarian Law only then it will be possible to ensure equal protection for all victims of armed conflict.

It is clear from the prior that national bodies made to advance humanitarian law will be instrumental in encouraging ratification, usage and dispersal of humanitarian law conventions<sup>137</sup>. In spite of the fact that there is no legitimate commitment to make such bodies, various states have considered it advantageous to make such instruments in various parts of the world, regularly in close coordinated effort with the ICRC. In so far as the South Asian nations are concerned, it is for sure gladdening to note that some positive advancement is stirring in this region. In March 2000, a national humanitarian law council was set up by the Government of Sri Lanka for which the Ministry of Foreign Affairs took activity. The ICRC<sup>138</sup> has additionally talked about the likelihood of setting up such bodies in Bangladesh, India and Nepal. The dominant voices in these nations are nearly analyzing the issue and are prone to start the procedure. Without a doubt, this will go far in advancing helpful law in this part of the world.

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<sup>136</sup> Christopher. Harland, *The Domestic Implementation and Application of International Humanitarian Law Norms*, Geneva, p 19.

<sup>137</sup> "National Measures to implement international humanitarian law, Resolution V of the 25<sup>th</sup> International Conference of the Red Cross (Geneva, 1986).

<sup>138</sup> *International humanitarian law: From Law to Action - Report on the Follow-up to the International Conference for the Protection of War Victims*, ICRC, (Geneva, 1995).

In case of Pakistan, the Diplomatic and Consular Privileges Act, 1972 gives effect in country to the Vienna Convention<sup>139</sup> on Consular Relations, 1963 and Vienna Convention on Diplomatic Relations, 1961. The law has incorporated eleven Articles of the Convention<sup>140</sup>.

Pakistan as a state following dualism<sup>141</sup> obliges enactment of any law by its parliament so as to unite any provisions into its legal system. Pakistan, being a dualist nation, works on such a comparative lawful system. International law administered by the rule that states regard the settlements and decides their powerful application by utilizing state organizations, makes their route into our residential enactment through the procedure of sanction. Ratification here is a procedure through which the state gives its endorsement, through a demonstration of the parliament, to execute the law in the nation. Hence, marking an arrangement alone does not tie or summon its provisions and ratification is critical for implementing the provisions of international treaties<sup>142</sup>.

There is a stern need of not only accepting the international laws at local level but their implementation is to some extent vital in terms to safeguard the universally admitted basic rights of citizens as well as protection of the victims of armed conflict.

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<sup>139</sup> Article IX of 1972 The Diplomatic and Consular Privileges Act of Pakistan.

<sup>140</sup> Article 32, 35, 36, 40, 50, 51, 52, 54, 62 and 67 in First, Second and Third Schedule of The Diplomatic and Consular Privileges Act of Pakistan, 1972.

<sup>141</sup> Improving Parliamentary Performance (IP3) published *Handbook on Human Rights for Parliamentarians, Committees and Secretariat Staff in Pakistan* 2013, p.51-56.

<sup>142</sup> Ibid. p.52.

## 2.2 ENFORCEMENT MECHANISM FOR IHL

Parties to the 1949 Geneva Conventions and to Protocols, 1977, grasp(knowledge) to regard and guarantee respect for the instrument being referred to<sup>143</sup>, and their dissemination<sup>144</sup>.

Distinctive authorization instruments present however retaliation (revenge)<sup>145</sup> has been denied. From the roots of history, there are evidences which ascertained that there are numerous violations of international humanitarian law that has increased the number of war victims around the globe. On the other hand in some cases, the law succeeds in securing the victims of war zones and restricted the use of barbaric weapons.

Implementation of the law always remain a matter of great difficulty as this very body of law applies amidst violence and conflicts but still the strive for effective compliance by states remains on priority. Government and various organizations within the state may be found helpful in compliance with IHL that would be an import step forward to the protection of human rights during warfare.

### 2.2.1 IMPLEMENTATION MECHANISM AT THE INTERNATIONAL LEVEL

International law leaves a reasonable extent of jurisdictional will to States, which can declare jurisdiction(authority) if this can be vindicated(justified) by a statute of international law, which is largely lenient. Although jurisdiction would be debated conferring (consulting) to traditional doctrines, it may be that a general belief has now developed that a State may implementation

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<sup>143</sup>Common Article1, 1949.

<sup>144</sup>Article 127 of Third and Article 144 of Fourth Convention of 1949.

<sup>145</sup>Articles 20 and 51(6) of Protocol I of 1977.

jurisdiction if there is a adequately near linking between the subject matter and the State to supersede(replace) the securities of a rival State<sup>146</sup>.

One of the strategies for implementation is the way to go of the Protecting Power, chose to watch over the interest of nationals of one social gathering to a conflict under the control of the other, whether as prisoners of war or civilians. Such force must certify, to the point that consistence with the grave achievements has been prejudiced (discriminatory) and that the structure drives about as a kind of indemnity for the assured individual and a channel of correspondence for him with his state.

The downside (disadvantage) of this charter is its dependence upon the acceptance of the parties involved. It not only limits the arrangement of the protecting force but also the ratification of laws by state as well as the consent of person living in that state.<sup>147</sup> Since the part is quite dynamic to the sanction and operationalization of humanitarian law, it is thus a flaw to be liable to state authority and its assent under the law. This entails (required) the croft state to decline its sharing and perform limited voluntary operations. Historically it has evident on various incidents, for instance the refusal of Chinese to approve the procedure of a protecting power as to its war with India in 1962, and the Indian refusal, of 1971 and hence, as to Pakistani detainees of war in its charge. Protocol I also lodges an International Fact Finding Commission for competence to ask into severe ruptures(disagreement, breaches)<sup>148</sup> of the protocols or the Geneva Conventions itself or different candid(straight) violations, and to embolden(encourage) through its inordinate workstations the 'reclamation(recover) of a state of mind of appreciation' for these instrument<sup>149</sup>.

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<sup>146</sup> Matthew Higgins, *Handbook of international law*, 2010, p. 65.

<sup>147</sup> Article 8 of GC I; Article 8, GC-II, Article 8, GC III and Article-9, GC IV.

<sup>148</sup> Articles 50-51, 130 and 147 of the Four 1949 Conventions and Article 85 of Protocol I, 1977.

<sup>149</sup> Article 90, Protocol I, 1977.



The parties to a conflict might themselves, obviously, set up a specially appointed ad hoc inquiry into infringement of humanitarian law.<sup>150</sup>

There are without a doubt challenges in the enforcement of international humanitarian laws endemic (common) to international law generally<sup>151</sup>. The system is based on goodwill and voluntary actions by the parties. The most appropriate appliances (purpose) are of normative (establishing, relating to behavior) rather than of contributory nature. New practices and institutional developments have limited these problems to some extent.

The High Contracting Parties agree to pass any law essential to offer effective penal sanctions for persons committing and/or ordering to be committed, any of the grave breaches of the Conventions<sup>152</sup>. The law states "Each state shall be responsible under the obligation to search for persons alleged to have committed or to have ordered to be committed such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another state concerned, provided such High Contracting Party has made out a *prima facie*<sup>153</sup> case".

The Convention bonds member state to legislate and give effect to the provisions of the Conventions as well as penalize those who commit grave breach<sup>154</sup>.

These include, but not limited to the act, protected property and persons, deliberate killing, torment, inhuman conduct and biological tests, willfully triggering great misery or serious injury to body or health and destruction of property without any care for military necessity<sup>155</sup>.

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<sup>150</sup> Articles 52-53, 132 and 149 of the Four 1949 Conventions.

<sup>151</sup> Robert Kolb and Richard Hyde, *An Introduction to International Law of Armed Conflict*, 2008, p. 284-5.

<sup>152</sup> Article 49, Geneva Convention-I, Article 50, Geneva Convention-II, Article 129, Geneva Convention-III, Article 146, Geneva Convention-IV.

<sup>153</sup> Article 146, Geneva Convention IV, *The Protection Of Civilian Persons In Time Of War*, 1949.

<sup>154</sup> Article 50, Geneva Convention-I, Article 51, Geneva Convention-II, Article 130, Geneva Convention-III, Article 147, Geneva Convention-IV, Article 85, Additional Protocol-I.

In addition, state is required to look for those who had violated the law and punish them domestically. State can also hand over the accused to another state at its request accordingly. However accused will be given fair trial in all the circumstances<sup>156</sup>. The law also provides that each state or high contracting party shall take necessary measures for the suppression (overthrows) of all acts contrary to the provisions of the Conventions other than the grave breaches defined in the law.

The sections of Conventions that deals with grave breaches are known to be one of the most important sections that needed to be incorporated domestically by all contracting parties of the convention. As there is a direct obligation<sup>157</sup> for this in Geneva Convention 1, Article 49 under the paragraph 1 that suggests to contemplate(consider) the domestic incorporation of these grave breaches as crimes.

## 2.2.2 ICRC MODEL LEGISLATION

Furthermore, ICRC<sup>158</sup> has exemplary legislation for most of these treaties added with sample legislation from many other countries hence work could be started to incorporate the provisions of the 1972 Biological Weapons Convention and the Hague Cultural Property Convention. It is provided under Article 90 of Protocol 1 that to investigate alleged grave breaches International Fact Finding Committee shall be established to probe (9enquiry) the allegation regarding grave breaches and other violations of the Conventions and Protocols. The contracting parties may accept the competence of aforementioned Commission.

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<sup>155</sup>Commentary to GC-I p.370-72; GC-II p. 266-70; GC-III p. 626-29; GC-IV p. 596-601.

<sup>156</sup>Commentary to GC-I p. 362-70; GC-II p. 263-66; GC-III p. 620-26; GC-IV p. 589-96.

<sup>157</sup>Article 49 of the Geneva Convention 1, 1949.

<sup>158</sup>[www.icrc.org](http://www.icrc.org) for publications on Conventions and Protocols, Last accessed on 17/8/2016.

In case, grave breach is committed<sup>159</sup>, the state is bound to compensate other party under war reparation. While persons are accountable for such crimes but states cannot be liberated as individual carry the directives (dictate) on behalf of the states<sup>160</sup>.

It is the duty of the parties to question into an alleged violation<sup>161</sup>. When one of the parties had requested, other party cannot deny it. If the parties do not agree upon mode of enquiry they must determine the third party that will decide between them accordingly. If it has been violated, the states<sup>162</sup> shall suppress (overturn) the same instantaneously.

Another significant case is the misuse of emblem as it is used for revealing as well as defending purpose<sup>163</sup>. Symptomatic (suggestive) means when it shows association of individual with ICRC in time of peace and protective means to prolong protection to property and persons during war and armed conflict. The misuse of emblem is prohibited in both the peace as well as in war time. Yet, its misuse<sup>164</sup> during war is extra precarious (risky).

