

FROM THEORY TO PRACTICE: ADDRESSING THE EVOLVING CHALLENGES IN INTERNATIONAL HUMANITARIAN LAW

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Received: July 10, 2024

Revised: August 10, 2024

Accepted: August 25, 2024

Published: September 05, 2024

ABSTRACT

The 21st century has posed formidable challenges to the application and enforcement of International Humanitarian Law (IHL). Technological progress, urbanization and the action of non-state actors in armed conflicts as well a shift from traditional war theaters have made it much harder to implement IHL principles such as distinction, proportionality or precaution. It does so as part of a wide visibility study on inner political complexities, including drone warfare, cyber operations during armed conflict or in the work for peace; autonomous weapons while collaborating with conventional military forces and private enterprises participation to defence/offence public service. It also explores climate change and how systems of conflict are establishing or expanding the types of defense adaptation processes; enforcement mechanisms. The research highlights these issues, illustrating that it is time to re-evaluate IHL so that this body of law can preserve their dual function: defending combatants and civilians alike.

Keywords: International Humanitarian Law, War on Terror, Cyber Warfare, Urban Warfare.

INTRODUCTION

International Humanitarian Law (IHL) — a set of rules designed to limit the effects of armed conflict based on principles that protect those not taking part in hostilities, and that restrict weapons tactic (Thakur, 2000). But the character of conflict has evolved considerably in the 21st century, complicating how these laws are enforced. Advances in technology, urban sprawl, the rise of non-state actors and militia armed groups as well commercialization of warfare have muddled the distinction between combatants (those who participate directly in hostilities) and civilians; this has made it harder to uphold fundamental principles IHL (S. Michael, 2007).

Modern warfare has changed drastically due to the emergence of new developments in technology such as drones, cyber warfare and autonomous weapons resulting in great volatility with respect to ethical concerns and legal considerations. Likewise, the urbanization means fighting is

increasingly happening in congested areas where civilian casualties and damage to infrastructure are high (Michelle, 2008). The proliferation of non-State agents and insurgent groups has made this problem more intricate, since they usually utilized irregular war-fare techniques outside the norms provided by international law that led into constant IHL breaches (Bellal, Annyssa, & Casey-Malsen, 2011).

This paper seeks to examine the multiple dynamics of challenges that IHL is subjected in present day era. This research aims to provide a holistic perspective of the challenges in applying IHL under modern scenarios, through analysis on areas such as technological advancements, urban battlegrounds and non-state actors; besides significant reference to war on terror. The study also speaks to broader issues of compliance, enforcement and the effects of climate change on armed conflict—the latter an area which

increasingly necessitates a coordinated international response as defined humanitarian principles are challenged by other interests in our globalizing world.

CHALLENGES FOR IHL IN 21st CENTURY

1. TECHNOLOGICAL COMPLEXITY

The evolution of technology over the last decade has revolutionized the nature of war, integrating warfare, drones, cyber weaponry, and automated wars. The use of these technologies has blurred the distinctions between combatants and non-combatants, taking it difficult to implement the traditional principles of IHL, such as distinction or proportionality. As a result, the difficulty is to establish a legal framework to solve the new tech associated ethical and legal dilemmas as well as respect the current established norms (ICRC, 2011).

a. Drone Uprising and Targeted Killings

Today, Unmanned Aerial Vehicles (UAVs), also known as drones, are revolutionizing military action by enabling precise strikes and providing real-time intelligence. However, this fast, modern looking technology frequently results in extrajudicial killing, begging the question of whether using drones in targeted killing is compliant with the principles of IHL such as distinction, proportionality and precaution (Anderson & Kenneth, 2009). The challenges lies in ensuring that utilizing military drones in an airstrike adheres to the rule of distinction and the right to life, and discrimination while minimizing civilian casualties.

b. Cyber Warfare and Non-Kinetic Operations

The wide proliferation of cyber weapons and cyber-attacks has also made the borders of traditional armed conflict irrelevant, and IHL's norms have proven difficult to apply in the regime of cyber warfare. The applicability of the distinction and proportionality principles is challenging due to the non-physical nature of the attacks, which might leave no direct casualties; however, the impact on the civilian infrastructure and essential services might be destructive (Khawaja, 2022). Redefining IHL to incorporate the cyber warfare specifics should focus on the clarity of the existing legal framework's relevance

to non-kinetic operations and become more effective in terms of accountability and attribution.

