

3. Relationship between International Law and Local Law

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TOPIC-1

LAWS OF WARFARE

The laws of war consists of the limits set by International law within which the force required to overwhelm the enemy may be used and the principles governing the treatment of individuals in the course of war and armed conflicts. The objective of the rules of war is not to govern the war or regulate it rather its objective is to limit the sufferings and pain of the people involved in the war and to limit the area of the war. That's why the laws of war are often called as the humanitarian laws of war.

The history of the laws of war is very old but the development of the modern laws of war can be traced since middle ages. The medieval concept of Christianity has greatly influenced the laws of war. In modern times, in accordance with the rules of war, killing of civilians, use of chemical weapons and chemical gasses, sinking of ships without ensuring the safety of the crew, papers and passengers etc have been prohibited.

Before the 19th century, many multilateral treaties and conventions have been made regarding to the laws of war. Most important treaties are;

- I. Declaration of Paris (1856)
- II. Geneva convention of 1964
- III. Declaration of Peters Burg
- IV. Hague Convention of 1899 & 1907
- V. Geneva gas and bacteriological warfare Protocol (1925)
- VI. The Submarine Rule Protocol (1937)
- VII. The four- Geneva Red Cross Convention (1949)

UNIT-III

TOPIC-2

Laws of Land warfare:

The **Hague Convention (1907)** is the landmark in respect of the rules of land warfare. It clarified the status of the belligerent states and made a distinction between the combatants and non-combatants.

According to the Hague Convention;

The persons in the regular army having specific regiment number etc are lawful combatants. Besides this, the guerrilla volunteers, corps etc may also be including in the category of combatants provided if they fulfilled the following three conditions;

- i. They serve under a definite and specific authority.
- ii. They have a specific emblem which may be recognized from distance.
- iii. They conduct war in accordance with the rules or customs of war.

The next landmark in respect of the laws of land warfare was the adoption of **four-Geneva Convention (1949)**. Geneva Convention on POWs formulated important rules relating to the land warfare. According to the **Article#4** of the Geneva Convention on POWs, the forces of **National Resistance Movement** may also be included in the category of lawful combatants provided that they also fulfill the previously mentioned conditions. In regard to the treatment of POWs, definite rules were formulated for the first time in Hague Convention of 1907 and then in the Geneva Convention of 1949. In this convention, it was provided that it is the duty of the belligerent states to look after the sick and wounded members of the armed forces and provide them adequate medical facilities.

Prohibited means in the land warfare:

War is a contest between the armed forces of two or more than two states wherein force can be used within certain limits laid down by the laws and customs of war. International customs and treaties have prohibited certain means which were used in the previous land warfare. According to the Hague Convention of 1907, the use of poisonous weapons, projectiles which caused un-necessary sufferings and pains etc have been prohibited. Similarly, the use of poisonous gas or poison the water or food to be used by enemy is also the violation of the laws and customs of war. During the land warfare, undefended cities and villages can't be attacked or destroyed. Killing of wounded and sick persons of armed forces during the war has also been prohibited. International law has

always maintained a distinction between combatants and non-combatants. Non-combatants can be arrested or made POWs but they can't be killed or grievously hurt during the war.

Ruses of War or Stratagem:

A ruse of war or stratagem is permitted during the land warfare. By this we mean that "For the attainment of military objective, a belligerent state can misguide or mislead the enemy." According to the modern concept of war, war is not only the test of the physical strength but also of intelligence that is why in accordance with the rules of modern warfare, ruses of war are permitted under **Article #24 of the Hague Convention of 1907.**

Provisions of Geneva Convention relating to the treatment of POWs (1949):

The Geneva Convention of 1949 clearly deals with all cases of declared war or any other armed conflict which may arise between two or more parties. Following are the important rules relating to the treatment of POWs;

