

Journal of Law & Social Studies (JLSS)

Volume 4, Issue 2, pp 279-285

www.advancelrf.org

Exploring the Link Between IHRL and IHL regarding its Simultaneous Application: A Case Study of Tribal Belt in KP for the Development of International Jurisprudence

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Abstract

The simultaneous application of IHL and IHRL during an armed conflict is a hugely debated area of international law. The experts have been divided into two categories. Some would say that simultaneous application is possible as IHRL is applicable in all circumstances whether of peace or of conflict. They would argue that the IHRL portion could not be disconnected from IHL as both interplay during warfare and armed conflict with each other. On the other hand, the other group of experts would argue that simultaneous application and interplay of IHL and IHRL is not possible as one is Lex Specialis and the other is Lex Generalis. They are also of the opinion that these two set of rules are different in its implementation mechanisms. Both follow different mechanisms for the implementation of its rules and the consequences of these mechanisms are entirely different. This article tries to elaborate both these opinions for the development of a consensual jurisprudence in international law. The erstwhile FATA (tribal belt in KP) is used as case study.

Keywords: International Humanitarian Law (IHL), International Human Rights Law (IHRL), Tribal Belt (erstwhile FATA), Lex Specialis and Lex Generalis

Introduction

IHL and HRL both needs to act in a certain way towards the conflicts and any disturbance to the harmony at any place in the world like ERSTWHILE FATA as well. The main purpose and goal of both regimes is, to provide safety and protect the self-worth of humanity as well human rights in each situation of conflicts or harmony. As the course of time HR organizations conveyed the obvious applicability of international human rights law in various circumstances also have a scrutiny over some of the occasions, though link between two regimes was limited to the moot conversation for more than 20 years. Both legal regimes has distinct progress level due to which each of the regime have always narrowed the impact which both of these have each other. Currently in the course of progress of international legal jurisprudence both organizations gradually getting unite with each other.

If it is about the inside issues bother to discuss, like the current situation and issues in ERSTWHILE FATA, Pakistan, in this regard both of organizations International Humanitarian Law and Human Rights Law relationship got closed as far as the legal regime concerned that the state behavior towards citizens and in all this the common article 3 of the Geneva conventions 1949 showed a standard role. The state restrict by the common article 3 to show consideration to armed groups if any challenges in the territory. Hence at this point both bodies apart as according to the concept of International Humanitarian Law, in code, didn't relate to the affairs of a state and its citizens. So, consequently Human rights law would be related to Common article 3 even though International Humanitarian Law has been arranged in volume of 4 Geneva conventions.

Thus, an analyst wrote that both legal regimes, it's combined progress and impacts by itself that both organizations have got connected and are gradually merging jointly and in sum of cases human rights law is fixing the basic course and principles for the modification of law of war zone. Also both Before 1957, at 60th ICRC was held in New Delhi where it was officially adopted, was the time where states showed cold response to International Humanitarian Law by putting it on edge as International Conference of the Red cross for suggestion of additional guidelines to bulk of states regarding the safeguard of citizens during war, another hit experience of International Human Rights Law was the of the organizations came at the top scene by its relationship matter when at one side UDHR was declared and signed soon after this 4 Geneva conventions were also signed and rectified by states in 1949. Before 1957, at 60th ICRC was held in New Delhi where it was officially adopted, was the time where states showed cold response to International Humanitarian Law by putting it on edge as International Conference of the Red cross for suggestion of additional guidelines to bulk of states regarding the safeguard of citizens during war, another hit experience of International Human Rights Law was the ICCPR and ESCR approval in 1966 also detailed in a way of constructive standards in the UDHR. According to the President of Inter American Commission on HR Mr. Sepulveda that the two bodies might be enforced at once but are not occur at the same time. In some circumstances most of the people collectively demands the safeguard through both legal regime at once.

In this regard the 23rd resolution is the one which consider to be the turning point for the concept of connection of both legal regimes. Later, United Nation General Assembly with the approval of resolution 2444(Somalia) in that time 1968 confirmed resolution 23rd. " Respect for Human Rights in Armed Conflicts" called for each single person safety in order to draw a plan during armed conflicts. The subject of relationship between both legal regimes copied from the resolution 23rd as suggested, as no straight connection of both systems in the frame of resolution. In 1969 and 1970 two documents presented by Secretary General on the title of "Respect for Human Rights in Armed Conflicts", signify an important role regarding the issue that no such difference is there in both IHL and IHRL.

