6. CONCLUSION AND SUGGESTIONS

6.1 Conclusion

6.1.1 New Wars and Contemporary Armed Conflicts pose challenge to International Humanitarian Law

If in one sentence the core aim of the research is put forward, it would be to analyze the changing nature of warfare and its impact on the dichotomy of the two types of armed conflicts governed under the international humanitarian law that is international and non-international armed conflicts. The achieve the same, this research has tried to investigate the development and evaluation of methods of warfare, since the development of the nation State system which also coincides with the development of the modern International Law. The current generation is living in the fourth generation of warfare and while the laws made to combat the second and third generations of warfare are applied. The fourth generation of warfare has some distinct features which makes the war fought during these times as 'New Wars' or 'Contemporary Non-International Armed Conflicts'. Both the names have two diametrically opposite terms used; however, they signify the same thing.

'War' is generally used to describe the use of armed force between two or more States, example World Wars, and Non-International Armed Conflicts are those which are internal in nature, with only one State or sometimes even no State involved. But the irony of the current times is that these two terms 'New Wars' and 'Contemporary Non-International Armed Conflicts' are tantamount demonstrating the baffling nature of conflicts we are witnessing. The reasons for the same have been described by the features that have been identified in the third chapter of the research, "New Wars and Contemporary Non-International Armed Conflicts: The Emerging Trends". The trends identified in the chapter are mentioned below. The discussion below also discusses the challenge posed by these features to the application of international humanitarian law.

a. Predominance of Non-International Armed Conflicts: Since the end of the Second World War, the world has witnessed numerous conflicts, however the majority of which have been non-international or internal conflicts. Although, an initial inference will not highlight any problematic issue that needs attention, but when one zooms into the practicalities involving the non-international armed conflicts and the law surrounding it, several challenges emerge that needs redressal. These challenges also are not uniform but are procedural as well as practical.

- **Conceptual Challenges:** Although, international humanitarian law had made a pathbreaking change by including non-international armed conflicts in the Geneva Conventions, theoretically, the law related to non-international armed conflicts is awfully limited. Formal law available in just Common Article 3 and the Additional Protocol II, the claim that it has been supplemented by customary International Law is not the complete truth. Several issues like detention, combatant immunity, status of prisoners of war are still ambiguous during a non-international armed conflict.
- **Practical Challenges:** The framework of international humanitarian law has been noticeably clear in the distinction between international armed conflicts and non-international armed conflicts and has been very straightforward while providing the threshold of an international armed conflict. However, the scope and applicability of the limited treaty provisions on non-international armed conflict are neither simple nor uniform. Three different provision, Common Article 3, Article 1 of Additional Protocol II and Article 8 of the Rome Statue, defining a non-international armed conflict provide three different thresholds for the classification of any hostilities as a non-international armed conflict thereby leaving room for confusion and ambiguity. Factual assessment of intensity of conflicts, categorization of non-State actors as armed groups has brought in too much subjectivity in the process of categorization of the armed conflict.

Thus, in light of the current developments, when most of the armed conflicts seem to be non-international in nature, these conceptual and practical challenges make the application of international humanitarian law difficult.

b. Multinational or Internationalised Non-International Armed Conflicts: An important aspect of the contemporary non-international armed conflicts is that they are local as well as global. A non-international armed conflict is internationalized due to foreign/other State or multinational intervention. These interventions can be direct and indirect, rendering different classification in both the cases. As per the ruling in the *Tadic* case, an internal conflict can be internationalized in two scenarios:

- **Direct intervention:** When armed forces of other States intervene through their troops to intentionally support non-State armed groups
- **Indirect intervention:** When the non-State armed groups of a non-international armed conflict act on behalf of other State.[435]

When a foreign State intervenes, even a minor military intervention would trigger the application of law of international armed conflict. If this intervention has no connection to the internal conflict, it will still be termed as an international armed conflict, alongside an existing internal conflict. The nature of the internal conflict will remain unaffected in spite of any unintentional support done to the non-State armed groups by the actions of a foreign State.

The categorization of the conflict becomes murky when a direct foreign intervention is intentional and with an aim to support the non-State armed groups. The "overall control test" used for determining the agency between the foreign State and the non-State actors has no clear-cut principles. A non-State actors will not be called as an agent of a foreign State in spite of being provided with military, financial and intelligence aid until and unless the other State has an overall control on the non-State armed groups having a

[435] Prosecutor v. Tadi´c (Judgement) [1999] T-94-1-A, para. 84 (Tadi´c Appeal Judgement).

visible impact on the conflict. Thus, due to lack of clarity in determining the effect of foreign military intervention has raised practical difficulties in application of law of armed conflict.

The same incoherent and confusing issues arise in the second type of intervention that is indirect in nature, where the primary test of "effective control" is applied to determine the foreign intervention that renders a conflict internationalized. Similar to the previous test, this test also measure the agency between the foreign State and the non-State actors and was laid down in the *Tadic* thus, famously known as the *Tadi´c Appeal Judgement's test* and was also applied to determine US responsibility in the *Military and Paramilitary Activities in and against Nicaragua case*[436]. Although, the test turned out to be ineffective and inconsistent as it failed to hold US responsible for the actions of the *contras* on the grounds that the violations committed by *contras* could be committed even without the control of US. Thus, the test was overruled and a new test was laid down in the *Tadi´c Appeal Judgement* in which instead of a strict test three different standards were laid to determine the control so as to categorise a non-State entity as an agent of a State.

- **For acts of single individual or non-organised military groups:** *de facto* organ of State if specific instructions given or officially supported or endorsed *ex post facto*
- **For acts of subordinate armed forces, militias, or paramilitary units:** Over all control and not just mere military or financial aid. The State here may not give specific orders for individual operation, but organizes, plans and coordinates the actions of the military group.
- **Assimilation Test:** Individuals are asserted as agents of State due to their actual behaviour. No significant jurisprudential development has been seen with respect to this test.

[436] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States, Merits) (Judgment)* [1986] ICJ Rep 14.

Thus, irrespective of several tests laid down, howsoever broad they may sound, they still remain incompatible to the mixed conflicts. The categorisation of Syrian Conflict, which while being internal followed the pattern of internationalised armed conflict. The Assad regime was supported by not just Syrian armed forces by foreign fighters of multiple States like Iran and armed groups like Hezbollah. The war caused violence in Syria's neighbouring country Turkey leading to the 'spill over' of conflict. All sorts of foreign interference like diplomatic, financial, logistics support was seen in Syria. Yet it was classified as non-international by the Commission of Inquiry on Syria, or some parts identified as non-International by the ICRC. Thus, irrespective of large-scale fighting, atrocities on civilians and multiple foreign interventions, it was not classified as an international armed conflict so as to attract the Geneva Conventions in entirety.

