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Historical perspective of international humanitarian law: Conventional Law, emerging issues

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Abstract: When there is an armed conflict, international humanitarian law (IHL) is applicable. It controls the means and tactics of combat while also protecting victims of armed conflict. The law has been around since antiquity, but the current version was created in 1864. Since then, as armed conflicts have become more complicated and sophisticated, the law has changed accordingly. However, there are a lot of additional advances that aren't covered by IHL. Law, which is falling behind in many areas, is not keeping up with developments in armed conflicts. Many of the issues related to modern armed conflicts are beyond the purview of existing IHL. Among the difficulties are the creation of autonomous weaponry, the rise of private military contractors, the use of sexual assault as a weapon of mass destruction, and the expansion of armed factions. The challenge of controlling warfare is made more difficult by the lack of or insufficiency of legal and regulatory structures. To address these issues, this work suggests reviewing the Additional Protocols and the Geneva Conventions.

Keywords: *Additional protocols, Armed conflict, Geneva conventions, International humanitarian law, Non-state actors.*

1. Introduction

It is commonly believed that during times of armed conflict, anarchy takes over and law disappears. Cicero expressed this opinion when he stated that amid an armaments race, the law remains quiet (Gasser, 1993:4). However, both Cicero and his supporters were in error. It is a well-established fact that regulations restricting the conduct of warfare have existed since ancient times. The laws were based on a reciprocity system and were mostly customary. Efforts to formalize the regulations began in the 1860s, and in 1864 the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted. The two additional protocols on international and non-international armed conflicts were adopted in 1977, marking the completion of the evolution of the law of armed conflict, as it is often known. Nonetheless, a great deal of additional information has emerged that has not been addressed in the Additional Protocols of 1977 and the 1949 Geneva Conventions. Political and military authorities are now debating several concerns that have arisen as a result of this, including a significant void in the legislation governing armed conflict.

This study explores the evolution of the law of armed conflict over time, including the Geneva Law's protection of war victims and the Hague Law's control of war behavior. It also looks at the history and purpose of these legal frameworks. It is also made clear how inadequate the regulations are and how they cannot deal with the problems brought on by armed conflicts in the twenty-first century. It makes the case that this area of the law ought to change along with society. The law of armed conflict must adapt to new developments on the battlefield and cannot afford to fall behind. To address these rising patterns and lessen the suffering brought on by modern warfare, nations, the UN, international

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organizations, and non-governmental organizations (NGOs) must collaborate in the creation of new institutional and legal frameworks.

2. Interpretation and Characteristics of Ihl

An adjunct of international law is international humanitarian law (IHL), commonly referred to as the law of armed conflict. All states, as well as some organizations and individuals, must abide by its regulations (Gasser, 1993: 3). Whether there is a conflict or not, the law aims to safeguard a set of fundamental rights (Umozurike, 1993:212). There have been several definitions put forth for IHL. According to Pictet, it is a significant portion of international law that is driven by human decency and serves to safeguard individuals (Pictet, 1984:56). IHL addresses human rights aspects of the law of war, according to Buergenthal (1995:17), from the standpoint of human rights. IHL is defined as those international regulations, established by treaty or custom, that are specifically intended to solve humanitarian issues that arise from international or non-international armed conflicts and that, for humanitarian reasons, restrict the parties' ability to use their preferred methods and means of warfare or to protect people and property that are or may be affected by the conflict (Gasser, 1993:16). The ICRC has played a significant role in the development of IHL.

Therefore, this area of law controls how war is fought and works to lessen the suffering brought on by the start of hostilities. Put differently, it restricts and limits the means and tactics that can be used to carry out military operations while also protecting those who choose not to participate in military action or have stopped doing so. Thus, the humaneness principle, which unites all of its provisions into a logical structure, is the oldest and most fundamental principle of international humanitarian law (Blishchenko, 1989:34).

