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PRISONERS OF WAR: CLASSIFICATION AND LEGAL PROTECTION UNDER INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

The International humanitarian law, through a set of international conventions, protects prisoners of war from any violation or infringement of human rights during their captivity. The status of prisoners of war is only applicable in international armed conflicts. After The Hague Convention had failed to identify the categories of fighters who would benefit from their privileges as prisoners of war in World War II, the Third and Fourth Geneva Conventions and their protocols were established to justify the inclusion of broader categories of combatants. Descriptive and analytical approaches are used in the study reported in this article to identify the category of people regarded as prisoners of war. by examining international treaties and agreements in relation to the definition of a prisoner of war before characterising the individuals who fulfil the criteria of “prisoner of war” under these treaties. Moreover, it explains the legal mechanisms

necessary to ensure that the parties involved in international conflicts comply with the international conventions on prisoners of war. This article concludes that the prisoners of war are often members of the military forces of one of the belligerents who fall into the hands of the opposing party and other types of people who possess the right to the status of prisoners of war or can be treated as prisoners of war following the Third Geneva Convention of 1949. In contrast, traitors, deserters and mercenaries are not considered the prisoners of war. If they commit a war crime, they can be prosecuted by the internal law of the Detaining Power. On the other hand, the overlapping definitions of the prisoners of war can create confusion in combatant interactions during the armed conflict, hence increases violations. Consequently, states must take practical steps to prevent any expected violations against the prisoners of war, for instance enacting national laws to ensure international treaties compliance and raise the awareness of international law among leaders and officials during armed conflicts to limit the violence against combatants.

Keywords: International humanitarian law, international law, prisoner of war, armed conflict.

INTRODUCTION

The International humanitarian law (IHL) works to alleviate the suffering of the parties involved in any armed conflicts and to protect from being abused or subjected to disproportionate inhumane treatment. The essential concept is that war cannot be eradicated but what can be done is to set laws that protect the rights of all parties involved, especially the victims of war on humanitarian considerations (Hastuti, 2016). Prisoners of war (POW) refer to the victims of war captured by the opposing combatants when they fight to defend their countries. International law pays special attention to the subject of POWs, and though the original document was drafted in 1929, the wording of the Geneva Convention was amended in 1949 to offer better protection for soldiers captured in combat. A POW is different from an ordinary prisoner (Hingorani, 1980).

Rejecting the status of a POW has severe consequences from the humanitarian perspective of providing protection. This because denying the captured enemy fighters the “prisoners of war” status

places them at the mercy of the Detaining Power (Jinks, 2004). At present, the POWs are entitled to certain rights and benefits under the Third Geneva Convention of 1949, regardless of whether or not the detaining authority is compassionate and humane towards them. The status of a POW is not granted to everyone who is captured, this is because only individuals identified as “combatants” under the Third and Fourth Geneva Conventions of 1949 and Additional Protocol I (1977) are eligible for a POW status if captured by the opposing party in armed conflicts (Jinks, 2004). According to the Commentary of 1958 on Article 2 of the Fourth Convention relative to the Protection of Civilian Persons in Times of War, it is to be understood that: *“Any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”* The convention is perceived as sufficient in protecting the people involved and in the absence of violence. However, it is difficult to define the POW status as there are several categories of the “victims of war” (Murphy & El Zeidy, 2009). The late Waldemar Solf (1987), an eminent scholar of the laws of war, noted that *“...the history of rules concerning the qualifications of combatant status and entitlement to be a prisoner of war has been a controversial subject at all law-making conferences, and has always resulted in compromise”* (p. 269).

Before capturing combatants who have surrendered in an armed conflict, each party needs to understand the definition of POWs, which according to Article 4 (1) of the Third Geneva Convention of 1949, are *“members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces”* (Del Mar, 2010, p. 110). On the other hand, the IHL states that a combatant is someone fighting on behalf of a state.

This definition excludes fighters who are involved in international armed conflicts, but who do not fight on behalf of a state. In this sense, only a few categories of captured combatants are certified to be recognised as POWs and granted the privileges accorded to POWs. In addition, today’s modern world has a more complex classification of conflicts, and this in turn has increased the overlapping classification of POWs. Although studies discussing the issues related to POWs

are still limited, it has long been a major concern in all regions with ongoing conflicts. A descriptive-analytical approach is used in the current study to examine the Third and Fourth Geneva Conventions and their protocols on POWs, as well as to define the eligibility of a POW status under these treaties.

This article consists of three sections. The first section distinguishes the rules governing the IHL in the treatment of POWs and civilian detainees. The second section provides an in-depth discussion of the general categorization of prisoners in line with the IHL, including who is and who is not entitled to the status of being a POW. The third section examines the international legal mechanisms to safeguard human rights at the local, national and international levels which include the International Committee of the Red Cross, United Nations, and International Criminal Court, among others.

PRISONERS OF WAR AND DETAINEES

A POW status is only relevant during international armed conflicts. Prisoners of war are often the members of the military forces of one of the conflicting parties who have fallen under the adversary's control. Other types of individuals who are eligible to the status and rights of a POW are defined in the Third Geneva Convention of 1949 (International Committee of the Red Cross, [ICRC], 2010).