c. Autonomous Weapons Systems and Ethical Dilemma

The potential development of autonomous weapons systems enabled by artificial intelligence and machine learning algorithms poses serious mitigation and legal issues on the subjects of human control, responsibility, and IHL compliance. The lethal use of autonomous weapons raises concerns about the capacity to guarantee genuine human supervision and force utilization decisions, unanticipated outcomes or the completion of human respect. Thus, countering the moral difficulties introduced by autonomous weapons necessitates comprehensive international consultation and regulatory devices to assure that such technologies require the tenets of compassion and demand (ICRC, 2016).

d. Dual-Use Technologies and Civilian Harm

Modern technological developments frequently have double-purpose applications as they can be used both for military and civilian ends. Double-purpose technology usage makes it difficult to distinguish a facility or object serving as military target, on the one hand and civilian object of special protection —from another party; consequently, there is always high probability that civilians will be killed or property destroyed. Adapting a technology-driven environment, compliance demand real time data for storage and access in addition to the promotion of intelligence exchange between relevant stakeholders as well increase capacity building initiative to alleviate civilian/civilian object suffering (Daniele, 2024).

2. URBANIZATION AND URBAN WARFARE

Over the course of the 21st century there has been a rising trend in urban conflicts being played out within densely populated built-up areas. This could be attributed to the nature of deployment tasks and challenging circumstances, compounded by frequent conflicts in populated urban areas. The close tactical proximity of nearby belligerents and local population means elevated civilian casualties are highly likely, as is the unintended adverse impact (Antouly, 2019). It must involve the use of creative concepts that correspond with these

principles especially in situations such as extreme urban warfare where individuals require protection from injury.

a. Dilemmas of Distinction and Proportionality

Urban warfare involves combat situations which are also frequently characterized by the presence of non-combatants, and in some cases a major distinguishing element between urban operations and other types. Moreover, the proportionality of such military targets is often threatened by civilian infrastructure and goals (L. Gisel, 2016). These two ideas require combatants to discriminate between civilian persons and military objectives, as well as refrain from using violence which exceeds what is necessary in order to achieve a military aim. The civilian risk is increased by combining these two factors and additional training, knowledge, precautionary measures etc. are necessary to reduce this high-risk environment caused thereby.

b. Protection of Critical Infrastructure

Critical infrastructure vital to the civilians' well-being is concentrated in urban areas – hospitals, schools, water and sanitation, and electrical supply. Attacks on such facilities can lead to dire humanitarian toll by disrupting vital services and generally worsening the plight of civilian. Attacking civilian objects is banned by international law, but in the confusing maze of urban warfare, isolation of legitimate military targets is difficult (Brown, 2015). The protection of critical infrastructure should be secured by total commitment to the IHL principles, strict accountability, and exhaustive monitoring.

c. Challenges of Humanitarian Access

Urban warfare is also frequently detrimental to humanitarian access due to the fighting that limits humanitarians' mobility and ability to reach the populations in need. In the given context, the chaos of conflict creates logistical barriers for the delivery of assistance, which may result in the delayed provision of life-saving services. The existence of various armed actors in urban settings is a direct threat to the staff, who in many cases cannot reach populations due to the security situation (Shue & Wippman, 2002).

d. Protection of Civilians

While urban warfare is identified as a dangerous form of military conflict, IHL stipulates that a prime consideration is given to the protection and welfare of civilians. More precisely, in case of urban battles, parties have an obligation to adopt all feasible measures to protect non-combatants from harm. Yet, the complexity and intricacy of urban geography and the living arrangements of the civilian population make it difficult to achieve the desired outcome (Hills, 2004). Distinction, proportionality, and precaution leave little doubt that a comprehensive effort that encompasses humanitarian, military, and civilian dimensions must be taken in order to protect civilians from the damage inflicted by the urban warfare.