As, international humanitarian law does not provide for a quasi-categorization, a conflict either must be an international armed conflict or non-international armed conflict. A same conflict cannot be both at the same time. Thus, even though it has been recognised that internationalised armed conflicts are of common occurrence in contemporary conflicts, law of armed conflict cannot be applied until and unless the dichotomy and the distinction between the international and non-international armed conflict is done away with.

c. Multinational forces and International Humanitarian Law: The conflicts are internationalized also by the presence of multinational forces like NATO or 'UN Peacekeeping' forces. Since the inception of these forces, they were kept accountable under the international humanitarian law as they were neutral parties, not representing any individual party to the conflict but the international community as a whole deployed with an intention to maintain peace and security. They do not take active part in the hostilities but are mainly engaged to aid the territorial State with intelligence or logistical support. As their legal status remains unclear, their continuous deployment in areas of internal conflict has created lot of challenges to the applicability of the international

humanitarian law. Although, kept outside the purview of the law, they are currently held accountable under the 'support based approach' in case where their help has a direct impact in increasing the capability of a party in a pre-existing non-international armed conflict. This test is of no help in cases where the classification of the conflict itself is unclear. If there is no consensus as to the nature of conflict, how will an multinational interference be looked upon.

A similar significant question that remains unanswered is the responsibility of wrongful acts committed by multinational forces. Answers to all these questions depend upon the categorisation of conflict which nonetheless is already internationalised worsening the exercise of classification and thus rendering the applicability of laws problematic.

d. Dominance of Armed Groups: As the non-international armed conflicts are the most prominent in contemporary times, the theatre of war is dominated by non-State actors. Apart for novel features like open groups with transnational presence and decentralized structure, armed groups pose several evergreen challenges to international humanitarian law. The Laws of Armed Conflict do regulate the actions of non-State actors, however their increasing influence presses for better application, implementation, and compliance with the law. In times when, more than 90 percent of the conflicts have non-State actors as participants, the international humanitarian law is in jeopardy as on one side, with so many conflicts its prominence and importance is increasing day by day, however with majority being non-International its respect and compliance is endangered like never before. The cause for the same are multifold as mentioned:

- Primarily their illegitimacy in the domestic law enforcement law keeps them out of purview of State recognition.
- Secondly, high threshold to be qualified as a party under Common Article 3 restricts the recognition of many non-state armed groups as 'armed groups' for the purpose of Geneva Conventions.

- Even if they be recognised by States as 'armed groups', denial of responsibility towards humanitarian norms and secondly, seeking compliance and holding them accountable for the violations has been evergreen challenge.
- Further, expecting compliance from non-State actors is also somewhat ironical as they themselves don't consent voluntarily to be bound by the Geneva Conventions, but instead are made legally bound because of being provided rights by the Conventions and by being *de facto* party to the conflict . Thus, there is an urgent need to seek respect and reciprocation of the rules of armed conflict from the non-State armed group participating in the armed conflicts.

e. Asymmetric Warfare and Hybrid Conflicts: If one looks closely at the international humanitarian law, one will find that it is based on the several assumptions, the primary being conflict is fought between two States alike or States and armed groups, non-State parties who possess some State-like features and thus are treated to be at par with State. However, modern conflicts are characterized by so many asymmetries.

One the legal front, this inherent asymmetry between the parties affects the compliance of laws of war. This occurs when the weaker party, to diminish or reduce this asymmetry and come at par with the State, violates the humanitarian principles and discourages the State parties to comply with the laws of war. Thus, because a non-State armed group is attacking civilians and civilian objects to inflict injury on State, the States in response also disregards the law and relax their standards. This leads to a spiraling effect ultimately causing a blatant disrespect for the laws of war. As only States are expected to comply with the provisions of international humanitarian law, non-State actors systematically refuse to be bound by the rules, the States tend to feel that their hands are exclusively tied by the law. The result is both the parties believe that following the rules of law is detrimental to them, thus causing an all-round disregard for the laws. This at the end, leads to blatant violation of the elementary principles of international humanitarian

law- distinction, proportionality and precaution leaving the civilian population most vulnerable to the effect of hostilities.

f. Urbanization of Warfare: Being one of the most distinguishing features of contemporary conflicts, urbanization of conflicts has changed the complete dynamics of war and the laws applicable thereto. With more fighting taking place in cities, the most fundamental principles of international humanitarian law like distinction, proportionality and precautions are violated.

- **Distinction**: The rules of international humanitarian law specifically mentioned under Article 48 and 52 of Additional Protocol 1 prohibit attack on civilians and civilian objects and infrastructure without distinction.
- **Proportion**: Article 51 prohibits attacks that are expected to cause incidental civilian harm excessive and not in proportion to the expected military advantage. Thus, indiscriminate attacks are not permitted.
- **Precaution:** Further, international humanitarian law requires parties to take precautions so as to protect the civilians from damage and effect of attacks. Article 57 and 58 provide that even during attack, all feasible i.e. practical precautions are to be taken to minimize the incidental damage to the civilians.

However, the challenges posed by urban warfare are vicious and difficult to tackle. As the urban infrastructure is interconnected, a single point failure can turn an incidental damage to an intensified, reverberated, and cumulative one making assessment difficult. Use of heavy explosive weapons lead to destruction of houses and residential areas, further aggravated by use of civilian properties for military objectives, causing civilians losing their life, property, and livelihood. However, the most irreversible damage caused is the mental and psychological trauma which goes unacknowledged and unaddressed.

g. New Technology and modern weapons: The two major technologies and modern weapons considered under the research are cyber warfare and autonomous

weapons. With respect to cyber warfare during armed conflict, it poses tremendous risk to civil and military infrastructure with no specific provision in laws of war that prohibit cyber-attack. To fall under the purview of Geneva Conventions it must happen during the armed conflict as part of an armed conflict.

Recently published Tallinn Manual, although non-binding provided for applicability of rules of international humanitarian law to cyber warfare. As per the manual, a cyber-attack will attract principles of laws of war if it has the potential to cause injury or death to persons or damage or destruction of objects irrespective of the operation being offensive or defensive. From the international humanitarian law perspective, any damage which hampers the functionality of an object will fall under the category of armed attack even if any kinetic force was used or not is a question that need deliberation.

However, there is consensus among States in applying the existing principles of law of armed conflict to cyber-attacks, characterizing and assessing any conflict on the grounds of distinction, proportionality, and precautions as a cyber-attack may not result in physical damage, but can cause escalation in the conflict. A larger question that remains is that whether damage to civilian data has the same value as damage to civilian life, property, or object. What standards would determine the proportionality of cyber-attack and what kind of precautions would be practically expected in cases of cyber warfare as by the very nature it is a clandestine war method. At the end international humanitarian law prohibits violence and equating cyber warfare to kinetic violence seems to more problematic when the attack has been initiated by a non-State group.

The next emerging technology that is being used during armed conflicts is the autonomous weapons systems and unmanned aerial vehicles. The most controversial aspect of this technology is the loss of human control over use of force. Instead of a human, the autonomy to execute the attack has been moved to the machines which legally cannot be held responsible unlike a human. International humanitarian law can be

applied to hold persons who plan and command the attack in cases of failure of judgment. Nonetheless, rules regarding human degree and permissible degree of human control needs to be determined and established under the broader principles of law of armed conflict to hold parties to an armed conflict morally and legally accountable.