POWs cannot be prosecuted or convicted for directly engaging in warfare. Their detention does not serve as a retribution, but rather as a deterrence to any future combat involvement. As soon as hostilities ceased, POWs must be freed and returned to their home countries. According to the UN, the detaining state is allowed to prosecute them for any potential war crime, but not for the act of violence permitted under the IHL. POWs must be handled humanely at all times and protected against any assault, intimidation, insult and public criticism. The IHL has established minimum detention conditions such as the provision of shelter, food, and clothes, and the assurance of cleanliness and medical treatment (Fourth Geneva Convention, 1949, Art. 42).

The guide lines regulating the treatment of civilian internees and the conditions of their detention under the IHL are substantially similar to those on treating the prisoners of war (Fourth Geneva Convention, 1949, Art. 42). Article 3 of the Third Geneva Convention (1949)

states that individuals imprisoned for reasons of being involved in armed conflict in a war, including non-international armed conflicts, shall be treated humanely in all situations. Accordingly, POWs are well protected against charges of murder, torture and other harsh, humiliating or degrading treatment, among other things. In addition, the applicable domestic laws regarding participants in hostilities who are imprisoned due to their conduct have made it clear that the POWs are not exempted from criminal prosecution, while the civilians interned during international armed conflicts are entitled to adequate protection under Art. 75 (3), (5) and (6) of Additional Protocol I (1977). However, if a party to a war determines that detaining people at a home or that internment is essential for security reasons, it may do so. Consequently, imprisonment is considered a preventative strategy rather than a kind of punitive action. This implies that individuals who have been imprisoned must be released as soon as the conditions leading to their incarceration are no longer in effect.

GENERAL RECOGNITION OF PRISONERS

The most important and unfortunate consequences of war are destruction, murder and imprisonment. Imprisonment is one of the most complex consequences faced by states during wartime because a large number of civilians fall into hostilities and the system of prisoners in modern IHL is linked to the situation of prisoners at the time of their arrest by the hostile state (Al-Zamali, 1999).

During World War II, certain groups of detainees were kept in a special interrogation camp before being transferred to a regular POW camp (ICRC, 2021, Art. 17). They were subjected to duress and coercion in order to get information from them. Such activities violated the language and spirit of Article 5 of the 1929 Convention Relative to The Treatment of Prisoners of War. Certain types of forceful questioning, however, slipped through the restricted wording of the 1929 Convention. In order to address this, the authors of the Third Geneva Convention of 1949 included a comprehensive prohibition on the use coercion to gain information.

Individuals Entitled to a Prisoner of War Status

A POW is described as an individual directly linked to a war, fights in the battlefield and is a combatant; the fighter whom the prescribed

protection afforded a POW status applies. In 1907, the International Court of Justice in The Hague had specified the categories of combatants and individuals who are eligible for POW protection, but the advent of World War II made it clear that the categorization did not work (Solf, 1986).

For example, during World War II, the vast majority of members of organised resistance groups, such as the French Marquis operating in the Axis-occupied states, were severely punished as unlawful combatants and denied the status of POWs, notwithstanding their efforts to be treated as one. In response to this situation, according to Goldman (1998), the participants of the Geneva Diplomatic Conference 1949 had drafted four Geneva conventions which were then reinforced with some modifications following the criteria of The Hague Regulation on the matter of irregular combatants as stated in Article 4 (A) (2) of the Third Geneva Convention (1949).

Organised Armed Forces

The third Geneva Convention includes individuals of the regular armed forces as members of the armed forces of a party to a war, as well as the militias and volunteer units that are part of the forces. In other word, it is a group of people who are a part of the state's territory, naval and air military units. Other professionals serving on a permanent military basis are entitled to direct participation in warfare (Additional Protocol I, 1977, Art. 43; ICRC, 1987). According to certain early jurists, members of the armed forces who committed a war crime or did not follow the laws and traditions of war were not entitled to the status of POWs when there were captured (Phillipson, 1915). Some war crime courts supported this point of view, and this position was reiterated during the Geneva Diplomatic Conference 1949 on the Prevention of Genocide. However, North Vietnam did not regard the captured fliers of Americans as POWs for two reasons, namely (i) the refusal of the Hanoi regime to recognise the state of war and (ii) the war crime was an attribution to the captured American flyers (The Swiss Federal Council, 1949). Moreover, denying the status of POWs to the members of the armed forces accused of war crime violates the Third Geneva Convention of 1949. A POW is defined in Article 4 (1) of the Third Geneva Convention (1949) as "*members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed*

forces.” As a result, only voluntary forces that are not members of the armed forces, sympathisers and resistance groups can be denied the right to be detained as POWs if they have committed a war crime.

The primary purpose of keeping prisoners of war in detention is to prevent them from joining their colleagues in arms. Releasing and repatriating those who are still capable of serving before the conflict has ended may empower the adversary through an increased in their numbers and may also lengthen the duration of the war. Therefore, the means used by the armed forces must not exceed this objective and violate humanitarian standards (Reiter & Stam, 2002). For example, in the past, detainees in Abu Ghraib were abused (Taguba, 2004) and mistreated by their American captors during the Iraq War. An official inquiry was launched once information about these violations became public (Marie Amann, 2005). Six soldiers were charged following a simultaneous criminal investigation (Graham & Von Drehle, 2004). Additionally, the US Congress convened a series of hearings (Marie Amann, 2005), and following these incidents, the US Congress established the Detainee Treatment Act which categorically states that it “*forbids harsh, inhuman or humiliating treatment of prisoners by all US troops wherever in the globe*” (Murphy & El Zeidy, 2009, p. 624). The Act is aimed at bridging the gap in the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which does not deal with such criminality.