The law sets out several openly identifiable symbols which can be used to classify protected places, objects and people<sup>165</sup>. The main emblems are the Red Cross, the Red Crescent and the symbols recognizing cultural assets and civil defense spaces. It is the obligation of States<sup>166</sup> to legislate for protecting the Red Cross and Red Crescent emblems.

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<sup>159</sup>Article 51, Geneva Convention-I, Article 52, Geneva Convention-II, Article 131, Geneva Convention-III, Article 148, Geneva Convention-IV, 1949.

<sup>160</sup>Commentary to GC-I p. 372-73; GC-II p.270-71; GC-III p.629-30; GC-IV p. 602-3.

<sup>161</sup>Article 52, Geneva Convention-I, Article 53, Geneva Convention-II, Article 132, Geneva Convention-III, Article 149, Geneva Convention-IV, 1949.

<sup>162</sup>Commentary to GC-I p. 374-79; GC-II p. 271-73; GC-III p. 630-32; GC-IV p. 603-06

<sup>163</sup>Article 53, Geneva Convention-I and Geneva Convention-III, 1949.

<sup>164</sup>Commentary to GC-I p.380-83.

<sup>165</sup> ICRC Advisory Service on IHL, *The Domestic Implementation and Application of International Humanitarian Law Norms*, Geneva p.7

<sup>166</sup>Commentary to GC-I p. 392-94; GC-II p.247-50.

## 2.3 ENFORCEMENT OF IHL AT DOMESTIC LEVEL

The International Humanitarian law protect those who do not have the will to take part in the armed conflict as well as who have ceased including the civilians, medical and religious military personnel, wounded, sick and shipwrecked fighter and war prisons. The protected persons are not only entitled to be respected for their mental and physical integrity but should be treated benevolently (kindly G) in all circumstances without opposing division. To provide the citizen with legal framework for International Humanitarian Law and to enforce the implementation of law there are four Geneva Conventions and Two Additional Protocols quandary (fix, G) the High Contracting Parties to prohibit reprisal, execute, translate into local languages and disseminate the law. There are various common relevant provisions in all these Conventions and Protocols to be followed by the states.

For detailed execution of these Conventions and Protocols there are two different types of responsibilities<sup>167</sup> are been placed upon the High Contracting Parties or States including the duty of the Chief Commander to implement the law commendably on the forces under his command and the state for which, it has been a prime obligation to decide correspondingly the case according to the general principles of Conventions and Protocols. Hence the sole responsibility of the proper execution of Conventions and Protocols in effective manner lies on States<sup>168</sup>.

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<sup>167</sup> Article 45, Geneva Convention-I, Article 46, Geneva Convention-II, Article 126, Geneva Convention-III, Article 143, Geneva Convention-IV, Article 80, Additional Protocol-I, 1949.

<sup>168</sup> *Commentary to Four Conventions*, ICRC Publications, p. 340-341 GC-I, p.251-52 GC-II, p. 929-34 AP-I.

### 2.3.1 DISSEMINATION OF IHL

The obligation to disseminate is a corollary to the commitment made by the States Parties to the instruments of IHL to respect and ensure respect for the provisions they contain. Educational and research institutions play a vital role in the dissemination of IHL. Dissemination must be carried out in peacetime, and stepped during armed conflicts. Dissemination promotes respect for the rules of the law, but it also helps inculcate principles of humanity that limit violence and preserve peace.<sup>169</sup> In order to ensure respect for the law, it is an obligation<sup>170</sup> of the high contracting parties to disseminate its knowledge as wide as possible so as to aware the public at large and Army personnel about IHL. It should not be restricted to armed forces only, but extended<sup>171</sup> to civilian, medical personnel and chaplains.

States are bound to provide copies of translation<sup>172</sup> of the Conventions and Protocols to one another in peace time via Swiss Federal Council and through protecting powers in war times. Besides translation, states are also bound to provide its domestic laws relating to the conduct of war.<sup>173</sup>

### 2.3.2 ENSURING RESPECT FOR IHL

Under the common Article 1 to the four Geneva Conventions, the States commence to "respect and ensure respect" for all these Conventions at any conditions. Similar provision is found in

<sup>169</sup> Dr U C Jha, *"International Humanitarian Law: The Laws of War"*, Vij Books India Pvt Ltd, India, 2011, pp.209-211.

<sup>170</sup> Article 47, Geneva Convention-I, Article 48, Geneva Convention-II, Article 127, Geneva Convention-III, Article 144, Geneva Convention-IV, Article 83, Additional Protocol-I, Article 19, Additional Protocol-II, 1949.

<sup>171</sup> Commentary to GC-I pp.347-49; GC-II pp.257-59; GC-III p. 613-615; GC-IV p.580-82; AP-I p.959-69; AP-II p.1487-91.

<sup>172</sup> Article 48 Geneva Convention-I, Article 49, Geneva Convention-II, Article 128, Geneva Convention-III, Article 145, Geneva Convention-IV, 1949.

<sup>173</sup> Commentary to GC-I, p. 350; GC-II p. 259; GC-III p. 615; GC-IV p. 582.

Article 1 of the Additional Protocol I and as quoted by the International Court of Justice (ICJ), the requirement to respect and ensure respect for international humanitarian law also smears (liable) in respect of obligations provided for in the common Article 3 to the Geneva Conventions<sup>174</sup>.

In addition to a rich legal responsibility on states to “respect and ensure respect” for international humanitarian law inside their own local context, common Article 1 also advises a adverse legal duty to neither inspire (encourage) a party to an armed conflict to infringe international humanitarian law nor act as it may leads to assist in such violations.

The International Law Commission Draft Articles on State Responsibility affirm this negative obligation under general international law by ascribing duty to a state that expressively aids or supports another State in the commission of an internationally wrongful act<sup>175</sup>. An example of this negative obligation would be the ban for a state to assume the transference of weapons or sale of arms to a State or other party to an armed conflict who is notorious to use such weapons to compel defilements (violation) of international humanitarian law.

## 2.4 STATE RESPONSIBILITY UNDER THE GENEVA CONVENTIONS

In the implementation of international humanitarian law its Conventions and Protocols, world has made great progress which can be adjudicated by the active participation of states in it as there are 103 National IHL Committees<sup>176</sup> working worldwide for the dissemination of international law with fluctuating structure. These committees comprise on major stakeholders (9 shareholder,

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<sup>174</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, ICJ Reports 1986, p. 14.

<sup>175</sup> International Law Commission, 53<sup>rd</sup> Session, 2001.

<sup>176</sup> National Committees and other National Bodies on IHL, *ICRC Advisory Service*, August 2013, p. 2

supporter) G on the issue within the state including the members belonging to government, armed forces and experts on the subject.

### 2.4.1 ESTABLISHING A NATIONAL IHL COMMITTEE

The party and purposes of a national committee must be resolute (firm) by the State at the time of its formation. Though, the committee has a mandate to further application and endorse awareness of IHL at the national level, the committee should have the features including evaluation of existing local law in lights of requirements made by Conventions and Protocol and other instruments of IHL. Moreover, the committee should be in a locus to made recommendations<sup>177</sup> prior and past the implementation, monitor the applicability of law, and propose new legislation or amendments in the existing law if necessary as well as liaison with administrative authorities for adoption of these laws and finally, provide suggestions and guidelines as well as interpretation and application of humanitarian law.

The committee needs to play an imperative role in endorsing activities to spread knowledge of IHL. It should have the power as well as ability to conduct studies on the topics related to implementation of international law, recommend actions, and contribution its part in making IHL more broadly recognized. In South Asia, Sri Lanka took the lead to constitute State's National Committee<sup>178</sup> for international humanitarian law and unfortunately it remains the only state to have such committee in entire region. Reference can be made to the decision of the Supreme Court of Nepal also whereby the government of Nepal is directed by the court<sup>179</sup> to accomplish its responsibility under IHL Treaties by implementing the same, and by March 2017

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<sup>177</sup> ICRC Advisory Service on IHL, *The Domestic Implementation and Application of International Humanitarian Law Norms*, Geneva p.22

<sup>178</sup> National Committees and other National Bodies on IHL, *ICRC Advisory Service*, August 2013, p. 2

<sup>179</sup> Harland, Christopher. *Basic Documents on IHL-South Asia Collection*, Geneva: ICRC, p. 1305-1309

the Nepali government approved and implemented the said orders for establishment of national IHL committee.

## 2.4.2 PAKISTAN'S ROLE

Pakistan has fully implemented only one international humanitarian law treaty, that is the Chemical Weapons Convention. Additionally the Geneva Conventions have been partially implemented by virtue of legislations in 1936 and 1963<sup>180</sup>. But the most important section related to grave breaches in Conventions has yet not been applicable or implemented in Pakistan.

Pakistan could consider consenting<sup>181</sup> on various IHL including the Additional Protocols to the Geneva Conventions I, II and III, the International Criminal Court Statute, as well as the fifth Protocol to the Convention on Certain Conventional Weapons that deals with tense war.

By adoption of the Chemical Weapons Convention Act in 2000, Pakistan has started the cause of implementation of domestic IHL but still lot is required to work on for adoption of other Conventions and Protocols including the Geneva Conventions which is considered as the central treaties of IHL. It is the requirement that Pakistan should consider the other Conventions and Protocol treaties of IHL and establish the National IHL Committee accordingly with the assistance of ICRC.

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<sup>180</sup> Article 245 of the Constitution of Pakistan enables the government to call in the armed forces in aid of civil power. The current military operations by the Pakistani Armed Forces in the Federally Administered Tribal Areas of the country are taking place under this constitutional mandate and it is within this legally permissible zone of Article 245 that Pakistan is undertaking its counter-terrorism/counterinsurgency.

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<sup>181</sup> ICRC Advisory Service on IHL, *The Domestic Implementation and Application of International Humanitarian Law Norms*, Geneva p.3



## 2.5 ENFORCEMENT OF IHL AND THE ROLE OF THE ICRC

States has a clear responsibility to implement and carry out measures for the adoption of international humanitarian laws. The entire system within the state have to contribute for the implementation of IHL including the government officials, legislature, courts, military officials and forces and other bodies of the state. To implement the law, acquainted knowledge pertaining to rules, their structure, requirement of administrative arrangements, prevention of their violations and punishments accordingly are all considers the essential measures for the enforcement of IHL. ICRC is internationally recognized<sup>182</sup> for its efforts for the implementation of international law at international level in general and domestically within the contracting parties in particular. The detailed functionality of ICRC is described separately under following headings in this chapter.

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<sup>182</sup>International Committee of the Red Cross (ICRC), Last accessed on 16/7/2016 from <https://www.icrc.org/eng/>

## 2.5.1 MANDATE OF THE ICRC

ICRC is distinctive of its given mandate (rather mandates) by the States party to the Geneva Conventions for helping victims of armed conflict<sup>183</sup>. It is, therefore, that the accomplishments of ICRC are deep rooted in public international law. There are other times when ICRC derives its mandate from Statutes of Movement i.e., in case of violence.

