International Protection of Human Rights in Non-International Armed Conflicts

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Abstract
This research examines the foundations for protecting human rights in non-international armed conflicts. The meaning and importance of the International Bill of Human Rights will be clarified, and the applicable rules for resolving non-international armed conflicts will be explained. The research relied on descriptive and analytical methods and was the primary objective. The results yielded several important results, the most important of which is that due to the International Committee of the Red Cross's tireless efforts and coordinated regional and global efforts, it introduced the draft articles created by the four agreements to the Diplomatic Conference held in 1949. This Article was delivered to the Conference and attempted to apply the principles of the agreements to all instances of armed conflict, including those involving non-international armed conflicts. The study suggested reviewing the texts of the Geneva Conventions of 1949, considering the past experiences of non-international armed conflicts to ensure greater protection of human rights.

Keywords: Human Rights, Non-International Armed Conflicts, Armed Conflict, Protection Agreements, Geneva Conventions.

INTRODUCTION

Historically, humanity has experienced numerous armed conflicts that led to devastating loss of civilian life, violations of human rights, and leaving a trail of suffering. Indisputably, war detrimental scenarios and calls for peace still exist today. The concept of human rights has ancient roots, and all divine religions, such as Islam, Christianity, and Judaism, grant it a significant value. Islam emphasizes human rights through its five big purposes: protecting religion, self, mind, offspring, and property. These five principles are primarily the main sources of laws protecting individual rights.

Human societies have long tried to formulate general rules that protect human rights; this is seen in the laws that the ancient Greeks, Romans, and other civilizations created. The need to protect human rights and freedoms has been emphasized in numerous declarations, and there has been a surge in worldwide interest in creating special laws that protect these rights. The collective efforts of political systems, particularly democratic ones, led to these declarations.

Numerous countries worldwide have suffered from masses of non-international armed conflicts, civil wars, disturbances, and internal tensions, which had serious repercussions on the individual's life and rights. Therefore, distinct international efforts have been made to establish effective rules defining and regulating these conflicts. The issuance of the Geneva Law in 1949 represented a historic turning point in preserving and protecting human rights in light of non-international armed conflicts.

Several principles of international law are applied in cases of human rights violations related to international crimes, such as the principle of equality, the Nonapplicability of Statutory Limitations, and the principle of the supremacy of international criminal law.

International criminal law encompasses various principles pertaining to protecting human rights, such as the inadmissibility of granting amnesty to perpetrators of crimes violating human rights and the principle of individual criminal liability. It has also developed multiple means to monitor the implementation of international human rights law, including sending reports, submitting complaints and allegations, forming fact-finding

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committees, and recording and publishing the facts. These methods have typically proven effective in confronting many of the conflicts some countries have suffered, especially the serious violations committed during non-international conflicts.

The problem of this research lies in determining the legal foundations adopted to protect human rights in non-international armed conflicts. The importance of this research lies in its focus on the required protection of human rights only in non-international conflicts due to the brutality of these conflicts and human rights violations. The research will attempt to discuss this problem by answering the following question: What are the legal foundations adopted to protect human rights in non-international conflicts?

Chapter One
The International Bill of Human Rights and its Importance

This section is divided into two subsections; the first subsection presents the international charters constituting the International Bill of Human Rights, and the second discusses the importance and impact of the International Bill of Human Rights.

International Conventions on Human Rights

The International Bill of Human Rights is a group of international conventions that were established to protect all human rights necessary for people to live a full, free, safe, secure, and healthy life by ensuring that everyone has access to the necessities of work, food, accommodation, health care, education, and culture adequately and equitably. It established individual and collective rights in the civil, cultural, economic, social, and political fields, constituting the main basis for the United Nations' activities to promote, protect, and watch human rights and fundamental freedoms. However, the International Bill of Human Rights comprises the Universal Declaration of Human Rights 1948, the International Covenant on Economic and Social Rights 1966, and the International Covenant on Civil and Political Rights 1966.