Militia Members, Volunteer Units and Members of Organized Resistance

These groups refer to armed members of forces who carry weapons publicly but do not follow the army of a state, including those who volunteer to fight in resistance parties whether they work outside or inside the country; even if the country or territory is under occupation by another state (Hingorani, 1980). Militias may be connected with the army of a state but is not always affiliated with them. The international law leaves the issue to be resolved by the state law, which is the primary reference that defines the size, composition and organisational structure of the armed forces (Preux, 1960).

These groups also work with the regular army to incapacitate the enemies and weaken their capabilities, cutting off logistics services by destroying their stores and eliminating personnel and other

military targets. States have tried to deny these groups the status of combatant and POW when they fall into enemy hands, and to treat them as criminals and prosecute them for crimes like sabotage and assassination. Fortunately, the international communities have looked into the plight of these groups with the establishment of the Brussels Conference 1874, The Hague Conference 1899 and The Hague Conventions 1907 (Yoroms, 2017).

Article 1 of the Convention (IV) respecting the Laws and Customs of War on Land (1907) states that “...*the laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: 1. To be commanded by a person responsible for his subordinates; 2. To have a fixed distinctive emblem recognisable at a distance; 3. To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war.*”

Must Be Led by Someone Responsible for His or Her Actions

Article 4 (2) (A) of the Third Geneva Convention (1949) stipulates “...*that of being commanded by a person responsible for his subordinates.*” The leader of the resistance group must be responsible for his or her team members, supervising and controlling the work of resistance in order to uphold the respect for international laws. On the other hand, a true leader means someone who can be held accountable by others and bear the excesses of resistance members while carrying out their activities (Additional Protocol I, Art. 43 (1)).

They Must Carry Weapons Publicly

In accordance with Article 44 (3) of Additional Protocol I (1977), “...*combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognising, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.*”

Part of jurisprudence considers this condition a systematic method of warfare which seeks to denote the actual combatant. It is aimed at protecting the civilians cum potential targets of the enemy, due to the attackers hiding their weapons and responding discreetly to both the resistance forces and the regular army. For this reason, whoever hide their weapons or carry invisible combats are excluded from the legal status of a combatant or POW (Goldman, 1998).

They Must Have a Fixed Distinctive Badge Recognisable at a Distance

Members of the organised resistance must wear uniforms in order to distinguish them from other civilians or at least distinguish themselves by using any clear and specific signs. Resistance members wearing plain clothes without any distinguishable images are not eligible to be considered as “soldiers” in these organisations and lose their rights to enjoy the provisions of the convention (ICRC, 1969). However, this requirement was criticised by the jurists, hence under Article 44 (3) of the Protocol I (1977), this requirement was ruled out. To date, only the requirement “carry weapons publicly during the engagement or in the preparation of the attack” must be followed.

They Must Conduct Operations Under the Law and Customs of War

This requirement is about the need for members of the resistance to abide by the rules of war and standards of morality. It is about being humanitarian even though being in armed conflicts, and being concerned, especially about the protection of the sick, wounded, enemy soldiers and respect for a POW. The protection and humane treatment of POWs are the most important rules that the parties in armed conflicts must adhere to, and jurisprudence stipulates that those who do not abide by the customs and laws of war have no right to claim the privileges granted under those laws and customs (Additional Protocol I, 1977, Art. 44 (3)).

Rosas (1976) stated that the condition of adherence to the rules and laws of war and fighting on behalf of a legitimate authority and seeking to expel the occupier is enough. Nevertheless, the condition of carrying weapons publicly and creating a distinctive sign is illogical because the fighters are keen to disappear, and in all cases, resistance fighters are not considered war criminals. It is also illogical for international

legislators to impose restrictions on the individuals aggrieved, who only wanted to exercise their natural right to defend themselves and limit their freedom in favour of the aggressors violating international conventions. Therefore, this opinion has considered the conditions to hinder the individuals aggrieved and to prevent them from exercising their right to defend themselves.

There is also criticism of these conditions that restrict the right to defend the homeland, especially the insignia that distinguish them from the rest of the population and consider this condition as unnecessary in light of the considerable development in the means of combat, where wars become remotely managed by aircraft, and the regular armies wear camouflage uniforms so as not to be easy targets. The guerrillas also depend on stealth and surprise in their operations so that they can overcome the balance of power between them and the enemy (Aldrich, 1982). In order to overcome the severity of the four conditions, the first additional protocol in 1977 developed a comprehensive definition of the concept of armed forces involving resistance fighters, thereby alleviating the severity of the four traditional conditions, or not applying it literally. Besides, political and military developments and experiences have shown that it is extremely difficult for the resistance to comply with these conditions in the face of hostile forces superior to them in terms of equipment and other resources. Strict adherence to these conditions proved to be able to eliminate any military resistance in the face of hostile occupation forces (Draper, 1949).

Some states have voiced their worry that this measure may harm the civilian population. For example, the United Kingdom has warned that any failure to distinguish between combatants and civilians will put the latter at risk, which is unacceptable unless a satisfactory interpretation is given to certain provisions (Federal Political Department, 1978).

Furthermore, many states have attempted to define the meaning of this exemption and explicitly specify its limitations in order to arrive at a reasonable interpretation. These restrictions are divided into three categories. First, several states pointed out that the exemption is only applicable in cases when armed resistance activities are organised, for instance in occupied areas or national liberation battles. Second, several states are of the view that the phrase “deployment” refers to any move towards a location from where an assault is conducted. Third, Belgium, Australia and New Zealand agreed that the word

“visible” includes both being seen via technological means and being visible with the human eye (Henckaerts & Doswald-Beck, 2005).