The main legal basis for the work of the ICRC in international humanitarian law are the resolutions of the International Conference of Red Cross , Red Crescent Societies (Movement) and the Statutes<sup>184</sup> of International Movement of the Red Cross and the Council of Delegates underscore(highlights) the legitimacy of the ICRC's work. International humanitarian law, as the Statutes of the Movement, confirms a historical tradition of ICRC action which predates its successive codifications. ICRC has been held responsible by the state for monitoring the faithful solicitation of international humanitarian law.<sup>185</sup>

As the custodian of humanitarian law, the ICRC adopts procedures to ensure respect, to endorse (approve,), to reaffirm and even to clarify and develop this body of law. The organization is particularly concerned about the possible erosion (destruction) of international humanitarian law and takes public measures bilateral or multilateral to promote respect and development of the law. The ICRC generally refers to international humanitarian law in connection with their activities. However, reserves the right to cite other bodies of law and other international standards that protect individuals, in particular international human rights standards, whenever believed

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<sup>183</sup> "Policy on ICRC cooperation with National Societies, "Last accessed on 17/7/2016 from [https://www.icrc.org/eng/assets/files/other/policy\\_cooperationicrc\\_ns\\_eng.pdf](https://www.icrc.org/eng/assets/files/other/policy_cooperationicrc_ns_eng.pdf)

<sup>184</sup> Resolution 7 of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent at Geneva, Resolution 1 of the 29<sup>th</sup> International Conference of the Red Cross and Red Crescent at Geneva.

<sup>185</sup> Yves Sandoz, Mélanges Sahovic, *Yugoslav Review of International Law*, 1996.

necessary.<sup>186</sup> The ICRC has developed several policy documents that are based on its pronounced experience.<sup>187</sup> These texts serve as a guide for their actions and aims to give the organization long-term consistency, which in turn gives the ICRC added predictability and credibility in the exercise of their mandate.<sup>188</sup>

## 2.5.2 PRINCIPLES OF THE ICRC

The ICRC's venture (course, project) is steered (handled, directed) by seven Fundamental Principles<sup>189</sup> (Geneva, 1986), which are added in the Preamble of the organization along with other components of the Movement's Statutes. The principles – humanity, impartiality, neutrality, independence, voluntary service, unity and universality – are set forth in the Movement Statutes and establish the common values that distinguish the Movement from other humanitarian organizations. The ICRC has been given the task of upholding and propagating these principles by the Movement. The first four, out of seven, are those most commonly referred to by the ICRC and are specifically mentioned in its mission statement:

**Humanity** is the fundamental most principle. It is based on respect for the human being and encapsulates (summarises) the ideals and aims of the Movement. The Red Cross and Red Crescent International in their national and international capacity is eager to bring aid without any discrimination to those who are suffering on the battlegrounds and to avert (stop Z) and improve

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<sup>186</sup> Jean-Marie Henckaerts, Louise Doswald-Beck. *Customary International Humanitarian Law, Volume I Rules*, Cambridge University Press, UK 2006.

<sup>187</sup> ICRC *Prevention Policy*, Geneva, 2010

<sup>188</sup> Marco Sassoli, Antoine A. Bouvier, Anne Quintin. *How Does Law Protect in War? Part I*. Geneva: ICRC 2011. p. 373

<sup>189</sup> *The Fundamental Principles of the Red Cross and Red Crescent*, ICRC Publication, 1996, ref. 0513

human suffering wherever it can be found. Its core purpose is to protect life and health and ensure respect for the human being, promotion of mutual understanding, friendship, cooperation and lasting peace amongst the nations and people.<sup>190</sup>

**Impartiality;** While the Fundamental Principles from a whole in which each of the principles is interpreted in the light of the others, but also characterize each mission of Movement differently. The principle of impartiality thus represents the very essence of the Red Cross and Red Crescent thought: it has been cited at all stages of formulation of the principles and is, moreover, inherent in the Geneva Conventions<sup>191</sup>.

**Neutrality:** the ultimate goal of the principle of neutrality is action. It is often neutrality that opens prison doors to delegates of the International Committee of the Red Cross, allowing aid convoys showing one of the Movement emblems to enter conflict areas and spares National Society volunteers from attack in a country torn by internal strife. The principle of neutrality reads as follows: "In order to continue to enjoy the self-reliance of all, the Movement may not take part in hostilities and, any time in controversies of a political, ideological, racial or religious nature."<sup>192</sup>

**Independence:** In its present-day wording of the principle of independence, which dates back to the very basis of the Movement, comprises three elements: a general declaration of independence one of the principles of the Movement, the role of National Societies as auxiliaries to the public authorities in humanitarian affairs and, finally, the need for National Societies to be autonomous in order to take action at all times in accordance with the Fundamental Principles of the Movement. The general meaning of the statement thus becomes: "Provide care and assistance, and to do so

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<sup>190</sup> Marco Sassoli, Antoine A. Bouvier. Anne Quintin. *How Does Law Protect in War? Part I*. Geneva: ICRC 2011. p. 4

<sup>191</sup> *The Fundamental Principles of the Red Cross and Red Crescent*, ICRC Publication, 1996, ref. 0513

<sup>192</sup> Marco Sassoli, Antoine A. Bouvier. Anne Quintin. *How Does Law Protect in War? Part I*. Geneva: ICRC 2011. p. 5

completely independently - this is the Movement's line conduct. To act accordingly, it must rely on their valuation on the basis of unbiased standards. It must not give in to political pressure or left persuaded by public view."<sup>193</sup>

**Voluntary Service**, scopes as "The Red Cross and Red Crescent Media International is a voluntary relief movement not driven in any manner by aspiration of gains"

The Red Cross and Red Crescent Media International is one of selfless volunteer service. Whether it is thru(don) without pay or with some kind of credit or even a modest remuneration, the main thing is not inspired by the wish for economic gain but by individual obligation and devotion to humanitarian purpose, freely picked or accepted as portion of the service that the Red Cross Red Crescent render to the community. The quintessence of voluntary service is honorary service to others, the most direct manifestation of humanity, which is the first of the Movement's principles.<sup>194</sup>

**Unity**; the principle of unity is one of the oldest of the seven Fundamental Principles.<sup>195</sup> As early as in 1875 Gustave Moynier, a Swiss jurist, spoke about principle of 'centralization', whose content was essentially the same as the current principle of unity:

"There can be only one Red Cross or one Red Crescent in the one country. This should be accessible to all, and extend its humanitarian action throughout the country"

The principle of unity refers specifically to the institutional structure of the National Societies. In fact, three elements mentioned in the beginning correspond to three conditions National Societies must meet in order to be recognized: the Society must be the sole institution with which the state

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<sup>193</sup> Ibid p. 374-75

<sup>194</sup> Marco Sassoli, Antoine A., "How Does Law Protect in War?" Part I. ICRC Pub., Geneva: 2011. p. 3

<sup>195</sup> [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0513.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0513.pdf)

must demonstrate non-discrimination in recruiting members and must cover the entire national terrain.

**Universality;** The International Red Cross and Red Crescent Movement, is worldwide recognized, in which all Societies have equal status and share equal rights and the duties to help each other.

Red Cross and Red Crescent came into existence as a result of consequences of war, torture and the ravages (result, effect) of earthquakes, to name some of the evils that befall mankind. To the universality of suffering, response is the universality of humanitarian action.<sup>196</sup>

### 2.5.3 WORKING MODALITIES OF THE ICRC

According to ICRC's monetary and financial wing, 83.02% of the total budget is paid (provided) by USA alone. It is worth mentioning that fiscal year 2017 ICRC budget is 2.892 billion US dollar.<sup>197</sup> This glittering fact is sufficient for predicting the influence and dominant role and interest of USA in this international humanitarian organization. This prestigious organization was based on the following modalities according to its mission statement.

- i. From Ideas to Operations: As mentioned above, the ICRC pursues two primary lines of work. It continues to work toward the promotion and development of international humanitarian law.<sup>198</sup> However, as first exemplified by the original committee delegates, its primary mission is operational: to protect populations from the effects of armed conflicts and other situations of violence.<sup>199</sup> It is important to underscore that these

<sup>196</sup> Marco Sassoli, Antoine A., *"How Does Law Protect in War?"* Part I. ICRC Pub., Geneva: 2011, p. 75

<sup>197</sup> The ICRC Newsletter – 2017, Available on <https://www.icrc.org/en/faq/icrcs-funding-and-spending>

<sup>198</sup> ICRC Mission, supra note 10, at 401.

<sup>199</sup> Gentile supra note 4, at 1167.

two efforts complement each other, with the development of the law informed by delegates working within, and pushing the boundaries of, the law of armed conflict's framework.<sup>200</sup> The original 1863 Swiss committee of five envisioned itself as a promoter of ideas only, with all operational activities assigned to what would become the national Red Cross and Red Crescent societies. During the first 1863 conference and subsequent period, the committee was viewed by itself, the nascent societies, and states as an entity that would cease to exist once national societies gained ground.<sup>201</sup> However, beginning with the short-lived fighting between Austria and Prussia in 1866, and the Franco-Prussian War in 1870, the ICRC began sending delegates to the battlefields.<sup>202</sup> the primary function of these delegates was to observe and report back on adherence to and implementation of the 1864 convention, though they also took direct part in the relief of suffering.

- ii. Fundamental Principles and Approaches: The ICRC's operational mission is informed by what the ICRC calls its seven "Fundamental Principles," of which impartiality, neutrality, and independence are the most referenced, the others being humanity, voluntary service, unity, and universality.<sup>203</sup> Neutrality dictates that the ICRC not take sides in a conflict or judge any side's particular *jus ad bellum* basis for conflict, or take sides in political, racial, religious, or ideological controversies.<sup>65</sup> This is sometimes difficult for U.S. military personnel to understand, given the atrocities often perpetrated by U.S. adversaries. The ICRC believes (and rightly so) that its access to the victims of violence depends on its neutrality. The ICRC's impartiality directs that

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<sup>200</sup> ICRC Mission, *supra* note 10, at 401.

<sup>201</sup> BUGNION, *supra* note 23, at 19.

<sup>202</sup> MOOREHEAD, *supra* note 19 at 55-56.

