

IHL - Reconciliation Of Humanitarian Considerations And Legitimate Military Actions

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ABSTRACT

International humanitarian law aims to reconcile humanitarian considerations and necessary military action. It subordinates war to the rule of law by limiting its destructive effect. This paper focuses to determine the objectives of IHL whether it is permissive for belligerent actions by state or proclaims direct prohibition for belligerent actions. IHL offers protection to those affected by an armed conflict and regulates the means and methods of war. The sources of international humanitarian law are the same as those of international law in general, which include international conventions, international customs, general principles of law and judicial decisions, and the writings of the highly qualified publicists as supplementary sources. International humanitarian law distinguishes between an international armed conflict and the non-international one; a much more limited range of rules apply to the latter. It clarifies the situations of NIAC and IAC by applying Afghanistan US conflict to the subject. Among the rules and principles of international humanitarian law that seek to protect civilians, the principle of distinction requires the participants to always distinguish between combatants and military objectives on the one hand and civilians and civilian objects on the other, while targeting only the former. Civilians lose this protection if they participate directly in hostilities. Likewise, necessity and proportionality are established principles that require a belligerent to use the amount and kind of force unavoidably necessary to defeat the enemy. The principle of humane treatment requires that civilians be treated humanely at all times. The principle of non-discrimination protects prisoners of war and civilians from being discriminated against based on race, nationality, religious beliefs, or political beliefs. Women and children are to receive preferential treatment, respect, and protection. Women must be protected against rape, assault and Children under the age of 18 must not be allowed to take part in any such conflict.

Keywords: International humanitarian law (IHL) , Geneva Conventions, Additional Protocols to Geneva Conventions, Marten's Clause, International Armed Conflict (IAC), Non- International Armed Conflict (NIAC), United States of America (USA), Customary International Law, International Law Commission (ILC), International Committee of the Red Cross (ICRC)

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Introduction:

International human rights law was drafted to regulate the relationship of the state during peacetime. There should be certain rules on the conduct of hostilities, on the use of weapons, on targeting combatants, on the method of warfare which suppose regulation by a specialized branch of law. The humanitarian need was a decisive argument in 1949 that resulted in developing the Geneva Convention 1949 which is a fundamental statute encompassing the principles of international humanitarian law.

The international humanitarian law is based on two legal maxims 'jus ad Bellum, which lays down the conditions that when the war should be legalized and on the other hand there is 'jus ad Bello which means how the war should be conducted¹.

International Humanitarian Law:

A System Attributive of Powers or a System Prohibitive of Action:

The nature of international humanitarian law is to be determined by discussion below that is whether it has been drafted to confer rights (permission to belligerent actions) or obligations (prohibition to belligerent actions) to states that are in a war zone. Article 13 of the Geneva Convention confers rights to prisoners of war in their physical integrity to be protected and respected by the detaining states.²

The argument presented in defense of International humanitarian law's primitive nature is that states that have acquired sovereignty possess every right to protect their sovereignty and take any action or measure that it deems fit in defense of its sovereignty and the integrity of its people. Their power to act is inherent in their sovereignty. International humanitarian law limits belligerent actions. The two sets of rules pull in opposite directions and adjust one to the sphere of the other. International humanitarian law emphasizes more on obligations (duties) of states during war. Thus there is no right without concomitant duties. An Italian scholar G. Balladore Pallorie stated in his book on the laws of war that there are no such norms that could determine the validity of belligerent actions³.

The adverse party is not liable to suffer the belligerent action. Hence, it automatically takes away the right of action of a state that could make the other one suffer. He further argued in opposition to freedom of action by the legal residual rule that "anything that has not been prohibited is permitted, hence, sovereignty doesn't confer rights to belligerent actions but mutual unilateral power of faculties. It limits the factual freedom of the state. It turns out that anything inhumane and incompatible with a public conscience is not allowed simply because there is no specific prohibitory rule.

¹ Murphy, S. D. (2013). JUS AD BELLUM, VALUES, AND THE CONTEMPORARY STRUCTURE OF INTERNATIONAL LAW. *The Journal of Religious Ethics*, 41(1), 20–26.
<http://www.jstor.org/stable/23354942>

² Article 13, humane treatment of prisoners, Geneva Convention relative to the treatment of prisoners of war of 12 August 1949, p 87.

³ G. balladore pallerie la guerra, padova, 1935, pp, 163-4.