International law (the Kellogg-Brian Pact of 1928 and the League of Nations Covenant of 1919) has attempted in the past to prevent conflict. However, governments consistently maintained their right to go to war (*Jus ad Bellum*), thus that was pointless. Nonetheless, the use of force or threat of using force against another state is prohibited by current international law (Article 2 of the UN Charter). States are to use peaceful measures to resolve their conflicts. States still start conflicts even though it is forbidden to use force in international affairs. Despite efforts to put a stop to it, resorting to armed warfare is inevitable (Ibanga, 1994:78). The focus has shifted from trying to end the conflict to protecting those who have been harmed by it as well as managing weaponry and military strategies (Ibanga, 1994:78).

3. Ihl's Development: A Historical View

Humanitarian guidelines about hostilities are not brand-new. To lessen the impacts of war, there have always been laws of war (Alexander, 2015). All human groups share humanitarian principles, according to Pictet (1988:3). They can be found in numerous significant literary works and cultures, including China, Japan, and the Indian epic Mahabharata (Gasser, 1993:7). In ancient India, the Laws of Manu governed the tactics and strategies of battle. There are humanitarian principles in the Bible as well. One story holds that prisoners of war need to be treated with compassion and spared no effort (2 Kings 6:21–23). Islam also has a strong foundation in humanitarian principles (Sultan, 1988:40). The tenets have been articulated by various intellectual movements (Pictet, 1988) and ideologies (Herczegh, 1988) in Latin America (Ruda, 1988), Africa (Njoya, 1988), Asia (Adachi, 1988), and Europe (Partsch, 1988).

The concept put forward by Jean-Jacques Rousseau in his well-known and frequently cited essay, "The Social Contract," is the source of the present methodology (Bertram, 2023). Francis Lieber and Henry Dunant found inspiration in this hypothesis. President Lincoln issued General Order 100 on April 24, 1863, based on the "Instructions for the Government of Armies of the United States," drafted by Lieber. These guidelines served as the basis for the creation of the Hague Law, sometimes known as the rules of war. However, Jean Henry Dunant was in charge of creating the Geneva Law, which is a collection of contemporary humanitarian law ideas. It has been said that his efforts and work are groundbreaking (Shaw, 1999:806). The International Committee for the Relief of the Wounded (later

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renamed the International Committee of the Red Cross) was established in 1863, and the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted in 1864. Dunant made these recommendations in his book "A Memory of Solferino," which he published after the battle of Solferino in 1859. The Geneva law and the Hague law are two legal systems that were created as a result of Dunant and Lieber's energy. While the latter focused on guidelines for conducting battle, the former was more concerned with safeguarding and providing for war victims.

4. The Geneva Law's Development

4.1. Geneva Convention of 1864

The publication of Henry Dunant and his proposal for the creation of an organization to care for victims of armed conflict served as motivation for the attendees of the diplomatic conference in Geneva in 1864. The result of this was the August 22, 1864, approval of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The Geneva Law on the protection of victims of armed conflicts was said to have its origins in this convention, which consists of ten brief clauses (Herczegh, 1984:23).

4.2. The 1906 Geneva Convention

Compared to the previous Convention, the 1906 Convention was better. There were 33 articles in all. This Convention replaced the "neutrality" that sanitary formations and institutions had previously enjoyed with an international legal obligation on the part of state parties to respect and spare the sick and injured. The 1906 Convention's provision for the Geneva Law's propagation was another significant inclusion. The provisions of the Convention were to be known to troops and other personnel (1906 Convention, Art. 26).

4.3. The 1929 Geneva Convention

The efficacy of the Geneva Convention was truly tested by the events of World War I. During the battle, a great deal of experience was gained, and the shortcomings of the preexisting norms were made clear. At the request of the International Committee of the Red Cross, the Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armies in the Field was signed on July 27, 1929. It consisted of 39 pieces and was mainly an addition to the 1906 one. The 1929 Convention included new restrictions on the use of unique insignia during times of peace and the protection of medical aircraft (Article 18). (1929 Convention, Art. 24). The Red Cross was replaced by the Red Crescent, Red Lion, and Sun emblems in countries that had already adopted them (1929 Convention, Art. 19). The extension of the Geneva Code of 1929 to include prisoners of war, a component of the Hague code (Convention Relative to the Treatment of Prisons of War signed at Geneva, July 27, 1929), was another significant development.