<sup>203</sup> Claudia McGoldrick, "The Future of Humanitarian Action: An ICRC Perspective", *Int'l Rev Ed*, Red Cross, 2011, pp. 965-966

the ICRC treat people equally according to needs versus nationality, etc.<sup>204</sup> whereas the independence principle allows it to fully adhere to these earlier principles, based on the fact that the ICRC is “independent of national and international politics, interest groups, and any other entity that may have some connection with a situation of violence.”<sup>205</sup> The ICRC prevention approach focuses on “influencing those who have a direct or indirect impact on the fate of people affected” by violent situations. This approach often couples with that the ICRC calls “Humanitarian Diplomacy”.<sup>206</sup>

- iii. Confidential Dialogues: The ICRC enjoys a long history of confidential, one-on-one dialogue with governments, and the United States is no exception. This confidentiality applies to all governments; for example if the United States desires information regarding ICRC observations of Pakistan prisoners, the United States must obtain such reports from the Pakistan government, not from the ICRC.
- iv. Treaty Basis for ICRC Roles: The ICRC’s international legal mandates for action have a long history. Article of the seminal 1864 Geneva Convention laid the groundwork by both establishing the principle of neutrality (termed inviolability) of military medical personnel, hospitals, and ambulances as well as that for civilians (inhabitants) helping wounded soldiers on and around the battlefield.<sup>207</sup> Organized relief work regarding the care of wounded on the battlefield, though not specifically that of the ICRC, was first specifically mentioned in the 1906 Geneva Convention, which detailed state responsibilities for respecting the neutrality of voluntary aid societies while

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<sup>204</sup> ICRC Mission, *supra* note 10, at 404.

<sup>205</sup> *Ibid*

<sup>206</sup> The fourth, cooperation, deals with the ICRC’s work to enhance the capacities of the various national – level Red Cross and Red Crescent Societies.

<sup>207</sup> Art. 5 states that “inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free.” See also Red Cross Convention; *supra* note 29, at Art. 2 (a) (establishing the neutrality of military medical personnel), and Art. 1 (the same for hospitals and ambulances).



emphasizing that such organizations could only operate with state consent.<sup>208</sup> Critically, this treaty was the first to recognize not only national relief societies working with their respective militaries for the care of wounded soldiers, but relief societies from neutral nations offering their services to the wounded as well.<sup>209</sup>

- v. ICRC Action During International Armed Conflicts: Today the ICRC mandates, at least regarding international armed conflicts (referred to as Article 2 conflicts), are explicitly expressed in the 1949 Geneva Conventions. These four treaties include provisions recognizing the roles for the ICRC plus relief societies in general and combine the relief work focused on the wounded with that regarding prisoners of war and civilian internees.<sup>210</sup>
- vi. Individuals Subjected to Detention and Internment: The ICRC plays role vis-a-vis civilians who are interned for reasons of imperative security. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (GC IV) mandates analogous ICRC to these civilians during international armed conflicts.<sup>211</sup> Article 143, similar to Article 126 in GC III, provides that the ICRC “shall” have the same prerogatives regarding access to internees as do representatives from Protecting Powers.<sup>212</sup> This includes the same access as described above for prisoners of war, including the right to select the places and times of visit, as well as private internee interviews, subject only to “reasons of imperative military necessity, and then only as

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<sup>208</sup> Convention for the Amelioration of the Condition of the ‘Wounded and Sick in Armies in the Field, 11, L.N.T.S. 440(1906) (showing that Articles 6—9 discuss the neutrality of national sanitary units, whereas Articles 10—14 authorize and protect voluntary relief societies, including those from neutral nations) [Hereinafter 1906 Convention].

<sup>209</sup> Ibid Art. 11.

<sup>210</sup> “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), Aug. 12, 1949, 75 U.N.T.S. 31, available at <http://www.unhcr.org/refworld/docid/3ac6b3694.hLm1> [hereinafter Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked.

<sup>211</sup> Geneva Convention III, *supra* note 91, at Art. 10.

<sup>212</sup> Ibid

an exceptional and temporary measure.”<sup>213</sup> Parties to the conflict are required to establish information bureaus with the same responsibilities as regarding prisoners of war, and the ICRC likewise has assimilated its Central Information Agency for civilian internees into its Central Agency described above.<sup>214</sup> Additionally, Article w provides that “[t]he provisions of the present Convention constitute no obstacle to the humanitarian activities which 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 civilian persons and for their relief.”<sup>215</sup>

- vii. ICRC Action during Non-International Armed Conflicts: During non-international armed conflicts, Common Article 3 to the four Geneva Conventions is the only treaty provision binding Of the United States regarding the ICRC functions and access (additional provisions apply to states bound by Additional Protocol 11). This “humane treatment” article simply provides for the ICRC’s right of initiative regarding such conflicts; that is, it authorizes the ICRC to offer its services to the belligerent parties.<sup>216</sup> In other words, there is no specific treaty mandate for access to detainees (civilian and belligerent) during such an Article 3 conflict or in those violent situations not even rising to the status of an armed conflict. However, the ICRCs study on customary international law, mentioned above, finds that “an ICRC offer to visit persons deprived of their liberty in the context of a non-international armed conflict must be examined in good faith and may not be refused arbitrarily.”<sup>217</sup> United States Department of Defense policy reiterates Common Article 3’s right of initiative, and hews to the

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<sup>213</sup> Ibid

<sup>214</sup> Ibid

<sup>215</sup> Ibid

<sup>216</sup> Geneva Convention I, *supra* note 91 at Art. 3.

<sup>217</sup> ICRC CIL Study, *supra* note 13, pp.445.

position that ICRC access is not legally required by international law in a non-international armed conflict.<sup>218</sup>

- viii. ICRC's Expanding Role Regarding The Conduct of Hostilities: The evolution of the relationship the DoD currently maintains with the ICRC has undergone three "revolutions" since the Persian Gulf War and Vietnam War era: the seminal events of September 11, 2001 the Abu Ghraib scandal in 2004, as discussed above, and the spike in civilian casualties in Afghanistan, epitomized by the Bala Baluk incident in May 2009. Prior to the armed attack by Al Qaida against the United States in September 2001, the United States maintained relations with the ICRC via the latter's delegation to the United States and Canada, which was a relatively small staff headquartered in Washington DC.<sup>219</sup> The immediate capturing of detainees in Afghanistan following the U.S. invasion in October 2001 put the ICRC back in its traditional role of detainee tracking and visiting, which immediately transformed the relationship. Especially once regular ICRC visits to detainees began at both Bagram Air Base, Afghanistan and Guantanamo Bay, Cuba in January 2002 the DoD's attention to the relationship was prompted by the need to facilitate detainee visits as well as to respond to ICRC criticisms. This growing relationship was subsequently adrenalized by the 2004 Abu Ghraib scandal, which promoted the above-mentioned institutionalization and formalization of the DoD's relationship with the ICRC at the OSD level.<sup>220</sup>

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<sup>218</sup> Department of Defense Directive 2311.01 E, DoD LAW OF WAR PROGRAM (Sept. 5, 2006) [hereinafter DODD 2310.01E]. Comment of John H. Bdlinger III, Legal Advisor to the U.S. Department of State, in YONAH ALEXANDER & MICHAEL B. KRAFT, EVOLUTION OF UNITED STATES COUNTERTERRORISM Policy (2007) ("We do not think we are required to give the ICRC access" to detainees captured in the non-international armed conflict against al Qaida).

<sup>219</sup> Geoffrey S. Corn, Rachel E. Van Landingham, Shane R. Reeves, Stanley A. McChrystal, "U.S. Military Operations: Law, Policy, and Practice", Oxford University Press, UK, 2016, pp.207-210.

<sup>220</sup> <https://www.icrc.org/en/document/icrc-visits-detainees-how-what-and-why>

## CONCLUSIONS

States are the sole players on the universal scene<sup>221</sup>, and even considerably less so in armed conflicts. Rules on State obligation, specifically as systematized by the ILC, are only tended to States separately and as individuals belonging from the international society. Their conceivable effect on better regard for international humanitarian law ought to accordingly not be overvalued, particularly not when contrasted with the preventive and oppressive components coordinated at individuals. However it is clarified in the Draft Articles and their Commentary, notwithstanding, numerous vital inquiries concerning usage of international humanitarian law might hence enhance the protection of war victims by States, for in the unforgiving reality of many present-day conflicts States keep on playing a noteworthy immediate or aberrant part, especially on the off chance that they are not permitted to hole up behind the smokescreen names of "globalization" or "uncontrolled components"<sup>222</sup>. They are dependable, under the general tenets on attribution of unlawful acts, significantly more frequently than they would desire. Moreover, violations do have results and outcomes for the victims as well as lawful consequences for the capable State. Concluding this, through the joined components of international humanitarian law and of the general standards on State obligation, every single other State are capable and are obliged to act when in case of any violations. Preferably, they ought to do as such through widespread and provincial establishments, a viewpoint maybe dismissed by the ILC. The Draft Articles on State obligation, connected to international humanitarian law violation, advise us that all States can respond legitimately and elucidate to a specific degree what they ought to do. This might be the most essential message of the examination. Despite the fact that there irrefutably must be the

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<sup>221</sup> Marco Sassoli, *State responsibility for violations of international humanitarian law*, Vol 84, 2014. p.432-433

<sup>222</sup> Ibid. p 412-416

fundamental political will, the need to regard and guarantee respect for international humanitarian law is not a matter of governmental issues and politics, but rather a matter of law.

## CHAPTER THREE:

# PAKISTAN'S IHL OBLIGATION AND NATIONAL IHL COMMITTEE

## INTRODUCTION

Those states who become parties to the Geneva Conventions 1949 and their additional protocols 1977, they bound themselves to disseminate all the provisions of those instruments as broadly as possible both in period of war and in peace time so that they are well known to the people and the armed forces as a whole. For the implementation of IHL in its letter and spirit it is incumbent upon a state like Pakistan to lay a foundation of National IHL committee to ensure its dissemination.<sup>223</sup> It is one of the essential requirements of the Geneva Conventions from all the member states to disseminate international humanitarian law not only among armed forces but among the civilians as well.

Pakistan pursues the Dualistic principles in both cases of Customary International Law and treaties.<sup>224</sup> In the municipal legal order of Pakistan in both the cases the applicability would depend on the subject matter which shows the act of the state obligatory for their domestic application, either a legislative cover or an executive act, having the result of making the international provisions suitable for application by the Pakistani courts.

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<sup>223</sup> Elizabeth G. Ferris, *"The Politics of Protection: The Limits of Humanitarian Action G - Reference, Information and Interdisciplinary Subjects Series"*, Brookings Institution Press, UK, 2011, pp. 208-211.

<sup>224</sup> Pakistan pursues the Dualistic principles in both cases of Customary International Law and treaties. <https://www.linkedin.com/pulse/20141117063038-105216481-international-law-and-pakistan-s-domestic-legal-order>.