Thus, in this procedure of Resolution 2675, by the 1969 and 1970 documents UNGA stated for the execution of human rights which declared fundamental human rights by International law and put into effect in international appliances and carry on during armed conflict. Later, in the principle of commencement of the Additional Protocols (1977) UN assembly approved many resolutions.

The latest three big declarations by the International Court of Justice regarding the connection of both legal regimes which arise three consistent plans.

- Applicability of IHRL carried out during armed conflict.
- Applicability under circumstances of conflict, matter specifically to derogation.
- IHL can apply both in domestic a d International law context, when International Humanitarian Law and International Human Rights Law are applicable.

A resolution of the ICHR and UNGA was declared which documented the relationship between both legal regimes. Both the legal systems interest involved for Humankind, even though directions of the manners of conflicts in international law significantly show already the existence of human rights. In the "Martens clause", IHL of conflict was clearly uttered and introduced in the preamble of Hague Convention II 1899 and Conventions 1907 as well in Hague convention IV (1949) and APs 1977.

Usually said that IHRL is charged with concerns of humankind while IHL formed to be pressured for responsibilities towards both humankind as well soldierly obligations. According to Meyrowitz that, difference of both legal bodies, IHL highlighted not only the form of humankind but as well emotions of kindness, sympathy for the mankind so in IHL humankind is protected by humanity while HRL develop through humanity by describing the individual of human context.

Distinguishing Features of IHRL and IHL

Though IHL and IHRL both have relationships but also having distinguishing features as well, which are given bellow:

- 1.** International Humanitarian Law initiated in design of decent and cultured conduct which should be considered to follow from the qualified military while HRL has not fully established roots. This could also be debated as it's a vague argument but still for the sake of understanding it we would not differ with this, although the HRs documents could date back to ancient times. The IHL on the other hand is considered as a growing phenomenon, as it was developed by the Swiss businessman Henry Dunant after the battle of Solferino. After which he founded the Red Cross and that paved way to the contemporary IHL, beginning from 1864's first Geneva Convention.
- 2.** International Humanitarian Law is not framed to describe the number of rights, however as a chain of duties and obligations soldiers should follow. Hence IHL in this regard has positive lead from legal point of view is that IHL is not topic to the opinion to wave the execution of commercial and public rights.
- 3.** Group of people demands safeguard provided from the two legal bodies in certain circumstances. Those circumstances could be of warfare and peace time. As mentioned in the abstract IHL is *lex specialis* and IHRL is *lex generalis*. Both these bodies of law are being created to tackle specific regimes. The application of IHL is specific to that of an armed conflict (from its initiation till its ended), while IHRL would be applicable in every circumstance.
- 4.** It is observed that international Human Rights law is brief and easy while International Humanitarian Law is lengthy and complicated. Despite this, the primary responsibility lies with the states and the governments to implement both IHL and IHRL within their jurisdictions.
- 5.** International Human Rights Law concern about the rights of the individuals of specific behaviour whereas International Humanitarian Law expects how a group during some conflict treat individuals at its kindness. Even in this case the individuals are being compelled through a process of law enforcement mechanism. While in the latter case during a conflict situation, the people have to take into account the rules and regulations of warfare. As if they are being violated, the violators are considered as war criminals.
- 6.** There are some rights which is not included in Humanitarian Law such is rights of relationship and administrative rights because International Humanitarian Law is concerned with the safeguard of individuals during an armed conflict. But on the other hand, these two legal regimes go hand in hand and cannot be detached. For example, IHL puts a comprehensive prohibition on torture and all its forms, but IHL has not defined or elaborated what is torture or its forms. Torture and its forms are

being defined by the UN convention against torture (UNCAT), which is considered as a HRL document.

Clash Between International Humanitarian and Human Rights Law During Armed Conflicts

Two legal systems are still dissimilarities regarding their separate frame works of presentation and different kinds of affairs they order although United Nations also struggle enough to get close both of regime. Some of important progresses which lessened the line between the application of HRL and IHL. An alleged third age group of rights created on universal human unity and owing each joint and distinct scope implications make a right and Duties towards state and its citizen apart from their self. Like say, the right to freedom, the right progress, the right to nourishment, right to education might be demanded by single person or collectively, other state citizens.

An analysis by the Professor Dietrich Schindler to all these differences between two of areas is that both systems has the main point to connect each other is armed conflict as well enforced at the same time at once, but the problem arise that which one treaties secure more rights of men and as well approved instrument to apply those rights. Pay heed to the point of determination about human pride that two of legal areas had great impact on one another progresses beyond their-distinguishes regarding enforcement and much more.

