CIU Journal | 4(1) 72–86

The Rise and Codification of International Humanitarian Law: Historical Evolution

Mohammad Aktarul Alam Chowdhury[1]
Md. Hasnath Kabir Fahim[2]

Abstract

International Humanitarian Law (IHL), also termed as the law of war, is a significant branch of public international law having an aim to mitigate the sufferings of civilians victimized by war or safeguarding those not or no longer getting involved in hostilities regardless of justification of war and to limit the use of weapons in warfare. Historically, the regional communities from the ancient period used to follow various norms of war based on their usages and religions even before the commencement of any globally accepted law. In the course of time, the progress in the field of science and modern technology has brought drastic change in the nature of armors and war strategies. The implementation of IHL is – however under severe threat and the protected persons are indebted to tolerate untold disasters like death – physical wound and extensive annihilation of their shelters and livelihoods. This article has firstly chosen to explore numerous ancient laws of armed conflict prescribed by religions, usages and local practices. It then highlights on the codification of IHL through the arrangement of four Geneva Conventions and three Additional Protocols. Lastly, the study addresses the success and implementation of IHL by formulating legislations on war in the national legal regime.

Keywords

IHL, armed conflict, Geneva Conventions, protection of civilians, prisoners of war

Introduction

After the battle of Solferino in 1859, the law of armed conflict was firstly documented, but its existence traces back to the beginning of human era. In fact, IHL shall be juxtaposed to the history of all civilizations, and particularly, religious sanctions have immensely influenced the issues of law of armed

[1] Assistant Professor, School of Law, Chittagong Independent University, Chattogram, Bangladesh

[2] Lecturer, School of Law, Chittagong Independent University, Chattogram, Bangladesh

Corresponding author:
Mohammad Aktarul Alam Chowdhury, Assistant Professor, School of Law, Chittagong Independent University, Chattogram, Bangladesh
Email: aktarlaw78@ciu.edu.bd

conflict (LOAC) (Shenoy, 2019). It is hardly feasible to know authentic evidence of when and where the first legal rules of war emerged, and it would be more cumbersome to address the creator of law of military operations (LOMO). All the earliest societies ranging from Papua, Sumerians, Persian, Greek and Roman to Arabian followed various means and methods of fighting, and some of those strategies were subsequently followed by other human civilizations. Many prominent religions such as, Hinduism (Shenoy, 2019), Christianity, Buddhism and Islam provide for rules on the law of war (LOW) (Lima & Batista, 2017). On everywhere that battle took place between tribes or clans, the leaders of the force did not result in a war to the finish but rules formed to limit the effects of the hostility. Therefore, the history of IHL goes back before the Treaty of Westphalia, 1648 and beyond European civilization (Lesaffer, 2002). In the European Middle Ages, the knights of chivalry framed hard rules on fighting, not least for their own safety. In short, influential lords and religious characters, learned men and warlords from every continent, since time immemorial have endeavored to lighten the consequences of battle by way of generally binding regulations. The feat of Europe in the nineteenth century can be considered against the historical evolution of IHL.

The universal and worldwide accepted part of today's IHL can be traced back to two men namely, Henry Dunant and Fancis Lieber (Droege, 2008). Having a traumatic experience of war, they, made momentous contribution to the concept and extents of contemporary international humanitarian law (Balachandran & Varghese, 2014). Henry Dunant in his book, A Memory of Solferino, did not emphasize on the fact that wounded soldiers were the mistreated people killed at the battlefield. The fact which shocked him deeply was the non-existence of any sort of assistance for the wounded and dying in armed conflict (Lima & Batista, 2017). He then proposed two means necessary for direct functioning: a global agreement on the neutralization of health professionals in the battle field and the formation of a perpetual organization for factual assistance to the people wounded in war. Gradually, the distraught provisions of law of war were documented by the "Lieber Code" in 1863 and first "Convention for the Amelioration of the Wounded in Armies in the Field" in 1864 (Balachandran & Varghese, 2014). After that, numerous Declarations, Conventions and Protocols on the issues of armed conflict have been embraced from time to time on the basis of nature of hostility and protection to civilians and hors de combats (Nahar, 2016). Four Geneva Conventions (GCs) in 1949, its three Additional Protocols (APs) in 1977 and 2005 and the establishment of the International Criminal Court (ICC) in 1998 were the pioneers in playing significant role for the framing of IHL (Alexander, 2015).