Armed Forces of Unrecognised States

Article 4, Paragraph 3 of the Third Geneva Convention (1949) stipulated that “...among the categories treated as POWs the regular armed forces of a party not affiliated with Detaining Power”. The term “members of the regular armed forces” has the same criteria applicable to a POW in terms of wearing military uniforms, carrying identification cards, among others. The Detaining Power does not recognise it as a legitimate authority, which means that it is: (i) An authority controlling part of the territory involved in the conflict; (ii) A government whose existence and roles ends; and (iii) Some members of its armed forces continue to fight just like what the Polish troops did during World War II. It also means the “government in exile” which moves its capital city from one country to another. These governments are mostly formed in exile and send regular armed forces to liberate their countries such as the Kuwaiti government, who moved to the Saudi City of Taif after Iraq invaded Kuwait in 1990 (Third Geneva Convention, 1949, Art. 38).

Individuals Accompanying the Armed Forces Without Being Part of Them

Article 4 of the Third Geneva Convention (1949) regards this categorization as a group of individuals considered as POWs despite the peaceful nature of their work at the beginning of the fighting, and who are the escorts to the armed forces rather than being members of the armed forces themselves. This includes civilians on board warplanes, war reporters and other individuals working in the field, and they do not participate directly in hostilities. Therefore, military operations should not be directed against them or they be confronted if they remain committed to their duties (Henckaerts & Doswald-Beck, 2005).

Crew Members of Commercial Vessels and Civil Aircraft Crews of a Party to a Dispute Who Do Not Benefit from Better Treatment Under Any Other Provisions of International Law

The term refers to people who do the necessary maintenance on private ships and planes owned by individuals, companies or government and

these means of transport were being utilised for civilian purposes. Usually, ships and aircraft are not attacked or directed into combat missions, but when converted so as to be able to contribute to the war effort or participate in armed conflict, their crews are considered combatants and may be taken as POWs. However, if they do so in hiding and under false pretences, they are regarded as perpetrators of a war crime and have no right to be treated as POWs (Additional Protocol II, 1977, Art. 13-14).

Article 4 of the Third Geneva Convention (1949) defines the legal status of crew members of commercial ships and civil aviation crews as those who do not get better treatment than the Third Geneva Convention under any other provisions of the international law. Thus, customary international law differentiates between a military, public and private aircraft. If members of the crew of the warplanes fall into enemy hands, they are to be treated as POWs.

Residents of the Non-occupied Territories Who Voluntarily Take up Weapons to Repel Any Aggression Without Having the Time to Form Regular Armed Units

Wars are not confined to regular fighters. There is another group that frequently joins in hostilities when their country is attacked or occupied. This group is known as the popular resistance and they must meet the following criteria: (i) Possess responsible leadership; (ii) Carry a special insignia that would distinguish them, and respect the rules and traditions of war. Article 4, Paragraph 3 of the Third Geneva Convention (1949) on POWs coined the term “popular resistance” and ever since then the term has been in existence. The Third Geneva Convention includes these armed resistance members and give them the status of POWs if they were captured. In order to enjoy the protection outlined by the conventions, they must take up arms publicly, which make them distinguishable from other civilians. If the resistance hides their weapons, they are denied access to this agreement and are not considered POWs when they are in enemy hands. Individuals fighting against the occupying forces must adhere to the laws and traditions of war, as well as treat wounded and sick soldiers and enemy prisoners with dignity; they will be penalised for acts constituting a war crime if these requirements are not observed (Hingorani, 1980).

Individuals Not Entitled to the Prisoner of War Status

Deserters and Traitors

Deserters and traitors in the enemy military forces are not regarded as POWs and can be prosecuted under the Detaining Power's domestic law. However, difficulties occur when the word "traitor" is meant to be interpreted as incompatible with their original state's ideology, regardless whether their original state is participating or not participating in the fight. For example, people from East European countries who fought the French army during the French-Indochinese conflict in 1950 were not considered POWs by the Ho Chi Minh government. Instead, these socialist expatriates were seen as traitors to their home countries' ideology which was promoted by the Indochinese dictatorship. As a consequence, the POW status was denied to them (Hingorani, 1980).

In the event when the Geneva Conventions do not protect POWs, they will be covered under the Civilian Conventions. In other words, the conventions are restrictive with the exception of a small number of individuals who are stripped of all legal protections due to their unlawful acts. Some authors think that individuals like these should be prosecuted as war criminals while others disagree. Alternatively, others believe that such individuals are "unprivileged belligerents" which means they do not get the legal benefits they would have had if they had been POWs (Elman, 1969). It is important to emphasise that there is no space to broaden the term "traitor"; it should be limited to maintain its original intent and context. Any expansion of the concept will be unilateral and in violation of legal principles. For instance, expats from other countries are not traitors, and as a result, whether they are military personnel or not, they must be handled as POWs.

Mercenaries

According to the Geneva Conventions of 1949, mercenaries are entitled to a POW status if "...they are the groups of the "armed forces of a Party to the conflict" or of "militia or volunteer corps constituting part of such armed forces," or if they meet the qualifications in Article 4, subparagraph A (2). If these conditions are not reached, mercenaries engaging in international armed conflicts are considered the same as any other civilians who have picked up arms—that is, as

unprivileged belligerents—and are liable to punishment and trial by the detaining power” (Major, 1992, p. 143).