However, IHRL with the passage of time a portion came out of the war while IHL precisely involved in the WWII and specially a case of Nuremberg trails where the respondents were accused for crime of the violation not only against peacetime as well misconduct in war besides that violence against mankind. According to the Sir Hersch Lauterpacht the international public reaction towards the violation of humankind are there in customary international law certainly implicit the acceptance of consistent of fundamental rights for men. Likewise, lawful nature of International Human Rights Law and legal status of principles of rights at any circumstances.

The Complementary Nature of Both regarding Various Ongoing Conflicts in the World

A keen observation by the qualified group of international law as per their view two of legal areas having corresponding mood to provide a complete welfare to individuals during armed conflict. During several continuing issues of war like in ERSTWHILE FATA (Pakistan), Israel, Palestine, Afghanistan and Lebanon, two of legal regimes counterpart each other. An international conference was held in 1968 where it's counterpart International Humanitarian Law because at the first resolution conference, directed to Israel for the implementations of Geneva conventions 1949 and Universal document of human rights. The resolution was about the "Respect and Applicability of Human Rights in the Occupied Territories" both IHL and IHRL. In the same row another resolution with the topic of "Dignity for Human Rights during armed conflicts" which means harmony and peace is the fundamental state for execution of human rights and war is their reversal thing. This resolution also for those who confined during armed conflict and combats and convicts and hostages etc. Regardless of the fact an uncertain position about IHL codes, it might be practically taken to mention to both legal regimes.

Critical Evaluation of the Interaction Between IHRL and IHL During Armed Conflicts in Erstwhile FATA

International court of Justice concise the situation on the given condition that safety given by the human right through conventions should not be ended or stop during armed conflicts, but it might be protecting by the influence of provisions may be modify likewise the Article 4 of the ICCPR. Three main probable circumstances for the relationship of International Human Rights Law and International Humanitarian Law like certain rights may totally related to International Human Rights

Law and same is the case with other regime as some rights may be concerned with International Humanitarian Law. The concept of the human rights is interpreted freely to enforce everywhere at any time and to each individual.

Therefore, various articles of human rights agreements which bounds their entreaty to single person within the territory of a state related have been explained to confirm the appeal of these agreements and treaties. According to the article 1st of the EC on Human Rights "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention".

The framework of human rights shows that still the government of ethnic groups usually the outrage group. Means it's not easy and practicable for government to possess the right and it's abrogated at once. There are certain situations where a party even a single person considered as the only practicable occupier of rights under IHRL. IHL and HRL both should be the same point of view. In this regard of both have the same point of view can capture the attention of international forms easily.

The major loophole the agreements related to human rights as the attention towards the government only that it's the single body obliged by the law. Besides the fact that in situations during internal armed conflicts these agreements are not good to operates. If the point come to the IHL and IHRL, IHL has been advanced to implement specially during armed conflicts. According to the ICJ, a term used *lex specialis* for IHL which means *Lex specialis*, (legal theory and practice, is a doctrine relating to the interpretation of laws and can apply in both domestic and international law context) as compared to IHRL.

The Outcome of the Analysis of the Link Between IHRL and IHL

The most important thing in all these as the significant recognition of the IHL towards the security and safety of individuals during the conflicts and warfare has joined another concept which is the involvement of human rights law in various matters which are international based. By this context the two of legal regimes decent portrayal on international zone regarding the mutual efforts on international as well in different non-governmental organizations.

If to look at the attitude of both legal systems and to study their background, the way how they gained trust and as well how they affect one another in the current progress and lastly their relationships approaches and distinguishes can affect their applicability in coming time. Further moves to the discussion of the Professor Raul Emilio Vinuesa about border of IHRL and IHL which can be concluded by that, apart from the various distinguishes in individuality in both besides from strong belief, a probable combination of both legal systems have mutual codes and ethics which can motivate a progressive connection which would help an improved inspiration of statute deeds from one organization to another. It would be totally depending on the progress of an idea simple and mutual norms and not need to suggest any lawful correspondence but to courage and support mutual relationship.

Conclusion

In conclusion, we would like to say that the simultaneous application of IHL and IHRL during armed conflicts is the need of the hour. As this can help the governments, states and other stakeholders to protect the violations of human rights during warfare. The implementation of the IHL and IHRL is the primary responsibility of every state, hence, it would be much easier for states to legislate for the simultaneous application of IHL and IHRL.

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