Objectives

The general objective of this paper is to explore and overview the historical evolution of International Humanitarian Law from various lenses and demonstrate the current status of the law of armed conflict in the twenty-first century. This study further aims to observe the directions of Islam regarding the rules of

war as Muslims had engaged in numerous and tragic wars from very inception. This paper also tries to highlight on the arrangements made by international community in farming of four Geneva Conventions and three Additional Protocols and their implementation approach.

Methodology

To design this paper, analytical method has been adopted following descriptive and qualitative design. This article is formulated on the basis of secondary sources such as ICRC research reports, textbooks, national and international journals and online news reports. Moreover, numerous literatures have been gathered from various websites. An examination of substantial background was considered to demonstrate the historical development of modern International Humanitarian Law.

Literature Review

A good number of research reports, articles and book chapters are available in cohesion with this research article. Taking the scope and limitation into consideration, several articles and books relating to this research have been selected aiming the discussion based on the depth of critical study. A noteworthy research was carried by Amanda Alexander (2015) where the author described the long and conventional history of the codification of International Humanitarian Law. His concentration is, however, limited to western view of codification of norms of warfare from ancient period to modern era. This author made no necessary discussion on the provisions of numerous religions regarding the notion of law of war. Relevant to this article, another paper of Renata Mantovani De Lima and Michelle Batista (2017) was considered to design the historical development of law of armed conflict. Their paper highlighted on the historical background of IHL but did not emphasize much on the origin and norms of ancient wars that factually assisted in formulation of modern theory of laws regarding the armed conflict. Moreover, a noteworthy paper by Tanya Krupiy (2014) deliberately focused on the evolution of IHL from an anthropological perspective rather than pointing out the international as well as political incitements behind the framing of legal basis of IHL. In addition, a handbook on International Humanitarian Law by Nurun Nahar explains the general concept on IHL but failed to focus on the historical contribution of prominent religions towards the framing of law of war.

Origin of IHL in the Ancient Communities

As discussed earlier, the history of IHL is as old as human civilization on Earth (Lima & Batista, 2017). Not only humans but also wild animals practice certain rules during their fighting. It is often observed among wild animals that when one is about to lose the battle, he surrenders and gives up fighting. The victor one, after getting the sign of surrender from the opponent abstains from causing further attack. Looking back to the earliest societies, the victory was

achieved after massive massacre and no norms of human dignity were observed. Fights between communities used to bring either rapacious win or heinous killing of thousands of lives.

However, the practice of taking wounded soldiers to a safer zone and providing medical treatment was also followed in those days. Tribal people living decades ago also followed regulation while battling with the soldiers of other communities. In Papua, tribes adopted numerous provisions such as sending prior warning to the enemies, refraining from fighting until the soldiers of both sides are prepared and suspending war for fifteen days on occasion of death or severe wound to any soldier (Islam, 2018).

Similarly, the Sumerians used to get involved in war by following the law of state. Their battle used to start by an open declaration and used to terminate after making a peace treaty with the opponent. The safeguard of the distressed people from the oppression of the rich and arrangements for releasing the hostages by ransom were ensured by the Code of Hammurabi by King Hammurabi of Babylon. During the seventh Century, King of Persians, Cyrus I, introduced a rule that an injured enemy soldier would be treated and cared like an injured own soldier. According to the Code of Manu written in 200 B.C., causing murder of a surrendered adversary was strictly forbidden. The Code has prohibited the use of burning arrows or poisonous weapon and declared that surrendering combatants should be spared (Arya, 2018). Apart from this, in a treatise known as 'The Arts of the War' from 500 B.C., the Chinese writer Sun Tzu wrote the idea that battles had to be limited to military necessity, and the prisoners of war, wounded, sick and civilians should be spared. The laws of ancient Greek declared the concept of equal rights of everyone during the wars between the Greek city-states. Alexander the Great, who also led war and fought against the Persians guaranteed respect for human life and dignity for those who suffered in war (Gill & Fleck, 2010). In spite of considering the earliest societies as uncivilized nations, they had particular norms to be followed in war against their enemies and it is also known that they strictly observed those norms. It is pertinent note that although the laws of war from ancient societies were not precisely codified as today's international humanitarian law, modern IHL has received many of its provisions from them.

Islamic Mandate on International Humanitarian Law

Specific rules of war were established in relation to the battles those took place between Muslims and their non-Muslim foes during the lifetime of the Prophet Muhammad (PBUH) (Al-Dawoody, 2017). Many verses of the Holy Quran and Hadith have elaborately discussed IHL and such Islamic concepts of military operations were strictly followed by many Muslim rulers in numerous wars. For defending the civilians during war, Quran (2:190) says "Fight in the name of Allah those who fight you and do not transgress limits: for Allah does not love transgressors" (Al-Dawoody, 2017). This Quranic provision has indicated two important aspects of LOW. Firstly, the battle can be fought only against those who are adversaries of Muslims and the Muslims shall never give rise to hostilities.