Finally, with respect to biological warfare, pertinent in times of the COVID-19 pandemic, it raises genuine concerns of the use of biological weapons by actors in armed conflict. Although, as per Rule 73 of the customary international humanitarian law formalized under several conventions like Geneva Gas Protocol and the Biological Weapons Convention, use of biological weapons has been prohibited during an international armed conflict. However, loss of risk to a humanity can be posed in case of use of biological weapons by a non-state actor or by any State under a clandestine operation.

Thus, speaking legally of the application of these new technologies to warfare, these are not governed adequately under the international humanitarian law. Article 36 of Additional Protocol I drafted to regulate the arms race during the cold war casts duties on the State Parties to undertake legal review of any new weapon and warfare technology that the State is developing, acquiring or using during war. This legal review not just assesses the legality of the weapon but also measures the State's conduct of hostilities under its international obligations. However, there is no such provision for a non-State actor and expecting a similar accountability from them has less probabilities. With States failure to prevent non-State armed groups from acquiring and using emerging technologies, the challenge further deepens. Thus, non-State actors using these new technologies with no reason for accountability and responsibility pose a grave danger to international humanitarian law during the conduct of contemporary warfare.

h. Terrorism and International Humanitarian Law: Terrorism is one such issue that has showed mirror to the whole framework of laws of war and laws of peace. Terrorist activities during times of peace fall within the domestic framework of any State.

To ensure international cooperation, aid and assistance for acts of terrorism executed through multiple States, several conventions have come in place. During an armed conflict, international humanitarian law does prohibit certain acts that would be designated as terrorist acts if committed during peace time. Nonetheless, it does not completely isolate itself from terrorist actions. International humanitarian law prohibits terrorist activities committed during armed conflicts as war crimes and range of other activities that would be terrorist if committed outside armed conflict.

Usually, States do not prefer to apply international humanitarian law to terrorist organisations as it would diminish their powers under counter-terrorism measures and provide unwarranted protections to the terrorists. More often States are reluctant to treat terrorists as prisoners of war and provide them the same level of recognition as they would have while fighting an armed conflict. Further, application of Geneva Conventions will permit humanitarian action and access, which generally is forbidden under the counter-terrorism regime. Any humanitarian aid can be termed as an assistance to terrorist organisation, thereby penalising a humanitarian action.

Further, categorising counter-terrorism measures as a non-international armed conflict under Common Article 3 would require the essentials of intensity and organizaton of armed groups to be met first, otherwise, it remains outside the scope of international humanitarian law. Similar question was raised as to the legal status of 'war on terror' against Al Qaeda, that was claimed as a self-defence against armed attack by US post the 9/11 attack. By using the term 'war' it attracted the application of Geneva Conventions however, legally it was an over classification of a situation that would rather fall under the laws applied during peace. It raised questions pertaining to 'war' in legal sense and if it involved transnational networks which were difficult to be imputed to a particular State. Suggesting that law enforcement paradigm, local and international is inadequate to deal with emerging scenario as the magnitude of terrorist activities qualifies as acts of war and the judicial systems currently dealing with terrorist activities are unequipped to

respond to an overwhelming situation of a terrorist attacks, transnational terrorist activities fall within the scope of international humanitarian law. However, the phrase 'war on terror' created a "legal black hole" as it exonerated the US Government from the human right obligations and even limited their war protections.

It turns out that the international humanitarian law and terrorism regime are so much so at crossroads that under-application or over-application has triggered legal challenges.

i. Private Militaries: With wars being fought in territories of foreign States, at different fronts and in different regions, huge manpower, assistance, and operational tasks had become a challenge to sustain any conflict for a long duration. This requirement led to the development of private corporations that provide military survives not just to State but also non-State actors. Their emergence has raised dual challenges with respect to the status of private militaries to determine their rights and obligations and the State responsibility for the action of private militaries.

- **Legal Status of Private Militaries:** International humanitarian law applies only to participants of armed conflicts, and thus bringing the whole private military company within the purview of international humanitarian law would be overstepping its jurisdiction. Rather, making individual members of company responsible based on their role during an operation would be viable. Depending upon the control of the State under which they are acting, their status would be determined. If acting as a part of an armed group or a militia or a troop bearing the signs of a State and carrying weapons openly, the members of armed groups will fall under Article 4(A)(2) of the Third Geneva Convention, and when acting voluntarily under the responsible command of the State, they will fall under Article 4(A)(1). But, when these private military companies act as mere supply contractors, their status of protection is that of a civilian under Article 4(A)(4) of the Third Geneva Convention.

- **Responsibility of State:** Apart from the legal status of private military companies is concerned, the responsibility of the State to ensure respect for international humanitarian law and accountability for the actions of private armed forces is also a pertinent question of international humanitarian law. Not just the State that hires private military but also the State on whose territory a private military company is operating needs to be held accountable for maintaining compliance to international humanitarian law. On top of it, States where the private military companies are registered and incorporated and whose citizens are associated to it, should also share the responsibility of ensuring respect for international humanitarian law by them.

Thus, with so many States involved in private entity participating either actively or passively in war, creates challenges at several fronts when an attempt to regulate it comes into question. Several States have drafted natural legislation governing the conduct of private militaries, but the multinational nature of the industry stands as a challenge for harmonizing several jurisdictions. Further, constant oversight and supervening authority over the conduct of private military is also a challenge for the States which makes it imperative for an international effort to be taken in this direction. In 2005, New U.N. Draft International Convention on The Regulation, Oversight and Monitoring of Private Military and Security Companies was put forth with no signs of it being taken forward. Moreover, the draft convention was too weak to just mention the principles with no framework for execution and implementation. Although it reflected the international sentiment it failed to address a grave issue and reach a conclusion.

j. Organized crime: Numerous armed conflicts have given rise to a parallel economy in conflict ridden States and regions. Funding and weapons are what makes the conflicts last and produce harm. Internationally, the Arms Trade Treaty of 2012 has

failed to control the illicit transfer of arms and with the recent fallout of US, the regime has become weaker to regulate illegal trade of weapons.

Further, these gangs and mafias dealing with drugs, weapons, minerals, and flesh have established a symbiotic relationship with the actors especially non-State of the conflict thus systematically supporting each other and disturbing the legal order across the continents. These organized criminal groups fall in the grey zone of conflicts and thus cannot be categorized as non-State armed groups under international humanitarian law simply because their actions do not qualify as an armed attack, and the intensity of violence does not reach the threshold of Common article 3 although they might be organized enough. Thus, States even if they intend to, cannot move against these groups under international humanitarian law.

Thus, this new category of non-state actors, that are not directly involved in combat but play an indispensable role for the sustenance of conflict escape from the purview of international humanitarian law. If they are deemed responsible for the conduct of the combatants, they can be held accountable under international humanitarian law, but it sounds to be abstract. Howsoever they may be responsible for several conflicts which would not have happened if they would not have been involved, they easily escape liability. A more systematic approach between the humanitarian framework, States and the UN Office on Drugs and Crime is required to break this nexus.

