

B.A.LL.B. VI SEMESTER
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INTRODUCTION

Law of war is the part of international law which deals with the commencement, demeanor, and termination of warfare. Its aim is to limit the suffering caused to combatants and, more particularly, to those who may be described as the victims of war—that is noncombatant civilians and those no longer able to take part in hostilities. Thus, the wounded, the sick, the shipwrecked, and prisoners of war also require protection by law. One of the primary cause of the evolution of mankind is considered to be war. There have usually been normal practices in warfare, however only within the last 150 years have States made worldwide rules to restrict the consequences of the armed battle for humanitarian reasons. There was no proper rules and regulation for the conduct of warfare.

The Geneva Conventions and the **Hague Conventions** are the principal examples. Generally referred to as “**Jus in Bello**” **International humanitarian law (IHL)**, it's also called the law of battle or the regulation of armed struggle.

The International humanitarian law governs the relationship between the States. The IHL is a law making organ it not only imposes an obligation to follow those laws. Even the parties have to show reverend against it. Revolution is the origin of evolution. Until and unless a change occurs nobody can achieve best out of it. The same condition is with the International Humanitarian Law whenever the States have some new technology, weapons or practice of war. Its limitation is also imposed by the IHL so that it has a persuasive value on the parties.

Definition Of War

The literal meaning of war can be understood and can be perceived from two perspectives **Early Sources & Modern Sources.**

Early Sources

From the perspective of Indian subcontinent mythology the earliest definition or discussion of war was done under the “**Mahabharata**”

“One should not attack chariots with cavalry; chariot warriors should attack chariots. One should not assail someone in distress, neither to scare him nor to defeat him. War should be waged for the sake of conquest; one should not be enraged toward an enemy who is not trying to kill him.”

Torah

The first part of Christian Bibles, based primarily upon the Hebrew Bible, a collection of ancient religious writings by the Israelites believed by most Christians and religious Jews to be the sacred Word of God. **Deuteronomy** the fifth book of Torah.

“When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees by wielding an axe against them. You may eat from them, but you shall not cut them down. Are the trees in the field human, that they should be besieged by you? 20 Only the trees that you know are not trees for food you may destroy and cut down, that you may build siegeworks against the city that makes war with you until it falls.”

It even describes that the “offer of peace” should also be given.

In the early 7th century, the first Caliph, Abu Bakr, whilst instructing his Muslim army, laid down the following rules concerning warfare:

Stop, O people, that I may give you ten rules for your guidance in the battlefield.

Do not commit treachery or deviate from the right path.

You must not mutilate dead bodies. Neither kills a child, nor a woman, nor an aged man.

Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy’s flock, save for your food.

You are likely to pass by people who have devoted their lives to monastic services; leave them alone.

Modern Sources

With the evolving in the practice of the warfare, there has been considerable change in the meaning and the perspective towards the war.

First modern international lawyer, “**Hugo Grotius**” in his classic treatise “De Jure belly ac Pacis”

Definition of war by **Prof. Oppenheim** in his “**British Manual Of Military Law, Part III**”

“A contention between two or more States, through their armed forces, for the purposes of overpowering each other and imposing such conditions of peace as the victor pleases.”

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.

However, this definition was not questioned or criticized till 18th Century. In one of the leading case “**Bas vs Tingy**” [1] arguments for recognition of a state of partial war.

In this case it was particularly discussed the position of France whether the word ‘enemy’ cannot be applied to the French; because the section in which it is used, is confined to such a state of war, as would authorize a re-capture of property belonging to a nation in amity with the United States, and such a state of war, it is said, does not exist between America and France. The former law relates to re-captures from the French, and the latter law relates to re-captures from the enemy.

Held-If congress had chosen to declare a general war, France would have been a general enemy; having chosen to wage a partial war, France was, at the time of the capture, only a partial enemy; but still, she was an enemy.

Professor Hanson says:

Ultimately, war is a question of economics, in which the options of all states are confined by their ability to produce goods and services; thus, every armed force calibrates the greatest military power for the least cost.

Declaration of war

It can be done formally in three different forms which are as follows

- **Declaration** -through statement a unilateral declaration is sufficient, despite the fact that the U.N. constitution (German language model) and the Kellogg Briand percent (German language model) may additionally restrict this energy)
- **Proclamation** -by using a proclamation by way of the country which considers itself to be in a state of struggle (that is distinct from an announcement...a proclamation states that the struggle is already in lifestyles)
- **Hostility** -by using an act of hostility directed by means of one nation towards some other which the latter chooses to regard as an assertion of warfare.

However, depth discussion has been done for the declaration of warfare and how a war begins in one the leading case

“Campbell vs Clinton” [2] was a case holding that members of Congress could not sue President Bill Clinton for alleged violations of the War Powers Resolution in his handling of the war in Yugoslavia. The conflict was between NATO and Yugoslavia continued for 79 days, ending on June 10 with Yugoslavia’s agreement to withdraw its forces from Kosovo and allow deployment of a NATO-led peacekeeping force. Throughout this period Pentagon, State Department, and NATO spokesmen informed the public on a frequent basis of developments in the fighting.