The provisions should be translated in the national language and should be reached to the common people through training, teaching, conferences and educational institutions. The formation and establishing of National committee of IHL will further pave the way to achieve the endeavor and it may be feasible through dissemination and implementation of IHL.<sup>225</sup>

In chapter third of my dissertation I will give details about responsibilities of Pakistan with respect to the implementation of international humanitarian law in its domestic system. The chapter will focus on the role of Pakistan while legislating as a dualistic state. It will further throw light on the courts of Pakistan and their important verdicts relating the international humanitarian law. At the end of the chapter details will be provided regarding the dissemination of international humanitarian law in Pakistan and its national committees in the light of appropriate provisions from Geneva Convention.<sup>226</sup>

### 3.1 IMPLEMENTATION OF IHL IN THE DOMESTIC SYSTEM

As far as the implementation of IHL in the domestic system is concerned a case has been discussed where CIL (customary international law) rules or treaty provisions can be functional without the required for a precise lawful cover as the existing rules legislation by now affords such cover. International principles or international obligations in certain cases can be put into

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<sup>225</sup> Dan Saxon, *"International Humanitarian Law and the Changing Technology of War"*, Martinus Nijhoff Publishers, USA, 2013, p.211.

<sup>226</sup> Fajri Matahati Muhammadin, *"A Comparison Between International Humanitarian Law and Islamic Laws of War: the Islamic State of Iraq and Sham (ISIS) and Treatment Towards Prisoners of War in Syria"*, Academia.edu publishers, UK, 2014. P.22.

operation by a mere executive order or through administrative directives. Both the international legal norms and domestic legislation here agree. It could be argued in such circumstances that the rules of international law form part of a broader complex of norms for the rules of activities within the municipal lawful order.

### 3.1.1 PAKISTAN BEING A DUALIST STATE

In both cases of CIL and treaties, Pakistan follows the Dualistic principles. In the municipal legal order of Pakistan in both the cases the applicability would depend on the subject matter which shows the act of the country necessary for their domestic application,; either a legislative cover or an executive act, having the effect of making the international provisions appropriate for application by the Pakistani courts.

Generally speaking a distinction may be made between the following three categories:

1. International law rules that are not covered by the statutory instrument ;
2. International law rules which are already covered by the legislative instrument;
3. International law rules which are inconsistent with a statutory instrument or which may need lawful cover for the application.

Before moving towards the lawful aspects concerning the applicability of international law in Pakistan, it is very important to recognize the exact organ of the government which in Pakistan is accountable to take such actions as are deemed necessary for the implementation of international obligations. Under Art 97 of the constitution of Pakistan, it explicitly defines the extent of executive authority as follows<sup>227</sup>:

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<sup>227</sup> The Constitution of Pakistan 1973, Art, 97



“Subject to the Constitution, the executive authority of the federation shall extend to the matters with respect to which *Majlis-e-Shoora* (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan”.<sup>228</sup>

Under Article 97 of the constitution it clearly allocates the job of external relations to the central government, the extent of the functions is not plainly specified at the same time it may not be possible to explain, with any extent of accuracy, the executive functions, ‘in relation to areas outside Pakistan’, it can be stated that they are roughly a residue of functions of the government after taking apart of the legislative and judicial functions.

In Pakistan for the implementation of international obligations, these may comprise the functions which relate to the direction of foreign policy and all those acts which are additional thereto, together with the provision of legislative cover, if so desired. In reality, the degree of executive power in foreign relation is, to some degree, elaborated, though not thoroughly, in the 4<sup>th</sup> schedule under the federal legislative list which allocates ‘external affairs’ to the central regime, illustrating this by including within its domain such subjects as “defense of federation, security of Pakistan, implementation of treaties, pacts, agreements, extradition etc”. For the implementation of bilateral treaties if any lawful cover is needed or multilateral treaties to which Pakistan has become a party, it is the central legislature that is competent whenever important, to ratify the law to give municipal law effect to the treaty.

On close examination of different judgments of Pakistani courts it becomes obviously visible that any statute of customary international law which has the following two elements, viz.

- (a) States General Practice and
- (b) Acceptance by states of this general practice as law,

In the courts of Pakistan It would be functional provided the same do not clash with any proviso of the statutes or the principles of Islamic law.<sup>229</sup>

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<sup>228</sup>The Constitution of Pakistan 1973, Art. 97.

### 3.1.2 Incorporating Legislation in Pakistan

For the protection of the victims of armed conflicts the most important treaties are the Geneva Convention and their additional protocol 1977.

It becomes imperatives that states along with Pakistan should incorporate their provisions to the best possible degree in order to protect the guarantees provided by these instruments. Incorporation needs the countries to admit a number of domestic laws and regulations.<sup>230</sup>

For instance, they must set up rules on punishment of violations, the use and protection of Red Cross and Red Crescent emblems and the fundamental rights for protected persons. In adding the Countries are grateful to extend knowledge of the conventions and protocols as broadly as possible.

Owing to the wide range of issues connected with these obligations, inclusive incorporation of the international humanitarian law rules needs harmonization and backup from all the departments of the governments and other concerned entities.

To make possible this development, many countries have setup domestic inter-ministerial working groups, which are called committees for the incorporation and implementation of international humanitarian law or national humanitarian law committees. Their main objective is to give advice and support the government in dissemination and extending knowledge of international humanitarian law. Countries look forward between national and international law in two different ways. Most commonly used are the Monism and Dualism which are two diverse legal traditions.

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<sup>229</sup> Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 1422.

<sup>230</sup> Ibid.

### 3.1.3 IHL in Judicial Decisions

Although both with the regard customary international law and treaties, Pakistan follows the dualist principles but as also adverted before in certain situations Pakistani courts do take judicial notice of, and as a matter of policy apply treaty law and international customary law to convene the ends of justice. It is quite clear from the reason mentioned in the cases of “M.A Qureshi Vs the USSR and M/s Gammon – Layton Vs Secretary of State of USA (PLD 1965 (W.P.) Karachi 425) on the question of sovereign immunity.”<sup>231</sup>

In the last case however, while pronouncing on the question of applicability of rules of international law, where municipal law functional, view was expressed by the court that it could not “engraft upon the provisions of domestic law general principles of international law which our legislature did not think it proper to do so”.

In M/s Najib Zarab Ltd vs the Government of Pakistan the issue was taken up at significant length and the court examined two main issues:

1. Without the aid of principle law whether international is, of its own force, drawn into the law of the land.
2. Whether so drawn, it supersedes domestic law in the case of conflict.

Two British doctrine while examining of “incorporation and transformation” the court was positively persuade towards the practice that nation must protest together and for that reason it hold up the rule that municipal law must esteem international law rules and international law norms may be accommodated in municipal law wherever possible even without express legislative sanction,

“Provided they do not run into conflict with the acts of the parliament, but when they do run into such conflict the sovereignty and the integrity of the Republic and the supremacy of the

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<sup>231</sup> Elizabeth G. Ferris, “*The Politics of Protection: The Limits of Humanitarian Action G - Reference, Information and Interdisciplinary Subjects Series*”, Brookings Institution Press, UK, 2011, pp. 202.

constituted legislature in making laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislature themselves".<sup>232</sup>

In the case of Pakistan it is hence obvious that in the situation of conflict of rules of international law with domestic law, the latter will prevail. To go against the domestic law it is difficulty which intimates (suggest) the bill of the sovereign state. One of the key organs of the sovereign states is the national courts and not the international law so national law should apply if international law conflict with it however, Pakistan being a member of comity of nations it courts as far as possible interpret the municipal law in the absence of prima facie conflict so as to avoid disagreement with the comity of nations are the well founded principles of international law in *M/s Najib Zarabys* the government of Pakistan the court acknowledged the explanation given in the trustworthy book on the interpretation of statute (Sir Lenon Maxwell) which states.

"Every statute is to be interpreted and applied, in so far as its language admits, as not to be inconsistent can with the comity of nations or with the established rules of international law".

This principle was also acknowledged in the case in which Justice Naseem Hassan Shah placing confidence on the same book held:

"The law of Pakistan is that every statute is to be interpreted and applied as far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law".

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<sup>232</sup> Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 1422.

### 3.2 OTHER RESPONSIBILITIES OF PAKISTAN FOR IHL

International humanitarian law (IHL) knowledge and information is stipulation (condition) of its esteem (approval, respect). Those states who become parties to the Geneva Conventions 1949 and their additional protocols 1977, they bound themselves to disseminate all the provisions of those instruments as broadly as possible both in period of war and in peace time so that they are well known to the population and the armed forces as a whole.<sup>233</sup> International humanitarian law other instruments also hold a responsibility of this nature. Even though it is the first and foremost duty of the states to formulate the law known, even other bodies, such as the International Committee of the Red Cross (ICRC), functioning in collaboration with the National Red Cross and Red Crescent Societies and their International Federation, have a authorization to help the countries in this job and are encouraged to take initiatives to that outcome.<sup>234</sup>

#### 3.2.1 Dissemination and Teaching of IHL

The responsibility to disseminate the information of international humanitarian law is founded on the idea that sound associate of the rules laid down in the law is vital for their effectual relevance and as a result for the protection of the victims of armed conflict.

Commonly speaking, the duty is a result to the promise made by the countries party to the instruments of IHL to esteem and guarantee respect for the provisions they include. The process of dissemination should not only be preferred during war time but also be carried out in time of peace; this knowledge should not be confined to wartime only. The aim of dissemination is to

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<sup>233</sup> Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 1422.

<sup>234</sup> Ibid.

promote respect for the rules of the law, but it also facilitate inculcate principles of humanity that preserve peace and limit violence.<sup>235</sup> The Geneva conventions 1949 and their additional protocol 1977 oblige countries parties to spread the contents of these humanitarian treaties as broadly as possible in their own states. Their insertion in military instruction is essential to guarantee their implementation in time of war. But it is evenly necessary to advance information of IHL among those whom it is planned to protect the civilian population and among those who have to apply it public officials of different ministries. Decision makers and political leaders at the same time must also be well known with the law so that they are conscious of its validity, practicality and mode of procedure if and when war should happens. To guarantee esteem for it and also to promote its growth it is necessary job to incorporate IHL in higher education. A number of initiatives have been taken by the ICRC to accomplish just that in the region of South Asia.

In South Asian States higher education is pattern on the British system. After the completion of twelve years of schooling, a student has the choice of joining any of the professional courses such as law engineering or medicine.<sup>236</sup> There are so many options for basic graduate programs in science, arts, commerce etc. Furthermore a student has the option to move towards professional courses after getting a basic graduates degree.

“Once professional qualifications have been achieved, such as a degree in law which qualifies the person for entry into the legal profession as a lawyer, an academic career can be pursued by taking up postgraduate studies and research”.<sup>237</sup> Universities are in charge of postgraduate courses and most of the professional courses are run by colleges associated to universities.

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<sup>235</sup> Ibid.

<sup>236</sup> <http://blogs.icrc.org/new-delhi/2016/12/16/towards-policy-clarity-autonomous-weapons-systems/>

<sup>237</sup> Ibid.