3. NON-STATE AND INSURGENT FRAGMENTATION OF ARMED GROUPS

With the rise of non-state actors and insurgent groups, the implementation of IHL has become more difficult. These groups may not accept the authority of international law like state actors, resulting in frequent violation and impunity. Fragmentation not only necessitates the need to engage with various non-state armed groups but also creates opportunities to ensure IHL compliance and violators' accountability.

a. Lack of Centralized Command and Control

Most NSAGs differ from traditional state armed forces by their uncentralized command and control systems. This structural feature makes it particularly hard to ensure accountability for violations of IHL. Fragmentation of leadership and decentralized property results in diverse activities of distinct factions within a single armed group. Distinction, proportionately, and precaution is some of the most critical principles of legal militaristic conduct (Bakke, Cunningham, & Seymour, 2015). However, the principle of distinction gets implemented only as there is effective and command disposition overall. Without a clear chain of command, it becomes external to get footholds necessities for enforcement. In the absence of authority, no punitive measures and enforcement mechanisms can be applied, which makes civilians especially suffer.

b. Diverse Ideological Motivations

Especially since there are ideologies, from which factions emerge, and from different ones at that, the command might understand their mission in different ways, and this impacts protection the most. As some factions are particularly vulnerable, others not only view them as avoidable harm, but also able to advance their positions. Numerous factions view institutions designed to secure civilian rights and protect civilians as guarantors of their own existence and power (Chinkin & Kaldor, 2011). The resulting concern is that the principles of protecting civilians become some kind of opportunity for armed groups.

c. Challenges of Engagement and Dialogue

Apart from differences from within, as armed groups are fragmented, engagement, dialogue, and enforcement, remain major for both policy and practice reasons. As a case for policy, piecemeal engagement does not leave governments and non-state actors with a solid and articulate negotiating partner (Bakke et al., 2015). As a case for practice, it causes serious problems, for without a comprehensive vision policies are never implemented. Not only does it difficult control over the same conditions in negotiations with multiple factions under the same umbrella but it also proves to be impossible to understand these conditions.

e. Accountability and Justice

Finally, even in case NSAGs can be held accountable, it is with the benefit of sobering considerations. For humanity actors, this is paramount in the sense that such structures have human faces and the outcomes suffered will be too. In the case of lusted noting that, the objective is to hold specific individuals responsible. While in some contexts war criminals may face charges for civilian massacres, these remain exceptions, with the situation being more common to what it used to be before the notion of war crimes was developed (Chinkin & Kaldor, 2017).

4. WAR ON TERROR

The War on Terror, which emerged after the 11 September 2001 terrorist acts, has been critical to shaping the landscape of international conflict and security in the 21st century. However, its very

character as unconventional warfare has presented crucial difficulties in the implementation of International Humanitarian Law.

a) Non-State Actors and Asymmetric Nature of Warfare

The War on Terror, on the other hand, has complicated the distinction between traditional state-based combat and non-state actors. The latter, which includes terrorist groups and insurgent militias, is often not confined to formal warfare and instead uses guerilla warfare, terrorism, and asymmetrical assaults (B. Michael, 2002). This made IHL applicable to aggressive non-state actors hard because the conventional paradigm of distinguishing between fighters and non-combatants, as well as the distinction between international and non-international conflicts, was compromised.

b) Legal Ambiguity and Extraterritorial Military Operations

The War on Terror has been associated with the rise of extraterritorial military interventions, such as drone strikes, individual casualties, and secret operations, in states not formally at war (Christopher, 2002). Extraterritorial interventions invite doubts about the organization's legitimacy and the lack of international humanitarian law to secure civilians in regions where belligerency is not validated by states. As a result, the absence of a comprehensive and robust legal framework and monitoring settings for extraterritorial military interventions results in a lack of corporate accountability and increased liability accusations and civilian casualties.

c) Guantanamo Bay and Indefinite Detention and Extrajudicial Punishment

The most controversial and debatable aspect of the War on Terror is the indefinite detention of alleged terrorists in Guantanamo Bay and other facilities. Detainees in those centers stay without rights to trial or due process. The uncertain facilities approach to detainees raises IHL violation concerns regarding the implications enforced disappearance, torture and inhumane treatment. The pattern enforced utterly and mainly by CIA imitates the absolute dark site torture quality of abusive and degrading treatment and facilitates extra-judicial killing with respect to human right

laws (Marco, 2004). The uncertainty accommodated in War on Terror's detention and interrogation affects the rule of law and international legal system trust.