Secondly, those who are not engaged in war against Muslims shall be given protection. According to the concept of modern IHL, both the confronting parties shall abide by various norms such as the principle of distinction, the principle of precaution, the principle of proportionality and the principle of limitation (Islam, 2018). Many Hadiths of Prophet forbid the targeting of women, children, aged people and religious hermits. Islamic law of war not only prohibits any aggression against aforesaid individuals but also forbids the attacking of medical personnel of enemy armies, as long as they do not engage in military operation against Muslims. When Prophet (PBUH) conquered the city of Makka, he ensured the safety of every people and their property without any slightest harm. He made an announcement that all the enemy soldiers captured or wounded would be protected and treated well. Moreover, Umar Ibn Al-Khattab, the second Caliph of Muslims issued written instruction during his reign stating that "Fear God in farmers; do not kill them unless they fight against you." Apart from these, many other types of non-combatants who shall never be targeted in a battle, including blind, the handicapped as well as insane (Al-Dawoody, 2017). From the above discussion, it goes beyond saying that almost every significant mandate of modern IHL, particularly the protection of civilians, safeguarding their assets and treatment of war captives have been precisely narrated by Islamic law more than fourteen hundred years ago and thus factually smeared by the Prophet Muhammad (PBUH) and his followers.

Framing the Modern Rules of Warfare

Often, some international lawyers point international humanitarian law in an ancient history of conflict that straddled numerous times and cultures. On the contrary, some other international lawyers emphasize the role of Henry Dunant, who witnessed the Battle of Solferino and was encouraged to establish International Committee of the Red Cross (ICRC) and inspire the tradition of the Geneva Conventions (Geneva Conventions, 1949). Regarding the documentation of IHL, few scholars refer to the Lieber Code, constituted to regulate the conduct of Union forces at the time of American Civil War, as the primary step towards the framing of modern law of war. However, most of the prominent jurists consider the Battle of Solferino in 1859 as the crucial incident in the history of modern humanitarian law (Alexander, 2015). Henry Dunant, a Swiss citizen witnessed deadly military conflict between Austrian and French Armies in 1859 where near about 40,000 people died and were wounded in just fifteen hours. Not only the soldiers were killed in this bloody war but also physicians, nurses and other health assistants were targeted by enemy force (Islam, 2018). Dunant in his book A Memory of Solferino shared the terrific experience which he had gone through after witnessing the battle of Solferino and thus proposed two suggestions. Firstly, "each state should establish in time of peace a relief society to aid the army medical services in the time of war," and secondly, "state should conclude a treaty that would facilitate the activities of these relief societies and guarantee a better treatment of the wounded." By doing this, Henry Dunant inspired to initiate the Red Cross movement; subsequently, the International Committee for the Relief of Military Wounded was

found with its permanent office in Geneva (Yadav, 2015). The landmark amplitude of the committee was that, in a very limited period, it was able to instigate the Swiss government for convening a global conference.

The Swiss Government, inspired by Dunant adopted the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field in 1864 (Henckaerts & Doswald-Beck, 2003). This Convention gives the start of the Geneva tradition of humanitarian law. The orthodox past goes on to list the promising humanitarian instruments such as the 1907 Hague Convention, the 1949 Geneva Conventions and the 1977 Additional Protocols (Hastuti, 2016). However, there remains another background of IHL, which reveals a history of oppression and imperialism rather than compassion and civilization. Many lawyers portray a history that shows military needs have repeatedly uprooted human values, pushing non-combatants to the violence of war and legalizing their sufferings (Alexander, 2015). As per this view, the number of treaties is nothing but a crimp attempt of compromise and pragmatism. The 1868 Declaration of St. Petersburg was made and it was narrated that the only licit motive which the belligerents shall effort to attempt at the time of war is to impair the confronting military forces so that the target would not be the civilians (Krupiy, 2014). Military necessity was left unchallenged by the 1907 Hague Conventions as the prime value of the laws of armed conflict and civilians is more vulnerable than ever to the strap of combat. Besides, the Nuremberg Tribunal however, assisted formal indulgent conduct in battle by denying conviction, or even prosecution on the basis of infringing the laws of war.

