



## **HOW DOES ARMED CONFLICT BREACHES HUMAN RIGHTS?**

**Naini Choudhary**

*Ph.D. Research Scholar, Faculty of Law, Himachal Pradesh University Summer Hill, Shimla (H.P.)*

**Nishan Sahib**

*BALLB, Himcapes' College of Law, Una (H.P.)*

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### **Abstract**

*This research study explores the complex and significant relationship between human rights and armed conflicts, providing insight into the intricate dynamics, lasting effects, and the crucial involvement of international legal frameworks and procedures. This study is an examination of the effects of armed conflicts on human rights, specifically focusing on civil and political rights, economic, social, and cultural rights. It draws upon an extensive assessment and analysis of existing literature to investigate the wide-ranging implications for communities affected by such wars.*

*This study explores the significance of theoretical frameworks in comprehending the motivations and behaviours of both state and non-state actors within conflict environments, providing valuable perspectives on the intricacies involved in safeguarding human rights. The analysis explores the historical backdrop, offering a comprehensive examination of notable prior hostilities and uncovering repetitive trends of violations of human rights, so underscoring the imperative for robust protective measures.*

*This study analyses the efficacy and implementation of significant global legal frameworks, such as the Geneva Conventions and the Universal Declaration of Human Rights, within the setting of conflict areas. It aims to assess their ability to safeguard the rights and well-being of persons during armed hostilities.*

*This study examines the many methods employed for protection, including the involvement of international organisations, non-governmental organisations, peacekeeping missions, and humanitarian initiatives. It acknowledges the difficulties encountered by these entities in fulfilling their mandates within the challenging context of conflict.*

*Non-state actors, including rebel groups and terrorist organisations, are widely acknowledged as significant participants in contemporary conflicts. Extensive scholarly*

*research has emphasised their profound influence on the perpetration of human rights abuses and the formidable obstacles they present to institutions of accountability.*

*This study critically examines the processes of accountability and justice, specifically focusing on international tribunals and truth and reconciliation commissions. It emphasises the significance of these institutions in guaranteeing accountability for instances of human rights breaches.*

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**Keywords:** Human Rights, Arms, Conflicts, Violation, United Nation, Refugee.



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**INTRODUCTION:** over the past few decades, the lives of numerous civilians have been adversely affected by armed warfare. Numerous military conflicts are characterised by prevalent instances of severe transgressions against international humanitarian and human rights law. Under specific conditions, certain transgressions may potentially amount to acts of genocide, war crimes, or crimes against humanity.

Over the course of the last two decades, various actors such as Governments, rebels, legislators, diplomats, activists, demonstrators, and journalists have made references to international humanitarian law and human rights within the context of armed conflicts. They are frequently cited in resolutions of the United Nations Security Council, deliberations of the United Nations Human Rights Council, political literature of opposition movements, publications by non-governmental organisations (NGOs), military training programmes, and diplomatic dialogues. The incorporation of international human rights legislation and international humanitarian law has become a significant consideration for numerous military commanders, who are now receiving guidance from legal professionals in the field. In legal proceedings, defence lawyers and prosecutors frequently make reference to these sources in both international and, to a somewhat restricted degree, local tribunals. Moreover, these sources serve as the foundation for judiciously reasoned decisions.

The preservation of human dignity and humanity is a shared objective of international human rights law and international humanitarian law. Throughout the course of time, the General Assembly, the Commission on Human Rights, and, more recently, the Human Rights Council have deliberated about the notion that parties involved in armed conflict bear legal responsibilities with regards to the rights of those impacted by the war. International human rights law and international humanitarian law provide various safeguards to individuals involved in armed conflicts, including civilians, individuals who have ceased direct

participation in hostilities, and active participants in the fight. While these two legal frameworks differ in their breadth, they both aim to ensure the protection of individuals in such situations. It is widely acknowledged by many international and regional courts, United Nations institutions, treaty bodies, and human rights special processes that both bodies of law, namely international humanitarian law and human rights law, are applicable in the context of armed conflict. These legal frameworks offer complementary and mutually reinforcing protection.