5. Evolution of the Hague Law

5.1. Lieber Code of 1863

On April 24, 1863, the Lieber Code, a field manual with guidelines for how the US Army should conduct itself during a conflict, was adopted. It significantly influenced the growth of the Hague School of International Humanitarian Law in two ways. First of all, it established a standard for later military manuals and guidelines about the rule of law. Second, it served as the impetus for the second wave of advancements in contemporary international humanitarian law, which included the establishment of guidelines for the actual conduct of war (Gasser, 1993, 10).

5.2. The Declaration of St. Petersburg, 1868

The Hague Law can also be traced back to the 1868 St. Petersburg Declaration. The Declaration declared that the advancement of civilization should have the effect of reducing the horrors of war to the

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greatest extent possible, that the only legitimate goal that states should strive to achieve during a war is to weaken the enemy's military forces, and that to accomplish this goal, it is sufficient to disable as many men as possible, that the use of weapons that cause needless suffering to disabled men or cause their death to be inevitable would exceed this goal, and that doing so would be against human laws. Several important guidelines for conducting war were presented in the Declaration, chief among them being the ban on using weapons that inflict needless suffering (Iyoho, 2000:30). This Declaration set the stage for the Hague Peace Conference, which resulted in the adoption of the special and more binding convention of 1899 (Elias, 1980:182).

5.2. Conference of Brussels, 1874; Oxford Manual, 1880

To review the draft of an international agreement on the laws and customs of war, the Brussels Conference was called in 1874. Even though the draft was not approved, it was unquestionably a very important step. It paved the way for the codification of war rules and customs at the 1899 Hague Peace Conference (Herczegh, 1984:29). The Institute of International Law took the initiative to further develop the Brussels Declaration. The Oxford Manual of the Laws and Customs of War was published in 1880 as a consequence of the institute's contributions.

5.2. The 1899 and 1907 Hague Laws

Because the agreements were approved at the peace conferences conducted in The Hague, Netherlands, they are referred to as "The Hague Conventions." A Convention (Convention (II) respecting the Laws and Customs of War on Land, signed at the Hague, on July 29, 1899) on Land Warfare was accepted by the First Hague Peace Conference of 1899, and it is annexed with regulations. Known by another name, the Hague Law 1899, it had sixty articles. During the Second International Peace Conference in 1907, the Convention and the Regulations were amended. Convention (iv) Respecting the Laws and Customs of War on Land is another convention that resulted from the Second Peace Conference and was signed on October 18, 1907. In essence, it was a reaffirmation of the 1899 Convention. There were only minor variations among the regulations. Due to the First World War's beginning, the third Hague Peace Conference was never held in 1915 (Ibanga, 1999:140).

6. Convergence of the Geneva and Hague Laws

6. 1. 1949's Geneva Conventions

Following World War I, the development of the Hague Law came to an end. As a result, the four Geneva Conventions of 1949 included many of the concepts found in the Hague Conventions. The four 1949 Geneva Conventions were ratified after the International Committee of the Red Cross conducted preliminary work. The adoption of the 1949 Conventions came after the horrors of World War II. As of December 31, 1992, the Conventions, which are obligatory on 175 governments, are the most universal international accords and serve as the primary sources of international humanitarian law (Gasser, 1993:18). These four conventions are:

- The First Geneva Convention, which aims to improve the conditions of sick and wounded soldiers serving in the field;
- The Second Geneva Convention, which aims to improve the conditions of sick, injured, and shipwrecked members of armed forces at sea;
- The Third Geneva Convention, which regulates the treatment of prisoners of war;
- The Fourth Geneva Convention, is a convention pertaining to the protection of civilians during times of war.

The common provisions, which were scattered and basic prior to these Conventions, were greatly consolidated and amplified.