However, Czar Alexander II of Russia took an initiative and thus on 27 July of 1874, delegates from fifteen countries assembled in Brussels to inquire into the draft place by the Russian Government to consider the issue of framing the LOAC. The assembly acknowledged the draft as "The Brussels Declaration" with few simple alterations but most of the countries were unwilling to ratify it because of its bonding effect. Later on, in 1899 and 1907 two conferences were led by the world community at Hague, Netherland and this initiative was taken by a Russian citizen, Tsar Nicholas II. Issues like disarmament, rules of war, war crime, restriction on certain war strategies like using poisonous weapon, attack from hot air balloon, rules regarding the treatment of prisoners of war and neutral civilians were discussed on both the conferences. On 18 May, 1899 the first conference opened and six significant documents were signed on 9 July, 1899 (Islam, 2018). In 1904, the European genus commenced to convoke the second Hague conference on the solicitation of US President Roosevelt; however, the attempt was not successful because of war between Japan and Russia. Thereafter, the conference took place from 15 June to 18 October of 1907 for modifying and enlarging the first convention which was adopted in 1899. The second convention of 1907 endeavored to affix few new rules particularly on naval warfare, but it remained undone due to rigid opposition from the side of Germany. A plan was made for arranging a third conference in 1914 and 1915, but the World War I on 28 July, 1914 ruined the plan. The mandates of the Hague Conventions were explicitly been contra-

vened by the belligerents during the World War I. The scenario of the World War I debunked that there were enormous paucity and absence of legibility in the Hague Conference of 1899 and 1907 (Nahar, 2016). After that, various immediate and special arrangements were adopted between combatants in Berne in 1917 and 1918 and the entire world after the breakup of the World War I, was highly concerned about the deadly and horrified result of the War and agreed to protect the world from further similar aggression. Following this, the League of Nations was established by means of the Treaty of Versailles 1919 having goal to enhance global fellowship and to erect global peace and security.

On 4 May to 17 June, 1925 a conference took place in Geneva holding the hand of the League of Nations. Two documents were signed in this Conference, namely the "Convention for the Supervision of the International Trade in Arms, Munitions and Implements of War" which failed to enter into effect and the "Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of warfare". ICRC further began to think about the treatment of war prisoners that initiated one more international instrument further concluding the status of war prisoners. In the International Red Cross Conference in Geneva of 1921, an opinion was expressed to form convention especially regarding the treatment of war prisoners and thus a draft convention was made thereto. The draft was then presented to the Diplomatic Conference which was held in Geneva, and finally, the "Convention Relative to the Treatment of Prisoners of war 1929" was initiated which came into force on 19 June, 1931 (Balachandran & Varghese, 2014).

Development of International Humanitarian Law

At the subsistence of World Wars, ICRC was largely engaged in duties such as providing foods to the non-combatants, wounded and other victims, and sheltering the injured from the war field (Hastuti, 2016). At the same time, it carried discussions with world communities on the issue of possibility to re-launch the method of revisiting and enlarging the scope of the Geneva Convention immediately. Following this, prior to the conclusion of hostilities of war in February 1945, ICRC manifested its intent for adopting renewed conventions and subsequently due to such initiative of ICRC in September 1945, a preparatory conference of National Red Cross Societies was arranged in Geneva, following a Conference of Government Experts in 1947 (Islam, 2018). The submitted revised draft of the ICRC Geneva Conventions highlighted some goals such as i. propagation of the safety of civilians, ii. securing the safety of the civil wars victims, iii. enhancing the implementing method of the conventions and iv. enlarging the extent of implementation of the conventions in all armed conflicts. To this context, swift and positive response was made from various corners of the world to revise the conventions. Such a proposal for revising was already justified by the government experts, assembled in 1947 and the partakers of the seventeenth International Conference of the Red Cross in Stockholm in 1948. After receiving patronage

from many governments, ICRC prayed to the Government of Switzerland for convening a diplomatic conference. A conference by the Swiss Government was arranged from 21 April to 12 August 1949 where delegates from 64 countries gathered which actually covered almost every nation of the globe at that time. This conference brought successful adoption of four Geneva Conventions (Geneva Convention I, II, III, IV) which were endorsed on 12 August 1949 and on the same day the Final Act of the diplomatic conference was conceded.

Among the four Conventions, three of them are regarding the wounded, sick and shipwrecked members of military forces and war prisoners that existed before the adoption of three Conventions in 1949. The conference by the Swiss Government gave an opportunity of being renewed, modified and improved for three Conventions and the fourth one which was new and relating to the safeguard of the non-combatants, had closed down the loopholes observed deeply by the people of world at the World War II (Droege, 2008). All these four Geneva Conventions ascertains regulations for protecting the combatants of military forces, wounded of war, war prisoners and most importantly the non-combatants including members of medical team, religious personnel and civilian aiding workers of the military (Yadav, 2015). Since the inception of adoption of GCs, they got remarkable success and came into force within shorter than one year from the signing date.