6.1.2 Consequences of these trends on the International Humanitarian Law

The above discussion reflects the fluidity of contemporary conflicts. Multiple parties, with shifting alliances, are fighting on multiple fronts, with diverse and often opaque motives. Proliferation of radical non-State groups based on multiple identities, mobilize support through social media and thus globalises the participation. With indiscriminate use of modern weapons, mostly in civilian areas has led to flagrant violation of

international humanitarian law worsened by readiness of armed groups to act on foreign soil, thus creating transnational character with regional repercussions. Lack of respect for international humanitarian law and lack of any viable solution makes these conflicts enduring and intense. These features are singular but are present in conflicts of Syria, Iraq, Yemen, Nigeria, Sudan, Somalia, Democratic Republic of Congo and in Afghanistan.

Thus, the consequences faced by them are multifold, some normative and some practical that are discussed below.

6.1.2.1 Distinction between International Armed Conflict and Non-International Armed Conflict turning fictional: One of the basic tenets of international humanitarian law is the distinction between international armed conflict and non-international armed conflict. The laws of war when formalised in 1949, the Geneva Conventions brought into its purview the armed conflicts of internal nature for the first time. Nonetheless, customary laws of war applied to recognised belligerency even before the adoption of Geneva Conventions. As already discussed in the previous chapter, States had varied opinions with respect to the inclusion of internal conflicts in the same set of regulations as international conflicts. However, irrespective of all the opposition, Common Article 3 dealing with armed conflicts not of international character was included in the four Geneva Conventions further supplemented by the Additional Protocol II of 1979. Nonetheless, the threshold of the application was different which formalised the distinction between conflicts governed by two distinct set of laws.

However, all the changes in nature of war and conflicts in the past seven decades have been revolutionary than the previous changes seen in the history. These changes have different strategic, tactical, military, political connotations, and significance, but legally their most important implication is the blurring of the distinction between the two kinds of armed conflicts. With all the features of contemporary conflicts discussed above, point

to an important development that is weakening and eroding the distinction between the International and non-international armed conflicts.

As initially when the narrow set of rules for prohibited weapons were drafted, only States had the capacity to acquire them, which is not the case today as even non-State groups are in possession of weapons that are prohibited for States. This distinction has also been eroded in the contemporary warfare.

Most importantly, the internal conflicts falling under non-international armed conflict became so brutal due to multiple actors and foreign interference, that the narrow regime of non-international armed conflict is unable to deal with this new 'internationalised armed conflict' which has further diminished the distinction between the two types.

Moreover, the Adoption of Additional Protocol I in 1970 recognised several non-international armed conflicts as international armed conflicts like conflicts of self-determination, conflicts against colonial regime and racist regimes. Further, by virtue of State practice and International and regional resolutions for seeking respect for humanitarian law by all actors in a conflicts, State as well as non-State, major rules of international humanitarian law have now formed a part of customary international law thus being applicable in all kinds of conflicts irrespective of its kind.

6.1.2.2 Distinction between wartime and peacetime and recognition of Non-International Armed Conflicts: Apart from the distinction between international armed conflict and non-international armed conflict, the international humanitarian law is also premised on the distinction between wartime and peace. It lays down certain thresholds to declare a hostile situation as an armed conflict, different for international armed conflict and non-international armed conflict. This implies that the qualification of peacetime and war is different in international armed conflicts and non-international armed conflicts. For international armed conflict the threshold is very low whereas for non-international

armed conflicts it's not just high but also subjective. It has become subjective because of several reasons. Firstly, the recognition of non-international armed conflict is no longer factual but is factoral, based in the assessment of presence or absence of intensity and organization. Rather than looking at the whole conflict as a whole and assessing its impact in a holistic manner, individual elements are tested independently, which often lead to non-application of international humanitarian law even if the demand of the situation would be otherwise.

Thus, if any conflict does not qualify as a non-international armed conflict, laws of peace, domestic laws and law relating to human rights are applied. This has made the law relating to non-international armed conflict absolutely redundant in light of the changing nature of contemporary conflicts. In times, when non-international armed conflict is the predominant conflict causing most of the violence and destruction, a narrow inflexible test has delayed the application of international humanitarian law and further excluded many situations from being regulated under international humanitarian law thus leaving at the expense of international human rights law and domestic laws.

Even though, non-international armed conflicts found their place with the international armed conflicts, their place was too small with very few rules applicable to them. The distinction between the two regimes remained. This distinction may be merely with respect to the nature of the conflict and the status of combatants and non-combatants it is significant to trigger and invoke the application of the laws. Most importantly, States retained all the power to apply the Geneva Conventions in cases of non-international armed conflict with themselves. Thus, the associated consequence of the strict test to classification of non-international armed conflict is the powers of States to recognise the conflict and initiate the response.

With all the discretion with States in recognizing an internal hostility as a non-international armed conflict, no objectivity and consistency in such declaration is found.

Most armed conflicts today would fall into the category of non-international armed conflicts, but the regime of the same is not yet fully developed. With scarce treaty rules, applying them by the Sates is also infrequent.

6.1.2.3 Non-Compliance of International Humanitarian Law by Armed Groups

Apart from the existing discrepancies in the hard law, the failure of compliance and diminishing respect for international humanitarian law is also a consequence of the contemporary conflicts. There are more than six hundred provisions under the Geneva Conventions to regulate the conflicts, and hence what is required is its compliance. However, this primary concern of implementation is further aggravated in current times due to increase in conflicts involving non-States actors. Thus, the implementation is not just linked to the applicability, but also practical situations liked failed states and armed groups. There are several reasons for armed groups not complying with the Geneva Conventions. Multiplication of armed groups in the same conflict, different ways of operation, lack of awareness makes it difficult to make them accountable or seek compliance of the rules. Moreover, armed groups find lack of incentive to abide by the rules.

However not just armed groups, even States' lack of political will has resulted into loss of respect for international humanitarian law. States deny applicability of international humanitarian law as they are reluctant to give any legitimacy to the armed groups by recognizing them as parties to armed conflicts. International interference makes it difficult to classify the conflict which further delays the application of international humanitarian law. Further, contemporary conflicts have made it practically impossible to apply international humanitarian law, like diminishing distinction between combatants and civilians, loss of protection due to direct participation in hostilities.

International humanitarian law, which assumes that both the sides are equal, have equal responsibilities, even if one party fails to do so, has lost relevance. States are not willing to recognise the armed groups to deny them protection under international humanitarian law but expect them to follow the rules of war is the challenging reality of today's times. This further worsened when military and humanitarian objects do not concur, for example the suicide bombers.

Also, due to asymmetric nature of contemporary conflicts, the principle of reciprocity has also lost its value. Rather, the negative reciprocity has become the order. Asymmetries in parties leads to violation of international humanitarian law principles which acts an excuse for the other party to abide by the same and thus leads to the spiral of violation.