Delegates at the Diplomatic Conference convened in Geneva from 1974-1977 reaffirmed the IHL applicable in armed conflicts by realising the extensive data, thus proving the rules and practices of mercenaries as illegal, and that mercenaries are perceived as unlawful combatants. If captured, mercenaries are not considered POWs, instead they are liable to the criminal law of the state where they were captured. It is also obvious from the conference’s preparatory works that a mercenary, like any other individual, must be treated at the minimal level as required by Article 75 of the First Protocol Additional to the Geneva Conventions of 1949 (Boumedra, 1981).

The conditions under which an individual participating in a conflict with a state other than his or her own is considered a mercenary as stated in Article 2 of Additional Protocol I (1977) as follows: “(A) *Is specially recruited locally or abroad to fight in an armed conflict. B) does take a direct part in the hostilities. (C) Is motivated to take part in the hostilities essentially by the desire for private gain and is promised, by or on behalf of a Party to the conflict, material compensation substantially over that promised or paid to combatants of similar ranks and functions in the armed forces of that Party. (D) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict. (E) Is not a member of the armed forces of a Party to the conflict. (F) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces”*. Mercenaries have no protection in non-international armed conflicts other than that which has been guaranteed by Article 3 of the Geneva Convention. During the Angolan trial of thirteen mercenaries, the subject of what status should be granted to mercenaries was also raised. On this topic, the Angolan court said the defendants cannot claim the POW status as they are irregular members of an army. Furthermore, a mercenary is considered as a common criminal under the United Nations resolutions (Major, 1992, p. 143).

INTERNATIONAL MECHANISMS FOR PROTECTING THE RIGHTS OF POWs

The concept of legal aid for prisoners has gained new acceptance with the heightened sense of international accountability in the face

of violations against prisoners through the mechanisms provided by international human rights conventions. These mechanisms assist the international complaints committees and provide the various organs of the UN with important and detailed reports on the violation of international conventions; whether as an occupying power or as members of the UN. Even if some countries act against international law and show a lack of accountability, these steps contribute to raising the issues related to prisoners and detainees at the international level, thus putting these countries in a position to defend their pseudo-democratic and prepare for accountability in the future (Al-Dameer, 2012).

There are international mechanisms to safeguard human rights such as the ICRC and United Nations, these organizations enforce their provisions at the local and international levels (International Federation – ICRC, 1994). The international community's continuation of honouring binding international human rights agreements is the first step in protecting them. However, this is still deemed insufficient because the role of international conventions is limited to recognising rights and there is still a need to discover other means to promote the protection of human rights. The provision of rights without a protection mechanism loses its content and weakens the chance to be enjoyed. On this basis, the international community had taken a significant step forward in protection when it established the legal, political and economic means and mechanisms to protect human rights (Reisman & Stevick, 1998).

In this regard, international institutions have put pressure on governments by publishing periodic reports that reveal violations committed by some countries and require them to follow the rules of the IHL and all international conventions related to prisoners which include, but not limited to the following: (i) Undergoing fair trial of POW; (ii) Preventing torture and murder; (iii) Prohibiting crimes like medical crime against war prisoners and the disclosure of information (Sandoz, 1988).

National Justice System

Article 80 of the Additional Protocol I (1977) states that all parties involved in any international armed conflicts must follow and ensure respect for the conventions that regulate wars. In addition, each party,

especially the military, must commit to doing everything possible to guarantee all individuals under their control follow the IHL norms (The Prosecutor v. Dusko Tadić, 1995, para. 128.). Military leaders are responsible for issuing orders and instructions on a more practical level to guarantee these principles are followed, and for monitoring their execution. In this regard, military leaders particularly, carry a large portion of the blame for the actions of their subordinate troops. (Allan Williamson, 2008).

Even during times of peace, the whole range of implementation methods permitted by the law must be fully used to ensure the IHL is applied in armed conflict circumstances. National efforts to put humanitarian law into effect result from the commitment made by countries that have signed humanitarian law treaties to respect and guarantee adherence to such agreements (Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea [Second Geneva Convention], 1949, Art. 1). Article 80 of Additional Protocol I (1977) defines the general responsibility to take “measures necessary for the execution,” which stipulates that “the High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.” Two types of the national standards that are essential in the context of the Geneva Conventions and their additional protocols are (i) the adoption of national legislation by the states to ensure treaty implementation and (ii) measures related to training and publishing. The international treaties that are not self-executing need the passage of a law enacted before they may be implemented, they require national legislations to be passed first. Whatever the general obligation to ensure the implementation of treaties through primary and secondary rules (Additional Protocol I, 1977, Art. 84; Second Geneva Convention, 1949, Art. 49; Third Geneva Convention, 1949, Art. 128), both the Fourth Geneva Conventions and Additional Protocol I need states to act on the necessary legal instruments in determining appropriate penal punitive measures for severe violations of the IHL (Additional Protocol I, 1977, Art. 19 & 83).

Furthermore, a widespread dissemination of legal information and training for individuals who are supposed to enforce the legislation are required for the law to enter into force, and in turn making it

possible to provide adequate protection for individuals impacted by armed conflict. Dissemination efforts should be stepped up during times of conflict, but they must also be carried out during peace times. As a principled obligation, states are to publish the texts of the treaties extensively throughout the world, both in peacetime and wartime, and to include their study in civil and military education programmes. If possible, steps must be taken to ensure that the armed forces and general public are aware of the content of those treaties (Second Geneva Convention, 1949, Art. 51; Third Geneva Convention, 1949, Art. 130; Additional Protocol I, 1977 Art. 11(4) (85)).