The Universal Declaration of Human Rights (UDHR) represents a milestone document in the history of human rights. It portrayed fundamental human rights universally recognized and protected, confirming that all people deserve freedom, equality, and dignity. The first article of the Declaration ensures that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article (3), deemed the first cornerstone of the Declaration, announced: "Everyone has the right to life, liberty, and security of person."

Articles 4 to 21 stipulate issues pertaining to other civil and political rights, for example, slavery, torture, degrading treatment or punishment, equality before the law, the right to an effective remedy by the competent national tribunals for acts violating one’s fundamental rights, arbitrary arrest, and full equality to a fair and public hearing by an independent tribunal. Additionally, it confirmed the right to freedom of movement, thought, religion, opinion, peaceful assembly, and the right to take part in the government of his country, directly or through freely chosen representatives.

Notably, UDHR focused on the rights of men and women of full age to marry with free and full consent, the right to own property, the right to participate in the country's government, and equal access to public service. In accordance with the Universal Declaration, the Covenants recognize that "... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

Article (1) of the Convention states that: "All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development." Under this right, people can determine their political status and pursue economic, social, and cultural development. Article (3) in the Covenants reaffirms the equality of men and women to enjoy all human rights and that the states are obligated to ensure this. Article (5) established guarantees against abusing any human rights or fundamental freedoms or imposing undue restrictions on them and against misinterpreting any provision in the
Covenants to justify abolishing or restricting any right or freedom. This article also prevents states from restricting the rights enjoyed within their territories on the pretext that the Covenants do not recognize domestic laws.

The Convent also addresses several issues related to the rights of individuals; for instance, Article 28 stipulates the establishment of a human rights committee responsible for supervising the implementation of the rights stipulated in the Covenant.

The First Optional Protocol to the International Covenant on Civil and Political Rights in Article (5) enables the Human Rights Committee established under that Covenant to receive and consider complaints submitted by individuals who claim to be victims of violations of any of the rights established under the Covenant. The Committee typically considers all the communications it receives according to the written information submitted by the State Party and the individual concerned. Therefore, after issuing these international Charters representing the International Bill of Human Rights, all states, peoples, and nations must work to consolidate and respect these rights and freedoms.

The Importance and Impact of The International Bill of Human Rights

The United Nations Declaration of International Covenants serves as a fundamental milestone for ensuring human rights, as it has become a criterion by which the degree of respect for and adherence to international human rights standards can be measured. The Universal Declaration was issued in 1948 as a non-legally binding document that defines basic human rights and freedoms and completes the shortcomings mentioned in the Charter, which is consistent with the standards of the modern state.

The issuance of the Universal Declaration of Human Rights in the form of a non-binding recommendation by the United Nations General Assembly simultaneously has a negative and positive impact.

The Universal Declaration of Human Rights affirms that the exercise of an individual's rights and freedoms may be subject to certain limitations established by law solely to secure due recognition of the rights and freedoms of others and to meet the just requirements of morality, public order, and the general welfare in a democratic society. The rights may not be exercised in a manner inconsistent with the purposes and principles of the United Nations or if it was aimed at wasting any of the rights stipulated in the Declaration. It is an inevitable duty that all members of the international community fulfill their obligations and promote respect for human rights and fundamental freedoms without discrimination on any grounds such as race, color, gender, language, religion, or political opinions.

Thus, for more than 25 years, the Universal Declaration of Human Rights alone served as an international standard for all peoples and all nations, and it became known and accepted by member states and in countries that have not ratified it or the Covenant. Its provisions became cited as the basis and justification for many focal decisions by United Nations bodies. They were a source of inspiration in the preparation of several international human rights instruments and significant practice in a number of treaties related to human rights.

The Declaration served as the cornerstone for all later human rights treaties and agreements. Numerous national courts referenced the Declaration's specific guidelines for the International Bill of Human Rights in their rulings, and numerous countries' constitutions and laws also embraced it. As it upholds each person's right to freedom of expression, it contributes to a worldwide recognition of the significance of human dignity and value.

