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Introduction To The International Humanitarian Law.

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Abstract:

International humanitarian law often referred to as the “law of war” or “law of armed conflict” forms a significant branch of public international law. It governs the conduct of parties engaged in armed conflicts and aims to limit the effects of warfare by protecting individuals not participating in hostilities and by restricting the means and methods of warfare. IHL has evolved through treaties, customs and practices rooted in ancient traditions, religious codes, and ethical principles of military conduct. Furthermore, Historically humanitarian norms were evident in various cultures, emphasizing respect for non-combatants and humane treatment of enemies. The Lieber Code 1863 played a crucial role in shaping modern international humanitarian law. It established principles such as military necessity, humanity and chivalry, and it prohibited acts like torture, unnecessary destruction, and targeting civilians. The Geneva and Hague Conventions further codified these rules, focusing respectively on the protection of victims and regulation of warfare conducts. The modern structure of IHL was significantly influenced by Henry Dunant’s experiences during the Battle of Solferino in 1859, which led to the creation of the International Committee of the Red Cross and the Geneva Conventions. These neutrality and protection of medical personnel and facilities, safeguarded civilians and injured soldiers during conflict. IHL consists of two core branches the Geneva Law and Hague Law, however several international conventions and treaties regulate the use of weapons and warfare tactics, including those prohibiting chemical weapons, landmines and biological warfare. However the customary international law is a critical source of IHL it derived from consistent state practice and the belief that such practice is legally obligatory (*opinio juris*), the two-elements approach general practice and acceptance as law underpins the identification of customary rules.

Introductions:

International humanitarian law are also known as “law of war” or “law of armed conflicts” it is the branch of Public International law. However, (IHL) help in regulating a relation between the state, international bodies, and international laws in the time of military conflicts between the two countries. The United Nations General Assembly passes a several resolution to protect the civilians from the military conflicts between the two states. Humanitarian law is a set of rules which includes various treaties conventions and customs

which help to resolve the humanitarian crises and protect the persons who are not participating in the bloodshed and it also restrict the means and method of warfare. International Humanitarian law is the part of the “*Jus In Bello*” which means “*Justice in war*” it regulate the conduct of parties engaged in an armed conflicts it seeks to minimize suffering in armed conflicts by protecting and assisting all victims of armed conflicts.

Origin and Nature of Humanitarian Law.

From the Ancient time rules against violence in war have existed in many cultures. These rules Often come from religious beliefs and military ideas. Different culture have similar customs about how soldiers should act. These customs focus on how fighters treat each other and how they should avoid harming civilians¹. However the old book on humanitarian law talk about three main Principles: Military necessity, Humanity, and chivarly. ²The humanitarian law began when using force in war was still legal and accepted. One big influence on European law was the church’s just war ideas. This ideas included when it was afair to start a war. At that time, it was not shameful to begin a war. People believed that fighting with honor was important. In the 1800s especially, acting with honor in war was seen as a sign of being civilized. This law also grew from the idea that soldiers should respect other armies. This philosophy is also mentioned in the lieber code of 1863.³

Furthermore, this code was used as the principle basis for the development of the Hague Conventions of 1899. And 1907. Article 67 of the lieber code says that every country has the right to go to war with another counrty. But it also says that there should be no special or unfair rules for how prisoners of war are treated, even if they are from the enemy government. The law focused on what was truly needed to win the war and banned actions that were seen as unnecessarily cruel. Further the Article 14 of this code explained the military necessity. It means that only actions needed to win the war are allowed. These actions must follow modern laws and customes of war. Article 16 of the act says that military necessity does not allow cruel acts like:

- Hurting people for revenge.
- Wounding or torturing people just to make them suffer.
- Using poison
- Destroying whole areas without a good reason.

The code also talk about the two most important concept in the International Humanitarian law.

- Protecting civilians
- Treating prisoners of war with respect.