The International Criminal Court (ICC)

Following the events of September 11, the United Nations Security Council published Resolution No. 1368 and the General Assembly Resolution No. 56/1, both which emphasise the need for all countries to work together to eradicate terrorist actions. Thus, the instruments utilised to do this must be sturdy and effective. The International Criminal Court (ICC) was one such legal mechanism, established on July 1, 2002, following the formation of the Rome Statute for the sixty-fifth time on April 11, 2002.

The ICC jurisdiction is presently restricted to the most severe crimes, namely the crime of war and crime against humanity and genocide (Rome Statute of the International Criminal Court [Rome Statute], 2002, Art. 5). The 1994 Draft Statute for the International Criminal Court attempted to expand the Court's jurisdiction to include "treaty crimes" which are the acts criminalised under various treaty regimes like war crimes (United Nations, 1998).

Creating an efficient judicial system through which perpetrators of certain crimes may be held accountable and punished in line with an international criminal law is the main aim of the ICC. Given this fundamental mandate, it is essential to note that the Rome Statute does not recognise the ICC as the primary jurisdiction in certain crimes. Instead, domestic courts are responsible for investigating and punishing individuals who commit crimes that come within the ICC's jurisdiction. A vital component of this duty is the complementarity principle which indicates that the ICC has jurisdiction only when a country with primary competence is unable or unwilling to prosecute or investigate the matter at hand. (Rome Statute, 2002, Art. 17).

Complementarity has various effects. First, it alleviates concerns that the ICC will infringe on national sovereignty. The very existence of the ICC's prospective jurisdiction over such crimes may serve as an inducement for countries to include the crimes into their national legislation and, as a result, to be more vigilant in investigating any breaches of international laws. Moreover, in the case where domestic courts refuse to hear a case that falls under the ICC's jurisdiction, the ICC will be given the authority to ensure that significant crimes are not left unpunished and that perpetrators of terrible acts receive the necessary punishment approved by the international community (Goldstone & Simpson, 2003).

There are several clauses in the Geneva Conventions and Additional Protocol I that outline the types of violations that will be punished by the countries that have acceded to the conventions and protocols of the treaties. Other violations of the conventions and protocols must be handled via disciplinary, criminal and administrative procedures in which the parties involved are obliged to impose in order to punish those who commit them. The concept of a universal criminal justice system has the advantage of requiring parties to a dispute and other contractual parties to pursue or deport the perpetrator of any such violations, regardless of the nationality or location of the breach, if they violate the agreement. There has previously been no efficient court case or punishment for this type of crime as governments have largely disrupted the universal criminal jurisdiction system. However, international processes established by the UN Security Council, for example the criminal tribunals, and especially the role of the IC, in holding the former nation states of Rwanda and Yugoslavia accountable for their violations of international laws, have boosted national prosecutions (Pfanner, 2009).

The Court's activities are carefully planned and executed. The ICC may be referred a case by the Security Council or a state party to the Rome Statute. Conversely, the ICC's prosecutor may initiate an investigation (Rome Statute, 2002, Art. 13 (a)-(c)). The ICC is no longer dependent and reliant solely on the Security Council's request, trying to make it less susceptible to the Permanent Members' political will. The Security Council's sole option for interfering with the functioning of the Court is to request the ICC to postpone an investigation for twelve months, though that may be extended. Consequently, not only a Permanent Member will be unable to use their veto authority to prevent the case from proceeding (Rome Statute, 2002, Art. 16).

Given the United States' objection to the Court, the Security Council approved a resolution on July 12, 2002, directing the ICC to postpone any prosecution or inquiry involving non-state authorities or troops related to the UN's peacekeeping operations. This order was issued on July 1, 2002, under the requirements of Article 16 of the Rome Statute. Furthermore, the US used Article 98 of the Rome Statute which states that the Court shall discontinue the invitation of capitulation or assistance if doing so will compel the requesting state to violate its international obligations (Goldstone & Simpson, 2003). The last American opposition to the Criminal Court was in June 2020, when the ICC personnel and their immediate families were subjected to financial and travel sanctions after President Donald Trump declared a national emergency over the ICC's investigation of the US personnel or those of allies conducted without their consent (International Criminal Court Project, 2021).

International criminal laws and their implementation in international courts play an increasingly important role in interpreting the IHL and the implementation of individual criminal responsibility for war crimes, genocide and crime against humanity perpetrated during military conflicts. The purpose of the ICC is to complement national judicial systems throughout the world. When a state is truly reluctant or incapable to carry out the inquiry or prosecution, the ICC will open an investigation or launch a prosecution (International Criminal Court Project, 2021). On the other hand, perception poses a potentially more serious obstacle. The gap between the ever-expanding promises of legal protection provided by jurisprudence, doctrine and occasionally even states, as well as the systematic lack of respect for this legislation, as revealed by media and non-governmental organisation reports, diminishes the law's credibility and the need for it to be respected.

International Committee of the Red Cross

The ICRC offers support and security to military and citizen victims, including political detainees, civilian detainees, war-wounded and civilian populations in occupied or hostile territories. The Commission has also made contributions to the improvement of the condition of war victims and to the preparation of the Geneva Conventions, which have guaranteed the norms under which parties to a conflict must treat detainees in their custody during times of conflict. The Commission's purpose is to advance and implement the IHL while serving as an

impartial mediator between parties in conflict (Ma'an News Agency, 2012).