1. Adoption and Ratification of Geneva Conventions

At present, all the countries of the world have successfully ratified the four Geneva Conventions. In early of 1950s, ICRC came successful to identify some modern changes of methods of warfare, such as landmine, atomic, chemical and bacteriological weapons, which were not governed by the Geneva Conventions. Thus, ICRC was concerned about these new means of war and the Board of Governors in 1954 urged ICRC for suggesting a further global conference having objective to protect civilians from the deadly effects of these modern weapons (Kelsey, 2008). Accordingly, taking the help of experts, a draft was prepared by ICRC named "Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of war." In 1956, this Draft was published and turned into a vital instrument of IHL for the safeguard of civilians from the hazardous effect of landmines, atomic, chemical and bacteriological warfare (Islam, 2018).

2. The Additional Protocols of Geneva Conventions

In 1965, the twentieth International Conference of the Red Cross was convened that introduced its four theories to protect civilians against the threat of war and simultaneously proposed ICRC to chase the enhancement of IHL. Both the International Conference of the Red Cross as well as United Nations Conference on Human Rights of 1968 inspired ICRC and thus it placed its schemes to the "National Societies of the Red Cross and the Red Crescent" who showed up at Geneva Conference. However, ICRC has no aim to revise the current GCs but it desired for reaffirmation and upgrading GCs by initiating numerous

supplementary issues and clarifying various significant points. Later on, the concept of introducing the Protocols additional to the Geneva Conventions was immediately conceived and recognized by the Governments (Droege, 2008). In "21st International Conference of the Red Cross on 1969 in Istanbul" a significant report was submitted by ICRC regarding this issue and a resolution was granted persisting ICRC for taking rapid and efficient approaches to propose an embodied framework as supplementary to existing IHL. To accomplish the assignment, ICRC thus convened the "Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts" that took place between 24 May and 12 June 1971 gathering 200 members from 40 nations. The entire discussion of the Conference was written in 8 volumes containing around 800 pages. ICRC picked up counsel of many non-governmental organizations (NGOs) shortly after the Conference of Government experts in November 1971. In the month of March of subsequent year, ICRC took consultation from the National Societies, which was held in Vienna by the Austrian Red Cross where the primary draft papers were placed by ICRC to them (Islam, 2018). Later on, ICRC arranged a second session of the Government experts which is treated as the most important session that took place in Geneva from 3 May to 3 June of 1972. In this session, 400 experts of 77 countries gathered and such assembly of experts was allocated into few committees for discussing the issue in conductive manner and thus it played the most cabalistic role for the development of international humanitarian law. These consecutive sessions enabled ICRC to design the text of two draft Protocols additional to Geneva Conventions where first one was regarding international armed conflict and the second one was for non-international armed conflict (Hastuti, 2016).

In June, a report of the Conference for two draft protocols along with commentary was provided to all countries and at the 22nd ICRC Conference, these draft protocols were placed. It was then suggested that government of all the nations shall make necessary arrangements for making the draft protocols globally applicable. To this point, without introducing any rules on prohibition or limitation in using conventional weapons, the draft protocols of GCs were passed. However, the matter of using conventional weapons was considered at the recommendation of experts and in this regard, two more sittings of a Conference of Government Experts was held in 1974 and 1976, one in Lucerne and other in Lugarno respectively. At last, at the International conference Centre of Geneva, the Government of Switzerland convened "The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1974." In that Conference, the delegates met in four vital sessions and it is noteworthy to mention that around 155 countries, 11 national liberation movements and 51 intergovernmental and NGOs and near about 700 delegates were present (Islam, 2018).The Conference was designed with three prime plenary committees namely the ad hoc committee on "conventional weapon," the credentials committee and the drafting committee. Finally on 8 June 1977, the Additional Protocols were adopted and after the formal signing of the Final Act by all the delegates, the Diplomat-

ic Conference came to an end (Arya, 2018). The texts of the two Additional Protocols to Geneva Conventions of 12 August 1949 were included in the Annex of the Final Act that represented the outcome of the conference. These instruments after the ratification by Ghana and accession by Libya came into effect on 7 December 1978. Undoubtedly, the Additional Protocols 1977 of Geneva Conventions 1949 are crucial in the historical development of IHL since the revision made in 1949 when four Geneva Conventions have been introduced (Yadav, 2015). Notably, among the Additional Protocols, the significant one was which dealt with the safeguarding mechanism of the civilians against the threats of hostilities (Islam, 2017). The goal behind the Diplomatic Conference was to reaffirm and promote the rules regarding the safeguard of the civilians which was ignored prior to the Fourth Geneva Convention of 1949. Thus, convening the Diplomatic Conference guaranteed safeguard for non-combatants (Art. 48, 51, AP I), protection for medical, religious personnel (Art. 15, AP I), medical unit (Art. 12, AP I), civilian objects (Art. 52, AP I) and aimed fundamentals for saving the civilians at war (Art. 52, 54, AP I).