Mechanisms to monitor compliance provided under Geneva Conventions like protecting powers, enquiry procedure, fact finding commissions, meeting of High Contracting parties have not been so effective other than ICRC. Many of these measures are either biased and political or they have not been used due to procedural difficulties.

6.2 Findings

To analyze the nature of contemporary conflicts and study the challenges posed by these conflicts for international humanitarian law this research was conducted extensively. This research was done with the following objectives:

1. To provide an account of the changing character of the contemporary violent conflict and related crises and to address theoretical debates, political approaches, and the law on the changing landscape of contemporary non-international armed conflicts.
2. To provide an overview of the challenges posed by contemporary non-international armed conflicts and New Wars for international humanitarian law.

3. To outline the challenges to the application of international humanitarian law in contemporary conflict zones and the inherent adequacies in the law.
4. To generate broader reflection on those challenges and outline the ongoing or prospective actions under international humanitarian law.
5. To study past instances representing various emerging kinds of armed conflicts and take into account how these problems were addressed by UN and other international agencies.
6. To provide a comprehensive assessment of the current legal framework of the international human rights law and its implementation with respect to its reliability during non-international armed conflicts.
7. To study the difference that would have been made towards victim redressal if different definitions had been applied.
8. To understand the rigidity vis-à-vis flexibility of the existing international humanitarian law framework so as to accommodate the contemporary non-international armed conflicts.
9. To provide preliminary conclusions towards a normative and policy framework that could sufficiently address the challenge posed by contemporary armed conflicts.

To achieve these objectives, the research is divided into six major chapters. The second chapter titled ***"Non-International Armed Conflicts: Their Place in International Law"*** discusses the reason for the adoption of the term 'armed conflict' instead of 'war' and the historical debates with respect to the recognition of two kinds of armed conflicts which eventually gave birth to the 'non-international armed conflicts'. The chapter has discussed the laws pertaining to the two kinds of armed conflict, their application and has deliberated into the causes of this distinction and its significance.

The third chapter is one of the significant portions of the research and is titled, ***"New Wars and Contemporary Non-International Armed Conflicts: The Emerging Trends"***. In this chapter the researcher has established a theoretical foundation for the

contemporary non-international armed conflicts. This has been done by analysing the evolution and development of warfare since the inception of the modern International Law. By means of examining the changes in methods and means of warfare due to industrialization and irregular war, which has gradually led to the evolution of the four generation of warfare. The current or the fourth generation, is also recognized as new wars and has several new characteristics coupled with few old but in a different setting altogether. This chapter has discussed the significant trends associated to new wars and contemporary non-international armed conflicts.

The fourth chapter is titled, ***"Accommodating New Wars in Old Law: Case Study"*** where four different conflicts have been studied. The conflict in Syria, the global war on terror, Kashmir conflict and Naxal conflict have been examined to classify these conflict under the laws of war and to see how the conflict was classified by the States, the participants and UN and other institutions. The chapter has also discussed as to whether these conflicts are new wars or not.

The fifth chapter, ***"Human Rights and Humanitarian Law: From a Victim's Perspective"*** discusses the applicability of human rights law during an armed conflict. It further analyses the reliability of the international human rights framework during the contemporary non-international armed conflicts and its relation vis-à-vis international humanitarian law.

The **objective No. 1** relating to the changing character of current conflicts and associated theoretical debates have been accomplished under chapter 3. The political approaches have been understood under chapter 4 by means of case studies through the stance taken by various States and international organizations and institutions in classification of these conflicts.

The **objective No. 2** to analyse the challenges due to new wars on the current international humanitarian law framework has been discussed under chapter 3 and chapter 6.

The **objective No. 3** that aims to outline the challenges to the application of international humanitarian law in contemporary conflict zones and the adequacies in the law have been dealt under chapter 4 in detail by means of case studies of four different enduring conflicts.

The **objective No. 4** that aims to throw light on the challenges and the actions taken by the international community has been discussed under chapter 6 where the researcher has successfully established that the international regime has failed to address the challenges thrown by these new conflicts to the existing framework of international humanitarian law.

The **objective No. 5** regarding past instances of armed conflict and how these were addressed by UN and other international actors and institutions have been discussed in detail in chapter 4 where several UN resolutions, NATO resolutions, UN reports on conflicts have been discussed to examine the actions taken so far. Apart from the legislative actions, the ad hoc International Criminal Tribunal judicial decisions have been investigated in various chapters. It must be mentioned that the major development happening in the jurisprudence of law of non-international armed conflict has happened due to the consistent efforts of the various tribunals established by the UN.

The **objective No. 6** pertaining to the analysis of the current framework of international humanitarian law and the law relating to non-international armed conflict has been discussed in detail under chapter 2.

The **objective No. 7** which aims to study the difference that would have been made towards victim redressal if different definitions had been applied has been discussed under chapter 4 and chapter 5. The objective has been achieved by analysing the classification of conflicts made by the States and repercussions of the same on the participants as well as the victims of the conflict.

The **objective No. 8** aims to understand the readiness of the current framework to accommodate new wars and the researcher in the chapter 6 has discussed how major changes have taken place that have led to the blurring of the distinction between the unification the two types of armed conflicts armed conflicts and most of the provisions of international armed conflict have not been applied to non-international armed conflict. However, the status of combatants and prisoner of wars is one important aspect that still needs to be fixed to result in the complete application of the laws of international humanitarian law to non-international armed conflicts.

The **objective No. 9** that seeks to provide for a normative or a policy framework has been provided under chapter 6 of the research. The research provides for a model supplementary protocol to the Geneva Conventions so as to deal with new kinds of armed conflicts that do not fall into the neat classification of two armed conflicts.

Conclusions drawn on basis of Research Question/ Hypothesis

- **Question No. 1:** Whether the various forms of contemporary non-international armed conflict need significant attention and legal definitions?
  The answer to this research question is positive. The said Question has been affirmed by the inferences drawn in Chapter 3,4 and 6 of this study.

- **Question No. 2:** Do 'New Wars' pose challenge to the application of the international humanitarian law?

The answer to this research question is confirmed. The said Question has been answered by the inferences drawn in Chapter 3 and 6 of this study.

- **Question No. 3:** Whether 'New Wars' and contemporary non-international armed conflicts fit in existing framework of the international humanitarian law?
  The answer to this research question is partly in negative as the contemporary non-international armed conflict do not exactly fit in the existing framework. The answer is based on inferences drawn in Chapters 3 and 4 of this study.

- **Question No. 4:** Whether the role of UN in addressing the non-international armed conflicts has been satisfactory or not?
  The said answer is in negative because compared to the expectation, UN has failed to maintain peace or negotiate peaceful ends to conflicts. These inferences are drawn from Chapters 4 and 6 of this study.

- **Question No. 5:** Whether the dichotomy and categorisation of armed conflicts has posed biggest challenge to rights of victims?
  The said Question has been affirmed by the inferences drawn in Chapter 3 and 6 of the research study.