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General Principles of IHL:

The general principles in international humanitarian law are guiding legal ideas. They play a middle role between *lex lata* (the law as it exists) and *lex ferenda* (what the law should be). Laws of armed conflict are mainly based on three legal ideas.

1- 'Mise en equilibre, which means balancing. The protection of legitimate expectation acquiescence. It invokes legal maxim 'Qui tacet consentire videtur; which means one who remains silent is considered to consent. It is a responsibility of expectation that is deliberately created.

The protection of interpersonal or social finalities attached to legal institutions through the doctrine of prohibition of abuse of rights or *Le Detournement de pouvoir* (abuse of power).

Standards of moral correctness and reciprocity stipulate that none shall take profit of his wrong. They are discussed below in detail:

Principle of humanity (Marten's Clause):

Under articles 1, 2 of Additional protocol 1 Civilians shall be protected as ensured by the principle of international law derived from established customs, principles of humanity, and the dictates of public conscience. It prohibits torture, hostage-taking, degrading treatment, and executions without regular trial against non-combatants.⁴ Civilians have the right to respect for their physical and mental integrity, their honor, family rights, religious beliefs, and practices, as well as their customs. This clause is known as the Martens Clause. The clause is taken to mean that if the conduct is not expressly prohibited by international humanitarian law it doesn't mean that it automatically becomes lawful unless measured by the requirements of humanity which operates as a general clause.

Application of Marten's Clause:

The nature of the Marten's Clause is very general and not specific that restricts its applicability. The problem with the martens' clause is two-folded. It is not taken too seriously by states due to its generality. Second is its subjective approach. It does open up a debate about what comes under the course of humanity and what may not.

The formulation of this clause is ambiguous in the sense that to what extent public conscience and humanitarian ideals could be achieved under international humanitarian law.

Codification of Marten's Clause:

The humane treatment of martens clause specifically codified in all four Geneva conventions of 1949 articles 12/13/27 of Geneva Convention 1 to 4⁵. That has been applicable only in terms of protected persons to be treated humanely. Hague law that

⁴ Article 1,2, protocol additional to the geneva convention of 12 august 1949, and relating to the protection of victims of international armed conflicts (protocol 1), of 8 june 1977.

⁵ Article 12,13,27, of geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field, of geneva convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, of geneva convention relative to the treatment of prisoners of war, of geneva convention relative to the protection of civilian persons in time of war (geneva convention 1 to 4), 12 august 1949.

has been related to the means and methods of warfare still has a certain reach in prohibiting the belligerent actions of the state during warfare. But that too is limited under its principle for example it states that if a particular weapon has not been specifically prohibited by a specific norm (treaty, convention, codified laws) then its usage becomes automatically lawful. Employing bullets used in man-to-man fighting have been prohibited since the Petersburg Declaration of 1868. Hence, the general approach of international humanitarian law is prohibitive.

Principles of Limitation:

This principle constitutes prohibitive rules for belligerent states. Article 22 of Hague regulations lays down the right of belligerents to adopt means of injuring the enemy isn't unlimited.⁶ Article 35, S 1, AP 1 stipulates that in any armed conflict, the right of the parties to the conflict to choose methods and means of warfare is limited. The term any armed conflict must be taken also to cover non-international armed conflict.⁷ The objectives of this principle are to limit the means and methods of warfare and the conduct of hostilities. It is also applicable in the context of a protected person alongside the principle of humanity. The principle of limitation has been operated as a brake on the principle of permissive military necessity. It applies to all armed conflicts whether it is international armed conflict or non-international armed conflict.

Principle of Distinction:

Article 48 of AP 1 proclaims that the belligerent states shall at all times distinguish between the civilian population and combatants and also between civilian objectives and military objectives.⁸

Military objectives in article 52, S 2 of AP 1 objects that by their nature, location, purpose or use make an effective contribution to military action.⁹ The aim of war isn't to achieve the greatest destruction and death possible. That's why the civilians not participating directly in hostilities are protected as per article 13 of additional protocol 2¹⁰. This principle is also applicable in NIAC. Article 57 of AP1 stipulates that the carrying of an attack should be in line with the principle of distinction. It also applies to a non-international armed conflict under customary international law.¹¹

⁶ Article 22, Chapter I, Hague Convention (IV) Respecting the laws and customs of war on land, 18 October 1907.

⁷ Article 35, , protocol additional to the geneva convention of 12 august 1949 , and relating to the protection of victims of international armed conflicts (protocol 1) , of 8 june 1977, p 30 .

