

Abstract

With the Peace of Westphalia in 1648, nation-States framed rules for their interaction with each other, rules that laid the foundation of modern International Law. The basis of this significant treaty was 'Sovereignty' of nation-States. It was recognized that each State was sovereign in its internal and external affairs. International Law was concerned only with 'States' as their subjects and their relationship with other States. With passing of time, International Law was formalized, and several other branches were developed. One of the oldest regulated was the 'laws of war' however with no written rules at place. As modern International Law was concerned only with the States, it did not deal with conflicts that were internal in nature. However, after the Battle of Solferino during the American Civil War, A Lieber Code was drafted to regulate conflicts like civil war, it later laid the groundwork for the first truly international treaty regime to govern wars between States Geneva Convention of 1864. Thus, began the formal development of laws of war where the military interest of the States was to be balanced with the rules of humanity and necessity of destruction. The grounds for the expansion of these humanitarian principles was laid again by the Hague Regulation of 1899 and 1907 and Geneva Conventions of 1939. However, it was only after the World Wars, that a pathbreaking step was taken with the adoption of four Geneva Conventions in 1949.

These Conventions brought new dimensions to the laws of war and hence truly modernized it. Firstly, there was a shift from the term war to armed conflict. It included cases of 'declared war' as well as 'not declared war', thus bring in the purview all conflicts whether recognized or not. Further, the rules of Geneva Conventions were to be applied by the Party State even when all other participants are not party to Geneva Conventions. Moreover, 1949 Geneva Conventions, is also celebrated due to inclusion of Common Article 3. Common Article 3 brought into the purview of International Humanitarian Law, Armed Conflicts not of International character but fought within the territories of State. Although even before Geneva Conventions, recognized belligerency was regulated by the laws of war, inclusion of Common Article 3 itself was considered a huge development.

However, the inclusion itself of Common Article 3 was celebrated so much that it overshadowed the limited nature of application of Common Article 3. In the whole set of Four Geneva

Conventions only one Article 3 common to all, was applicable to the Non-International Armed Conflicts. Thus, the needs were felt to expand the provisions and so in 1977 two Additional Protocols were adopted, dealing with International and Non-International Armed Conflicts. The Additional Protocol II although brought in several new rules during the conduct of Non-International armed Conflicts, it still did not remove the basic lacunas that were restricting the application of laws to non-international armed conflicts. It further raised the threshold for the determination of non-international armed conflicts.

The major reasons that come to mind for lack of attention given to regulation of non-international armed conflicts are multifold. International armed conflicts deals with States and non-international armed conflicts are by their very nature internal. Secondly, States object any kind of interference in their internal matters. The effect of this was, that States distanced themselves from recognizing non-international armed conflicts occurring in their States, and if it was recognized, the fighters of non-international armed conflicts were not given the protection under combatant status.

Although these issues were being raised time and again, the international community did not pay attention to it simply because non-international armed conflicts were not often occurring like the international armed conflicts between States, nor were the non-State actors and rebel groups capable enough to inflict injury or cause destruction that would attract attention of the world.

But, since past three decades, tables have turned. Since the end of the cold war, only few international armed conflicts have been fought, but more than half a hundred non-international armed conflicts have occurred. Also, the assumption that non-State actors cannot cause destruction has been proved false, as major destructions and damage caused these days has the hands of non-State actors. The most startling example of is the 9/11 Twin-Tower attack or the 11/08 Mumbai attacks that shook the world were planned and executed by non-State actors.

Thus, a shift has been seen where States have lost their monopoly over war and are instead of fighting against each other, which is highly regulated, they are fighting against non-State actors, which is loosely and sparingly regulated.

Not just non-international armed conflict have captured the scene, their nature has also transformed. The classical non international armed conflict contemplated by the drafters of

Geneva Convention 70 years ago has dramatically changed and metamorphed itself. With changes in methods and means of warfare, we are currently in the fourth generation of warfare. Technological advancements, modern weapon technology, reemergence of guerrilla warfare has urbanized the conflicts today and changed its characteristics. With terrorism coming to the forefront and organized criminal syndicates becoming all time powerful have fueled these conflicts. Increasing role of mercenaries and private military and security companies has further deteriorated the situation. This has also affected the human rights standards of the conflict zones and the neighboring regions that have faced refugee rises, which has been also called the crises of the century. Further, there has been a constant rise in the human rights violations due to the emerging trends of non-international armed conflicts. The situation has been worst due to the rising number of non-state armed groups who show disrespect to the International Humanitarian Law and further worsen the impact of conflict on the society. Thus, old wars have now transformed into new wars. With numerous internal conflicts affected by international intervention that these conflicts today are both localized as well as globalized. It will not be an exaggeration that we are living in the times of ‘third world war’.

In such a scenario when existing framework is not equipped to deal with such contemporary non-international armed conflicts, humanitarian law needs to be updated so that it can arm itself up to regulate these wars, protect civilians and maintain order during the conflicts. Thus, this research identifies the issues and challenges of International Humanitarian Law posed by the non-international armed conflicts in the contemporary context and has suggested a Model Protocol to applied to these contemporary non-international armed conflicts.