

International Humanitarian Law Violations: The Causes and Ways of Improving Compliance

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Abstract

This concept paper attempt to highlight and examine the main instruments of international humanitarian law. Factors that are influencing the violation of International Humanitarian Law (IHL) during a war-fare were also cited. The paper argues that the major causes of international humanitarian law breaches include nature of war, moral decadence cognitive dissonance and obeying orders. The paper proffered recommendations/strategies that may enhance compliance with international humanitarian law in the theatre of war. These include mandatory training in international humanitarian law, exemplary leadership of commanders and disciplinary measures.

Keywords: Breach, violation, cognitive dissonance, compliance, international humanitarian law

1. Introduction

Law is a term that relates to authoritative standards of behaviour. These standards are found in various fields. There are laws governing the physical world and there are laws governing human behaviour. The common feature in all laws is that they set standards of what will or what is supposed to happen in given circumstances. There are different types of laws governing human conduct. There are ethical laws or internalised value standards which govern behaviour of individuals and are obeyed by individuals due to conviction and commitment to values. However, there are also laws which will be enforced by responsible organs (Chizikani, 2013). Among the different types of law there is International Humanitarian Law (IHL), that is, international rules that were established by treaty or custom which are intended to solve humanitarian problems arising from armed conflicts. Human dignity is compromised when this humanitarian law is violated by belligerents during an armed conflict. The objectives of International Humanitarian Law include, the preservation of the fundermental human rights of persons who fall into the hands of the enemy and to assist in the restoration of peace. International humanitarian law also provides advance notice of the accepted limits of warfare as well as to reduce confusion and makes the identification of violations more efficient (DiMieglio, 2012) [5]. The violation of international humanitarian law is a clear indication that there is no respect being accorded to the rules of IHL. Without acknowledgement and respect of the law, rules become meaningless. However, the Geneva Convention of 1949 Article (1) enshrines the principle of respect which must be recognized by all parties to a conflict.

1.1 Purpose and Relevance

The central aim of this paper is to bring out the contributing factors that are perpetuating the violation of international humanitarian law. In trying to address the causes of breaching the international rules, the paper also attempt to suggest ways of improving compliance with this law of armed conflict. The main instruments of international humanitarian law were also highlighted. This paper will also be of significance to AU, AU

member states, SADC, UN, ECOWAS, EAC, GAD and United Nations and other organisations such as ICRC.

1.2 Sources of Literature

The discussion argument is based on a survey of literature from books, magazines, news-papers, journal articles, internet sources and personal contacts.

1.3 Literature Review

1.3.1 Defining International humanitarian law

According to ICRC (2004), international humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International humanitarian law is part of international law, which is the body of rules governing relations between States.

1.3.2 Main Instruments of IHL

The main instruments of the International Humanitarian Law are contained in the four Geneva Conventions of 1949 and the Additional Protocols of 1977.

- (a). Geneva Conventions of 1949 for the amelioration of the condition of the wounded and sick in the armed forces in the field,
- (b). Geneva Conventions of 1949 for the amelioration of the condition of the wounded, sick and ship-wrecked of the armed forces at sea,
- (c). Geneva Conventions of 1949 for the Protection of civilian persons in the time of war.

1.3.3 Additional Protocols of 1977

- (a). Additional Protocols One(1) of 1977 for the Protection of victims of international armed conflicts,
 - (b). Additional Protocols Two (2) of 1977 for the Protection of victims of non-international armed conflict.
- The international humanitarian law has two major prongs which are, *Jus ad Bellum* and *Jus in Bello*. *Jus ad Bellum* is the law that deals with conflict management, and how states initiate armed conflict, that is, under what circumstances the

use of military power is legally and morally justified. Whereas *Jus in Bello* is the law governing the actions of states once conflict has started that is, what legal and moral restraints apply to the conduct of waging war (DiMeglio *et al*, 2012) [5].

1.3.4 Application of International Humanitarian Law

International humanitarian law applies in two very different types of situations, that is, the international armed conflicts and non-international armed conflicts. Although the treaties of international humanitarian law systematically refer to different types of “armed conflicts”, they do not provide for the general definition of that concept. The first comprehensive definition has been developed by International Tribunal for former Yugoslavia (ICTY). According to this definition,

“.....an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state” (Bouvier, 2012) [2].