¹ See Part 1 of the Report of International Dimensions of Humanitarian Law, UNESCO, Paris, Henry Dunant Institute, Geneva, 1988.

² See, for example, L. Oppenheim, International Law, Volume II, Dispute, War and Neutrality, Seventh edition, Longmans and Green, London, 1952, pp. 226-227.

³ See, Instruction for the Government of Armies in the field, 24 April 1863. The law on armed conflicts, Martinus Nijhoff Publishers, Dordrect, Henry Dunant Institute, Geneva, 1988.

Furthermore, Article 22 says that as society has become more advanced, people have learned to tell the difference between: (1) A regular person living in an enemy country. (2) And the enemy country's army. The rule is that unarmed civilians should not be harmed. Their lives property, and dignity should be respected as much as possible during war. And the prisoners of war should also be treated with respect.

The lieber code emphasized humane treatment during war. Prisoners of war should not be punished, tortured, or harmed for being enemies. Captured soldiers must not be forced to give information, and honorable ones should remain silent. Hospital should be protected and not attack during the military conflicts and using the false protective signs to deceive the enemy is forbidden. However in the occupied territories violence, rape, looting, and killing of a civilian persons are strictly prohibited and punished by death.⁴ Also the retaliation is allowed only as a last resort for protection, not for revenge and it must be done with careful manner.

Development of Modern International Humanitarian law.

The development of modern international law is credited to the efforts of 19th century swiss businessman henry dunant. In the year of 1859 the dunant witnessed a bloody battle between the french army and Austrian army. After the ending of war the winning army is left the battlefield with dying mens. The dunant try to save the army personal but thousand of personal was died because of the battle between the french and Austrian armies. Afterthat Dunant proposed that trainer volunteers reliefs groups must be granted a protection during the war in order to protect the injured and died mans. Furthermore, A group known as the committee of five, which was became the international committee of red cross, which was formed in geneva in the year of 1863. He was also suggested a written agreements between the countries for saving the lifes of the injured persones. Several months thereafter, representatives of sixteen (16) high contracting parties, with the assistance of the aforementioned committee and in consultation with delegates of military medical services and impartial humanitarian organization, concluded a convention comprising ten (10) Articles, wherein it was agreed as follows: (1) Ambulance, military medical establishments, and the personnel serving with them are to be recognized as neutral and protected during any conflicts.⁵ (2) Citizens who assist the Wounded are to be protected. These agreement are known as geneva convention it was became a foundation of the modern international law.

Branches of International Humanitarian law:

Humanitarian law have two branches First is law of Geneva and Second one is Law of the Hague. However, Law of Geneva is a body of rule that protect the Victims of military conflicts such as military personal who are (Prisoner of Wars) and civilians who are not participating in the bloodshed. Furthermore, the law

⁴ These days be a violation of the right to fair trail of the accused, which is reflected in Article 75 of 1977 Protocol I and equally applies to the treatment of a party's own soldiers.

⁵ See summary of geneva convention

https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf?srsltid=AfmBOooNTX1sMJktvVdEqN-E_Tskw8SDyMWb5V5RC0LAdJqwX-HWQ41

of the Hague is a body of rules that provides the rights and obligation on the parties which are engaged in the armed conflict. And it also regulated the means and method of warfare.⁶

Sources of International Humanitarian law.

There are the conventions given below which deals with the protection of civilians and the people who are not seeking participation in military conflicts and conventions that limits the means and methods of warfare⁷.

- The Hague Regulations respecting the law and customs of war on land
- The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- The Geneva Convention (II) for the Amelioration of the Condition of wounded, Sick and Shipwrecked Member of Armed Forces at Sea.
- The Geneva Convention (III)
- The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.
- The Protocol Additional to the Geneva Convention and relating to the Protection of Victims of international armed conflicts (Protocol I).
- The Protocol Additional to the Geneva Conventions and relating to the protection of Victims of Non-International Armed Conflicts (Protocol II).