Since 1967, the ICRC has done the following: (i) Continue to visit prisoners in prisons and interrogation centres; (ii) Secretly submit observations and recommendations to the responsible authorities; (iii) Monitor the task of transporting the families of prisoners for visitation to a prison; (iv) Help exchange text and messages between prisoners and their families; (v) Inform the families of prisoners about where the prisoners are being held; (vi) Receive complaints from the families of the prisoners and follow up on these with the prison authorities. The Committee provides material assistance to the prisoners in prison, including medical equipment and food and cultural supplies for patients; provided the authority's approval is obtained (Ma'an News Agency, 2012). Many people have considered new and extra modes of implementation to combat the lack of regard for the IHL. Several regional expert seminars on this topic were arranged by the ICRC in 2003. However, the fundamental difficulty with all these solutions is that they are only recognised and implemented if governments are prepared to accept the rules and regulations of international laws, including effective third-party implementation in international society. As is too well known this has turned out to be not the case (ICRC, 2003).

The ICRC's assets include its independence, humanitarian activity, impartiality and ethical approach. Despite its independence from governments, the ICRC survives on a globe controlled by these very governments. Its authority over powerful governments is so restricted that it may not even try to put public pressure on them even if it should have done things differently from a legal and humanitarian standpoint (Dormann & Colassis, 2004). It is also no longer possible to be completely present in the thick of the combat in many other situations like in Eastern Congo, Iraq and Chechnya; therefore, the ICRC cannot immediately monitor the observance of the IHL where it is most abused.

United Nations Security Council

The UN Security Council calls on all states to observe the IHL and believes that compliance with its norms and principles will be a critical element in restoring peace, since the international community

needs a more effective global order. It demands that the Fourth Geneva Convention be applied in its entirety, on top of the release and repatriation of POWs, unhindered access to humanitarian assistance and free passage of humanitarian aid. In addition, in the pursuit of those responsible for violations, the commission of inquiry and dedicated criminal court, or the referral of any case to the ICC should have jurisdiction and be allowed to carry out their responsibilities, even if the country in question is not a signatory (Pfanner, 2009). Furthermore, the ICC may assist the UN's protection forces by helping to negotiate for humanitarian corridors and carrying out reparation programmes for armed attack victims and providing a mechanism for reporting the IHL violations. On encouraging systematic compliance with the law, the Secretary-General has argued that, "*...the Security Council has a crucial role to play in promoting systematic compliance with the law*" (UN Security Council, 2009, p.8). More specifically, the Security Council should take advantage of the opportunities available to condemn all infractions and inform and demand that the parties involved in an armed conflict must adhere to their obligations. This is especially important when there is a public threat to apply meaningful measures against any party leadership that has consistently defied Security Council demands and failed to respect civilian populations. Periodic reporting of human rights violations and the adoption by investigative committees are essential in order to investigate cases involving egregious breaches of international humanitarian and human rights laws. There is the need to identify and prosecute those liable nationally or refer the case to the ICC (Pfanner, 2009).

Indeed, the Security Council's practice reveals it is unequal in its treatment, as disputes involving a full member of the Security Council or its allied forces are handled differently than the conflicts involving other non-member countries. These discrepancies or "double standards", weaken the Council's legitimacy and do little to advance the IHL's central premise; that the law has to be implemented fairly at all times (Pfanner, 2009).

International Humanitarian Fact-Finding Commission

Article 90 (2)(C) of the Additional Protocol I (1977) was the first to make an effort to organise the investigative process by establishing an International Fact-Finding Commission (IHFFC). This Commission has the authority to "*enquire into any facts alleged to be a grave*

breach as defined in the Conventions and this Protocol or other serious violations of the Conventions and this Protocol” and to “facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol”. The aim was to ensure that the Commission’s actions aid in preventing diatribes and crime from escalating during a war. However, it is uncertain if it is able to do this in reality without an operational force on the ground and the required rapid-response capability.

In accordance with Article 90 (5) (a) of Additional Protocol I (1977), the Commission is needed to provide to the parties involved, a report on its particular facts, as well as any recommendations it deems appropriate. Paragraph (c) of the same article states that *“The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.”* The idea that its findings must be kept private is similar to the ICRC’s working method, but secrecy is not an acceptable way for an international commission to work.

The statute mentions that the IHFFC can only investigate if all parties involved agree to it (Additional Protocol I, 1977, Art. 90 (1) (b)). However, nothing prevents the third state from questioning if the Commission investigates a grave breach of humanitarian law perpetrated by one of the conflict parties; given the party in question has also acknowledged the Commission’s authority (Additional Protocol I, 1977, Art. 90 (2) (d)). This option upholds the responsibility of ensuring the law of armed conflict is followed.

Although it was established in 1991, the Commission has yet to be active. It is unlikely to be unless it is permitted to investigate on its own initiative, or at the proposal of just one party in a dispute, or as a decision by another body like the UN Security Council. The UN Security Council has established investigation commissions which are imposed on even the most reluctant nations and which are best positioned to meet the international community’s anticipations (Pfanner, 2009).

The Human Rights Council (HRC)

The Human Rights Council (HRC) was established in March 2006 through a resolution of the UN General Assembly. The primary

objective of the HRC is to address human rights violations and make recommendations for resolving them. The HRC has held several meetings on humanitarian laws and the most significant one was in September 2009 which discussed the following issues: (i) Human rights situation in the Occupied Palestinian Territory; (ii) Israeli aggression in the Gaza Strip; and (iii) Violations committed by Israel against civilian Palestinian women and children (Al-Mutairi, 2010).