Notably, the interconnectedness and indivisibility of civil, political, economic, social, and cultural rights are fundamental principles of international human rights law, recurrently reaffirmed in every human rights conference.

Since the enforcement of the First Optional Protocol to the International Covenant on Civil and Political Rights, following the attainment of the necessary minimum of ten instruments of ratification or accession, up until 30th September 1995, and the subsequent enforcement of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty: The agreements and declarations pertaining to human rights, as endorsed by the United Nations, specialized agencies, and
regional intergovernmental organizations, has established a set of standards and obligations that states are required to adhere to.

Therefore, the countries that make up the so-called "international community" realize that each individual has obligations to others and the society in which they live. They also understand that it is their duty to work towards promoting, defending, and upholding the human rights outlined in this Covenant. However, limiting the power of authoritarian and illegitimate regimes that violate human rights for political reasons is one of the most notable advantages of these international treaties. The majority of people endorse the idea that human rights are universal. Although they may not always be upheld, their recognition and existence nonetheless provide significant moral worth and defense against abuses and crimes against humanity.

Numerous states worldwide adopted the Universal Declaration of Human Rights; therefore, denying its legal standing does not impact its real significance. Along with the impact of the Declaration on pertinent international and regional accords, its role and influence on national constitutions and internal laws cannot be disregarded.

Chapter Two
Regulations Governing Non-International Armed Conflicts

Human society has experienced tragic and hazardous circumstances due to non-international armed conflicts igniting a powerful awakening of human consciousness. Efforts have been made to bring this suffering to the global community's attention in an endeavor to identify the best means of protecting all people regardless of gender, race, roots, or belief.

Following the end of World War II, there was a swift shift in the international community's perspective regarding non-international armed conflicts, which had previously been disregarded under a number of pretexts, including the principle of sovereignty and non-interference in domestic affairs. Regrettably, after World War II, non-international armed conflicts rose compared to a decline in international conflicts driven by nations' pursuit of comprehensive peace. In response to the escalating threat of non-international conflicts and the failure of international efforts to bring about global peace, the Geneva Law was introduced in 1949, offering protection for civilians living in war zones.

This section will address two key issues: the regulations governing non-international armed conflicts prior to the enactment of the Geneva Law in 1949 and the provisions outlined in the Geneva Law of 1949 specifically pertaining to non-international armed conflicts.

Regulations Governing Non-international Armed Conflicts prior to Geneva Law in 1949

Legislators have made numerous attempts to address issues related to armed conflicts and the people involved in them. In 1832, the French legislator and certain European countries sought to distinguish various levels of rebellion. This involved recognizing distinctions between mere intent without a tangible element and the element of attempt, specifically, the endeavor to commit a crime. The stage preceding the attempt is called the preparatory actions, such as the actions that can lead to an attempt against the state's security. These actions must be determined exclusively to avoid imposing arbitrary injunctive penalties.

Below are some provisions of the constitution related to preventive measures.

The Third Republic inherited from the Second Empire the text of Article (87) of the Penal Code without amending its wording: "An attempt that aims to destroy or change the government or the system of succession to the throne by urging citizens to take up arms against the imperial authority shall be punished by detention in a fortified prison."

The French Penal Code of 1832 specifies in Article 91 that the attempt to incite disobedience is regarded as "incite civil war," as it stated, "An attempt that aims to incite civil war, by arming or inducing citizens or residents..., arming against each other, whether to carry out acts of sabotage, murder, or looting in one area or several areas, shall be punishable by death. " In the nineteenth century, the government held a specific scenario
to protect their political and social structures against civil war, applying the penal code to punish the rebels under the internal penal code.

The League of Nations draft of (1926), confirmed by the Maritime Rights Conference of (1958) indicated that (the act of disobedience is considered piracy according to internal law and not international law. Internal law can only be applied by the government and its citizens solely and within the limits of its legislation. It is not enough for the government to treat Concerned rebels as pirates to be treated as such by third countries.