⁸ Article 48, protocol additional to the geneva convention of 12 august 1949 , and relating to the protection of victims of international armed conflicts (protocol 1) , of 8 june 1977 , p36 .

⁹ Article 52 , S 2 , protocol additional to the geneva convention of 12 august 1949 , and relating to the protection of victims of international armed conflicts (protocol 1) , of 8 june 1977, p 38.

¹⁰ Article 13 , protocol additional to the geneva convention of 12 august 1949, and relating to the protection of victims of non international armed conflicts (protocol 2) of 8 june 1977, p 90.

¹¹ Article 57 , protocol additional to the geneva convention of 12 august 1949 , and relating to the protection of victims of international armed conflicts (protocol 1) of 8 june 1977, p 41.

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Principle of Proportionality:

Article 51, S 5, letter b, of AP 1 proclaims that an attack that may be expected to cause incidental loss of civilian life, which would be excessive concerning the concrete and direct military advantage anticipated is considered as being indiscriminate and prohibited.¹²

Principle of Precaution:

It has direct links to the principle of distinction. The military attack should be launched in such a way that no civilian should be harmed who isn't directly participating in hostilities.

Military Necessity:

It's an action that is considered necessary to achieve war aims. The law of armed conflict has limited the freedom of belligerent parties and requires them to adopt some course of conduct by explicit prohibitive rules which depict the principle of military necessity. Any form of violence excessive to the war aim is prohibited. The military objectives installed should be compatible with the rules of IHL¹³. The preamble of the 1868 Petersburg declaration expresses this limitation in clear words, "that the only legitimate object that the states should endeavor to accomplish during war is to weaken the military forces of the enemy; that for this purpose it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled man."

There are two aspects of this principle one is that it acts as a constraint on the use of lawful violence which has the following main effects in the laws of armed conflicts Any act of violence which is useless from the military standpoint (vengeance or will of destruction) is prohibited

If there are different military options to achieve a certain goal, but some have a greater degree of destructiveness or impact on civilians, the choice should go towards the less destructive means.

On the other hand, the principle operates as an exemption from the respect of rules of IHL, and here its action is to extend the range of legally permissible violence. The danger is to render IHL less effective. IHL operated as a *lex generalis* but according to the modern rules of international humanitarian law military necessity cannot be invoked generally to put aside any rule of IHL in case of necessity.¹⁴ In particular, it is not possible to invoke the 'state of necessity; under article 25 of the international law

¹² Article 51, S 5, letter b, protocol additional to the Geneva Convention of 12 August 1949, and relating to the protection of victims of international armed conflicts (protocol 1), of 8 June 1977, p37.

¹³ M. Whiteman, digest of international law, vol. 10. Washington 1968, p300.

¹⁴ M. Sassoli, ' the implementation of international humanitarian law : current in inherent changes ; yearbook of international humanitarian law, vol.10, 2007, pp. 45-73.

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commission (ILC)¹⁵. It explicitly binds states for internationally wrongful acts, applicable in the law of peace, for excusing violations of IHL. International humanitarian law has its own, in this sense self-contained, a regime of exemption for necessity. IHL is in itself a law of emergency or necessity. There are two basic types of conflicts that international humanitarian law involves. One is NIAC and the other one is IAC.

International Armed conflict and Non-International Armed Conflict:

International armed conflict is the conflict between two states while non-international armed conflict is between government and insurgents or between armed groups.

Scope of Application of NIAC:

Under International Humanitarian Law Additional Protocol 2 and Common Article 3 of Geneva Convention deals with the applicability of non-international armed conflict. Common article 3 applies to non-international armed conflict when it's occurring in the territory of one of the high contracting parties. Customary international law defines IAC and NIAC through the legal maxim 'pact tertiis nec nocent nec prosunt', which means that if an armed conflict is happening in one or two territories of the state then for the application of the common article 3 to non-international armed conflict it must be ascertained that territory covering the war state should belong to the state that is obliged under Geneva convention. Excessive destruction caused by the Russian and Spanish led to the inclusion of NIAC in international law. Non international armed conflict have an impact on international peace and security

Main Components of Common Article 3:

Common article 3 applicable on non-international armed conflict has the following main components.

Principle of Humane Treatment:

This principle is also embodied in Martens Clause which is applicable in both international human rights law and international humanitarian law in terms of non-international and international armed conflict which explicitly stipulates that civilians and combatant should be treated humanely.