The appellate court affirmed. It held appellants had ample legislative authority it could exercise to stop appellant’s war-making, and thus, appellants lacked the power to challenge such executive action in court.

Legal Regulation on War

The keystone of IHL is the Geneva Conventions. For the first time, it was signed by 16 countries in 1864. For centuries before then, regulations had implemented to the behavior of struggle, however, they had been based totally on custom and subculture, had been a neighborhood or just transient. 1864 changed all that and began a method of constructing a body of regulation this is still evolving today.

The initiative for the first conference got here from five residents of Geneva. One in all of them, Henry Dunant, had, with the aid of risk, witnessed the struggle of Solferino in 1859. He changed into appalled by using the shortage of help for the wounded and prepared nearby citizens to return to their useful resource. Out of this act got here one of the key factors of the first conference – the humane remedy of these not a part of the warfare, regardless of which aspect they have been on.

Geneva Convention

This treaty was for the ameliorative step towards improving the condition of wounded soldiers in the army field.

It had originally 10 Article which has been increased to 64 in number due to regular revision and modification to match the current position of warfare. Some of the significant Articles in the above-mentioned treaty are as follows:-

- **Article 12** mandates that wounded and sick soldiers who are out of the battle should be humanely treated, and in particular should not be killed, injured, tortured, or subjected to biological experimentation. This article is the keystone of the treaty.
- **Article 15** mandates that wounded and sick soldiers should be collected, cared for, and protected, though they may also become prisoners of war.
- **Article 16** mandates that parties to the conflict should record the identity of the dead and wounded, and transmit this information to the opposing party.
- **Article 9** allows the International Red Cross “or any other impartial humanitarian organization” to provide protection and relief of wounded and sick soldiers, as well as medical and religious personnel.

Hague Convention

There was formally two Hague convention in the year 1899 and 1907. The Hague Conventions were among the first formal statements of the laws of war and war crimes in the body of secular international law.

3 important section in the 1899 Hague convention

I – Pacific Settlement of International Disputes –This convention included the creation of the Permanent Court of Arbitration, which exists to this day.

II – Laws and Customs of War on Land – contains the laws to be used in all wars on land between signatories. It specifies the treatment of prisoners of war, includes the provisions of the Geneva Convention of 1864.

III – Adaptation to Maritime Warfare of Principles of Geneva Convention of 1864 – This convention provides for the protection of marked hospital ships and requires them to treat the wounded and shipwrecked sailors of all belligerent parties. It too was ratified by all major powers.

The Second Hague Conference, in 1907, caused few major advancements from the 1899 Convention.

It was called at the suggestion of U.S. President Theodore Roosevelt in 1904, but it was deferred because of the war between Russia and Japan. The Second Peace Conference was held from 15 June to 18 October 1907.

There were many other treatises but basically, these two were significant on the regulation of war

War and the United Nation

A good way to pressure countries to remedy problems without a struggle, framers of the United Nations charter tried to commit member nations to the use of conflict best under restrained occasions, mainly for shielding purposes.

The UN has become a combatant itself after North Korea invaded South Korea on 25 June 1950. The UN Security Council condemned the North Korean action by means of a 9—0 resolution referred to as upon its member international locations to return to the resource of South Korea. America and 15 different countries formed a “UN pressure” to pursue this action.

The United countries have issued Security Council Resolutions that declared some wars to be felony movements below worldwide regulation, most substantially resolution 678, authorizing the 1991 Gulf conflict which becomes prompted through Iraq’s invasion of Kuwait. UN Resolutions authorize the use of “pressure” or “all necessary manner”.

Effects of the outbreak of war

War is the ultimate game changer in a point of epoch it will have a devastating effect on the legal, economic and environmental effect.

Case laws relating to the legal effect of war.

Navios Corporation vs. The Ulysses II [3]

In this situation, there was a contractual liability under a charter depended on the interpretation of a contractual clause providing that “If the struggle is declared against any present NATO nations. Proprietors or Charterers have the proper to cancel this constitution party upon of entirety of that precise voyage vessel is engaged upon.” Following the seizure by means of outstanding Britain and France of the Suez Canal from Egypt in 1956, legal responsibility under the constitution depended upon the dedication of whether “conflict” had been “declared” via Egypt.

In Re Al Fin 1970 Chancery [4]

The U.K. Patents Act supplied for extension of a patent if the court turned into glad the patentee had suffered damages by using purpose of hostilities among Her Majesty and any overseas country. Under the facts offered, the question becomes whether the Korean battle between 1950 and 1954 rose to the necessary stage. Observe the overseas office’s careful barriers and the holding of the court.

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