Conventions which regulate the conduct of armed hostilities and impose restrictions on the use of certain weapons.

- The convention on the Prohibition of the Use, and stockpiling, Production and transfer of Anti-personnel mines and on their destruction.
- The convention on Cluster Munitions.
- The Convention on the Prohibition of the development, production and stockpiling of bacteriological and Toxic Weapons and on their destruction.
- The convention on the Prohibition of the development , Production Stockpiling and Use of Chemical Weapons and on their Destruction.
- The 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.
- The treaty on the Non-Proliferation of Nuclear Weapons.
- The Hon'ble International Court of Justice in the North Sea Continental Shelf Case observed that International humanitarian law find their source in a series of international treaties, which have been reinforced and complemented by customary international law⁸

⁶ See Report of inter-parliamentary union and international committee of the red cross (ICRC) 2016 https://www.icrc.org/en/download/file/40569/en_-handbook_humanitarian_law-_web.pdf.

⁷ See, Report of International legal protection of human rights in armed conflict HR/PUB/11/01 sales no. E.1 1 .xiv.3 https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf.

⁸ Federal Republic of Germany v. Denmark I.C.J. Report 1969, p.3.

Customery law in Relation with International humanitarian law.

International humanitarian law is deep rooted with Customary International laws. Customery law consists the rules that are developed by the past decades. It is created by states by its action or inaction of state that are undertaken out of sense of legal obligation and through the officials statements. Customery law is unwritten law deriving from practice accepted as law. (IHL) is a important source of Public international law.⁹ However, in the case of Nicaragua v. United State of America the International Court of Justice Observed that it is sometimes be necessary to determined the law applicable at the time when certain act occurred (the intertemporal law) which may be customary International law even if a treaty is now in force. In any event, a rule of customery international law may continue to exist and be applicable, separately from a treaty, even where the two have the same content and even among parties to the treaty.¹⁰

Furthermore, a treties which are bind only on the members of the treaties. However, Customery international law is binds on all states. Even those state who are not a members or had no part in its formation.¹¹ There are some states who play a crucial role in formation of customery interntaional law this states are Specially affected by the rule because it play an important role in the area that the law addressed. For example the state which performs a high naval military operations in the oceans they are specially affected by the customery rules of the naval warfare. Therefore, the views of these states have greater weight in determining whether a norm has achieved customary International Humanitarian Laws.

Methods of Determining the Existence and Content of Customary International Law.

The basic approach to determined the customary international law that it specifies that identifaying a rule of customary international law required a stablishing the existent of two constituent element **(1)** A general practice and **(2)** The practice must be accepted as law (*opinion juris*). In the case of North Sea Continental Shelf Judgement observed that there are two condition which must be Fulfilled. A general practice and acceptance of that practice as law (*opinion juris*) are the two constituent elements of Customery International Law. Together they are the essential conditions for the existence of a rule of customery International law. The identification of such a rule thus involve a careful examination of available evidence to determined there presence in any given case. This has been confirmed *inter alia* in the case law of the International Court of Justice.¹²

Furthermore, if general practice accpeted as law cannot be proven, then claim rule of customery international law does not exist. Furthermore, in the Asylum case the I.C.J. found that the facts showed too much uncertainty and contradiction in how diplomatic asylum was practiced. Different countries had different opinions and changed their views over time. There were many asylum treaties, but some countries

⁹ See Article 31 Para, 3 (c) of the Vienna Convention on the Law of Treaties (United Nation Treaty Series Vol. 1155, No. 18232, p.331 ("1969 Vienna Convention").

¹⁰ Nicaragua v. United State of America I.C.J Reports 1986, p. 14, at pp. 93-96, paras 174-179; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), I.C.J. Reports 2015, p.3, at pp. 47-48, para 88).

¹¹ See Military and parliamentary activities in and against Nicaragua (see footnote 663 above), at pp. 97-98 para.