- **Question No. 6:** Whether international human rights law can be relied in times of non-international armed conflicts?
  The said Question has been partly confirmed as international human rights law can be completely relied in times of conflicts by the inferences drawn in Chapter 5 of the research study.

- **Question No. 7:** Has the distinction between international armed conflict and non-international armed conflict become insignificant?

The said Question has been answered affirmatively by the inferences drawn in Chapters 3 and 6 of the study.

- **Question No. 8:** Whether the difference in definition of non-international armed conflicts leads to difficulty in implementing international humanitarian law?
  The said Question has been positively established by the inferences drawn in Chapters 4 and 6 of this study.

- **Question No. 9:** Do they need to be addressed with a set of new laws?
  The said Question has been answered in affirmative and the research also provides alternatives in the way of Model Protocol. The inferences for this question have been drawn from chapter 3, 4 and 6 of the research study.

Hence, it can be concluded that News Wars and Contemporary Conflicts have led to the blurring of distinction between international and non-international armed conflicts. The current framework is not suitable to address the changes caused by the contemporary conflicts and thus new laws are required for new wars.

Thus, the researcher has suggested a possible model supplementary protocol so as to accommodate the new wars into the international humanitarian law framework and further concretize the unification of the laws of armed conflict.

6.3 Suggestions

As highlighted in the research, the means and methods of warfare have evolved dramatically, but the law has evolved at its own pace. No doubt it has tried to regulate the recent development but has not achieved enough success to humanize the conflicts. The most important reason identified for the failure of the international humanitarian law is that it has failed to regulate the non-international armed conflicts with same rigour and

flexibility as it regulates international armed conflicts. With most of the conflicts today are internationalized non-international armed conflicts, bearing features of both types, the need for two sets of laws has become redundant. Various conventions, treaties and decisions have tried to remove the dichotomy between the two kinds armed conflicts to come to terms with the new wars and contemporary conflicts. Moreover, major success has also been achieved with respect to the unification of the normative framework. However, the implementation is still a roadblock. The major hurdle in the unification of the laws of armed conflict is the status of combatants or those who directly participate in the armed conflicts. This has been evidenced in cases of non-international armed conflicts, where States either under apply or over apply the international humanitarian law to avoid the recognition of a non-international armed conflict. A conflict that would have all the requisites of a non-international armed conflict will still no be recognized simply to deprive the non-State armed groups their due protection as combatants. This deviation by the States is restricting the expansion or the unification of the laws of armed conflicts. The major reason for the same is that the States do not wish to recognize the "right to rebel" compromising its sovereignty to the members of asymmetric armed groups indulging in transnational terrorist activities.

There are strong arguments in favour of unification of the law of armed conflict.

- *Firstly*, from humanitarian perspective applicability of the humanitarian law will act as a cushion to absorb the shock of any conflict and
- *Secondly*, even States can detain members of armed groups for an indefinite period rather than arresting them under domestic law wherein finally they end up being released by the judicial process to be found again on the battlefield.
- *Thirdly*, recognizing armed groups would generate reciprocation from the non-State actors thus bringing them one step closer to respect and follow the international humanitarian law.

- *Fourthly*, with both parties applying humanitarian principles, will lead to less human rights violations, decreased animosity and faster and fruitful peace negotiations.
- *Fifthly* and *finally*, this would expand the application of international humanitarian law to all kinds of conflicts irrespective of what their nature is, even encompassing terrorist activities, thus removing the human subjectivity from the legal application.

Thus, to bring in such changes, a model law has been proposed, with an attempt to fill the gap that still remains with respect to the application of international humanitarian law to non-international armed conflicts and accommodate the changes and the trends that change the nature of non-international armed conflicts. It is important to understand that this law is not uniformizing the international and non-international armed conflicts or giving the status of State to non-State armed groups but is merely unifying the applicability of humanitarian principles during a conflict irrespective of its type.

6.3.1 Model Protocol

Model Protocol for the Applicability of principles of Humanitarian Law in Non-International Armed Conflicts and its Peaceful Termination

2020

Preamble

Conscious of numerous hostilities that threaten the peace, security, and wellbeing of the world,

Considering the definition of armed conflicts that encompasses every hostility that deserves international attention,

Recognizing the Martens Clause as the pre-emptory rule for the protection of combatants and non-combatants,

Recalling the principles of international humanitarian law embodied in the Geneva Conventions, the norm of general international law (jus cogens) and the Rome Statute,

Mindful that throughout history millions of children, women and men have been victims of armed conflicts that deeply shook the conscience of humanity,

Considering the rights of non-State parties to seek protection under international humanitarian law and their obligations to the same,

Affirming that violations of rules of international humanitarian law must be prevented,

Determined to put an end to impunity for those who violate the rules of international humanitarian law and thus to contribute to the prevention of such acts,

Considering also that, because violation of international humanitarian law must not go unpunished, the effective prosecution of such acts must be ensured by taking measures at the national and regional level and by enhancing international cooperation,

Recalling that it is the duty of every State to protect its citizens from the scourge of war and provide maximum protection and security during wars,

Reminding that it is the shared duty of every State and non-State actors, organisations and individuals to terminate the conflict and undertake peaceful negotiations and strive to maintain peace and humanity

…

Article 1

Scope and Application

The present model protocol applies to non-international armed conflicts occurring in the territories of Contracting State Parties.

Article 2

Non-State Armed Groups

Non-State armed groups under the present protocol will include any combatants and/or group of rebellions which have reached minimum organization to operate under responsible command structure and carry out sustained and concerted military operations, and

Are so recognized by a Humanitarian Law Commission set up under Article 3 of this Protocol.

Article 3

Constitution of Humanitarian Law Commission and Powers

Each State shall constitute Humanitarian Law Commission in its territory

1. In case of an ongoing conflicts, then within 6 months of signing of this Protocol,
2. or after 6 months of violence and hostility occurring on its territory irrespective of the intensity of the same.

Humanitarian Law Commission shall consist of such number of independent members as prescribed in Contracting State Parties' domestic framework.

Article 4

Powers of Humanitarian Law Commission

The Humanitarian Law Commission shall be empowered to recognize the existence of a non-international armed conflict upon receiving application from,

1. The Concerned State when it identifies the existence of non-international armed conflicts,
2. Non-State armed groups,

The Humanitarian Law Commission may *suo moto* assess the nature of hostilities in determination of existence of non-international armed conflicts.

Humanitarian Law Commission after assessing the hostilities and distinguish the same from internal disturbances, riots, and sporadic violence and recognize the existence of non-international armed conflicts by publication of Notification.

Humanitarian Law Commission is empowered to recognise the combatant status of non-State armed groups as per Article 5 and withdraw such recognition as per Article 6.

Humanitarian Law Commission shall also after being satisfied determine the termination of non-international armed conflicts.

Article 5
Declaration by Non-State Armed Groups

Every non-State armed groups participating in a non-international armed conflict can submit, to the Humanitarian Law Commission, a declaration expressing intention to adhere to the rules of International Humanitarian Law and the provisions in this Protocol.