According to Article 2 common to the 1949 Geneva Conventions, international humanitarian law relating to international armed conflict applies, “...to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”. However, Article 1(4) of Additional Protocol (1) spells out armed conflict as, “.....armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes the exercise of their right of self determination”.

According to Article 2 of Additional Protocol II international humanitarian law shall apply to all armed conflicts not covered by Article 1 of Protocol (I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised groups which, under which responsible command exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.

However international humanitarian law is not applicable in situations of internal violence and tensions. This was clearly made in Article 1(2) of Additional Protocol II which states that, “.... This Protocol shall not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflict” (POTI, 2012) [2].

1.3.5 Grave breaches of International humanitarian law (IPU&ICRC, 1993).

The following acts constitute grave breaches of the Geneva Conventions:

- wilful killing,
- torture or inhuman treatment, including biological experiments,
- wilfully causing great suffering or serious injury to body or health,
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,
- compelling a prisoner of war to serve in the forces of the hostile power,

- wilfully depriving a prisoner of war of the right to a fair and regular trial prescribed in the Third Convention,
- unlawful deportation or transfer,
- unlawful confinement,
- hostage-taking.

The following acts constitute grave breaches of Protocol I of 1977

The following acts, when committed wilfully, in violation of the relevant provisions of the Protocol, and causing death or serious injury to body or health:

- making the civilian population or individual civilians the object of attack;
- launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- making non-defended localities and demilitarised zones the object of attack;
- the perfidious use of the distinctive emblem of the red cross or red crescent or of other protective signs recognised by the Conventions or the Protocol.

The following acts are also regarded as grave breaches of Protocol II of 1977

- the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- unjustifiable delay in the repatriation of prisoners of war or civilians;
- practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

1.3.6 Factors Influencing the Violation of International Humanitarian Law

(a) Nature of war

By its nature, war breeds a fertile ground to commit crime. An environment of war is horrible to both soldiers and civilians. Those with criminal dispositions take advantage of the confusion which armed conflicts create. Experiences of war are difficult and painful to fathom, and sometimes for the belligerents to adapt to the situation, they end up taking drugs such as marijuana and alcohol. These drugs have a psychological effect on cognitive processes, inter-alia, making poor judgements of situations and creation of dutch courage that can lead to the commitment of crimes.

(b) Moral decay

The general moral decadence in various societies or that which came as a result of war can lead to violation of international humanitarian law. This brings in the concept of socialisation and the influence of the environment (social) on human behaviour. For instance, children who grew up in an environment of conflict can adopt conflict behavioural traits or tendencies. This also applies to soldiers who have been

exposed to the gories of war for a long time, they gradually lose their conscience. Furthermore, crime end up being regarded as part of the law of the jungle. The belligerents' recognition of the law of the jungle can influence attitude that justifies immoral and criminal behaviours.

(c) Cognitive dissonance

Myers (1987) characterised cognitive dissonance as feelings of tension that arise when one is simultaneously aware of two inconsistent cognitions. Dissonance may occur when an individual is faced with an incongruous situation in which he is urged to do something he knows is wrong but he wants to do it anyway. It could also mean that the person does not want to do what he or she knows is right. Tension is felt by the individual in this situation as a result of cognitive dissonance because the two thoughts or cognitions, that is, to do wrong and knowing what is right are psychologically inconsistent. This state of imbalance result in frustration and anger. Therefore, cognitive dissonance can play a tremendous role in conflict, both in its perpetuation or limitation.