A leading part is comprised of the perplexing issues of liberation wars and guerrilla fighters which is deemed to be a massive rearrangement in the arena of IHL. One of the major chapters of the Protocol I is the ways and means of warfare which had been highlighted by the Hague Regulation in 1907 and a serious need was there to upgrade these provisions (Krupiy, 2014). By framing numerous norms of warfare, a single instrument was intertwined by both Geneva and Hague laws (Tyagi & Singh, 2019). The regulating framework to protect the environment during any sort of armed conflict is also a prominent development (Art. 35, 55, AP I). At last, the provision relating to the arrangement of protecting authority for the observation and effectuation of the Geneva Conventions and of Additional Protocols has raised the importance of Protocol I remarkably (Art. 5, AP I). Another noteworthy enhancement of IHL is common Article 3 of Geneva Conventions and AP II regarding applicability of International Humanitarian Law to protect the victims of non-international armed conflict (Sassoli, 2010). In case of application in the non-international armed conflicts, common Article 3 is the keystone for humanitarian legislation and AP II has been introduced for amplifying Article 3 keeping the conditions of its application unchanged (Arya, 2018). Article 3 however, provides the norms for protecting the victims of internal armed conflicts; it was further observed that one more global instrument is required, particularly for the safeguard against the hostilities caused by internal armed conflict. It is to be noted that the duress of internal armed conflict is a common threat for the entire world and there is lack of sufficiency in common Article 3 (Sassoli, 2010). The common Article 3 postulates the core components for protection but complexities in factual execution have been observed as this set of regulations was often seemed to be unworthy while dealing with immediate humanitarian needs (Islam, 2018). Realizing the necessity to quench the inadequacy of common Article 3, ICRC wanted to adopt additional document adding these topics as added features and elevate the common Article 3 of GCs 1949 and subsequent-

framed the "Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflict" (AP II).

Inspired by the extraordinary promotion of IHL after the erection of AP I and AP II in 1977, the last few decades moved forward having no interruption for introducing further instruments, for illustration, "1980 Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons, Protocol on Prohibition or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 1980 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of IHL Committed in the Territory of the Former Yugoslavia, 1994, Statute of the International Criminal Tribunal for Rwanda, 1994, Ottawa Treaty, 1997, Statute of the International Criminal Court, 1998, 2005 Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III) and 2013 The Arms Trade Treaty." From the above discussion, it is observed that numerous declarations, treaties, conventions and protocols on International Humanitarian Law have been made since 1863 for protecting not only civilians but also to regulate the means and methods of warfare.

National Response towards Framing of International Humanitarian Law

In respect to enforcement mechanism, there remains vast difference between national and international laws. Through implementing the domestic actions, national laws can be feasibly enforced, but on the other hand, international law goes through number of obstacles while question of enforcement comes (Hastuti, 2016). Absence of state action to sign international instruments or signing it keeping certain reservations, political disagreement, non-compliance of nations on various issues and lack of enforcing authority are some of the reasons thereto (Yadav, 2015). It is often observed that after having number of international conventions and protocols, the enforcing policy is very fragile and thus for this reason, significant number of jurists have denied to treat international regulation as law and addressed it as arbitrary power in the grip of powerful countries (Islam, 2018). In fact, international law can attain its true enforcement only when its provisions are inserted by any national government while enacting state legislation (Sassoli, 2010). Though some countries have refrained from passing national laws by absorbing the mandate of IHL, most of the sincere nations have legislated domestic laws containing the guidelines of GCs and APs. The International Crimes (Tribunal) Act 1973 (Bangladesh), the Chemical Weapons (Prohibition) Act 2006, the Cluster Munitions (Prohibition) Act 2010 (UK), the Geneva Convention Act 1957 (Britain), the Geneva Convention Act 1963 (Ireland), the Geneva Convention Act 1969 (India), the Chemical Weapons Act 1993 (Pakistan), the Chemical Weapons Act 2007 (Sri Lanka) and the US War Crimes Act 1996 (USA) are numerous vital domestic

legislations which incorporated the norms of IHL in various countries. Some countries have special tribunals for concluding the trial mechanism of the war criminals such as Bangladesh and Sierra Leone. Many other countries have delegated the legal authority to the existing courts for conducting trial and pronouncing verdict in the cases of war crime, crime against humanity or genocide.

