

Establishment of National IHL Committee by High Contracting Party under Geneva Conventions of 1949: Case of Pakistan and the Islamic outlook

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Abstract

Implementation of International Humanitarian Law is the responsibility of states signatory to the Geneva Conventions (GC) of 1949 and Additional Protocols of 1977. As Islamic Republic of Pakistan is member to four Geneva Conventions, therefore, this paper will consider responsibility of Pakistan for the effective implementation of International Humanitarian Law (IHL) in this regard.

Key words: Humanitarian Law, Convention, Contract

Introduction

In the present age, everything is not fair in war. War is regulated by law known as International Law of Armed Conflict. More recently, it is 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.¹ So purpose of IHL is humanitarian on one hand and to restrict use of weapons on other. First one is called Geneva Laws and later as Hague Laws.

As International Humanitarian Law (IHL) is based on Geneva Laws and Hague Law. While former comprises of four Geneva Conventions of 1949; two Additional Protocols of 1977 and third Additional Protocol of 2005, whereas, later is composed mainly of Hague Conventions of 1899 & 1907. There are also other treaties dealing with these issues in one way or other.

Geneva Laws deal with the humanitarian aspect. First Geneva Convention deals with sick and wounded armed personnel; second deals with sick and wounded shipwrecked

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personnel; third deals with prisoners of war and fourth deals with civilians. First Additional Protocols deals with International Armed conflict; second deals with non-international armed conflict and third deals with emblems².

Hague Laws deal with means and methods of warfare. It restricts the choice of using weapons in the armed conflict. Use of weapons is now subject to various limitations imposed upon the signatory states³.

History of IHL is as old as human history. It developed with passage of time and experienced many wars and conflicts. Religions and customs are very important sources of it. Every religion has almost same humanitarian principle. Islam defined this aspect in very elaborate manner. There are various Versus, Ahadis, the practices of Right Caliphs and subsequent Muslim Jurists. Form the Holy Qran and the glorious life history fo the Holy Prophet (S.A.W) it is obivious that the human rights must be secured. The Prophet (S.A.W) received the delegations and signed the treaties with the Non believers on various occasions. The Islamic jurisprudence has highlighted the international Humanirarian law in detail.

Among the prominent Islmic jurists, Imam Muhammad has the prestige to compile the first even book on this topic. This book is known as “Al-seair ul Kabir”and is the original source of Islamic jurisprudence. From these lines reveals that Islam introduces this law at first.

However, Swiss businessman, Henry Dunant, played pivotal role in the development of IHL as we see it today. He was on a business visit and wanted to meet French King in 1859 in Salfarino, Italy, who was engaged in a conflict. He failed to meet King but was moved by the deplorable conditions of sick and wounded, lying helpless and waiting for ruthless death. He stayed there for three days and looked after the sick and wounded.

When came back, he wrote “A Memory of Solferino” to wake the conscious of people and to train them through private relief committees to be established in time of peace. These committees would help the sick and wounded in war. He was lucky to have four dedicated and sincere friends/colleagues⁴, who extended whole-hearted support to the noble cause. They established ‘International Committee for the Relief of

Wounded' in 1863. This Committee is now known as 'International Committee of the Red Cross and Red Crescent (ICRC)' ⁵. This Committee drafted and adopted First Geneva Convention in 1864⁶, which was amended/supplemented from time to time. It was finally codified in 1949⁷ and supplemented in 1977 by two additional Protocols⁸.

Implementations of IHL

Implementation means to ensure respect of IHL. Respect does not mean that rules of IHL will be enforced during the armed conflict but also during the peace time to ensure protection, distinction and compliance. If armed forces and civilians are familiar with principles of IHL, which will mitigate violations of Law and sufferings⁹.

It is the responsibility of high contracting parties to implement, promote and disseminate IHL. According to Four Geneva Conventions, states are bound to disseminate¹⁰, Translate¹¹, Penal Sanctions¹², Grave Breaches¹³ and prevention of misuse of emblem¹⁴.

Four Geneva Conventions of 1949 are signed by almost all the countries around the world and Pakistan is not an exception to it. Therefore, all of their provisions are to be strictly adhered to.

National IHL Committee: way out

As Implementation of IHL is the responsibility of High Contracting Parties, therefore, different committees are established around the world in this regard.¹⁵ These committees vary in structure, powers and functions.

