CASE STUDY: INTERNATIONAL HUMANITARIAN LAW

Introduction:
Rules regarding the conduct of hostilities

- Limits on the way wars are waged have existed for centuries.
- For the most part, these limits have been unwritten understandings on how to behave.
- Usually, these understandings were based on the reciprocal recognition of the reality of potential retaliation if certain limits were overstepped.
- Today, there is a special term used when referring to the means and methods of warfare employed by belligerents in armed conflicts.
- This term is: the conduct of hostilities.

Definitions

- **Conduct of hostilities**: The means and methods of warfare employed by belligerents in armed conflicts.
- **Means**: The physical means that belligerents use to inflict damage on their enemies during combat. It encompasses all weapons, and includes weapons systems as well as delivery platforms. There are treaty bans prohibiting the use of: laser weapons, biological weapons, chemical weapons, anti-personnel landmines, etc.
- **Methods**: The tactics or strategy used to defeat the enemy by using available information together with weapons, movement and surprise. Examples of prohibited methods of warfare include: terror, starvation, indiscriminate attacks, pillage, taking hostages, damage to the natural environment, etc.
- **Armed conflicts**: A nation or person engaged in war or conflict, as recognised by international law. Conflicts between two or more states.

Sources of IHL

- Modern IHL is made up of numerous treaties, humanitarian principles and customary law, all of which set a standard for how the international community should act during times of conflict.
- The treaties that formed the basis for IHL are:
  - Hague Convention of 1907
  - 1949 Geneva Conventions and their Additional Protocols of 1977
- There are a series of other treaties covering specific issues, particularly in the field of weapons, eg. the Convention on Cluster Munitions.
- IHL works to both promote and maintain world order. It is not always effective and is often limited by state sovereignty and decentralised enforcement mechanisms.

What are the main aims of IHL?
• The IHL rules on conduct of hostilities aim to strike a balance between military necessity and humanity.
• They seek mainly to protect civilians from attacks and effects of hostilities, but equally to limit the suffering of combatants.

When was IHL introduced?
• Efforts by the international community to introduce effective legal limits on the conduct of war began seriously in the 19th century. For centuries before then, rules had applied to the conduct of war, but they were based on custom and tradition, were local or just temporary.
• The initiative for the first convention came from five citizens of Geneva. They created the International Committee for the Relief to the Wounded, that later became the International Committee of the Red Cross.
• The conferences that followed resulted in the signing of the first Geneva Convention in 1864. This was replaced by the four Geneva Conventions in 1949.
• In the century and a half that followed, the body of IHL grew. The Geneva Convention was extended and the Hague Conventions, mainly aimed at regulating the conduct of warfare, were also adopted in 1907. Protocols were added to the Geneva Conventions in 1977 and 2005.
• A range of other international conventions and protocols covering specific areas have been introduced, including conventional weapons, chemical weapons, landmines, laser weapons, cluster munitions, the protection of children, etc.

The principles of IHL

| Distinction               | • Parties to an armed conflict must “at all times distinguish between the civilian population and combatants”.
|                          | • This implies that indiscriminate attacks and the use of indiscriminate means and methods of warfare are prohibited. |
| Proportionality          | • The principle of proportionality seeks to limit damage caused by military operations by requiring that the effects of the means and methods of warfare used must not be disproportionate to the military advantage sought. |
| Precautions              | • An attack must be cancelled if it becomes apparent that it is of a type that is prohibited. |
|                          | • If circumstances permit, an advance warning must be given for those attacks which may affect the civilian population. |
In determining the objective of an attack, and when a choice is possible, the one causing least danger to the civilian population must be selected.

| Prohibition of superfluous injury or unnecessary suffering | • Refers to the effects of certain methods or means of warfare which uselessly aggravate the suffering of disabled men.  
• International humanitarian law forbids such methods and means. |

**International Humanitarian Law**

**Principle of Distinction**

- The IHL principle of distinction states that parties to an armed conflict must ‘at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives’.
- This principle was first seen in the St. Petersburg Declaration which states that ‘the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy’.
- The Hague Regulations do not explicitly specify a distinction between civilians and combatants, but Article 25 is based on the same principle, which prohibits ‘the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended’.
- The Statute of the International Criminal Court states that ‘intentionally directing attacks against the civilians not taking direct part in hostilities’ is considered a war crime in international armed conflicts.

**Effectiveness of the rules regarding the conduct of hostilities**

- The implementation and enforcement of international humanitarian law is problematic. This is because the international legal system is based on the notion of state sovereignty.
- This means the implementation and enforcement of international humanitarian law is often voluntary, and there are no compulsory means for the settlement of disputes or for ensuring enforcement of international humanitarian law.
- Despite this, there are various legal and non-legal measures that attempt to do so.
- The main legal responses to the conduct of hostilities are:
  - International humanitarian law
  - Courts
- The United Nations
- There are also non-legal responses to the conduct of hostilities that aim to reduce the effects of armed conflict. The primary example being the:
  - International Committee of the Red Cross.
- These responses exist to promote and maintain world order. They are not always effective. This is because the international legal system is based on the notion of state sovereignty, which limits compliance and because enforcement mechanisms such as courts are largely decentralised.