In Bangladesh, the International Crimes Tribunal Act 1973 (as amended in 2009) portrays the system of appeal which was not present in the Nuremberg Tribunal, but the provisions of appeal and revision have been introduced on the Rome Statute of the International Criminal Court. This Court is empowered with trial jurisdiction and can punish any person who takes part in commission of crimes against humanity, war crimes, crime against peace and genocide within the territory of Bangladesh. Besides, in the hearing of an appeal by defense of Mr. Ante Kovac in the Appellate Division panel of the court of Bosnia and Herzegovina, the learned court made Mr. Kovac guilty for ordering and approving the illicit confinement in inhuman conditions of around 250 Bosnian civilians in Vitez in 1993 and he was given imprisonment for thirteen years (Islam, 2018). These varieties of domestic and global statutes portrays the successive development of IHL considering the transforming characters of the means and strategies of war, but the desired success has not yet been attained. At present, the occurrence of armed attacks is often noticed and most of the hostilities which are taking place are non-international in nature (Hastuti, 2016). Many countries consider such non-international armed conflict as internal issue to shorten the application of IHL within their national territory (Kremte, 2017; Islam, 2016). Though all the nations have ratified the Geneva Conventions unanimously, many other prominent countries such as the USA, Israel and Myanmar have refrained from signing AP I, AP II as well as Rome Statute (Droege, 2008). Moreover, terrorism has turned into a burning concern globally, still no comprehensive approach has been yet taken by world communities to define and regulate this global threat (Yadav, 2015; Balachandran & Varghese, 2014). It is well settled that world peace can never be established by force, and so the United Nations including other significant international institutions shall come forward to inspire their member states to ratify the international instruments of International Humanitarian Law. Apart from this, world communities shall make equal arrangements for regulating the issues of terrorism, counter-terrorism, cyber war (Lima & Batista, 2017; Kelsey, 2008), use of nuclear and other weapons and so on (Islam, 2018). The ratifying states also bear much bigger responsibility to enforce the mandate of IHL by their domestic legislation (Sassoli, 2010).

Conclusion

International Humanitarian Law, even a century ago, did not have much attention, and it was only limited to table discussion of certain countries. However, presently, it has turned into a leading genre of public international law that also received recognition from all the nation of the world as they followed national

obligations of GCs. Looking back to the history, norms of international humanitarian law were narrowly followed and practiced among the uncivilized ancient societies (Arya, 2018). However, the concept of modern IHL has been narrated in numerous holy religious books, and those religious norms made significant contribution towards documentation of IHL. The road to formal formulation of law of Armed Conflict commenced from the convening of Geneva Convention of 1864. Following this, various international conventions, instruments and declarations regulating the laws of war have been adopted since 1948. However, IHL got its most significant document in 1949 and 1977 after the adoption of Geneva Conventions and Additional Protocols respectively. At the initial stage, the APs had lack of legal provisions to regulate the means of using the conventional weapon which was accomplished in 1980 by the Conventions on using of conventional weapons (Hastuti, 2016). It is to be noted that the Rome Statute of the Permanent International Criminal Court in 1998 has made an eminent performance in the journey of development of IHL.

This short history of IHL demonstrates that it did not grow in the mists of time, nor was it fashioned in the hand of Henry Dunant when he formed ICRC. Rather, IHL was formulated after the intersection of the function of various groups of actors, each targeted on their own individual objectives, policies or tasks. Many of these actors were, however, acknowledged participants in international law, like the nations assembled in the Diplomatic Conference or ICRC, but they performed their activities in a somewhat distinct manner to that which is generally envisaged. The numerous casts of actors contributing a preface in the history of IHL reveal that this law is not a code managed and framed by states alone. It exhibits that it is a wider practice that can comprehend performance by traditional and non-traditional participants (Alexander, 2015). In today's modern age, it is a lamentable matter that numerous global conventions, statutes and declarations on law of armed conflict are currently in effect but have not yet received ratification by all the nations of world. On the other hand, many of the countries which have already ratified those international instruments have not yet promulgated adequate national legislation complying with the Geneva laws and other documents of IHL. The paradigm of these countries regarding their lack of compliance with disciplinary commitments of IHL may hamper to establish the considerable peace and harmony around the globe.

References

Additional Protocol (AP, I) to the Geneva Conventions of 12 August 1949 and Relating to the protection of Victims of International Armed Conflicts, 1125 UNTS 3, 3 June 1977.