While most of the members of the Council are politically motivated, the emphasis is on human rights, and the Council may serve as a deterrent and a vehicle for name-and-shame campaigns. Additionally, the universal periodic review (UPR) is one of the ideas pioneered by the Board of Directors of the Council. This approach provides an assessment of the human rights record in each of the 192 member countries of the United Nations. The UPR is specifically authorised by Resolution 5/1 to assess compliance with the IHL obligations, among other matters. This law has emerged in the review process on several occasions when the nation in question is involved in an armed conflict. It is also currently under consideration and has been referred to in other mechanisms like the Human Rights Council which serves as the Council's research centre and provides support and expertise on human rights issues. It has also been mentioned in special procedure mechanisms and revised complaints procedures which allow people and organisations to report violations of human rights to the attention of the Council (Pfanner, 2009).

Amnesty International

Amnesty International is the world's largest international human rights organisation. Its principles are defined in the Universal Declaration of Human Rights and other international conventions. Its initiatives intend to help people in need of assistance and the protection for their rights as guaranteed by the Universal Declaration of Human Rights. It prepares official reports and letters at the end of the year to be sent to all governments around the world to ensure that human rights are upheld and respected. The organisation also supports public demonstrations that raise issues related to protecting human rights (Bardarova et al., 2013).

Amnesty International's work with prisoners is focused on the following three ways: First, *"It seeks the release of men and women*

detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are prisoners of conscience.” Second, *“It advocates fair and prompt trials for all political prisoners and works on behalf of such people detained without charge and without trial.”* Third, *“It opposes the death penalty, torture or other cruelty, inhuman or degrading treatment or punishment of all prisoners without reservation”* (Mukerjee, 1988, p. 36). In addition, Amnesty International has long expressed concerns about Israel’s use of brutal and severe administrative detention tactics against Palestinian inmates. Nevertheless, Palestinians continue to be frequently held indefinitely on political or security grounds, without charges or trial, under the terms of renewable detention orders. Furthermore, it estimates that approximately 500 Palestinians have thus far been arrested purely for their nonviolent political actions and writing, in order to deter other Palestinians from becoming activists. Amnesty International has always stated that the administrative detention order imposed against these activists is a clear infringement of their right to free expression (Amnesty International, 2017, May 24).

Despite Amnesty International’s tireless efforts, it continues to rely on ineffective policies to exert pressure on abusive nations. Raees Noorbhai, for example, was the former Chairperson of the Amnesty International chapter at Wits University in South Africa. Noorbhai and his group consists of strong-willed student activists focusing particularly on Palestinian solidarity (Jackson, 2020). The chapter went beyond the organization’s stance in requesting governments to stop financially supporting Israel’s illegal settlement programme by criticising what its members viewed as “apartheid” in Israel, and calling for an economic boycott, divestment and punishments against Israel (Amnesty International, 2017, September). When Noorbhai was advised that the chapter could not take this popularly supported position, he resigned, accusing Amnesty’s International Secretariat of infringing upon the autonomy of democratic student chapters by trying to overturn progressive viewpoints (Jackson, 2020).

CONCLUSION

The status of a POW is only applicable in international military conflicts. The Third Geneva Convention 1949 related to a POW

states that the POW have the rights and benefits that differ from other ordinary prisoners. They are frequently members of one of the opposing parties' military forces. However, the Geneva Conventions and their protocols prevented some groups, such as traitors, deserters and mercenaries, from benefiting from the status of a POW due to their illegal actions during the war or conflict, and they are treated the same as any other civilians who have picked up arms and are subjected to trial and punishment by the Detaining Power. In practice, the armed forces are disciplined; they are led by responsible leaders, wear uniforms and are familiar with military procedures. Nevertheless, complications may arise and other fighting groups may emerge as a result of the circumstances. Granting the status of a POW is governed by two overarching principles, first the fighters must be distinguished from civilians and the rules and conventions of war must be respected if the world is to be protected from falling into anarchy.

The absence of international accountability for the violations of POW rights encourages the parties in conflict to continue these violations. Therefore, the concept of legal aid for prisoners is gaining ground through enactments which ensure international accountability in the face of violations against prisoners. This is achieved through the mechanisms provided by international human rights conventions, as well as the avenues to provide important and detailed reports on the violations of international conventions to the various organs of the UN. Next, the adoption of national laws consistent with international conventions by countries is an important step in ensuring compliance with international treaties. This is in addition to acquiring more knowledge through publications or other activities about the IHL among those responsible for the enforcement of legislation during armed conflicts and peacetimes. This impact should not be underestimated as it allows for the establishment of limitations on the one hand, and on the other hand, it works as an indirect constraint on the spiral of violence to which a fighter is exposed. The Geneva Conventions and their protocols comprise a defined number of breaches and war crimes which the contracting parties have to deal with through administrative, disciplinary and criminal measures in order to punish the perpetrators. Although belligerents are reminded of their unilateral obligations to uphold the IHL and to execute that responsibility independently of the enemy's actions, the truth is individual and collective behaviour in times of conflict is typically controlled by international law.

In short, the efforts to spread the IHL should be framed as a legal and political problem rather than an ethical one, with an emphasis on standards rather than basic principles. Respect for the IHL can only be enhanced via the implementation of strong directives governing the conduct to be adopted by those holding guns, as well as the application of appropriate sanctions. Finally, in this case, it is clear that the international community must seriously address the issue of applying international laws to all countries equally.

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