d) Counterterrorism Measures

More broadly, the counterterrorism measures taken within the framework of the War on Terror have often gone at the cost of civil liberties, among other things. They are associated with constraints on the liberty of speech and association and have been used disproportionately against vulnerable and marginalized communities. Furthermore, these measures can have a comprehensive set of humanitarian outcomes when they lead to displacement, systemic discrimination, and other violations of human rights (Andrej, 2008). The challenge of securing national security without encroaching on human and civil rights is double-layered and should be approached with legality, necessity, and non-discrimination of IHL.

5. LACK OF RESPECT FOR THE PRINCIPLES OF IHL

International Humanitarian Law, also known as the laws of war or the law of armed conflict, is a set of objective rules aiming to protect people who are not or are no longer participating in the hostilities during times of armed conflicts and wars. Since its inception, IHL has been guided by the principles of humanity and propriety. Despite this, the international community of the 21st century often remains a silent witness to gross violations of the provisions of this law or, at best, follows the letter of the law, neglecting its true essence.

a. Principle of Distinction

Under IHL, the principle of distinction provides that parties to an armed conflict must differentiate between combatants and non-combatants, as well as between military objectives and civilian objects. The parties must limit the effects of their operations to parties in the conflict and military objectives only. However, the current and modern conflicts have abused the principle of distinction through indiscriminate attacks, attacks on vital civilian infrastructures, and direct attacks on non-combatants (Kalshoven, 2009). Therefore, the failure to observe this principle exposes civilians to avoidable dangers and risks and, thus, diminishing the IHL protection.

b. Principle of Proportionality

The principle of proportionality forbids the use of attacks likely to cause civilian injuries or damage to civilian objects excessively in relation to the concrete and direct military gain anticipated (ICRC, 2015). Nevertheless, even though it is transparently illegal, on current combat scenes, operations typically result in disproportionate civilian casualties and civilian structure damage. Factors contributing to the principle of proportionality's non-compliance include inexact target discrimination and unavailability or inadequacy of operational data, as well as usage of indiscriminate weapons.

c. Principle of Precaution

The responsible party to the armed conflict is required to use all feasible precautions to minimize the effects of armed conflict on civilian and civilian entities. Practically, precaution is given through adequate warnings, appropriate weapon and method of warfare selection and distancing from civilians, among others. However, the means of protection provided to the technique are rarely implemented effectively, leading to innocent civilian's exposure towards the harm of the armed conflict with harmless channels of protection (ICRC, 2015).

6. ATOMIZATION OF WARFARE

The 21st century has seen an unparalleled development of military technology. The proliferation of warfare automation, alongside the advent of cyber combat, is a defining feature of the modern battlefield. Although these novel forms offer enhanced opportunities for the pursuit of military objectives, they also pose considerable threats to the application of International Humanitarian Law.

a. Automation of Warfare

The automation of warfare refers to the use of autonomous weapons systems (AWS) with artificial intelligence (AI) and machine learning algorithms to conduct different military tasks without human intervention. AWS present advantages of increased accuracy, limited risk to military personnel, and improved operational effectiveness have various ethical and legal implications that threaten the observance of IHL

(Al- Saadi, 2007). Notably, the lack of proper human control over the AWS poses threats to the separation, control, and precaution IHL principles and the risk of unaccounted casualties and secondary effects.

b. Legal Ambiguity and Accountability

The use of AWS in war undermines the clarity of liability and stirs concerns about who should be held responsible for IHL violations. Claims about the use of AWS contributing to the deaths of civilians or incurring collateral damage are difficult to enforce, as the existing legal definitions may fail to account for the nature of autonomous weapons. Lack of established legal norms and liability measures for AWS abolishes the enforcement of IHL guarantees and further diminishes the global justice climate, fostering impunity risks and challenging the safety of persons in conflict zones (ICRC, 2021).