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6.2. The New York Law

A common belief is that the third stream of the law of armed conflict originated in New York. This basically has to do with things that have happened at the UN. The creation of the law of armed conflict was not initially given much attention by the UN (Kalshoven & Zegveld, 2011:21). The "Nuremberg Principles," which address personal criminal responsibility, were reaffirmed by the UN General Assembly in 1946 (Resolution 95(1) 1946). The General Assembly passed Resolution 1635 (XVI) of November 24, 1961, which focused on the use of nuclear weapons and prohibited their deployment.

However, the General Assembly and Security Council, the two main UN bodies, have passed several resolutions on topics about armed conflicts since 1968. Resolution 2444 (XXIII), "Respect for Human Rights in Armed Conflicts," adopted by the General Assembly in 1968, reaffirmed the significance of a few fundamental humanitarian principles. The Security Council also reaffirmed that fundamental human rights must be upheld even in the most extreme circumstances of war (Res. 237 (1967)). The UN's role should never be undervalued because the Security Council has enforcement powers that include the ability to order military action (which has been taken against Libya and Iraq) and to create special war crimes tribunals to try individuals who have seriously violated international humanitarian law (trials have been established for the former Yugoslavia, Rwanda, and Sierra Leone).

6.3. The 1977 Additional Protocols

In 1977, the laws of Geneva and The Hague came to a complete convergence. The emergence of armed conflicts between and within states in different regions of the world following the ratification of the 1949 Conventions has highlighted the necessity for the advancement of international humanitarian law. The 1954 Convention on the Protection of Cultural Property in the Events of Armed Conflict was adopted as a result of these worries. Humanitarian law quickly needed to be updated to meet new issues, particularly those arising from civil and liberation wars. As a result, the ICRC's draft text was negotiated at the Geneva Conference on the Reaffirmation and Development of International Humanitarian Law. After years of negotiations, two additional protocols were adopted on June 8, 1977, to augment the Geneva Conventions of August 12, 1949. The negotiations began in 1974. Protocol II deals with humanitarian concerns in non-international armed conflicts, while Protocol I protect victims of international armed conflicts. Above all, however, the Additional Protocols united the Hague and Geneva Laws.

6.4. Modern terminology of International Humanitarian Law

The law governing war or armed conflict is now referred to as "international humanitarian law" (IHL). Agarwal (2010:899) states that it is of relatively recent provenance. Humanitarian law was not included in the 1949 Geneva Conventions; instead, they simply referred to "humanitarian activities and humanitarian organizations" (Agarwal, 2010:899). The term "the term appeared perhaps for the first time in 1965 in Resolution XXVIII of the XXII International Red Cross Conference held in Vienna" (Agarwal, 2010:899), even though it has been in use from the early 1950s.

7. New Challenges, Old Rules

The Geneva Conventions and Additional Protocols, which were never intended to take these developments into account, did not address any of the new trends and difficulties that international humanitarian law is currently experiencing. The law governing armed conflicts has been severely tested as a result. The 1949 Geneva Conventions' classification of today's armed conflicts has been impacted by their complexity. Internationalized armed conflict is a new category that has evolved in addition to the two types of warfare covered by the Conventions: non-international and international. This entails the assistance of an armed group fighting within their own country through the involvement of a foreign authority. This raises a question about the relevant regulations.

Massive deaths have taken place in several military conflicts since the end of World War II and the 1949 adoption of the four Geneva Conventions. Wars are still fought with extreme cruelty and

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intensity. Mass murders that occurred in Rwanda and Bosnia-Herzegovina throughout the 1990s were not stopped by the 1948 Genocide Convention (Kelly, 2007–8). The majority of the 1990s' armed confrontations, aside from mass murder, took place inside state borders between armed groups and government troops. Africa has served as a battlefield in recent times. In addition to national liberation battles, violent armed conflicts and horrifying acts of violence against women erupted across the continent in the 1990s (Aremu, 2010). These days, there are several reasons for these armed conflicts: Islamic fundamentalism; ideological disagreements and border disputes; warfare resulting from state collapse or degeneration; ethnic rivalry for control of the state; ongoing liberation conflicts; and warfare stemming from fundamentalist religious opposition to secular authority.