Provided it shall have to declare its capability to comply with the rules of international humanitarian law for which it can even seek assistance from State parties of this Protocol, Humanitarian Commission, United Nations, Regional Organizations, International Committee of the Red Cross or any other NGO.

Humanitarian Law Commission upon being satisfied shall recognize the non-State armed groups and may impose such terms and conditions as appropriate and thereby recognize the existence of non-international armed conflict as per the Article 4.

On such recognition, the State will be bound to apply the rules of international humanitarian law.

Article 6 Eligibility for protection as combatants

Member of armed groups shall be eligible for the protections provided under Geneva Conventions if,

1. The Humanitarian Law Commission recognizes the existence of non-international armed conflict.

2. The members of the non-State armed groups wear uniform, carry arms openly and act under responsible command.
3. The armed groups do not violate the rules of international humanitarian law or any terms and conditions which may be imposed.

Breach of any of the above conditions would make armed group ineligible for the status of combatants.

Article 7 Protection of Civilians

Civilians taking direct participation in hostilities shall lose their protection as non-combatants, except otherwise if acting under unorganized or spontaneous acts.

Article 8 Legal Status of Private Militaries

Private militaries and their members shall be eligible for the protection as combatants if they directly take part in hostilities.

Members of private militaries if not wear uniforms and carry weapons openly will lose the status of combatants.

Members of private militaries providing indirect support to the parties of the conflicts shall be protected as non-combatants.

Each party bears responsibility for the military and security activities of private entities operating under their command.

Article 9 Nexus of armed group with organized criminal gangs

States may apply to Humanitarian Law Commission to discontinue to treat armed groups as combatants if any nexus of the members with an organized criminal gang is proved.

Article 10 Intervention by Foreign State

Any foreign State, intervening militarily or otherwise on behalf of the State shall submit the consent of the State and a declaration to be bound by rules of international humanitarian law to the Humanitarian Law Commission.

Any foreign State, intervening militarily or otherwise on behalf of the non-State armed group shall have declare the reason and nature of intervention to the State of intervention.

In case such declaration is not made, the State can refrain the foreign State from intervening on grounds of Sovereignty and non-interference in internal matters and seek sanctions against intervening State from the UN or Regional Organisations.

Article 11 Special Judicial Committee: Constitution, Role and Functions

Each State party shall constitute, under a *sui generis* framework, a Special Judicial Committee as soon as the existence of non-international armed conflicts is recognised by the Humanitarian Law Commission under Article 5.

Once the Special Judicial Committee is constituted it must be notified by the State to the UN.

States and non-State actors, parties to the non-international armed conflict can approach and make complain against the other party for the violation of international

humanitarian law. The Committee is empowered to take cognizance on similar complaints made by civilians and Humanitarian Law Commission.

The Special Judicial Committee shall have the power to investigate commission of violation of rules of international humanitarian law, conduct trials for the same and punish if found guilty.

Aggrieved party can approach United Nations which can constitute an Ad hoc Appellate Tribunal to hear appeals from all the matters related to the conflict.

In case where the decisions of the Special Judicial Committee are not respected by any of the parties, it can approach the United Nations for its execution which has powers to take necessary action under Article 13(b) of the Rome Statute.

Article 12 Termination of Non-International Armed Conflicts

Every State party to a non-international armed conflict shall take measures to end the conflict and reach a peaceful agreement with the non-State groups or try to end the hostilities peacefully between two or more non-State groups.

Any armistice between two parties shall be submitted to the Humanitarian Law Commission who shall notify the termination of the conflict and the end of applicability of international humanitarian law.

6.3.2 Commentary to the Model Protocol

Article 1: The non-international armed conflicts under the model protocol shall have the same meaning as prescribed under Common Article 3 of the Geneva Conventions of 1949. Thus, non-international armed conflicts under the protocol will come into existence, when

1. The Contracting State is engaged in armed conflicts against armed groups.
2. Armed groups engaged in armed conflicts against each other.
3. Any combination of the above two situations.

Article 2: As the law of non-international armed conflicts is silent as to the threshold to determine the existence of non-international armed conflicts, the most objective criteria laid down in the *Tadic* case has been chosen for the Model Protocol. The *Tadic* formula has been widely accepted and removed the rigidity and the ambiguity from the definition of non-international armed conflict. The model protocol has applied the same formula to determine the existence of non-State armed groups, whose participation turns any hostility to a non-international armed conflict. There are three important changes suggested by this model protocol:

1. It removes the threshold of 'occupation of territory' that was included by the Additional Protocol II.

2. It also removes the requisite of 'capability of armed groups to comply with the principles of humanitarian law' as such a requirement sets the threshold too high to recognize any conflict as a non-international armed conflict. Although this important requirement has not been completely foregone by the model protocol, as non-State armed groups while making declaration under Article 5 can seek assistance from different bodies and organisations to comply with the principles of humanitarian law.

3. Moreover, the model protocol takes away the right of States to recognize the existence of non-international armed conflicts in their territory and hands it over to an independent national statutory body constituted by the State itself. Thus, this modus solves two pertinent problems faced currently. First, the States usually abstain from recognizing armed conflict they are engaged in and secondly, they do not want any international interference in the matter's sovereign to them. This modus operandi will also be helpful in cases where States are not a party to a non-international armed conflict happening in its territory. Such situations, where two groups are fighting usually, States interference and decisions and be motivate by political interests and repercussions. In such a scenario an independent body can take a reasoned and an impartial decision for the determination of existence of an armed conflict.

However, this provision does not affect the status of non-State armed groups as stipulated under Common Article 3 of Geneva Conventions. The recognition of armed groups will neither diminish the sovereignty of the State nor will provide any legality to the armed group.

Article 3: To bring in transparency in the determination of existence of non-international armed conflicts it is especially important that States do not indulge in assessing such a situation. Further to avoid any international interference, the model protocol suggests constitution of an independent humanitarian commission that would deal with matters related to the application of international humanitarian law during any internal hostility taking place within the territory of any State. The model protocol suggests a *sui generis* system and gives States the liberty to constitute their own commissions which are truly independent from State control. An example of Human Rights Commissions established by States is exceptionally fine example of *sui generis* systems adopted by State to fulfil international aspirations and perform domestic obligations.

Article 3 further postulates a time limit of six months for the constitution of the commission, where it has contemplated two scenarios, States where conflicts are already going on, or States that may face conflicts in future. In the first scenario, the States must formulate a legislation and constitute within six months of the signing of the Protocol; and in the second scenario, the States shall constitute the commission with six months of starting of any hostility within the territory of the State. An important point that needs to be highlighted here is that States duty to constitute a commission shall not depend upon the intensity, scope, or frequency of attacks in the hostility. Before passing of six months since the tensions, riots, or incidents of violence, the States must from the commission to examine the situation.

Article 4: The Humanitarian Law Commission so constituted shall have powers to determine the existence of armed conflict and assess the end of armed conflicts thereby triggering or ending the application of non-international armed conflict. Thus, it can do so after receiving an application from States, armed groups or it can *suo moto* assess the nature of hostilities.