States' adoption of the principles of sovereignty and non-interference in internal affairs led to viewing civil wars as genuine internal conflicts that should not be viewed or treated under the laws of war. Rebels were not granted the status of warriors but rather were considered criminals. A consensus prevailed, advocating the consideration of civil wars as an internal matter that should be subject to national state law, and the legitimate government of the affected state retained the right to employ necessary repressive measures to restore public order.

The provisions relating to civil wars have been subject to some international regulation, in accordance with the rules of public international law, since the second half of the nineteenth century until the conclusion of the four Geneva Conventions of 1949. This means that the provisions of the law of war apply to civil wars in which the rebels fulfilled the elements of government regulation if the existing government recognized them or any of the Gentile states as warriors. Based on the above, non-international armed conflicts have long been considered a humanitarian issue due to the hatred and ferocity they entail in the absence of basic guarantees protecting peaceful civilians.

Several jurisprudence attempts have tended to subject this conflict to international regulation. For instance, in his book The Law of Nations, Vattel critically says, "Those who argue that rebels who are deserving of execution are not subject to the laws of war are either misguided or tyrannical." Vattel mainly intended to convey that the monarch should act differently towards the rebels, as whenever a group believes it has the right to oppose the ruler, they are compelled to take up arms against the other party; the severe repercussions of this conflict are similar in the case of actual wars; therefore, it should be viewed as a conflict between two distinct countries.

The Lieber Instructions were issued in 1863 as the first attempt to codify the law of war. They were prepared during the American Civil War. Despite their ferocity and a great influence on the drafting of many international agreements later, such as the Brussels Declaration of 1874 and the Hague Conventions on Land Warfare of 1899 and 1907, they were not binding to other countries. These instructions included an entire section regarding rebels in the civil war, which included defining the categories of rebels, the parties to the civil war, the humane treatment of those arrested, considering them prisoners of war, conducting their exchange operations, and distinguishing between rebels participating in the civil war, and other civilians in conflict areas and the need to respect the rules and laws of war.

Based on the above, the nineteenth century ended without recognition of a state of war by third countries with absolute freedom because recognition must be compatible with reality; if the state of war does not exist or have sufficient importance, the recognition of the third force constitutes illegal interference that violates the legitimate government. Traditional jurists have tried to define the conditions that must be met by the rebel party to deserve recognition under the state of war.

In this regard, Article (8) of the organization of the Institute of International Law in 1900 stipulated the conditions of a real civil war, which are, respectively, - the control of the rebels over a certain part of the state's territory and the establishment of an organized government that exercises, at least superficially, the rights of sovereignty on that part, war is fought by an organized army that respects the laws and customs of war.

Lastly, it should be mentioned that other nations' recognition of rebels only applies the neutrality norms. The Anko-American arbitration that followed the war of secession demonstrated how the lessons learned from historical civil wars had contributed to the current state of neutrality.

The goal of adopting the principle of effectiveness in public international law was to establish the objective international legal personality of the rebels, even in the absence of their regular character, and to recognize them as combatants equally. On the other hand, the adoption by contemporary international law of the principle
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of non-interference in civil wars, which appeared in the Spanish Civil War (1936-1939), gradually receded in contemporary international practices, and other countries recognized the status of combatants.

Furthermore, adopting this system has created serious confusion in contemporary international law and regarding the system of international legality, specifically between civil wars and international wars, in light of the principle of prohibiting the use of force in international relations.

Finally, the four Geneva Conventions of 1949, especially the adoption of the joint Article 3, played a crucial role in ending that stage of subjecting non-international armed conflicts to international regulation.

**Geneva Code of Non-International Armed Conflicts of 1949**

There have been several attempts to enact international laws that contribute to protecting civilians in areas of armed conflict. Still, they failed to enact internationally binding laws until the Geneva Law 1949 was introduced.