7.1. Armed Non-State Actors' Actions

In armed conflicts today, non-state armed entities like terrorist organizations, rebel groups, insurgents, militias, warlords, and private military firms are frequently involved. The rise of armed groups is one of the unsettling developments in contemporary armed conflict (Musila, 2010:89). The majority of hostilities during the 1990s involved the national government and non-state armed organizations. These people engage in a form of asymmetric warfare when they take up arms against the state for various causes. The weaker side frequently turns to unorthodox tactics and strategies in conflict. At the moment, IHL lacks a sufficient institutional and legal framework to address these groups' violent actions.

7.2. Terrorism

Terrorism is one of these novel occurrences. Jenkins (2024) defines this as the use of violence and random attacks on civilians to instill terror in the populace and achieve political or ideological aims. States, armed organizations, and people are now openly using terror as a tactic of warfare, and no continent is immune to the carnage. Around the world, terrorists have wreaked havoc on several nations. Every country experiences direct or indirect effects (Patrnogic, 2002:7).

The world has changed significantly since the September 11, 2001 attack on the World Trade Center in the United States and former President George W. Bush's declaration of war against terrorism (Hostettler, 2002:30). There is no front in the battle on terror, and the opponent is sometimes unidentified and faceless. Most of the victims are civilians. Numerous innocent individuals have been slain by terrorists in several nations across the world, including Nigeria (Okemi, 2013). There are no set guidelines for governing this kind of war, even though the general principles of humanitarian law are valid.

7.3. Obstacles Brought About by Technology Development

Technological developments in recent times have facilitated the creation of new weapons that can function autonomously (ICRC, 2010). They consist of unmanned ground vehicles and unmanned aerial vehicles (UAVs). Drones and robots used for military operations are becoming increasingly common. The weapons use artificial intelligence, software, and sensors to function independently. The regulation of the means and methods of warfare is one of the main goals of IHL. One major concern is the potential of automated weapons to violate the law of armed conflict (Kaston, 2013). The ability of such systems to discriminate between military goals and civilian objects, as well as between combatants and civilians, is under question, as is their ability to adhere to the legal criteria of proportionality and prudence.

When robots make choices that could mean the difference between life and death, there are difficult moral dilemmas related to autonomous weaponry. There isn't yet a treaty law that specifically addresses autonomous weapons and unmanned vehicles. The myriad questions of accountability, guilt, and ethics are not addressed by the current IHL regulations. States are required to make sure that new weapons adhere to the practical and legal standards for distinction, proportionality, and care. To handle the issues brought about by the development of autonomous weapons, a new institutional and legal framework is required (Espada & Hortal, 2013).

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7.4. Dangers Associated with Cyberattacks

Cyberwarfare refers to cyberattacks on other states by states or their proxies that can wreak havoc and cause significant disruptions. It is carried out from and within computers as well as the networks that link them (Sheldon, 2024). Another outcome of technical development is cyber warfare (Melzer, 2011). Cyberspace is useful for both military and non-military objectives. For military purposes, states breach the systems of other states. As of right now, there are no particular IHL regulations to address issues brought about by the application of cybertechnology to warfare. The majority of these systems are run by non-military personnel, who are not involved in military operations. One description of this is the "civilization" of military combat. When civilians actively participate in military operations, they forfeit the protection provided by IHL.

7.5. The rise of Private Security and Military Firms

Using private military and security organizations (PMSCs) to carry out tasks intended only for states is another new phenomenon and a highly controversial topic facing IHL. States and non-governmental organizations have hired PMSCs for military and security operations as well as other tasks in conflict areas throughout the previous thirty years (Gillard, 2006). The introduction of PMSCs has generated debate. They are perceived as mercenaries in certain contexts and as lawful entities carrying out their contractual duties in other contexts (Archibong, 2021a).