Article 5: This is one of the most needed provisions under international humanitarian law, which allows non-State actors to not to be just passive partaker but also active participant in application of humanitarian principles. Keeping in mind the dispersed and latent nature of armed groups, assessing their requisites of their presence like organisation, command, hierarchy and capacity to inflict harm, this provision makes way where non-State armed groups can by themselves unilaterally declare to be bound by principles of humanitarian law on possessing such essential qualifications.

The Protocol by this Article removes the obstacle of capacity to apply principles of international humanitarian law which was the biggest hindrance in the recognition of presence of armed groups. It is not necessary for armed groups to possess all State like features to be capable of showing respect for the humanitarian law. Keeping in mind the

loss of life and damage to civilian property during contemporary conflicts, it is high time that States should motivate armed groups to respect humanitarian principles in the conduct of hostilities. Thus, the protocol allows armed groups to seek assistance from various NGOs like ICRC or Amnesty International to provide humanitarian training, assistance to comply with the rules of armed conflicts. The assistance can be in manners to deal with captured combatants, wearing uniforms, understanding command responsibility, even negotiating with the State, among others.

However, an important aspect here is to understand that such unilateral declaration does not automatically trigger the application of humanitarian principles. But it allows the Humanitarian Law Commission to assess the situation with more clarity. Further, such a provision also avoids a situation where it might happen that the hostilities have not acquired the threshold of non-international armed conflicts and the non-State armed groups might wish to seek the combatant status under the Protocol which they are not worthy of.

Article 6: The major change brought by this model protocol is that it provides combatant status to the members of armed groups participating in a non-international armed conflict and thus lifts them from being mere criminals. However, the protocol follows the Geneva Conventions whereby there are certain rules to be followed so as to remain legal combatants and violations of the same would strip them off their status and make illegal combatants.

Article 7: A provision for direct participation in hostilities has been drafted to formalise a principle of customary international humanitarian law.

Article 8: The model protocol has made an attempt to bring an unaddressed issue of private militias and mercenaries, who are playing an active role in contemporary conflicts, within the purview of rules of armed conflict. Thus, by giving protection to

private militaries as combatants, the command under which they operate can be held liable for violations of humanitarian law by any such member of private military. However, this protection of combatant status is available only when the private militaries participate directly to the hostilities that is by military activities and not in cases of peacekeeping or logistical and health support. While providing indirect support, they will be protected as non-combatants and cannot be targeted. To be identified as combatants they must wear uniforms and carry weapons openly while following other principles of humanitarian law.

Article 9: This protocol also addresses the issue of the nexus between armed group and organised criminal syndicates and gangs that will have the effect of discontinuance of status of combatants of armed groups. Humanitarian Law Commission has the power to take call in the matter at the insistence of the State.

Article 10: With respect to the most controversial issue of foreign State intervention faced by the contemporary non-international armed conflicts the protocol has brought regulation so as to secure the respect for the sovereignty of the State engaged in a conflict or in case a conflict on its territory between non-State armed groups. As per the protocol, any foreign State that finds the necessity for intervening in an ongoing non-international armed conflict cannot intervene, either militarily or otherwise, without the consent of the State, even if such an intervention is favourable for the State. Further, such State will be bound by the rules of humanitarian law and considered a party to the conflict and shall submit the declaration mentioning the same to the Humanitarian Law Commission.

Also, if the foreign State is intervening on behalf of non-State armed groups, it must mention the cause for such intervention, like protection of its citizens. If no such reasons are cited and the declaration is not made, the State can take necessary actions under International Law for breach of sovereignty.

Article 11: As Geneva Conventions have not provided for any implementing authority, it has become imperative that a body at domestic and international level is formulated that looks after the implementation of humanitarian law and punishes for breach of rules of armed conflicts. However, as States have always objected to foreign intervention, the present model protocol, mandates the contracting State parties to formulate a *sui generis* domestic framework to carry out judicial functions in implementation of international humanitarian law. This this solves two purposes, firstly States complain of foreign intervention can be addressed and secondly implementation can be done domestically ultimately taking the goal of humanitarian law to its appropriate culmination.

As per the Protocol, every State where the Humanitarian Law Commission has recognised the existence of the armed conflict has to constitute and independent Special Judicial Committee with powers and functions to investigate, conduct trial and punish for alleged acts of violation of humanitarian law.

In order to ensure that States fully perform the obligation under this Article, it is mandated that such States shall notify the constitution of the judicial committee to the United Nations.

Further, it also allows not just State but also armed groups and members thereof to approach the judicial committee and register their grievance. Further, it also opens its doors for civilian and can act at the insistence of Humanitarian Law Commission.

Anybody aggrieved of the decision of the judicial commission, can also approach United Nations which can constitute an *ad hoc* appellate tribunal or a tribunal under Rome Statue if the respective State is party to it.

Article 12: The model protocol mandates every State to take all measure to humanise the conflict and end it through peaceful negotiations. When such an agreement is made, it

must be notified by the Humanitarian Commission which will terminate the conflict and end the application of humanitarian law.

6.3.2 Other Suggestions

Apart from these, there are other suggestion which the researcher seeks to provide for the peacetime.

- As inferred from the research, human rights violation, apart from being the consequences of armed conflicts are also cause and symptoms of an armed conflict. States and international community must strive to detect the undercurrents of the human rights violations and avoid any conflict before it reaches its boiling point.

- Further, its high time that United Nations take charge of international peace and order. As many roles and responsibilities added by this draft protocol, UN should democratize itself. An equal representation of all States should be made in the decision-making process of such issues.

- Moreover, conflict ridden States should be given a seat in meeting where resolutions relating to the conflicts to which they are party or conflicts that are happening in their territory are being discussed and passed by United Nations.

- United Nations Security Council needs to be enlarged so as give equal representation to underrepresented States.

- As reforms at international level may take time in happening, regional organizations or States in a region must come together to end armed conflicts and bring peace in the region which is a must for the overall growth and development for States.

- At the national level, States must realize that maintaining peace and security within their territory is their foremost duty. With this it is also important that States must maintain and build peace not by using force but taking actions promoting well-being of the citizenry. Proactive role of States to protect civilians from hostilities should be done by minimalistic force used as defence. responsibility of State.

- States must integrate rules and principles of international humanitarian law in their military doctrine, educate their soldiers and spread awareness amongst the non-State armed groups.

- Ultimately, the whole argument to regulate non-international armed conflicts boils down to 'Sovereignty' of the States. However, it is important to understand for the States that sovereignty that is secured on the bodies of dead, who lost their lives in an internal conflict, will not last longer. States must determine to forgo their sovereignty for a while and try to humanize conflict to which it is party. As rightly said by Lord Shri Krishna in *Bhagwad Geeta* that -

"No one should abandon duties because he sees defects in them."

-Ch 18, Verse 48, Bhagwat Geeta

सहजं कर्म कौन्तेय सदोषमपि न त्यजेत् |

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