In various South Asian States educational expert have consented to incorporate IHL in law and political Science studies. Following the suggestions of the "Association of Indian Universities in May 1998", most of the Indian universities have incorporated international humanitarian law constituents in their undergraduate LL.B. programmes, which are conducted by the 550 law colleges affiliated to them.<sup>238</sup> Round about 30 universities present postgraduate courses in international law. Of these, some twenty universities offer a full optional course in international humanitarian law. Furthermore, thirty-five universities in India present a Master's programme in defense and strategic studies, with an optional course on international humanitarian law. Most human rights postgraduate or diploma programmes comprise a course on international humanitarian law. IHL in Pakistan is taught mainly within law faculties and law departments of international relations.

IHL in some universities is an optional course in international relation studies. "The Universities Grants Commission of Pakistan has shown interest in the inclusion of international humanitarian law modules in undergraduate professional law courses".<sup>239</sup>

IHL is a part of postgraduate's law programmes in a number of law faculties. A team of law students from Pakistan took part in last year's Jean Pictet International Moot Court Competition, and another team is being trained for the 2001 Competition. The ICRC, through its Regional Delegation in New Delhi, is closely concerned in promoting international humanitarian law in academic institutions in South Asia. Thus the delegation:

- frequently organizes a South Asian Teaching Session on international humanitarian law for postgraduate students and young university lecturers;
- supports research and publications in this field;

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<sup>238</sup> <http://blogs.icrc.org/new-delhi/2016/12/16/towards-policy-clarity-autonomous-weapons-systems/>

<sup>239</sup> Ibid.

- Publishes a journal on international humanitarian law; and organizes academic events on specific aspects of international humanitarian law, such as the International Criminal Court, the 1977 Additional Protocols, the issue of anti-personnel landmines, etc.

The delegation also admits students for internships, has recognized a documentation center on its premises, supports libraries of academic institutions by providing publications on international humanitarian law, holds moot court and essay-writing competitions and arranges other promotional events.

It frequently organizes training programmes in international humanitarian law for academic staff teaching law, international relations, human rights, etc. who give courses on the subject at undergraduate and postgraduate levels. Since 1999, together with the Indian Academy of International Law, it has launched a postgraduate diploma programme in international humanitarian law.<sup>240</sup> More stress should be given that as a rule these activities of the ICRC Delegation in New Delhi are conducted in association with universities and other educational institutions in the states concerned, and also with academic societies.<sup>241</sup>

Academic institutions have usually revealed a dedicated concern in introducing international humanitarian law into higher education. As a result, there is significant responsiveness of its magnitude among the academic communities in South Asia.<sup>242</sup>

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<sup>240</sup> <http://blogs.icrc.org/new-delhi/2016/12/16/towards-policy-clarity-autonomous-weapons-systems/>

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.



### 3.2.2 Translation of the Conventions and Protocols

To differentiate between dissemination to the civilian population and dissemination to the armed forces, IHL instruments show initiatives the countries must take in order to accomplish their responsibilities to widen information of law. Additional protocol 1 in particular, makes stronger the responsibility by requiring the countries to take a number of initiatives during peace time. Since propagation must be as broad as possible, the countries are permitted great flexibility with view to the selection of methods for dissemination.

The responsibility to interpret the IHL instruments into domestic languages clearly a first step towards the implementation. In Geneva Convention I translation procedure is mentioned, it states "The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof".<sup>243</sup> In the II Geneva Convention the similar suggestion is been provided under article 49 and 128 of III Geneva Convention, "144 of fourth Geneva Convention and article 84 of Additional Protocol I enumerate the rules and procedure of translation of Geneva Conventions and Protocols, in addition to this article 26 of 1954 convention talks about translation too. The purpose behind is to Disseminate International Humanitarian Law".

The "official translations of the Convention" are those drawn up by the decision-making authorities in a state under the terms of their own law. States with more than one national language may, therefore, communicate several translations. The languages such as French, Russian, English and Spanish should be expelled, nevertheless, since English and French are the genuine texts of the convention, whereas Russian and Spanish have been officially arranged by the Swiss Federal Council under the terms of Article 54.

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<sup>243</sup> Geneva Convention I, Article 48, 1949.

At the time of publication of the present Commentary, "the translations made by Governments have added to these four texts official versions in Arabic, Czech, Danish, Dutch, Finnish, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Norwegian, Persian, Polish, Rumanian, Serbo-Croat, Swedish and Thai".

### 3.2.3 Training Programs

The Hague Convention 1954 for the Protection of Cultural Property in the Event of Armed Conflict needs that its terms be made known to the personnel engaged in the protection of cultural property.<sup>244</sup> The second protocol of 1999 to that convention needs furthermore that any military or civilian authorities who in time of armed conflict presume responsibilities with reverence to its relevance be completely up to date with the text. To that end, the countries must include guidelines and instructions on the protection of cultural property in their military regulations and must also develop and implement peacetime training and educational programs in cooperation with UNESCO and relevant governmental and non-governmental organizations.<sup>245</sup> It is the responsibility of the countries to include study of the text and of its protocol in military instruction programmes.<sup>246</sup>

Its II amended protocol IHL also identify that each country must need its armed forces to issue appropriate military instructions and working procedure and to offer guidance for armed forces personnel that are appropriate with their respective jobs and obligations.<sup>247</sup> It is predetermined that the countries shall offer guidance for their armed forces.<sup>248</sup>

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<sup>244</sup> Hague Convention 1954, Article, 25.

<sup>245</sup> Additional Protocol II, Article 30.

<sup>246</sup> Convention on Certain Conventional Weapons (1980) Article, 6.

<sup>247</sup> Addition Protocol II of Convention on Certain Conventional Weapons (1980) Article, 14.

<sup>248</sup> Ibid, Article 2.

And lastly, each country party to the "Convention on the Rights of the Child<sup>249</sup> and to its Optional Protocol of May 2000" on the participation of children in armed conflict<sup>250</sup> agree to make the principles and provisions of those instruments broadly known by proper means, to adults and children the same.

### 3.3 NATIONAL IHL COMMITTEE

The 1949 Geneva conventions and 1977 additional protocol are the most important treaties governing help to and protection of the victims of armed conflict. It is vital that the countries implement their principles to the fullest possible extent in order to secure the guarantees provided by these instruments. Implementation needs the countries to accept a number of internal laws and regulations.<sup>251</sup>

They must, for example, establish rules on the punishment of violations, the use and protection of the Red Cross and Red Crescent emblems and the fundamental rights for protected persons. In addition, the States are obliged to spread knowledge of the Conventions and Protocols as widely as possible. Owing to the broad range of issues associated with these responsibilities, comprehensive implementation of the rules of international humanitarian law (IHL) requires coordination and support from all the government departments and other entities concerned.<sup>252</sup>

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<sup>249</sup> Ibid, Article 42.

<sup>250</sup> Ibid, Article 6.

<sup>251</sup> Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 1435.

<sup>252</sup> Ibid.

### 3.3.1 Provisions of the Geneva Conventions about IHL Committee

The responsibility of the countries to educate their armed forces are the provisions which are laid down in the law and customs of war and to get those rules to the notice of the public at large was a characteristic of the first instruments of the law of armed conflicts. What is more, the fact that the States carry out distribution activities in practice and deem themselves lawfully bound to do so, makes this a rule of customary law.

All four 1949 Geneva Conventions use virtually identical wording to reaffirm the general obligation to disseminate the texts;

"The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population".<sup>253</sup> The Geneva Convention III of 1949 includes that any military or other establishment who in time of war are accountable for prisoners of war must own the content of the Convention and be specifically instructed as to its provisions.<sup>254</sup> The officer's who are in charge of those camps where the prisoner of war are kept must that these rules are recognized to the employee of the camp and guards and are in charge for their appliance.<sup>255</sup> Moreover, the convention must be posted in areas where the prisoners of war can understand it.<sup>256</sup> The IV Geneva convention of 1949 affords the identical responsibilities with regard to any military, police, civilian or other establishment who presume obligations in respect of civilians, mainly in places of

<sup>253</sup> Geneva Convention I, II, III and IV, Article 47-48, 127-144, 1949.

<sup>254</sup> Geneva Convention III, Art, 127 (2), 1949.

<sup>255</sup> Ibid, Article 39.

<sup>256</sup> Ibid, Article 41.

instrument.<sup>257</sup> The responsibility of to spread the protocol and conventions is repeated and established in the Additional protocol 1977.<sup>258</sup> It is protocol I that creates rules for specific initiatives with a view to strengthening the common responsibility. On the other hand protocol II creates the responsibility appropriate to circumstances of NIAC. The response of conformity with the provisions of IHL that is to be inculcated is in reality always the identical, irrespective of the nature of the conflict.<sup>259</sup> It is the responsibility of the countries to distribute the knowledge of IHL but it is not needed to establish committee by the Geneva Conventions nor needs by their Additional protocols such a committee to be established. It is however completely up to the concerned states to decide how it is established, how it works and are its members. But it is usually the responsibility of the states in the globe to establish national committee and to fulfill the duty of dissemination of IHL.

### 3.3.2 The Role And Mandate Of The IHL Committee

The IHL committees should make certain that their concerned government obeys with the responsibility to disseminate information and knowledge of the law and the subject is incorporated in domestic education programs.<sup>260</sup> The Red Cross and Red Crescent international conferences, which brings jointly the states party to Geneva conventions and movements component “(the ICRC, the National Red Cross and Red Crescent Societies and their International Federation) in

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<sup>257</sup> Geneva Convention IV, Article 99, 14(2), 1949.

<sup>258</sup> Additional Protocols I, 1977, Article 83, Additional Protocol II, Article 19.

<sup>259</sup> Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 1423.

<sup>260</sup> Christopher Harland, *Basic Documents on International Humanitarian Law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 14-25.

principle every four years, regularly reminds the States of their obligations regarding dissemination and the Movement of its role to provide impetus and support for the States in this field".<sup>261</sup>

It is the mandate of the International Committee of Red Cross to work for the thoughtful and dissemination of international humanitarian law with the coordination of the National societies.<sup>262</sup> ("Movement Statutes"). The ICRC has expertise who are specialized in this field and who are assigned the job to dissemination in the diverse regions of the globe, it draws up distribution programmes and extraordinary teaching material for the armed and security forces, educational circles and young people, and it runs movements to improve public awareness of the law. The ICRC Advisory Service on IHL frequently updates a compilation of documents on execution of the law in individual states; this compilation, which is part of a database, contains, *inter alia*, information on the measures taken by the States to broaden awareness of IHL. It is the mandate of National Societies to distribute and to assist their governments to distribute information of law. Measures should be taken to that effect and recruit, guide and allocate the vital staff.<sup>263</sup>

For promoting and coordination of international humanitarian law International Federation helps them in this field.<sup>264</sup>

### 3.3.3 Problems In Establishing IHL Committee

For the implementation of international humanitarian law national committee and similar institutions formed in 101 states at the end of 2011. Such institutions were encouraged by the international committee of Red Cross (ICRC) since they have proved helpful in supporting

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<sup>261</sup>Ibid.