Specific prohibitions:

The specific prohibitions were imposed after the excessive destruction caused in World War 2 and Spanish civil war. These are against the attack on life and limb, degrading treatment, taking of hostages and unfair trial.

Geneva Convention 1 of 12 August 1949:

It carries concerns for wounded and sick.

¹⁵ Article 25, responsibility of states for international wrongful acts, Yearbook of the International Law Commission, 2001, vol. II (Part Two), p7.

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It is concerned with the faculty of impartial humanitarian bodies, such as the ICRC, to offer its services by proposing humanitarian assistance.

Additional protocol 2 paves way for common article 3. The main Components of additional protocol 2 are as follow:

Principle of humane treatment

Prohibited acts as mentioned in article 4 and 2. That includes prohibition of collective punishment, refusal of quarter, acts of terrorism, enforced prostitution, rape, slavery, pillage or any threat to commit such prohibited acts.

Article 5 stipulates protection of fair treatment with detained persons.

Article 6 lays down the right of fair trial to the detained persons.

Article 7 and 6 confer duty on the detainee state to take care of the injured and sick.

The main Components of additional protocol 1 are as follows.

Protection of civilian population in the context of hostilities as mentioned in the provisions of article 48 and 77

Principle of distinction mentioned in the article 13

Article 15 embodies the protection of works and installations containing dangerous forces

Article 16 proclaims the protection of cultural objects

Article 17 stipulates the prohibition of forced displacement

The right of relief societies to offer their services as mentioned in article 18

The parties to the conflict can also make rules by binding themselves in terms of treaties and conventions. If any state party acts in contradiction to convention / treaty would be held liable. The other state party would have the right to sue the state party that breaches its obligation in international courts.

International Armed Conflict:

There was a need to develop international humanitarian law because the municipal laws of state and human rights law were inadequate to deal with armed conflict.¹⁶ In the context of an armed conflict, municipal law presents two salient defects. The first aspect is that the social order crumbled during an armed conflict and social institutions could not perform properly.¹⁷ The second aspect is that the municipal law sides with the Government. So, according to the domestic law of state the rebels are considered simply as criminals. Hence, the administration of the right of fair trial by the hands of the state could not be trusted.

Similarities between NIAC and IAC:

ICRC found that some rules of customary international law are applicable in both conflicts that are as follow:

¹⁶ Official record of the diplomatic conference on the reaffirmation and development of international humanitarian law in armed conflict , Geneva (1974 – 1977) , vol. 8.

¹⁷ See M.Sassoli, 'Taking armed groups seriously : ways to improve their compliance with IHL ; journal of international humanitarian legal studies, vol. 1, 2010 , pp.15ff.

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Rule 11: Prohibition of discriminate attacks.

Rule 22: Duty of the parties to the conflict to take all necessary precautions to protect civilian object and civilian population against the effects of war.

Rule 24: Military objectives should be separated from civilian and the object under the control of civilian.

Rule 25: Protection and respect of medical staff that have assigned medical duties.

Rule 38: Preservation of cultural property.

Rule 53: Prohibition on the use of starvation of the civilian population as a method of warfare.

Rule 74: Prohibition on the use of chemical weapon.

Rule 90: Prohibition of torture, cruel or inhumane treatment.

Dissimilarities between NIAC and IAC:

The differences between international armed conflict and non-international armed conflict are of legal, political and systematic nature.

Status of Combatant:

This status is limited only to international armed conflict. The state involved in an armed conflict may get reluctant to accept the international status of insurgents which entitles them to commit acts of belligerent violence for which they could not be persecuted. As they committed acts of violence by exercising power under combatant status. States to the non-international armed conflict agreed to give status of combatant to the civilians that directly participate in hostilities. The rule of international humanitarian law of direct participation proclaims that a civilian is targetable only during his active engagement in warfare. The status of fighter could be granted to the armed group and they could be targeted throughout their armed engagement. The freedom to act can either be granted by the law or by the fact. Non international armed conflict has less reach in international law. The freedom to act of the belligerent state is through fact and not law. Non international armed conflict is mostly between the state and the armed group of people of its own nationals.¹⁸ Up to the time of World War 2 the way a state treated its own nationals was regarded as a question falling under domestic jurisdiction and not under international law. The US War of Succession, civil war at the beginning of 1920 and Spanish civil war (1936-1939) led to the codification of international humanitarian law in terms of non-international armed conflict. The suffering to human life and human dignity caused during these wars demanded for international action.