**H/W: Research the 1949 Conventions and Protocols from 1977. How do they apply now, how do they work, how effective are they? Use slides and website.**

How do they apply/work?

- Almost every single country in the world is signatory to the 1949 Geneva Conventions. The Conventions have been developed by two further agreements, the Additional Protocols of 1977 relating to the protection of victims in armed conflict.
- The 1949 Geneva Conventions consist of 4 Conventions, each addressing a separate aspect of international conflict:
  - The first Geneva Convention protects wounded and sick soldiers on land during war, as well as protecting medical units, equipment and personnel.
  - The second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war, including hospital ships.
  - The third Geneva Convention applies to prisoners of war, in which the acceptable conditions and places of captivity were defined with particular regard to the labour of POW, their financial resources, the relief they received and the judicial proceedings instituted against them.
  - The fourth Geneva Convention affords protection to civilians, including in occupied territory. It discusses the treatment and status of protected persons, distinguishing between foreigners and native civilians, as well as humanitarian relief being available to them.
- The Additional Protocols to the Geneva Conventions were adopted in 1977 to strengthen the protection of victims of both international and non-international armed conflicts.
  - Additional Protocol I outlined the protection of victims specifically in international armed conflicts. It extended on the Geneva Conventions’ protections of civilian medical equipment, supplies, transport units and personnel, as well as the prohibition of attack on civilian persons and objects.
  - Additional Protocol II was applying the same protections from Protocol I to non-international armed conflicts and extending the rules of the law of armed conflicts to internal wars.
Additional Protocol III established the Red Cross emblem to be recognised as a visible sign of the neutral status and the protection granted by international humanitarian law to armed forces’ medical services and volunteer relief. This established a universally recognised and distinctive symbol. As symbols for the Red Crescent and the Red Lion were being increasingly used, the Protocol added additional international protection to these two emblems and subsequently confirmed all three emblems under international law.

How effective are they?

- The Geneva Conventions are only somewhat effective. Over time, the Conventions are becoming gradually less enforced and the treatment of combatants and civilians is becoming less regulated by the international community for a variety of reasons, which renders the Geneva Conventions rather ineffective. They have, however, been successful in limiting some harm that could have potentially been caused in armed conflict. The Conventions successfully and clearly set out the standard and expectations for behaviour on an international level and allow for clear distinction between appropriate and inappropriate behaviour. However, the Conventions are also largely outdated and have failed to adapt to new threats, such as nuclear weapons.

H/W: Complete columns 1 and 2 from Slide 21.

Which laws serve as the foundations of IHL?

- IHL was traditionally based upon unwritten international customary law.
- In modern times, a number of treaties, humanitarian principles and customary laws have created IHL and set a standard for how international conflict should happen.
The four IHL principles that IHL is based upon are: **distinction, proportionality, precautions** and **prohibition of superfluous injury or unnecessary suffering**.

What are examples of other IHL?
- There are a number of other international instruments relating to IHL, including:
  - 1972 Biological Weapons Convention
  - 1980 Conventional Weapons Convention and its five protocols
  - 1993 Chemical Weapons Convention
  - 1997 Ottawa Convention on anti-personnel mines

What is the purpose of IHL?
- The main purpose of IHL is to strike a balance between the safety of humanity and the necessary actions of the military. They aim to protect civilians from harm, while simultaneously limiting the unnecessary damage done to combatants.

What are the limitations of IHL?
- As the international legal system is largely based upon state sovereignty, the implementation and enforcement of IHL is often voluntary with non-compulsory methods of settlement for disputes or ensuring enforcement.
- The concept of state sovereignty significantly limits the compliance or likelihood of compliance from nations and impacts the capacity for other enforcement mechanisms such as courts to be effective, as compliance and cooperation is necessary for these.

Despite limitations, what is the significance of IHL?
- IHL is still significant despite limitations, as it embodies and codifies numerous morals that are necessary for the promotion of world order. Without such laws, the nature of warfare and global conflict would be extremely different and much more difficult to regulate or prosecute.
- Though IHL does in some ways allow for wars and armed conflict to occur, it attempts to regulate such occurrences and minimise the harm caused during them. In essence, it does not condone war, but simply recognises an inevitable act and attempts to reduce the damage caused.

Does IHL promote and maintain world order?
- In theory, IHL should successfully promote and maintain world order. However, the principles and laws created by the IHL treaties fail to be enforced globally and the
system relies solely upon the cooperation and compliance of international actors and nations.

- The UN attempts to enforce IHL in the Geneva Conventions through the International Criminal Court (ICC). The ICC is somewhat effective in nature as it can prosecute individuals quickly and has strong enforcement power through the UN. However, the ICC has had limited success in prosecuting individual offenders and is arguably minimally effective in promoting and maintaining world order with regard to IHL breaches. The UN Human Rights Commission is also highly active on the matter of IHL and the application of these laws is often debated and part of their decisions and actions.

- The International Committee of the Red Cross (ICRC) is fairly effective in promoting and maintaining world order, as they are a large non-government organisation that operates internationally with a global platform to draw attention to and create real change in the law and in the realities of global conflicts.