### **RESEARCH OBJECTIVE**

1. To assess the impact of armed conflicts on the violation of human rights, with a focus on specific regions or conflict zones.
2. To analyse the effectiveness of international humanitarian law and human rights mechanisms in protecting civilians during armed conflicts.
3. To examine the long-term consequences of human rights abuses in conflict-affected areas and their implications for post-conflict recovery and reconciliation.

### **RESEARCH QUESTION**

1. How do armed conflicts impact the protection and promotion of human rights in conflict-affected regions?
2. What are the key challenges and opportunities for ensuring the safety and security of civilians during armed conflicts, in accordance with international human rights law?
3. To what extent do economic interests, including the exploitation of natural resources, influence human rights violations in conflict-affected areas?

**RESEARCH METHODOLOGY:** This work was conducted using doctrinal research methods. A variety of sources are used, including books, court cases, print and electronic media, as well as periodicals, articles, and reports from different authorities. Examples of primary sources include laws and statutes from different countries. Using secondary sources such as books, journals, scholarly articles, and reports, the foreign arbitral awards in India are critically evaluated.

### **LITERATURE REVIEW**

**1. International Review of the Red Cross:** the application of conflicts has been incompletely investigated thus far. In his book titled "human rights in armed conflict," Gerd Oberleitner provides a comprehensive examination and raises thought-provoking inquiries regarding the overall purpose, meaning, and extent of the *jus in bello*.

**2. International legal protection of human rights in armed conflict:** international human rights law and international humanitarian law both aim to uphold the principles of safeguarding the dignity and humanity of all individuals. Throughout the course of time, the general assembly, the commission on human rights, and, more recently, the human rights council have deliberated on the notion that parties involved in armed conflict bear legal responsibilities with regards to the rights of individuals impacted by the war.

**3. Law, practice, policy and order:** the purpose of this analysis is to fulfil multiple objectives: firstly, it aims to assess the current understanding of the significance of human rights in armed conflicts. Additionally, it seeks to structure, contextualise, and re-examine the ongoing discourse on human rights in armed conflicts from a contemporary standpoint. This discourse has been enriched by the contributions of numerous scholars and practitioners throughout history.

**4. George H. Aldrich:** the observation might be made that the laws of war, encompassing the protection of prisoners, the sick and wounded, as well as civilians under the control of a belligerent, along with the regulations controlling the conduct of hostilities, predominantly consist of antiquated provisions that have become largely irrelevant.

**FROM MEDIEVAL SOURCES TO MODERNITY:** The existence of rules governing behaviour in times of conflict may be traced back to ancient times, reflecting the enduring nature of this phenomenon throughout human history.<sup>1</sup> While some authors may express scepticism regarding the existence of such rules prior to their formal codification in the 1860s<sup>2</sup>, their prevalence and significance have been recognised by a majority of scholars.

Contrary to popular belief, early philosophical and religious books of African, Asian, and European provenance do contain precepts for the appropriate behaviour of warriors.<sup>3</sup> The issue of prisoner treatment and the safeguarding of civilian populations has been a matter of concern for all parties involved, in addition to the differentiation between combatants and non-combatants, provision of aid to the injured, proper care of deceased individuals, prevention of looting, and preservation of cultural artefacts.

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<sup>1</sup>See David J. Bederman, "International Law in the Ancient World" in David Armstrong (ed.), *Routledge Handbook of International Law* (London: Routledge, 2009), p. 124.

<sup>2</sup>See Howard Levie, "History of the Law of War on Land" (2000) 82(838) *International Review of the Red Cross* 339 (who argues that no such thing as humanity in land warfare existed before the 1860s).

<sup>3</sup>See in greater detail Leslie C. Green, *The Contemporary Law of Armed Conflict* (Manchester: Manchester University Press, 2008), p. 26-36.