c. Cyber Warfare

Cyber warfare is defined as the act of utilizing digital technologies to interfere with, deactivate, or damage computer systems and networks for strategic or military reasons. Cyber-attacks on critical infrastructure, military systems, and the civilian population have become an integral aspect of modern combat, presenting substantial difficulties to IHL. Cyberspace's interconnectedness and the blending of military and civilian sectors have created uncertainty about the relation of traditional legal instruments to cyber warfare, as well as regarding the future attribution of responsibility and accountability after a cyber-attack causing damage to civilians or infrastructure (Gisel, Laurent, Rodenhäuser, Tilman, & Knut, 2021).

d. Protection of Civilians and Critical Infrastructure

Weapons automation and other cyber warfare technologies intensify the risks to civilian populations, their critical infrastructure such as hospitals, power supply units, and communication networks. To establish effective protection for civilians and infrastructure against these risks, the coalition of legal framework, ethical issue consideration, and advanced technology must be implemented. Enforcement of the existing IHL would need to be updated and strengthened to

respond to the threats related to the automation of warfare and cyber warfare, new monitoring, compliance, and enforcement tools and mechanisms should be developed (John-Hopkins & Michael, 2010). Promotion of responsible state conduct in cyberspace would be prerequisites for the protection of civilian populations in line with the humanity and human dignity principles.

7. AVAILABILITY OF WEAPONS

The 21st century is characterized by the unprecedented proliferation and accessibility of weapons that define a significant challenge of IHL implementation. The ongoing armed conflict is characterized by increasing complexity and asymmetry that is exacerbated by widely available weapons. The phenomenon undermines the humanitarian impact of conflict and the protection of civilian population, as well as IHL principles enforcement.

a. Proliferation of Small Arms and Light Weapons

Small Arms and Light Weapons (SALW), such as rifles, handguns, and explosives, are the most common tools of violence and warfare in current day conflicts. The ready availability and accessibility of SALW are associated with increased violence and casualties and hamper attempts to establish peace and security. SALW trade and illicit SALW trafficking contribute to armed conflict and violence and diminish the role of IHL in shielding people from the adverse effects of armed conflict (François, 2006).

b. Impact of Technological Advancements

The development of technology, in particular military technology, drones, and cyber weapons, has transformed the face of modern warfare in the 21st century. Despite the potential and opportunity that these innovations provide for military applications, they simultaneously entail ethical and legal implications dictating the compliance with IHL that may include the principle of distinction, proportionality, and precaution (Shapiro, 2018). The expansion of advanced weapons systems and the use of emerging technologies have undermined the regulation of the use of force in warfare, complicating the prospects of safeguarding civilians and prosecuting the violators of international humanitarian laws.

c. Role of Non-State Actors

Non-state actors play a significant role in the availability of weapons in and the conduct of armed conflict. Specifically, terrorist organizations, insurgent groups, and criminal networks are closely related to the supply and use of weapons in armed conflict. Since these groups are likely to secure various weapons through exploiting porous borders, weak governance systems, and illicit trade, they use the weapons to sustain their operations. The engagement of non-state actors in weapons proliferation and trafficking creates greater insecurity, instability, and human rights violations, thereby creating obstacles that limit the implementation of IHL and the protection of civilians in armed conflict arenas (Robots, 2020).

d. Lack of Regulation and Oversight

At the same time, the absence of well-developed and implemented regulation and monitoring measures concerning the production, transfer, and usage of weapons result in a high humanitarian impact of the armed conflict and limit the compliance with the core principles of the IHL. Even though there are international treaties and conventions on arms export controls, the regulatory and monitoring systems are not very effective. The level of enforcement and implementation remains insufficient as many states and non-state actors find ways to avoid control and use loopholes to export weapons (Schmitt, 2013). Improving international cooperation, transparency measures, and responsible arms transfers framework are necessary to address the challenge of the existence of weapons and to ensure better compliance with the measures of IHL.