¹² North Sea Continental Shelf, Judgement, I.C.J Reports 1969, p.3 at p.44, para. 77.

accepted them while others rejected them. The practice of asylum was often influenced by political reasons. Because of this there was no clear, consistent, and uniform rule as law.¹³

Furthermore, the two-element approach is often referred to as “inductive” in contrast to possible “deductive” approaches by which rules might be ascertained other than by empirical evidence of a general practice and its acceptance as law. However the two-element approach can still use some deduction as a supporting tool it should be used carefully. This is especially important when studying rules of customary international law that are based on broader legal principles. These principles come from and reflects a general practice accepted as law¹⁴. It is also important when deciding if certain rules are part of a larger, unified legal system an (*indivisible regime*).¹⁵ However the two -elements approach is used to find out if a rule of customary international law exists and what it means. This method is used in all areas of international law. It is confirmed by how states behave and by court decisions. This approach fits well with the idea that international law is one unified system. It is not separated into different areas with their own rules about sources¹⁶.

There must be a checking of evidence to know if something is a common practice for treated as law we must look at the whole situation, what kind of rule it is and the specific details of the case therefore, each of the two constituent elements is to be separately ascertained. This required assessment of evidence for each elements¹⁷. Further for determining a practice is a law (opinion juris), each and every evidence must be studied carefully and in context. This helps make fair decisions and allows flexibility in international law. Afterwards, we must look at the full situation and topic the rule covers. The kind of evidence and how strong it is depends on the case. Some practices and signs of legal acceptance matter more in some situations. In the immunities of the state case, it was observed that the judgement of court, national laws, and officials statements showed that countries accepted immunity as law.¹⁸

- **General Practice**

There must be fullfilment of certain Requirement for determininig any General Practice as a Customary International humanitarian law.

The requirement of a general practice for beacme a customary international law, there must be practice of state that formation or expression of rule of customary international law. However sometimes, actions by International organization also help to create or show these rules.

¹³ Colombian-Peruvian asylum case, Judgement of 20 November 1950, I.C.J Report 1950, p.266, at p.277.

¹⁴ See, Argentina v. Uruguay, Judgement, I.C.J, Reports 2010, p. 14 at 55-56, para101.

¹⁵ See, Nicaragua v. Colombia Judgment, I.C.J. Reports 2012, p. 624 at p. 674, para. 139.

¹⁶ See work of the study group on fragmentation of international law, Yearbook...2006, vol, II (Part Two), para. 251 (1).

¹⁷ See North Sea Continental Shelf, dissenting opinion of Judge Tanaka, at p.175 and also See Freedom and Justice party v. Secretary of State for Foreign and Commonwealth Affairs, Court of Appeal of England and Wales,[2018] EWCA Civ 1719 (19 july 2018), para. 19.

¹⁸ See, Jurisdictional Immunities of the State (footnote 672 above), at pp. 123-124, para.57).

Forms of Practice

Practice can be in very wide ranges it can be in words or actions under any specific circumstances it can be even doing nothing (inaction). However state practice can also be includes diplomatic actions and letters, actions related to international resolution or conferences, treaty related actions, actions by government laws and administrative actions, and court decisions. However no one type of practice is more important than the others by default. Furthermore, the inaction is count as practice when state must choose not to act on purpose. It must be clear that the state was aware of the situation and decided not to act. we cannot just assume that inaction means a deliberate choice. There are some examples given which can be a negative practice: Not starting criminal cases against foreign officials, Not protecting certain naturalized citizens, and not using any kind of force.¹⁹



¹⁹ See The Case of the S.S. “Lotus” (footnote 687 above), at p. 28: Nottebohm Case (second phase), Judgement of 6 April, 1955, I.C.J. Reports 1955, p.4, at p. 28 and Jurisdictional Immunities of the State at pp. 134-135. 77.