The International Committee of the Red Cross has been working to improve the lives of victims of non-international armed conflicts for many years. It presented a report outlining its role in the context of civil wars during the Ninth International Conference of the Red Cross in 1912, which was held in Washington. This report aimed to bring this conflict to the global community's attention. Therefore, this issue was reintroduced at the Tenth International Conference of the Red Cross, held in 1921. The deliberations yielded several recommendations pertaining to the rights of victims of civil wars, unrest, and revolutionary disturbances.

The Sixteenth International Conference of the Red Cross, held in London in 1938, was the subject of focused studies by the Conference's legal committee. It submitted a report to the Conference that called for applying humanitarian principles in civil wars.

The Committee will submit the results of these studies to the Seventeenth International Conference on the Red Cross. In line with this report, the Committee that studied the Prisoners of War Convention at the same Conference expressed its desire to apply it to all armed conflicts, including civil wars.

Regarding the Sixteenth International Conference of the Red Cross, held in London in 1938, the Conference's legal committee submitted a report advocating the use of humanitarian principles during civil wars. The Conference made a number of recommendations, one of which was to conduct particular legal studies on the topic. The committee's presentation of the study's findings at the Seventeenth International Conference of the Red Cross was mandated. Consistent with this report, the committee reviewing the Prisoners of War Convention at the same Conference declared its intention to expand the Convention's application to cover all armed conflicts, including civil wars.

In 1947, the International Committee of the Red Cross held a joint conference that included experts from the Red Cross from other countries. The Conference approved the addition of a new paragraph to the text of Article 2 of the draft conventions, which is the application of the principles of the conventions to non-international armed conflicts, especially civil wars. This text was approved by the Seventeenth International Conference of the Red Cross, held in Stockholm in 1948.

We conclude from the above that the preliminary stages of preparing the Geneva Conventions in 1949 relating to protecting war victims witnessed a trend aimed at applying the conventions to all cases of armed conflict, including cases in which there is no international character.

As a result, in 1949, the International Committee of the Red Cross proposed the Diplomatic Conference, adding a joint article to the four draft agreements brought before the Conference. The aim was to encompass all forms of armed conflict and apply the principles delineated in the agreements. The majority of participating delegations, however, staunchly opposed this proposal. A demand to remove the proposed draft of Article 2 resulted from concerns expressed during the Conference regarding the text's potential to cause chaos.

However, some conference participants endorsed the text as proposed, arguing that in light of the suffering experienced by those who lose their lives in non-international armed conflicts, the Conference should take this brave and vital step. When a scenario of a non-international armed conflict breaks out on one of the High Contracting Parties' territory, all parties to the conflict must, at the absolute least, abide by the following rules:
Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture;
- taking of hostages;
- outrages upon dignity, in particular, humiliating and degrading treatment; and
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The wounded and sick shall be collected and cared for.

However, any impartial humanitarian body, such as the International Committee of the Red Cross, may provide its services to parties to a conflict. The parties to the conflict must work accordingly, through special agreements, to implement all or some of the other provisions of this agreement and the above provisions. This text provides victims of non-international armed conflicts with vital protection. Notably, it is a crucial part of the 1949 Geneva Conventions, representing a substantial advance over the conventional theory that had hitherto completely ignored non-international armed conflicts.

The Diplomatic Conference accredited the application of the Geneva Conventions' Article 2 to international armed conflicts and granted Article 3's minimum protection to internal conflict victims. Nevertheless, it could not clearly define non-international armed conflicts because it refers to a very specific and complicated topic.

The issue became more ambiguous as the First Committee of Experts of the International Committee of the Red Cross decided in 1955, based on the Gidel report, to apply Article (3) to "situations that have some of the characteristics of war without interference within the framework of international war."

In 1962, the Second Committee of Experts took a clearer position in interpreting the concept of non-international armed conflict, that is, "every act of aggression directed against a legitimate government falls within the scope of common Article (3) if it represents a single collective character that is less organized."

In fact, adopting the term non-international armed conflicts precisely conveys civil wars because they are the main reason for the destruction of national unity in the country where the rebellion broke out. Strictly speaking, this narrow perspective was a means of reaching an agreement that provided some protection for non-international armed conflicts, namely civil wars. It's important to note that attendees remained adamant about the significance of implementing traditional elements of control and territorial sovereignty, even though it was better than the Conference completely failing.