8. PRIVATIZATION AND COMMERCIALIZATION OF WAR

Today, two major trends in the field of armed conflict, namely the privatization and commercialization of war, lead to a number of insurmountable problems for the application of International Humanitarian Law. In the rapidly developing and complex changing modern geopolitical reality, the use of the military and security services of a PMC by an increasing number of participating states in an armed conflict is gaining momentum, the boundaries and factors of which are blurred, including in relation to

classical concepts of state, non-state and belligerent-neutrality ratios.

a. Rise of Private Military and Security Companies (PMSCs)

PMSCs have grown exponentially during the last few decades, thus offering a broader range of military and security services to states, international organizations, and non-state entities. Thus, diverse projects, from logistical support and training to combat, are completed involving PMSC units. It implies that issue of responsibility, transparency, and compliance IHL principles is questioned. In contrast to state military forces, PMSC is not explicitly regulated, and sometimes its members are beyond the scope of liability for breaching humanitarian norms (Pitcher, 2002).

b. Lack of Legal Clarity and Oversight

The phenomenon of privatization complicates ensuring compliance with IHL by PMSC, since such companies operate essentially wholly in a legal vacuum. Legal standards of conduct for PMSCs International legal instruments, like the Montevideo Document and International Code of Conduct for Private Security Service Providers are an attempt at defining international standards that may regulate interactions between states employing these companies and transnational corporations in order to avoid harmful effects (Bina, 2005). But there are either weak or no real mechanisms to enforce these rules. Due to the black box regarding PMSC operations, combatants and civilians alike become more exposed to IHL violations such as indiscriminate attacks, torture or excessive detention.

c. Profit Motives and Ethical Concerns

Commercialization of war opens up a particularly dangerous door for the profit motive in armed conflict. PMSCs, by their very nature as for-profit entities, are more interested in making money than adhering to any humanitarian principles. Therefore, PMSCs often face situations in which they are forced to grossly violate the provisions of IHL regarding impartiality and neutrality as well with respect to humanity. Finally, it is mainly on the basis of indebtedness to legions of stateless private contractors that one has actually been able to develop any military capabilities at all — and this poses some profound questions not only about

neo-imperial trends but also concerning where the boundaries should be between a development in relation merely commercial ways or transfer obligations for national security (Carney, 2006).

d. Strengthening Regulation and Accountability

The contention that regulatory and accountability measures will not be an effective response to the problems posed by privatizing and commercializing war is fundamentally wrong because such mechanisms are necessary for its control. Primarily, it is a comprehensive legal basis that will help reduce the negative consequences in this area and there should be transparency and control on their work for these organizations (Singer, 2003). The promotion of IHL standards, as well as co-operation between states, international organizations and PMSCs to ensure respect for humanitarian norms in situations of armed conflict is equally important.

9. CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION

Climate change and environmental degradation are some of the major issues of focus today as they pose severe threats to both national and international stability, development and the health of the people. With climate change worsening the crises and adding to other factors that cause conflicts, International Humanitarian Law (IHL) faces new and challenging hurdles.

a. Displacement and Migration

Another major impact resulting from climate change is forced migration as a result of storm surges, floods, and other natural disasters, and the deterioration of conditions that human beings are willing to endure. While individuals have no choice but to abandon their homes in search of safe havens and resources, the issue of safeguarding refugees remains a major humanitarian consideration. But conventional legal instruments in IHL might not satisfactorily capture these multifaceted causes of climate change displaced persons, creating grey areas in their protection and subsequent assistance (Davies, Riddell, & Scheffran, 2020). Climate refugees need strategies that focus on humanitarian funding, planning, and strategies addressing climate change displacement

issues and finding long-term and sustainable solutions.

b. Resource Scarcity and Conflict

Global warming also increases struggles for resources such as water and food and resulting in conflicts and forced migration in already affected areas. Environmental destruction and armed conflict is also an area of pragmatic concern regarding IHL because many modern conflicts caused by competition over resources lead to mass suffering and violations of IHL (Koubi, 2019). To achieve the compliance with IHL principles, including distinction, proportionality, and precaution in the context of resource-related conflict, the complex strategy shall be designed with reference to the primary causes of conflict, sustainable use of resources, and measures for conflict prevention and regulation.