During their work, the employees of these companies commit crimes and other infractions. IHL has not sufficiently addressed its role in armed conflict (Prado, 2011). Although mercenaries are permitted under the Geneva Conventions, PMSCs are not considered mercenaries. Their standing in international law is ambiguous or conflicting, and no legislation governs their actions. Murder, rape, and torture were among the many atrocities committed by PMSCs hired by the US government in Iraq and Afghanistan (Snell, 2011). An international treaty should address the question of accountability for IHL violations and specify the status of these private contractors (Andreopoulus & Kleinig, 2015).

7.6. The Issue with IHL's Application and Enforcement

Although the Geneva Conventions and Additional Protocols include many admirable provisions, they are weak when it comes to execution and enforcement. The cornerstone of contemporary IHL is still the ability to enforce its regulations if they are broken (Gasser, 1993). One of the primary issues with IHL is determining who is criminally responsible for war crimes, crimes against humanity, genocide, and other major violations of the law and how to prosecute those responsible. Armed combat still has a high rate of impunity. The 1990s saw the establishment of ad hoc, which signaled the start of the era of perpetrator responsibility. The framework for individual criminal responsibility for crimes committed in armed conflicts was established with the creation of the Special Court for Sierra Leone (SCSL), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for the former Yugoslavia (ICTY). A permanent international criminal court was established in 1998 with the adoption of the Rome Statute of the International Criminal Court. The majority of cases tried at the Court thus far have originated from Africa. States need to put aside their disagreements to fortify this branch of the international legal order.

7.7. Using Sexual Assault as a Weapon of War

Reports of sexual assault and rape throughout modern armed conflicts are abundant, as fighters have turned women's bodies into battlefields (Blank & Noone, 2013). The Gulf War in 1990, the Bangladeshi War of Independence in 1971 (United Nations, 1994), and World War II all featured significant use of sexual assault. When it came to cruelty and violence against women, the post-World War II military war in the former Yugoslavia was the worst in Europe. Sexual assault was pervasive and organized. Women have been purposefully targeted by all sides in the armed conflicts between Marxist insurgents and security forces in several Latin American countries. Sexual assault has been

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widely used as a weapon of war in armed situations throughout Africa (Ikong, 2023; Amnesty International, 2004).

Violence against women during conflict continues to be a global issue even with the institutional and legal frameworks in place to protect them (Archibong, 2019). Violence against women is prevalent, systematic, and severe in today's armed conflicts. The situation is so bad that even UN peacekeepers have been implicated in sexual violence in D.R. Congo, Central African Republic, and other areas of deployment. As of right now, there is no mechanism in place to hold them responsible. Concerning the transgressions committed by peacekeepers, international law remains mute.

7.8. Extensive Employment of Juvenile Combatants

Children under the age of fifteen have been drafted into the military for the majority of today's violent conflicts. Combatants have enlisted children to fight and kill in almost every conflict. Numerous boys and girls are used as messengers, porters, scouts, cooks, spies, and guards (Archibong, 2021b). They experience severe maltreatment and exploitation. Many people experience gender-based and sexual violence, particularly girls. There are several reasons why young people join the military or another group. Armed actors kidnap, threaten, coerce, or manipulate some people. Some are motivated by their need to survive and their poverty (Archibong, 2021b). In Africa, child recruitment and exploitation are still commonplace practices (Faulkner, 2024). Children as young as nine were drugged, recruited by armed organizations in Sierra Leone, and given AK-47 rifles with the intention of killing. Boko Haram employed hundreds of youngsters as suicide bombers throughout the fight in northeast Nigeria (Archibong, 2021b).

7. 9. High Number of Fatalities Among Civilians

The people who suffer the most in today's violent wars are the civilians. They bear a greater share of the cost of war than fighters. There are rarely frontlines or declarations of war in today's military wars. Wars are fought everywhere, frequently in densely populated regions where it is impossible to tell soldiers from civilians (Kellenberger, 2009). Due to the close-quarters nature of the conflict, there is also no swift and definitive resolution. New economic opportunities occasionally accompany these wars, which could deter people's desire or motivation for peace. As a result, combatants seldom murder one another and instead target civilians for violent crimes, targeted killings, forced relocation, and other forms of intentional harm.