The regulations pertaining to warfare in ancient India precede those found in Western and Mediterranean societies,<sup>4</sup> yet comprehensive guidelines on fighting may also be observed throughout the early and classical periods of Greek history. Pre-colonial Africa and Latin America have well-defined humanitarian regulations that encompassed several aspects, such as the prohibition of specific weapon types, safeguarding the rights of women, children, and the elderly, and the establishment of ad hoc tribunals to address post-conflict reparation matters.<sup>5</sup>

**GENEVA, NEW YORK, TEHRAN: WORLD CONFERENCE OF HUMAN RIGHTS 1968:** in the period subsequent to the ratification of the Geneva Convention and the universal declaration of human rights, there was a prevailing state of "tacit acceptance"<sup>6</sup> regarding the coexistence of two distinct legal frameworks. The United Nations' general disinterest in the laws of war was counterbalanced by the United Nations educational, scientific and cultural organisation (UNESCO), which demonstrated a notable exception through its commitment to safeguarding cultural values during armed conflicts. This commitment was evident in the 1954 Hague convention on cultural property and its two accompanying protocols.

The user's text is too short to be rewritten academically. The International Committee of the Red Cross (ICRC) maintained a critical stance towards human rights for a variety of reasons. The organization's approach to all forms of legislation, including international humanitarian law, was characterised by pragmatism, prioritising the provision of help rather than the pursuit of justice. The International Committee of the Red Cross (ICRC) expressed apprehension regarding the ability of human rights to fulfil their stated objectives.

The absence of legally binding international agreements on human rights at the global level, until the enforcement of the two United Nations Covenants in 1976 (pertaining to civil and political rights, as well as social, economic, and cultural rights), coupled with the lack of a substantial monitoring mechanism, prompted the organisation to raise do The International Committee of the Red Cross (ICRC) regarded the burgeoning human rights movement as a rather idealistic endeavour, aspiring towards an idealised world but ultimately yielding little

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<sup>4</sup>See V.S. Nirmal, "International Humanitarian Law in Ancient India" in V.S. Mani (ed.), *Handbook of International Humanitarian Law* (New Delhi: Oxford University Press, 2007), pp. 37-38.

<sup>5</sup>See Meriboute, "Humanitarian Rules and Sanctions" (n. 4) pp. 366-68.

<sup>6</sup>Charles H.B. Garraway, "Occupation Responsibilities and Constraints" in Howard M. Hensel (ed.), *The Legitimate Use of Force: The Just War Tradition and the Customary Law of Armed Conflict* (Aldershot: Ashgate, 2008), p. 268.

tangible results. In contrast, international humanitarian law is regarded as having the capacity to safeguard tangible individuals in practical contexts.<sup>7</sup>

The International Committee of the Red Cross (ICRC) also recognised the distinctiveness of their approach, particularly in contexts involving the infringement of human rights, such as instances of incarceration.

The user's text does not contain any information to rewrite. The organisation commenced its visits to detained individuals as early as 1919. These visits extended beyond prisoners of war and individuals detained in internal conflicts, encompassing those detained under the category of "by reasons of events." This terminology was coined by the ICRC to address the hesitancy of states in permitting humanitarian interventions during periods of domestic tensions. In the context of human rights discourse, a significant number of individuals can be classified as political prisoners. Through these trips, the International Committee of the Red Cross (ICRC) surpassed its mandate focused on conflicts and demonstrated a significant lead over the international human rights framework. The International Committee of the Red Cross (ICRC) initially aimed to safeguard refugees. However, due to the sheer number of refugees and their extensive needs, the ICRC became overwhelmed. Consequently, refugee protection evolved into a distinct area of law, with private refugee associations assuming responsibility initially, followed by the Nansen Refugee Office of the League of Nations, and ultimately the UN High Commissioner for Refugees. As a result, refugee protection became separate.