In South Asia, Sri Lanka, Bangladesh and Nepal are the only States having National IHL Committee. Also reference can be made to the decision of the Supreme Court of Nepal, whereby Government of Nepal was directed to fulfil its obligation under IHL Treaties by implementing the same.¹⁶ Pakistan is having only one Act, Geneva Convention Implementation Act 1936, & 1963 which provided for Rs. 50/- fine under Section 4 for violating emblem of the white cross on a red background.¹⁷

Suggestions

As Pakistan is signatory to the four Geneva Conventions, and is not fulfilling its obligations in this regard. Following are some suggestions to implement IHL effectively in Pakistan:

1. Pakistan must sign Additional Protocols I & II to recognize the current state of conflict going on particularly in FATA and effectively combat the same.
2. In order to effectively implement IHL in Pakistan, National IHL Committee may be established with representation from different ministries particularly Foreign, Defence, Interior, Finance, Armed Forces and any independent humanitarian organization as observer.
3. The Committee must include Ulema to check that the proposed laws as they are not inconsistent with Islamic Provisions enshrined in the Constitution of Pakistan 1973. Ulema will also give their wise suggestions and prudent input in context of Islamic Law of War to harmonize International Humanitarian Law with Shariah.
4. This Committee may be empowered to work for the dissemination, implementation and promotion of IHL.
5. The Committee will provide legal and technical advice to the Government in implementation, promotion and dissemination of IHL.
6. The Committee will be in a better position to convince the world about its mandate and to improve the image of Pakistan in the world community.

Conclusion

Under the Geneva Conventions, it is the responsibility of High Contracting Parties to implement IHL. As a signatory to the Geneva Conventions, Pakistan is lagging behind in fulfilling its obligations. If Government establishes National IHL Committee, it will improve image of Pakistan in the community of states and clarify misconceptions in this regard.

Conventions and Protocols

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of International Armed Conflicts (Protocol I). Geneva, 8 June 1977.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of Non-International Armed Conflicts (Protocol II). Geneva, 8 June 1977.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an Additional Distinctive Emblem (Protocol III). Geneva, 8 December 2005.

References

1 Marco Sassoli, Antoine A. Bouvier, Anne Quintin, *How Does Law Protect in War? Vol. I*, Geneva: ICRC, Third Edition, p.p. 1-2.

2Ibid

3Ibid p.3

4 General Dufour, Gustave Moynier-lawyer, Dr. Appia & Dr. Maunoir.

5 Alma Baccino Astrada, *Manual on the Right and Duties of Medical Personnel in Armed Conflicts*, Geneva: ICRC, 1982, p. 15.

6 Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts*, Oxford: Hard Publishing, 2008. p. 38

7 *The Geneva Conventions are the result of a process that developed in a number of stages between 1864 and 1949. It focused on the protection of civilians and those who can no longer fight in an armed conflict. As a result of World War II, all four conventions were revised, based on previous revisions and on some of the 1907 Hague Conventions, and readopted by the international community in 1949. Later conferences have added provisions prohibiting certain methods of warfare and addressing issues of civil wars.*

8 *Additional Protocol-I deals with International Armed Conflict, whereas, Additional Protocol-II with Common article 3 deal with Non-International Armed Conflict.*

9 *Implementing International Humanitarian Law: From Law to Action*, ICRC, p. 1, retrieved from http://www.icrc.org/eng/assets/files/other/implementing_ihl.pdf on 2-6-2014

10 GC-I Art. 47; GC-II Art. 48; GC-III Art. 127; GC-IV Art. 144

11 GC-I Art. 48; GC-II Art. 49; GC-III Art. 128; GC-IV Art. 145

12 GC-I Art. 49; GC-II Art. 50; GC-III Art. 129; GC-IV Art. 146

13 GC-I Art. 50; GC-II Art. 51; GC-III Art. 130; GC-IV Art. 147

14 GC-I Art. 54; GC-II Art. 45;

15 National Committees and other National Bodies on IHL, ICRC Advisory Service, August 2013, p. 2

16 Harland, Christopher. (Ed) Basic Documents on IHL-South Asia Collection, Geneva: ICRC, p. 1305-1309

17 Ibid p. 974