<sup>262</sup> ICRC and Red Crescent Statutes, Article 4-5, 1986.

<sup>263</sup>Ibid.

<sup>264</sup> The Federation Constitution, Article 3.

countries to accomplish their responsibilities under the 1949 Geneva conventions and the additional protocol of 1977 and 2005 as well as other instruments of international humanitarian law.<sup>265</sup>

The establishment of such committee is not needed by the Geneva Convention. The choice to do so is exclusively the right of the concerned regime. Similarly there is not set format or

The Geneva Conventions do not require the foundation of such committees. The choice to do so is exclusively the right of the government concerned. Nor is there a standard format or constitution for the formation of such committee. Due to this reason, National Committees differ in composition and in the method they effort, from state to state. According to the International Committee of Red Cross, National Committee should assess country-wide legislation in the light of obligations enclosed in a range of international humanitarian law instrument, in particular the Geneva conventions and their additional protocols.<sup>266</sup> They should supervise the appliance of international humanitarian law, be competent to propose fresh legislation, or alteration to present law and afford guidance for the international humanitarian rules interpretation.

National Committees efficiency very much depends on their composition. They require consisting of people with the basic expertise. The most understandable members should be diplomats of government ministries who have deep interest in international humanitarian law such as foreign affairs, defence, internal affairs, justice and education.<sup>267</sup> In many states senior members of the judiciary and the army officer's members, such as top academic specialists, delegates of the humanitarian institutions and the media.

Even though not a duty on set up international humanitarian law committee under IHL is creating dilemma in the formation of National committee. The difficulty occurs from very

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<sup>265</sup>Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012, p. 14-22.

<sup>266</sup>Ibid.

<sup>267</sup>Ibid.

beginning is the political will of the state. In such circumstances political will never support provisions to be a part of its domestic system that can go against the interest of concern state. Therefore state does not concur to approve or sign the conventions that are in opposing of the political will of the state. So that political will is basic trouble in establishment of Nation Committee of IHL in state.

## CONCLUSIONS

To wind up the above discussion of chapter three it is clear that the universal system of the states in the globe is that they adopt the rules of international humanitarian law as a part of their domestic system and similarly Pakistan does the same. Dualism is a system that permits the countries to take up the initiatives towards the implementation of international humanitarian law in their domestic system. The reason behind this is that it is needed by Geneva conventions and their additional protocols provisions.

The demand of the Geneva Conventions from all the member countries is to disseminate international humanitarian law not only among armed forces but among the civilians as well. The provisions should be translated in the national language and should be reached to the common people through training, teaching, conferences and educational institutions.

The formation and establishing of National committee of IHL will further pave the way to accomplish the aim and it may possible through dissemination and implementation of IHL.



## CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

The gist of the whole thesis is that IHL is a set of rules that follow humanitarian reasons to bind the effects of armed conflict are known as Humanitarian Law. These rules are published by treaties or customs which are specifically intended to solve humanitarian problems that arise directly from international or non-international armed conflict. A significant part of international humanitarian law is enclosed in the four Geneva Conventions of 1949. About each State on the earth has consented to be bound by them. There is a stern need for measures to be taken to guarantee esteem for these laws. States have a commitment to show its rules to their military and the general population. It is the responsibility of state to anticipate infringement or impose punishments for their violations within its jurisdictions. Specifically, state should order laws to punish the most genuine infringement of the Geneva Conventions and Additional Protocols, which are viewed as war crimes. The States should likewise pass laws securing the Red Cross and red sickle emblems. Likewise measures should be taken at a global level: tribunals have been made to rebuff acts conferred (discussed) in armed clashes. The rules provide great variety of laws that could be used to minimize the drastic effects of war and armed conflicts around the globe by simply implementing these law with true letter and spirit domestically.

States are the sole players on the universal scene, and even considerably less so in armed conflicts. Rules on State obligation, specifically as systematized by the ILC, are only tended to States separately and as individuals belonging from the international society. Their conceivable effect on better regard for international humanitarian law ought to accordingly not be overvalued, particularly not when contrasted with the preventive and oppressive components coordinated at individuals. However it is clarified in the Draft Articles and their Commentary, notwithstanding, numerous vital inquiries concerning usage of international humanitarian law might hence enhance

the protection of war victims by States, for in the unforgiving reality of many present-day conflicts States keep on playing a noteworthy immediate or aberrant part, especially on the off chance that they are not permitted to hole up behind the smokescreen names of "globalization", "fizzled States" or "uncontrolled components"<sup>268</sup>. They are dependable, under the general tenets on attribution of unlawful acts, significantly more frequently than they would desire. Moreover, violations do have results and outcomes for the victims as well as lawful consequences for the capable State. Concluding this, through the joined components of international humanitarian law and of the general standards on State obligation, every single other State are capable and are obliged to act when in case of any violations. Preferably, they ought to do as such through widespread and provincial establishments, a viewpoint maybe dismissed by the ILC. The Draft Articles on State obligation, connected to international humanitarian law violation, advise us that all States can respond legitimately and elucidate(explain) to a specific degree what they ought to do. This might be the most essential message of the examination. Despite the fact that there irrefutably(certainly) must be the fundamental political will, the need to regard and guarantee respect for international humanitarian law is not a matter of governmental issues and politics, but rather a matter of law.

A dualism is a system that permits the countries to take up the initiatives towards the implementation of international humanitarian law in their domestic system. The reason behind this is that it is needed by Geneva conventions and their additional protocols provisions. The demand of the Geneva Conventions from all the member countries is to disseminate international humanitarian law not only among armed forces but among the civilians as well. The provisions should be translated in the national language and should be reached to the common people through training, teaching, conferences and educational institutions. The formation and

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<sup>268</sup> Ibid. p 412-416.

establishing of National committee of IHL will further pave the way to accomplish the aim and it may possible through dissemination and implementation of IHL.

## RECOMMENDATIONS

First, IHL treaties must be incorporated into domestic or national law. In common law States, this usually requires the enactment of implementing legislation.

Second, States must ensure that their criminal law provides for punishment of —

- grave breaches of the Geneva Conventions and their Additional Protocol I;
- misuse of the emblem (the emblems, designations, signs and signals protected by the Conventions and Protocol I and the Cultural Property Convention);
- violations of the 1954 Cultural Property Convention;
- violations of the 1997 Ottawa Convention;
- willfully killing or causing serious injury to civilians through violations of amended Protocol II (landmines) of the 1980 Conventional Weapons Convention.

Third, States must adopt a variety of other implementation measures to give effect to their obligations under IHL treaties, for example:

- translation of these texts into national languages;
- dissemination of the Conventions and Protocols within the armed forces and generally
- identification of protected persons and places;
- protection of fundamental and procedural guarantees;
- appointment and training of persons qualified in IHL including legal advisers within the armed forces;
- Establishment of National Societies, civil defense organizations and national information bureau.

Fourth, national implementation studies — the purpose of these studies, ordinarily undertaken by a local lawyer engaged specifically for this purpose by the ICRC, is to determine the state of implementation (legislative and administrative) in the country;

Fifth, national seminars on implementation of IHL — the purpose of these seminars, which bring together representatives of relevant ministries, the National Society, civil defense and other relevant bodies, is to consider the state of implementation and make recommendations as to what needs to be changed (and perhaps also recommendations as to ratification of IHL treaties and establishment of a national IHL committee);

Sixth, establishment of a database of implementation measures — the purpose of this database, Which will appear in the ICRC's homepage is to make information concerning national implementation readily accessible to States and others.

## Bibliography

### Journals

- i. Am. J. Int. L. Willoughby, *The Legal Nature of International Law*, 1908.
- ii. Antoine. A. Bouvier, *International humanitarian law and the law of armed conflict*, peace operation training institute, 2005.
- iii. Barcroft, Stephen. "The Hague Peace Conference of 1899" *Irish Studies in International Affairs* 1989, Vol. 3 Issue 1, 2007.
- iv. Barenblatt, Daniel, *A Plague Upon Humanity: the Secret Genocide of Axis Japan's Germ Warfare Operation*. HarperCollins, 2004.
- v. Boissier, Pierre, *History of the International Committee of the Red Cross: From Solferino to Tsushima* (2<sup>nd</sup> ed.), Geneva, Switzerland, 1985.
- vi. Bugnion, Francios, "The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium", *International Affairs* (Royal Institute of International Affairs 1944), 2000.
- vii. Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012.
- viii. D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, 1979.
- ix. H. Caminos and M. Molitor, 'Progressive Development of International Law and the Package Deal', 1985.
- x. H. Kelson, and O. Thosa, *National Law and International Human Rights Law: Cases of Botswana, Namibia and Zimbabwe*, Alders hot: Ashgate, 2001.
- xi. Harris, Sheldon H. *Factories of Death: Japanese Biological Warfare 1932-45 and the American Cover-Up*. Routledge, 1994.
- xii. Henry Dunant, *A Memory of Soferino*, ICRC, Geneva, 1986.

- xiii. L. J. Kunz, The Nature of Customary International Law", *American Journal of International Law*, 1953.
- xiv. Marco Sassoli, Antoine A. Bouvier. Anne Quintin. How Does Law Protect in War? Part I. Geneva: ICRC 2011.
- xv. Marco Sassòli, State responsibility for violations of international humanitarian law, Vol 84, 2014.
- xvi. Nur Muhammad Azami, *Means and methods of warfare*, ASA, University review, July – Dec, 2011.
- xvii. Patrick J Boylan, Implementing the 1954 Hague Convention and its Protocols: legal and practical implications, City University London, UK, 2006.
- xviii. Picciotto, The Relation Of International Law To Tile Law Of England and of The United States, 1915.
- xix. Pieter Kooijmans, International publication in vogelvlucht, WoltersNoordh off, Groningen, 1994.

## Books

- i. Anthony E. Cassimatis, "International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law" The International and Comparative Law Quarterly, Vol. 56, No. 3, 2007.
- ii. Anthony Aust, *Handbook of International Law*. Cambridge University Press, 2005.
- iii. Burrus M. Carnahan. *Lincoln on Trial: Southern Civilians and the Law of War*. University Press of Kentucky, 2008.
- iv. C. Harland, The Domestic Implementation and Application of International Humanitarian Law Norms, Geneva, 1993.
- v. Customary International Humanitarian Law, Volume I Rules, Jean-Marie Henckaerts, Louise Doswald-Beck, Cambridge University Press, UK, 2006.