#### **ADDITIONAL PROTOCOLS OF 1977**

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which took place from 1974 to 1977 in Geneva, Switzerland, was organised by the International Committee of the Red Cross.<sup>8</sup> This conference led to the creation of two Additional Protocols to the Geneva Conventions, addressing the regulation of armed conflicts both at the international and non-international levels. The International Committee of the Red Cross (ICRC) and the Swiss Confederation expressed reservations regarding the organisation of the meeting. They believed that the conference's primary motivations were driven by political and strategic goals, notably from those that had recently gained independence from colonial powers, rather than being solely driven by humanitarian concerns. These states have consistently expressed dissatisfaction with their lack of involvement in the formulation of laws pertaining to armed conflict, hence

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<sup>7</sup>Forsythe, *The Humanitarians* (n. 3) pp. 164-65.

<sup>8</sup>See Partsch, "Human Rights and Humanitarian Law" (n. 26) p. 911.

questioning the legitimacy of such legal frameworks. Therefore, any potential amendment to humanitarian law must take into account their demand for a more inclusive, fair, and morally upright global system. Furthermore, matters such as neo-colonialism, imperialism, and racism, which have already been extensively discussed within the United Nations, would likely be included in the deliberations regarding humanitarian law. Furthermore, individuals who had already shown scepticism towards the Tehran World Conference in 1968 would likely anticipate a similar outcome concerning the issue of human rights. The Western powers grudgingly participated in the preparation of the Diplomatic Conference, driven by a defensive sentiment and a potential sense of guilt regarding the repercussions of the Vietnam War. This sentiment was expressed by George Aldrich, who served as the chairman of the US delegation during the Diplomatic Conference from 1974 to 1977.<sup>9</sup> The entire procedure appeared to be ineffective in terms of mitigating the divide between the International Committee of the Red Cross (ICRC) and the United Nations (UN). The entire procedure appeared to be ineffective in terms of mitigating the divide between the International Committee of the Red Cross (ICRC) and the United Nations (UN).<sup>10</sup>

From a more optimistic perspective, the composition of the Protocols could be interpreted as an initial endeavour towards multiculturalism in the development of humanitarian law, thereby challenging the Western-centric nature of this legal framework. The number of participating governments showed a notable increase in comparison to preceding humanitarian conferences. It was anticipated that the conference would yield texts that were influenced by many political and racial regions across the globe. Ultimately, the research produced satisfactory outcomes, considering the inherent political and ideological disparities that needed to be reconciled. The conclusion of the meeting was marked by the ratification of two Protocols pertaining to the Geneva Conventions. These Protocols specifically address the regulation of both international and non-international armed conflicts.<sup>11</sup>

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<sup>9</sup>See Forsythe, *The Humanitarians* (n. 3) p. 261.

<sup>10</sup>See Robertson, "Humanitarian Law and Human Rights" (n. 27) pp. 800-1.

<sup>11</sup>See Schindler, "International Humanitarian Law" (n. 59) 173.

**"HUMANITARIAN RIGHTS": HUMANITARIAN LAW IN HUMAN RIGHTS DOCUMENTS:** the incorporation of human rights terminology and principles into humanitarian law texts, specifically the fourth Geneva Convention and the additional protocols, has already illustrated the potential harmonisation between these two legal frameworks. The ratification of the convention on the rights of the child (crc) in 1989 marked a significant milestone in the integration of humanitarian values into human rights documents.<sup>12</sup>

According to Article 38 of the Convention, State parties are required to uphold and guarantee adherence to international humanitarian law. Additionally, they are obligated to implement practical steps to prevent individuals under the age of fifteen from actively engaging in hostilities. The phrase "respect and ensure respect" is derived from Common Article I of the four Geneva Conventions.<sup>13</sup> Even though the provision was rightly criticized for not expressing the best interests of the age restriction for individuals considered as children should have been set at eighteen years old. It became evident that the distinction between human rights as treaties during times of peace and humanitarian law as treaties during times of conflict was no longer sustainable.