8. Taking Up New Difficulties

There is currently no international humanitarian law that can address the plethora of problems related to modern armed conflicts. To adapt to these new tendencies, the international community must come up with new institutional and legal frameworks. A review of the legislation about non-state armed groups is necessary to close the current loophole. It is necessary to create a new international legal framework to address the issues associated with these groupings. The development of new weapons as a result of technical innovation presents a significant regulatory challenge to IHL. Modern weaponry could not be governed by the 1949 regulations. Technology related to weapons has advanced more quickly than IHL regulations. For the sake of humankind, international law must discover a means to regulate and restrict the proliferation of new weapons technologies.

Women and children in particular endure immense suffering both during and after armed war. Many people lose their homes, belongings, and sources of income, and they are frequently forced to start over in extremely trying situations. The state is typically more eager to rehabilitate and reintegrate former combatants than their victims in post-conflict scenarios. Although serious violations of the Geneva Conventions and their Additional Protocols are punishable by law, compensation for innocent bystanders—such as women who have been sexually assaulted and left with permanent scars, shame, and stigma—is not provided. Such compensation is provided for in the ICC Statute. This can also be used for the Geneva Rules, which have been ratified and accepted by more states.

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Sexual violence was not considered an international crime of great concern before the Yugoslav conflict. The International Tribunal for the Former Yugoslavia (ICTY), formed by the UN Security Council in 1993 (U.N. Doc. S/RES/ 827 [1993]), marked a turning point in the situation. According to Article 5[g] of the ICTY Statute, rape was classified as a crime against humanity. To try acts of sexual assault committed during such conflicts, among other things, the Security Council also established the Special Court for Sierra Leone (SCSL) in 2000 (S.C. Res. 1315 [2000]) and the International Criminal Tribunal for Rwanda (ICTR) in 1994 (S.C. Res. 955 [1994]). These bodies' jurisprudence has upheld rape's classification as a crime against humanity and a war crime. They have also acknowledged that sexual assault can be considered torture, cruel treatment, and in some cases, genocide." Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparative gravity" are to be considered war crimes, according to the 1998 Rome Statute that established the International Criminal Court (ICC). If they are deliberately carried out as a component of an extensive or organized assault on a populace, they qualify as crimes against humanity.

On October 31, 2000, the Security Council unanimously enacted Resolution 1325 on women, peace, and security (S/RES/1325), marking a significant step forward for the UN in reducing violence against women in armed conflict. Several additional UN Security Council resolutions (Res. 1820 of June 19, 2008; Res. 1888 and Res. 1889 of 2009) have called for an immediate and total cessation of sexual violence against women and girls in conflict areas. The notion of individual criminal responsibility is one way that international law has reacted forcefully to these new difficulties. It is erroneous and out of date to maintain the fallacious belief that states alone are covered by international law. Individuals who commit major offenses may be held accountable before a national or international criminal tribunal in addition to the responsibility that states bear.

9. Conclusion

There are no easy answers to the issue of terrorists and armed groups. A suitable international legal framework is required to tackle the various obstacles presented by the threat of non-state actors. The technology and strategies used in warfare are evolving rapidly. The development and use of these weapons are currently unregulated by any international institutional or legal framework. Due to their sexual orientation, women are still the subject of abuse. Children are still being enlisted in armed conflicts by opposing parties. It is suggested that IHL be examined, updated, and changed to address the new issues. A code of conduct for non-state armed groups should be developed, and an international authority should be established to control the production and use of deadly weapons. Institutional shortcomings and legal gaps must be remedied immediately. The UN ought to take the initiative in this area. To support the theory of individual criminal responsibility, much more work needs to be done. To make sure that humanitarian law is upheld, the ICC ought to extend its reach beyond Africa. This will promote accountability and reduce impunity.

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