- vi. D. N. Palmer and C. H. Perkins, *International Relations: The World Community in Transition* Third Revised Edition India: A.I.T.B.S Publishers & Distributors, 2007.
- vii. Daniel Dormoy, 'Recent developments regarding the law on participation in international organisations', in Karel Wellens (ed.), *International Law: Theory and Practice – Essays in Honour of Eric Suy*, Martinus Nijhoff, The Hague, 1998.
- viii. Gary Solis, "The Law of Armed Conflict: International Humanitarian Law in War", Cambridge University Press, 2010.
- ix. J. Brierly, *The Law of Nations*, Origin of International Law, 6th edition, Oxford, 1963.
- x. J. Dugard, *International Law: A South African Perspective* Third Edition, Kenwyn: Juta, 2006.
- xi. J. Lehman, S. Phelps, "West's Encyclopedia of American Law" Edition 2, 2005.
- xii. Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law*, Cambridge: Cambridge University Press, 2005.
- xiii. M. Akehurst, *Modern Introduction to International Law*, Harper Collins, London, 1997.
- xiv. "Malawian Constitution" Africa, 1996
- xv. Maluwa, T. "The Role of International Law in the Protection of Human Rights under
- xvi. Masters, Peter, "Chapter 8 – The Man Behind the Red Cross", *Men of Destiny* (paperback ed.), London, 2008.
- xvii. Merryman, John Henry, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (3rd ed.). Stanford University Press, 2007.
- xviii. Michael Haas, *International Human Rights: A Comprehensive Introduction*, Routledge, 2008.
- xix. Moorehead, Caroline, *Dunant's dream: War, Switzerland and the history of the Red Cross* (hardcover ed.), London, 1998.

- xx. Morgenstern, F., "Judicial Practice and Supremacy of International Law" A British Year Book of International Law, 1950.
- xxi. Oscar Riddle. *The Unleashing of Evolutionary Thought*, Vantage Press, 2007.
- xxii. Paul R. Bartrop and Samuel Totten, *Dictionary of Genocide*, 2007.
- xxiii. S. Rosenne, Practice and Methods of International Law, New York, 1984.
- xxiv. Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir*. Little, Brown and Company, 1993.
- xxv. Williams, Peter, *Unit 731: Japan's Secret Biological Warfare in World War II*. Free Press, 1989.

## Web Sites

- i. Anthony E. Cassimatis, The International and Comparative Law, Accessed on May 7, 2015 from <http://www.jstor.org/stable/4498092>
- ii. "Policy on ICRC cooperation with National Societies," Assessed on August 19, 2015 available at [https://www.icrc.org/eng/assets/files/other/policy\\_cooperationicrc\\_ns\\_ang.pdf](https://www.icrc.org/eng/assets/files/other/policy_cooperationicrc_ns_ang.pdf)
- iii. Development of IHL, American Red Cross 2011, Accessed on July 14, 2015 from <http://www.redcross.org/>
- iv. Diakonia, International Humanitarian Law Accessed on November 16, 2015 from <https://www.diakonia.se/en/ihl/the-law/international-humanitarian-law-1/introduction-to-ihl/principles-of-international-law/>
- v. Eric Stover (2011): Crimes of War Project Sick and Wounded accessed on August 18, 2015 <http://www.crimesofwar.org/a-z-guide/sick-and-wounded/#sthash.xq7ewa43.dpuf>
- vi. ICRC Data base on National Implementation of IHL, Accessed on August 23, 2015 from [www.icrc.org/ihl-net](http://www.icrc.org/ihl-net)

- vii. International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Accessed on May 18, 2015 from <http://www.refworld.org/docid/4374cae64.html>
- viii. Joan Policastri and Sergio D. Stone, International Humanitarian Law, American Society of International Law, 2013, Accessed on August 18, 2015 from <http://www.asil.org/erg/?page=ihuml#id.utnofdl7zmb5;>
- ix. Parties of the 1956 Convention, Accessed on August 19, 2015 from <http://www.unesco.org/eri/la/convention>
- x. Protocol additional to the Geneva Conventions of 12 August 1949, Accessed on August 18, 2015 from <http://www.treaties.un.org>
- xi. Protocols I and II, the Geneva Conventions and Geneva Conventions of 1949 and Additional Protocols, and Commentaries accessed on August 15, 2015 from <https://www.icrc.org/eng/resources/documents/misc/additional-protocols-1977>
- xii. The United Nations Children's Fund (UNICEF), Information: Impact of Armed Conflict on Children, 1996, Accessed on August 18, 2015 from <http://www.unicef.org/graca/patterns.html>

### **Commentaries, Conventions, Acts and Treaties**

- i. 1980 Convention on Certain Conventional Weapons – Factsheet, International Committee of the Red Cross, March 2014.
- ii. Act No IX of 1972, The Diplomatic and Consular Privileges Act of Pakistan.
- iii. Article 1-64 of the First Geneva Convention.
- iv. Biological Weapons Convention, Article 1.
- v. Commentary of 1960: Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.



- vi. Commentary, GC-I pp.370-72; GC-II pp. 266-70; GC-III pp. 626-29; GC-IV pp. 596-601.
- vii. Convention (IV), The Hague, 18 October 1907.
- viii. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864.
- ix. Convention on Certain Conventional Weapons, 1980, Art, 6.
- x. Geneva Convention I and Geneva Convention II, 1949, Article 12.
- xi. Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, entered into force Oct. 21, 1950, Human Rights Library, University of Minnesota.
- xii. Geneva Convention 1906.
- xiii. Geneva Conventions 1929.
- xiv. Geneva Protocol 1925.
- xv. Hague Convention 1954, Art, 25.
- xvi. ICRC and Red Crescent Statutes, Art, 3, 4, and 5.
- xvii. III Hague Convention 1899.
- xviii. J. Pictet (ed.), The Geneva Conventions 1949: Commentary, Geneva, 1952-60.
- xix. J. Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952.
- xx. Resolution 7 of the 26th International Conference of the Red Cross and Red Crescent at Geneva, Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent at Geneva.
- xxi. The BWC Implementation Support Unit
- xxii. The Constitution of Pakistan, 1973
- xxiii. The Convention on Cluster Munitions, Article 1, 22 and 23.
- xxiv. The Federation Constitution, Art, 3 and 6.

- xxv. The Foreign Private Investment (Promotion and Protection) Act, 1976.
- xxvi. The Geneva Convention IV Relative To The Protection Of Civilian Persons In Time Of War Of 12 August 1949.
- xxvii. The Privileges and Immunities Act, 1948.
- xxviii. The Protection of Economic Reforms Act, 1992.
- xxix. United Nations Treaty Collection: Convention on Cluster Munitions.
- xxx. Xth Hague Convention 1907.

### ICRC Publications

- i. "State Parties / Signatories: Geneva Conventions of 12 August 1949". International Humanitarian Law, International Committee of the Red Cross, ICRC.
- ii. "National Measures to implement international humanitarian law, Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986). Written representations by the ICRC", ICRC, Geneva, October 1991; "Implementation of international humanitarian law: National Measures", ICRC, Doc. C.1/4. 1/1.
- iii. Additional Protocols to the Geneva Conventions of 1949 – International Committee of Red Cross – ICRC, 2013.
- iv. Boissier, Pierre, Henri Dunant, Geneva, Switzerland: International Committee of the Red Cross, ICRC (1974).
- v. Christopher Harland, *Basic Documents on international Humanitarian law South Asia Collection* (ICRC Regional Delegation, New Delhi, India), 2012.
- vi. Christopher. H, The Domestic Implementation and Application of International Humanitarian Law Norms, Geneva. Accessed on August 19, 2015 from <http://supremecourt.gov.pk/ijc/Articles/1/3.pdf>
- vii. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949 accessed from <https://www.icrc.org>

- viii. Dunant, Henri (1986) [originally published 1862], *A Memory of Solferino (PDF)* (in English, French, Spanish, Arabic, and Chinese), Geneva, Switzerland: International Committee of the Red Cross, ICRC.
- ix. Harland, Christopher. (Ed) Basic Documents on IHL-South Asia Collection, Geneva: ICRC, p. 1305-1309
- x. ICRC Advisory Service on IHL, The Domestic Implementation and Application of International Humanitarian Law Norms, Geneva.
- xi. ICRC Prevention Policy, Geneva, 2010.
- xii. Implementing International Humanitarian Law: from Law to Action, Advisory Service on International Humanitarian Law Legal Division, International Committee of the Red Cross, Geneva. 2002.
- xiii. International Committee of the Red Cross <https://www.icrc.org/>.
- xiv. International Committee of the Red Cross, South Sudan: world's newest country signs up to the Geneva Conventions, July 19, 2010 available at <http://www.icrc.org/eng/resources/documents/news-release/2012/southsudan-news-2012-07-09.html>
- xv. International Committee of the Red Cross, What is International Humanitarian Law? Advisory Service on International Humanitarian Law, 2004 available at [http://www.icrc.org/eng/assets/files/other/what\\_is\\_ihl.pdf](http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf)
- xvi. International humanitarian law: From Law to Action - Report on the Follow-up to the International Conference for the Protection of War Victims, ICRC, Geneva, 1995.
- xvii. National Committees and other National Bodies on IHL, ICRC Advisory Service, August ~2013.
- xviii. States/Parties who ratify the Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 accessed on July 18, 2015 from <https://www.icrc.org/applic/ihl/ihl.nsf/states>

- xix. The Domestic Implementation of International Humanitarian Law, ICRC national implementation database available at <http://www.icrc.org/ihl>
- xx. The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, 1996.
- xxi. Treaties, States Parties and Commentaries accessed on August 18, 2015 from <https://www.icrc.org/applic/ihl/ihl>
- xxii. UmeschKadam, International Review of the Red Cross (ICRC, New Dehli) vol, No. 841, 2001.

## Reports

- i. Fisheries Jurisdiction (UK v. Iceland; Germany v. Iceland), ICJ Reports, p. 3, ILR 238, 1974.
- ii. Improving Parliamentary Performance (IP3) published *Handbook on Human Rights for Parliamentarians, Committees and Secretariat Staff in Pakistan*, 2013.

## Unpublished Theses

- i. Muhammad MushtaqAhmand, *Jihad, MuqahamataurBaghawat*, (Gujranwala: Al-Shari'ah Academy, 2008.
- ii. Marco Sassoli, Transnational Armed Groups and International Humanitarian Law, Harvard University Occasional Paper Series, 2006.
- iii. Onyekachi. Duru, International Law *Versus* Municipal Law: A Case Study of Six African Countries; three of which are Monist and three of which are Dualist, 2001.

## Projects and Judgements

- i. ICTY, The Prosecutor v. DuskoTadic, Judgment, IT-94-1-T, 7 May 1997, para. 561-568. ICTY, The Prosecutor v. FatmirLimaj, Judgment, IT-03-66-T, 30 November 2005, para. 84.
- ii. International Criminal Tribunal for the Former Yugoslavia, Judgement, Tadic, Appeals Chamber, July 15, 1999, paras. 116-144.

- iii. Judgement: *The Law Relating to War Crimes and Crimes against Humanity*, see more on the Avalon Project at the Yale Law School.
- iv. United Nations Office for Disarmament Affairs: Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects: Status of the Treaty.

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