The content of Article 77(2) of Additional Protocol I, provided provision, despite its specificity, highlights the need to consider international human rights law alongside international humanitarian law when assessing the obligations of states in armed conflict. This implies that international human rights law may have the potential to override or substitute international humanitarian law obligations.<sup>14</sup>

In a similar vein, the Commentary to Article 77 of Additional Protocol I has previously contended that this particular clause pertains to the realm of human rights, as it: Serves as a development of both the fourth Geneva Convention and of other rules of international law which govern the protection of fundamental human rights in time of armed

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<sup>12</sup>See Emily Crawford, Road to Nowhere? The Future for the Declaration on Fundamental Standards of Humanity, Sydney Law School Legal Studies Research Paper No. 12/02 (2012), available at [http://works.bepress.com/emily\\_crawford/2](http://works.bepress.com/emily_crawford/2) (last accessed 15 April 2014); and Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private and Security Military Companies during Armed Conflict, UN Doc. A/63/467 and S/2008/636 (6 October 2008), Annex.

<sup>13</sup>See Martin Scheinin, Fundamental Standards of Humanity, Background Paper to the International Expert Meeting, Stockholm, 22-24 February 2000, UN Doc. A/CN.4/2000/145, pp. 56-57.

<sup>14</sup> See, e.g., Hans-Joachim Heintze, "Die völkerrechtliche Stellung des Kindes im bewaffneten Konflikt" (1991) 3 Journal of International Law of Peace and Armed Conflict 92; and Matthew Happold, "The Optional Protocol to the Convention on the Rights of Children on the Involvement of Children in Armed Conflict" (2000) 3 Yearbook of International Humanitarian Law 227.

conflict, particularly the International Covenant of 1966 on Civil and Political Rights and the Declaration on the Rights of the Child.

Armed conflict can have a profound impact on human rights. Here are a few ways these rights can be violated.

1. **Loss of life and injury:** The most immediate and serious violations involve loss of human life and bodily injury. Armed conflict often results in the death and injury of civilians, violating the individual's right to life and security.
2. **Displacement:** Conflict forces people to flee their homes, resulting in displacement or displacement. This violates the right to a decent standard of living for health and well-being and the right to housing.
3. **Access to food and water:** Armed conflict can disrupt the distribution of food and water, threatening the right to a decent life, including the right to food and water
4. **Violence against women and children:** Generally, in conflict situations, there is a rise in gender-based violence and exploitation. Women and children are particularly vulnerable, facing physical and sexual violence, trafficking and forced recruitment.
5. **Denial of education:** Conflict disrupts educational systems and denies access to education for many children. Schools may be destroyed or reused in the military, and teachers and students may be targeted.
6. **Torture and inhuman treatment:** Torture and inhuman treatment are common in conflict situations, violating the absolute prohibition against torture and cruel, inhuman or degrading treatment or punishment.
7. **Forced labor and child soldiers:** Armed groups may forcibly recruit individuals, including children, for combat or support activities. This violates the prohibition on forced labor and the use of child soldiers.
8. **Targeting public facilities:** Deliberate attacks on public facilities such as hospitals, schools and cultural centers violate the right to profit

**CONCLUSION:** Human Rights are universally recognised as the most fundamental entitlements inherent to every individual, commencing at birth, regardless of factors such as caste, creed, ethnicity, or place of origin. Armed conflicts transgress fundamental principles of human morality. They inflict bodily suffering, resulting in casualties and material damage. Additionally, they engender profound psychological consequences that are enduring in nature. It is contended that armed conflicts have significant lethality with far-reaching consequences.

Soldiers and military personnel, while serving a crucial role in certain regions globally, can have detrimental effects on the overall well-being of the local community. Regarding the Gaza Strip, it is imperative that peace negotiations be conducted to facilitate the establishment of a mutually agreeable two-state resolution. These discussions should involve all relevant parties, overseen by international entities such as the United States, and led by prominent states. A suitable manner in which to conclude this discourse would be to incorporate a quotation from Mahatma Gandhi, who articulated, *“An eye for an eye can make the whole world blind”*.

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