Moreover, the conference attendees acknowledged the imperative of surmounting the rigorous prerequisites enforced by conventional international law. International legal actions were prompted by the draft Article's non-implementation of any explicit objective criteria that would have allowed for a clear distinction between civil wars and other types of non-international armed conflicts. To bring a rebellion into compliance with Common Article 3 of the four 1949 Geneva Conventions, these attempts sought to define the internal components necessary to be classified as a civil war.

Thus, Article 3 of the Geneva Conventions of 1949 established the guarantee of civilian rights during non-international armed conflicts, providing a framework for protecting these people—particularly given the widespread civil unrest and upheavals that have claimed millions of lives. This article includes everyone not directly involved in fighting, such as military personnel who have volunteered or become incapacitated and injured people who need to be picked up and treated.

As established in the four Geneva Conventions held in Geneva in 1949, the principal goal of international humanitarian law is to mitigate human suffering during non-international armed conflicts, even if only
somewhat. The horrors and devastation of World War II, along with its many challenges, had a profound impact on these conventions. The fundamental idea underpinning these agreements is to ensure the preservation of individual rights and the protection of human dignity, particularly for those who aren’t actively involved in hostilities or have become incapable of doing so.

RESULTS

The study yielded the following findings:

The idea of traditional international law views the civil war as an internal conflict to which the various laws of war do not apply due to states' adherence to the principles of sovereignty and non-interference in domestic affairs.

The Lieber Instructions, issued in 1863, are regarded as the first attempt to create a law of war containing guidelines for insurgents fighting in the American Civil War. It also specified the classifications of rebels and parties to the civil war, as well as the humane treatment of individuals detained and treated as prisoners of war (POWs).

As a result of the International Committee of the Red Cross's tireless efforts and coordinated regional and global efforts, it introduced the draft of Article 3 in the four agreements to the Diplomatic Conference held in 1949. This Article was delivered to the Conference and attempted to apply the principles of the agreements to all instances of armed conflict, including those involving non-international disputes.

The Geneva Conventions of 1949, regarded as a historical turning point for armed conflicts, contain an article (3) that guarantees the rights of civilians in non-international armed conflicts.

CONCLUSION

In conclusion, by creating a thorough framework for human rights, the Universal Declaration of Human Rights and its guiding principles signaled a profound shift. Numerous governmental and non-governmental organizations focusing on human rights have been established due to the legitimacy and international recognition these rights have received.

Human rights have been violated, and non-international armed conflicts, such as civil wars, tensions, and international unrest, have caused many tragedies. Therefore, we aimed to examine these two terms, concluding that both terms refer to the presence of armed conflict inside the territorial limits of a particular state.

The international community has shown varied degrees of interest in developing humanitarian norms for armed conflicts, both international and domestic, throughout history. The Geneva Law was established in 1949 as a result of this interest. The study covered the details of the Geneva Law of 1949 and the humanitarian standards already in place for non-international armed conflicts, focusing on Common Article Three.

A noteworthy advancement in the legal protection of human rights in non-international armed conflicts can be seen in Article Three. It represents the fundamentals of international law applied when human rights are violated, making it a significant achievement for future generations. Notably, the conversation covers the ideas of no statute of limitations for human rights crimes and equal punishment for all parties involved in those violations.

Recommendations

Based on the findings, the researcher recommends the following:

Reviewing the texts of the Geneva Conventions of 1949, especially Article 3, in the context of the past experiences of non-international armed conflicts to ensure greater provision for the protection of human rights.

Increasing the legal and cultural awareness of members of the armed forces and internal security in developing countries in human rights through meetings, seminars, and conferences while preparing the necessary publications that urge decent treatment and respect for human rights in times of international conflict.
Establish and enforce legal rules on the violators of human rights committed by any person, including security and military forces members, to deter other individuals.

REFERENCES


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