Additional Protocol (AP, II) to the Geneva Conventions of 12 August 1949 and Relating to the protection of Victims of Non-International Armed Conflicts, 1125 UNTS 3, 3 June 1977.

Additional Protocol (AP, III) to the Geneva Conventions of 12 August 1949 and Relating to the Adoption of an Additional Distinctive Emblem, 8 December 2005.

Al-Dawoody, A. (2017). Islamic law and International Humanitarian Law: An introduction to the main principles. *International Review of the Red Cross,* 99(3), 995-1018. DOI: 10.1017/S1816383118000310

Alexander, A. (2015). A short history of International Humanitarian Law. *The European Journal of International Law, 26*(1), 109-138. DOI: 10.1093/ejil/chv002

Arya, J. P. (2018). International Humanitarian Law and other social ways combating terrorism. *International Journal of Legal Developments and Allied Issues, 4*(6), 115-133.

Balachandran, M. K., & Varghese, R. (2014). *Introduction to International Humanitarian Law.* New Delhi: Indian Centre for Humanitarian Law and Research.

Droege, C. (2008). Elective affinities? Human rights and humanitarian law. *International Review of the Red Cross, 90*(871), 501-548.

Geneva Convention (GC, I) for the Amelioration of the Condition of the Wounded and Sick inArmed Forces in the Field, of 12 August 1949, 75 UNTS 31.

Geneva Convention (GC, II) for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949, 75 UNTS 31.

Geneva Convention (GC, III) Relative to the Treatment of Prisoners of war, of 12 August 1949, 75 UNTS 31.

Geneva Convention (GC, IV) relative to the Protection of Civilian Persons at Time of War, of 12 August 1949, 75 UNTS 31.

Gill, T., & Fleck, D. (2010). *The hand book of the international law of military operations.* Oxford: Oxford University Press.

Hastuti, L. (2016). Enforceability of International Humanitarian Law in armed conflict at present. *UUM Journal of Legal Studies, 7*, 129-137

Henckaerts, J. M., & Doswald-Beck, L. (2003). "Military Necessity" and "Civilian Immunity": Where is the balance? *Chinese Journal of International Law, 2,* 179-180.

Islam, M. S. (2016). Contemporary technological development and challenges to the International Humanitarian Law. *IIUC Studies, 13,* 53-68. DOI: 10.3329/iiucs.v13io.37646

Islam, M. S. (2017). Domestic measures during peace time for the implementation of International Humanitarian Law. *IIUC Studies, 14*(2), 111-126. DOI: 10.3329/iiucs.v14i2.39884

Islam, M. S. (2018). The historical evolution of International Humanitarian Law (IHL) from earliest societies to modern age. *Beijing Law Review, 9,* 294-307. DOI: 10.4236/blr.2018.92019

Kelsey, J. T. G. (2008). Hacking into International Humanitarian Law: The principles of distinction and neutrality in the age of cyber warfare. *Michigan Law Review, 106*(7), 1427 1451.

Kremte, H. A. (2017). Minimizing human suffering and protecting persons affected by conflict: A critical appraisal of the compliance system of International Humanitarian Law. *Beijing Law Review, 8,* 440-450. DOI: 10.4236/blr.2017.84024

Krupiy, T. (2014). The evolution of International Humanitarian Law: An anthropological perspective. *UK Law Student Review, 2*(2), 24-44.

Lesaffer, R. (2002). The Grotian tradition revisited: Change and continuity in the history of International Law. *British Yearbook of International Affairs, 73*(1), 103-139.

Lima, R. M. D., & Batista, M. (2017). Evolution of International Humanitarian Law and war: Crime in international proportions. *Open Access Library Journal, 4,* 01-10. DOI: 10.4236/oalib.1104107.

Nahar, N. (2016). *A text book of International Humanitarian Law.* Dhaka: Hira Publication.

Sassoli, M. (2010). Taking armed groups seriously: Ways to improve their compliance with IHL. *Journal of International Humanitarian legal Studies, 1,* 05-51.

Shenoy, A. V. (2019). International Humanitarian Law in ancient India: A multicivilisational perspective. Indian Journal of International Law, 01-27. DOI: 10.1007/s40901-019 00102-y

Tyagi, A., & Singh, P. (2019). Analysis of International Humanitarian Law and human rights. *International Journal of Law Management & Humanities, 2*(4), 01-07.

Yadav, M. K. (2015). International Humanitarian Law as a part of International Law with special reference to its implementation in the West and South Asian Region. IOSR *Journal of Humanities and Social Science, 20*(12), 01-19. DOI: 10.9790/0837-201240119