Devices for International Action:

The devices for international actions are International Governmental Organizations (I- NGO's) , United Nations, IOM , International Committee of the Red Cross (ICRC) , Shanghai Cooperation Organization (SCO) .

¹⁸ J.M.Henckaerts and L.Doswald Beck ; customary international law , vol 1 , Cambridge 2005, p 222-3.

Humanitarian Initiative of the ICRC:

ICRC exercises its position as an advisory body. It can put forth a proposal but cannot make the parties to conflict bind by its action. The parties to conflict may accept the proposal or may reject it.

Objectives of the ICRC:

Its main aim is to protect civilians, prisoners of war, medical staff, and sanitary workers. It can also induce parties to conclude special agreement that they would bind themselves under certain laws and will not go beyond certain limits. As it was observed in the Spanish civil war, ICRC controlled the situation in the Spanish civil war and it also made them exchange its prisoners of war.

Recognition of Belligerency:

International humanitarian law recognizes belligerency by giving the status of belligerent to rebels. It has been made to protect the interest of the third state. By conferring status of belligerent to both parties makes them liable under international humanitarian law. So, the third state could claim to respect their mutual rights from both belligerents.

Status of Rebel as Belligerent:

It's a kind of legal personality given by a unilateral legal act which is constituted and not declaratory. It is an upgrading position to the rebel. The government involved in an armed conflict could wish to recognize the group of rebels as belligerents internationally. No political gain is possible by this recognition. It is relative and not absolute. The legal personality to the rebels conferred only for the mutual legal relationship of recognizing (state) and recognized legal entity that is captured by the group of rebels. Other states are not liable to be bound by the unilateral acts of another state. Hence, an entity could exist as an international legal person for one state while it could continue to be non-existent for another.

Principle of Neutrality:

Recognition of belligerency is actually a limitation on the principle of non-intervention in internal affairs, accorded by customary international law. The unilateral nature of the act implied that any third state could impose on the local Government a treatment of the rebels as an international legal person with rights and duties, thus applying the laws of neutrality. In lieu of this recognition the domestic nature of non-international armed conflict was limited and the armed conflict between state and armed group was taken in terms of war that paved the way for applicability of the laws of war including principles of neutrality. In other words the result was that the armed conflict ceased to be taken as a simple civil war to which international law could not apply. There led a legal limbo to legal regulation. It could be termed as a discretionary act of will by a state.

Conditions for the Recognition of Belligerency:

The conditions for the recognition of belligerency were determined, that allowed intervention in internal affairs. The rebels should have established a de-facto

government by exercising control of a part of national territory. The disciplined and organized rebel troops should conduct hostilities under responsible command, abiding by the laws of war.

Simultaneous Application of IHL and IHRL:

Situation in NIAC and IAC causes the interplay of international humanitarian law (conduct of hostilities) and international human rights law (maintenance of order and law enforcement). During the hot phase of the conflict the conduct of hostilities under IHL will prevail. While in the soft phase of the conflict especially in the post bellum phase the law enforcement paradigm will tend to prevail. The fundamental right ensured by human rights law and constitution of Pakistan is right to life. Every other right is derived from this basic right. This right get suspended during an armed conflict but it remain intact for example in IHL during an armed conflict the combatant could be attacked and killed but when the adversary surrenders or get injured or having an ailment, should not be attacked or killed. After the phase of combat, comes the phase of occupation and the duty to maintain public order (article 43 of the Hague regulations of 1907).¹⁹

Afghanistan and USA Conflict in the Perspective of an International Armed Conflict:

The United States invaded Afghanistan and toppled the Taliban government in October 2001, in retaliation for the 9/11 attack. To that end the US had formed a global coalition that would help it succeed militarily. Since then, it went on. The Taliban have come to power in Afghanistan as a result of the Doha agreement signed between the then Trump Administration and the Taliban, on 29 February 2020, and the implementation of the deal by two parties, culminating into the completion of withdrawal of the US / NATO forces by 31st august 2021, which enabled the Taliban's final takeover of the entire country including Kabul, on 15 august 2021. The Doha agreement clearly indicates that the US and NATO countries had accepted the Taliban as the main stakeholders in the affairs of Afghanistan.²⁰ The International Humanitarian law divides an armed conflict depending upon its intensity into national and international. The conflict between Afghanistan and United States America could be termed as international armed conflict due to its escalated war effects involving the international community, and at the same time, could also be called as non-international armed conflict by applying certain dimensions of international humanitarian law to the specific situation of the conflict.