c. Environmental Impact of Armed Conflict

They also affect the environment directly through polluting, deforestation and destruction of habitat through war and fighting. The environment is also affected as it gets degraded during warfare and as this aggravates the humanitarian crisis, it also hinders the possibility of achieving sustainable development and the conservation of the environment (Lehto, 2021). Both IHL and other branches of international law acknowledge the desire to avoid any harm that might be caused to the environment due to armed conflict and the consequences of environmental degradation that may remain after the conflict. However, the measures to prevent violations of environmental laws and reporting of violations in such areas are not well enforced, which shows that more attention is not paid towards environmental conservation in troubled areas.

d. Adaptation and Resilience-Building

Combating climate change and environmental degradation hence requires a humanitarian, environmental, and development approach. Adaptive capacity to climate change and environmental shocks is crucial in preventing the effects of disasters and preventing vulnerability to conflict (Reuveny, 2007). The suggested strategies of increasing the impact of humanitarian assistance include the further improvement of adaptation measures, expansion of sustainable development

activities, as well as encouragement of bottom-up approaches for improving the resilience of communities.

10. LACK OF COMPLIANCE AND ENFORCEMENT MECHANISMS

International humanitarian law is a legislative framework that is intended to regulate the conduct of armed conflict and protect civilians and combatants during hostilities. However, the efficacy of these principles is restricted by the absence of robust compliance mechanisms in international law. In the 21st century, the capacity to monitor, enforce, and prosecute conformance is compromised by the absence of accountability mechanisms.

a. Monitoring and Compliance

Monitoring IHL compliance is notoriously challenging, particularly during armed conflict or disturbances where access and investigatory efforts are hampered. Monitoring is challenging when relationships between the parties in a conflict and security situation are unequal, placing more emphasis on security over any other goal. Further, the global surveillance system is inadequate and where in place it is often erratic and piecemeal. Consequently, there is a broad path dependency for conflicts in holding the parties to these norms of action and so the two often occur simultaneously — with direct humanitarian violence against either civilians or combatants (Schmitt, 2007).

b. Accountability and Impunity

The lack of accountability for grave breaches of IHL leads to impunity and undermines trust in the international legal system. Though war crimes and other atrocity crimes are internationally recognised, only certain instances of these acts can be prosecuted by international criminal tribunals like the ICC. These aside, the justice is at other times not allowed to be served for political and other reasons (Michelle, 2008). As a result, most perpetrators of grave breaches of IHL go unpunished; this undermines the deterrent effect provided by international law for those responsible and enables cycles of violence which often entail human rights violations.

c. State Sovereignty and Political Considerations

The enforcement of compliance with IHL is complicated by questions of state sovereignty and politics as well. States are more concerned about their national interests rather than humanitarian principles, and may, therefore, turn a blind eye to law implementation and apply international law unevenly. Additionally, the strong states may use their power to protect other lawbreakers, particularly their allies, which makes IHL less persuasive and weakens the international legal order (Annyssa & Casey-Malsen, 2011).

d. Challenges of Attribution and Jurisdiction

Determining those responsible for IHLs violations can be difficult, especially in conflict situations where the conflict includes several parties to the conflict and non-state organizations. The absence of a clear chain of command and the presence of multiple actors who control different territories and different population groups make it difficult to ensure accountability. The territorial issue also raises several jurisdictional challenges and legal obstacles that control war criminal prosecution and victim justice (Michel, 2006). Impunity continues to be decisive for the rule of law.

e. Strengthening Enforcement Mechanisms

Tackling the lack of enforcement mechanisms should be pursued through multiple ways including legal reforms, institutional capacity building and international cooperation. Enhancing the capacity of national judicial systems to investigate and prosecute war crimes, advanced international accountability measures such as universal jurisdiction and dialogue and cooperation between states would foster greater compliance with IHL (Sassoli). It would also enhance accountability for violations committed.

CONCLUSION

In short, the 21st century has posed a host of novel and complicated issues with respect to how application International Humanitarian Law should be. The coming of the new face of warfare and conflict from weapons with wide effects to decline on state sovereignty, privatization over war has its contentious points for protecting civilians as well

combatants during times of armed conflicts. Although enforcement of international law and prevention of atrocities have been among the primary purposes for which states came together as an internationally recognized body, much remains to be done in protecting those who are most vulnerable. The international community and states must act to strengthen the legal environment, accountability mechanisms, as well as respect for humanitarian norms.

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