(d) Obeying Orders

Most of the time, soldiers who commit atrocities are not naturally criminal, but these soldiers are 'normal people' who have been trained to obey orders with no discussion. Sophie Richardot (2014) ^[13], a social psychologist became interested in the subject in relation to Milgram's famed obedience experiment. Milgram showed the disturbing extent to which normal people are willing to inflict pain on people in the name of obeying authority (Chang, 2014) ^[3]. In her research paper, titled "*You Know What to Do With Them': The Formulation of Orders and Engagement in War Crimes,*" which was published in the issue of *Aggression and Violent Behaviour (March/April, 2014)*, Richardot (2014) ^[13] examined historical accounts of three modern conflicts: the German invasion of the USSR during World War II, the My Lai massacre during the Vietnam War, and the American conflicts in Afghanistan and Iraq. She found five distinct formulations of orders, each which provides, to some extent, a psychological cushion for subordinates to justify their actions (Chang, 2014) ^[3].

1.3.7 Ways of Improving Compliance to International Humanitarian Law

(a). Mandatory Training in International Humanitarian Law

Learning is defined as the relative permanent change in behaviour (Atkinson *et al*, 1993). Training can influences or shape attitudes of soldiers or belligerents so that they can comply with the law of war during an armed conflict. In order to prevent and suppress breaches, High Contracting Parties and parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and Protocol 1.

(b). Exemplary Commanders/Leadership

The Additional Protocol 1 to the Geneva Convention Articles 86 & 87 make it clear that the commanders would be held responsible if violations of the law of war are not reported where prevention was not possible. Articles 87 states that,

(i). The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and others persons

under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the conventions.

Commanders should lead by example because by them following and acting in accordance with the international rules, they indirectly influence their subordinates to emulate them. Commanders must be leaders of integrity in order to give instructions or exert their influence with ease.

(c). Disciplinary Measures

According to the Additional Protocol 1 to the Geneva Conventions, the High Contracting Parties and parties to the conflict requires any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of the same protocol, to initiate such steps as are necessary to prevent such violations of the conventions or the protocol and where appropriate, to initiate disciplinary or penal action against violators thereof (ICRC, 1949) ^[7]. However, the penal action executed by commanders or any other relevant organ should be deterrent enough to would-be offenders, and these penalties must be spelled out during trainings on international humanitarian law.

(d) Domestication of International Humanitarian Law

In his foreword to "*The Domestic Implementation of International Humanitarian Law*" Manual, Dr Jacob Kellenberger, President of the International Committee of the Red Cross (ICRC) wrote the following with regards to implementation of international humanitarian law into local laws by States,

"...some international humanitarian law treaties have been widely ratified. Indeed, the Geneva Conventions have now achieved universal acceptance and their Additional Protocols of 1977 are among the most widely accepted legal instruments. The universal ratification of some other humanitarian law treaties is, however, still a long way off. Adherence to these international conventions is only the first step. Respecting international humanitarian law requires that a number of concrete measures be taken at the domestic level, even in peacetime, to create a legal framework that will ensure that national authorities, international organizations, the armed forces and other bearers of weapons understand and respect the rules, that the relevant practical measures are undertaken and that violations of humanitarian law are prevented, and punished when they do occur. Such measures are essential to ensure that the law works when needed. To do this effectively requires coordination between various government departments, the military and civil society..."

Laws that are instituted and enforced at local level to individuals tend to be effective in deterring unwanted human conduct because of their proximity. There is also a feeling of ownership in local laws due to participation by local people during promulgation processes, either individually or through their legislative representatives. Whereas, rules that are instituted at international level seem to be remote in their influence on human behaviour.

1.4 Conclusion

Inadequate respect by parties to the armed conflict for international humanitarian law is the chief cause of human suffering during the conflict. The international media is awash

with daily reports of continued gross violations of the law of war which include deliberate attacks against civilians, the destruction of infrastructure vital to the civilian population, the forcible displacement of entire communities from their habitual places of residence and various forms of sexual violence inflicted against vulnerable individuals and groups. Persons deprived of liberty in armed conflict are likewise frequently subject to appalling behaviour by their captors, including murder, torture and other forms of ill-treatment, inhuman conditions of detention and denial of procedural safeguards and fair trial rights. Medical personnel and humanitarian workers are also an increased target of attacks. The law tries to prevent or put a stop to suffering and to deter future violations, but rules cannot, in and of themselves, eradicate abuses or be expected to do so. They need to be complied with (Maurer, 2013) ^[14].

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