Taliban were the people who were held responsible for jihadist's terror. They have installed an interim cabinet in Afghanistan through undemocratic means. Influx of

¹⁹ See M.Sassoli, 'legislation and maintenance of public order and civil life by occupying powes , EJIL, Vol . 2005 , pp.66 ff

²⁰ Kamran adil , Government of Taliban in Afghanistan , jahangir's world times vol 5 , issue 1 october 21, p 20, www.jworldtimes.com

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destitute refugees and ostracism by other countries had been attached with Afghanistan. It could also be expected that radical Islamists will get confidence from the undemocratic government formed in Afghanistan. While it is important to hold Taliban accountable and nudge them towards fulfilling their commitments, it would be unwise to spread negativity or indulge in propaganda at their critical juncture as it will only undermine the prospects of peace. The situation in Afghanistan has continued to remain uncertain. The criticism done by the International Community on this government is that it is mainly Taliban dominated and does not have an inclusive broad based representation from other political, tribal and ethnic groups as well as women. A concerted global action is in demand to avoid humanitarian crises in Afghanistan. Taliban has to make allowance for the 20 years of democratic incursion by its battleground adversaries and input them as partners in a new setup.

Humanitarian Crises:

Abandoning the country could lead to the rise of terrorist groups. Therefore, the engagement of the world community with Afghanistan is the only real option, for that, they must listen to reason and change accordingly. America froze their \$10 billion which they decided to provide as aid to Afghanistan. America's action has directly restricted the ability of the new government to take care of its people. Pakistan maintained the stance that the aid must be resumed immediately so that the country could avoid catastrophe and then future trenches could be made contingent upon the Taliban showing flexibility, forming an inclusive government, giving women their proper rights etc.²¹ The ensuing crisis could lead to a fresh wave of instability that could, among other things, trigger a greater exodus of refugees into Pakistan. The present state of Afghanistan should be taken in consideration with the purpose and principles of the UN Charter and the principles of extensive consultation, joint contribution and shared benefits. Recognition and legitimacy of Afghanistan is dependent upon how the Taliban run a state on their own without having to depend on outside powers or harsher tactics. The formation of a viable, internationally acknowledged Government including women, ethnic groups and sectarian groups in Afghanistan is all but inevitable. Without it the Taliban government will not get international recognition, legitimacy and credibility they crave for.

Legal Questions Arises from the Conflict:

Whether this new Afghan government is acceptable under international law that came to force through undemocratic ways?

Recognition of Taliban Government:

As Taliban are the reality in Afghanistan, it will be impossible for the world to cut ties with them. They have to engage with them but they still may opt not to recognize them.

²¹ Mahboob khawaja, how America and NATO betrayed the global humanity, jahangir's world times vol 5, issue 1 october 21, p 20, www.jworldtimes.com

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International status and legitimacy of Afghanistan Government:

The continued presence of many Taliban leaders on the UN's designated terrorist list is another challenge for this new Afghan government on the International Forum.²² The Taliban has a history of hosting terrorist groups. There are many concerns from the International Community ranging from the inclusion of minorities to respect for human rights to the need to suppress Afghanistan from fostering terrorist activities. Their legitimacy is debatable but their intentions to remain in power isn't. It isn't just the Taliban who have to move with the world. It looks like it's also the world that will have to move with the Taliban.

Pakistan's Recommendations to Afghanistan Conflict According to the Principles of Neutrality:

Consumed by rage after 9/11, as the United States prepared an attack on Afghanistan for housing Osama Bin Laden, Pakistan advised restraint and impressed upon Washington the need to find ways to hunt down Al-Qaeda that was considered responsible for the 9/11 attack. Pakistan is the most directly affected by whatever happens across its western border and has 80,000 dead to show for it. It is expected to receive between 0.5 – 0.7 million refugees following the US exit from Afghanistan. The Afghan refugee crisis is not new, as it occurred during the Soviet Union invasion and in the US war on terror in Afghanistan. Since the withdrawal of US and other NATO forces from Afghanistan, the Taliban has grown stronger than ever. As a result, Pakistan may experience a massive influx of refugees fleeing civil war. According to the UNHCR 2020 estimate KPK has 58% of Afghan refugees of its total 1.4 million population.²³ Pakistan at present is finding a solution for its economic woes and other debilitating challenges represents a visionary paradigm in the conduct of its foreign relations. Pakistan played a vital role in this conflict. Pakistan initiated dialogue with Taliban so that Taliban can make their policies open to the world on the one hand while on the other hand international community can recheck their policies. Pakistan tried to convince the International Community to provide Humanitarian and Economic assistance to stabilize the country and eliminate security threats to the region. All the more worrying for Pakistan is the fact that Taliban on capturing Kabul, opened prisons and freed, among others, Faqir Mohammad, a leader of the Tehreek e Taliban (TTP), a terrorist group responsible for some of the worst massacres in Pakistan history. The TTP is thought to have as many as 5000 men hiding in Afghanistan. Pakistan emphatically highlighted the need for the political solution to the Afghan conflict. It emphasized that a military solution will fail to bring about lasting peace in Afghanistan and will invariably be followed by more bloodshed, strife and protracted fighting. Pakistan facilitated intra-Afghan peace and reconciliation process. The instant action is needed for stopping the Afghan soil from being used for terrorism against the regional countries. Pakistan Afghanistan policy focuses at evolving regional consensus and protecting the country's vital economic,

²² Aftab Abbasi, US departure from Afghanistan (its responsibility doesn't end here), Jahangir's World Times vol 5, issue 1 October 21, p 22, www.jworldtimes.com

²³ Muhammad Usman, Pakistan's lead role of global dimension, Monthly Press Review vol: 35, issue 10/21 p 19.

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political and strategic interest. It requires greater collaboration and synergy of actions. ²⁴ India has also been trying to strengthen its position in Afghanistan to advance its regional agenda. China has out rightly hinted positive engagement with the Taliban much before the announcement of the interim Taliban government. The US failure in building the new Afghanistan depicts the fact that the brutal military power does not guarantee political success. Taliban's policy denial of human rights especially women rights will have a negative impact on Pakistan in the domains of democracy and human rights. However they seem to formulate an inclusive, comprehensive government that will stick to the principles of modern governance. The Taliban can succeed this time only if they act as a state that is connected to the global system rather than a movement. According to the UNHCR 2020 estimate, Khyber Pakhtunkhwa (KP) has 58% of the total 1.4 million registered refugees, followed by Baluchistan with 22 %, Punjab with 12 %, Sindh and ICT combined with 7 %. In addition, nearly all of them live in cities rather than Afghan refugee villages (ARV). This situation already has a financial, social and environmental impact on the native people's life. According to the need assessment report by UNHCR and the Pakistani government in 2008, 85 % of the refugees were involved in criminal activities like theft, robbery, and sectarian violence. In addition destruction of agricultural properties, illegal land disposition and import drug culture were also seen in rural areas. Moreover, it may lead ethnic pluralism and political instability as Afghan people support the Pashtun Tahafuz Movement (PTM). Pakistan should be national security, as this nation has suffered immensely due to fighting the US war on terror.

Conclusion:

International humanitarian law is that branch of international law which not only obligates states but also regulate the matters between individuals. It is a legal regime that limit the effects of war. The general approach of IHL is soundly prohibitive in nature but there are many nuances to be added in order to give a full account of the complex functioning of this body of international law. Overall, it can be said that the application of IHL in IAC is regulated in a quite flexible and Broadway. The polar star in the matter is the trigger of 'armed conflict, as the cause of hostilities. Hostilities are interpreted broadly on two accounts : there is no requirement of certain intensity; the interpretation is largely functional , in other words, IHL shall apply anytime the situation on the ground touches upon one of the regulations of this branch of the law (for example by existence of an injured person , or the use of certain weapon). The main aim of IHL is to eliminate any gap in protection. This effort culminates in common article 2 of the Geneva conventions.

Doubts do arise mainly at the lower edges of armed conflict. The international organizations UN, IOM, ICRC and many International Non-Governmental Organizations (INGOs) need support from the state government to operate effectively and smoothly. The areas identified by adumbration are by no means exhaustive. A community of nations will have to put acts together and plan on principles of international law to enable the people of Afghanistan to self-determine their future course of action. With two world powers forced to leave the country it can be deduced

²⁴ Sikander norani , craving stability from the crises , Monthly Press Review vol: 35 , issue 10/21 p 24

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that a more just international legal order will lead to a better political world.

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