- i. POWs must all the time be humanly treated.
- ii. Any un-lawful act or omission by the detaining power causing the death or seriously endangering the health of the POWs in its customs is prohibited and will be regarded as a serious breach of the present convention.
- iii. No POW may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned or carried out in his interests.
- iv. POWs must all the time be protected particularly against the insult or the public curiosity.
- v. POWs are entitled in all circumstances to respect of their persons and their honors.
- vi. The POWs shall retain the full civil capacity which they enjoyed at the time of their capture. The detaining power may not restrict the exercise either within or without its territory of the rights which the convention has laid.
- vii. The detaining power is bound to provide all the medical facilities to the POWs.
- viii. No physical or mental torture or any kind of coercion may be inflicted on POWs to secure information from them. POWs who refused to answer may not be threatened, insulted or exposed to un-pleasant treatment of any kind.

Geneva Convention of 1949 relating to the treatment of the dead and injured members of the armed forces:

Following are the rules in this regard;

- i. The dead and injured members of the armed forces can't be attacked during the war. They should be looked after without any discrimination. It was the duty of the commanders of the armed forces that they should search the wounded and dead persons of the war and collect the dead bodies so that they may be saved from insult and mutilation.
- ii. Protection has been provided to the mobile hospitals which provide medical facilities to the wounded and sick members of the armed forces. These mobile hospitals can't be attacked during the war.
- iii. The doctors and persons serving the hospitals and patients should be provided protection and full respect.
- iv. Marauding that is the looting or plunder of the dead bodies or to mutilate was declared illegal.
- v. Geneva Convention has also prohibited violence against the wounded and sick members of the armed forces.
- vi. At the end of war, the dead bodies of the armed forces should be searched and should be cremated or buried with due respect.

Red Cross Person and Red Cross Insignia:

With a view to ensure that the wounded and the sick members of the armed forces may be given proper treatment. The Geneva Convention has provided that the belligerent states have to respect and protect the mobile medical units and personnel of medical service.

Under Article #24, the persons engaged in the treatment of sick and the wounded must be respected and protected under all circumstances. They should be allowed to perform their duties for the armed forces.

The Geneva Convention recognizes the emblems of the Red Cross, the Red Crescent or the white flag as a distinctive emblem. Oppenheim has summarized the rules concerning the use of this emblem in following words;

- i. It must be shown with the permission of the competent military authority on the flags, the armlets and on all the equipment belonging to the medical service.
- ii. Medical units and establishment host the distinct flag which may be accompanied by the national flag of the belligerent to which they belong.
- iii. The Red Cross on wide grounds and the word Red Cross must be mentioned on all medical units, establishment, personnel and material

UNIT-III

TOPIC-2

LAWS OF MARITIME WARFARE

Before 19th century, laws of maritime warfare were mostly in form of customs. Since 19th century, several Int- conventions have been held and as a result of these conferences at present, besides the customs, the laws of maritime warfare are mainly in Int-treaties and declaration such as;

- Declaration of Paris (1856)
- Hague Convention (1907)
- Geneva Submarine protocol (1936)

Following are the main laws of maritime warfare;

1. Attack on public and private enemy ship:

During the naval war, the belligerent states are entitled to attack the enemy ships and destroy their property. This general rule admits the following exceptions;

a) Hospital ships:

According to the Hague Convention (1907), hospital ships can't be attacked.

b) Vessels employed in religious, scientific and philanthropic works:

According to the Hague Convention (1907), vessels employed for religious, scientific and philanthropic missions can neither be seized nor be attacked. To attack or seize such ships has been declared illegal according to Hague Convention.

c) Cartel Ships:

Cartel ships or ships carrying POWs can't be attacked. Attack on such ships has been prohibited by the rules of maritime warfare.

d) Fishing smacks and Market boats:

In accordance with the provisions of Hague Convention, fishing smacks and market boats engaged in the local profession and which are un-armed can't be seized or otherwise destroyed during the naval warfare.

e) Immunities of merchants:

Hague Convention of 1907 provides the following immunities to the merchants;

a. After the beginning of the war, the merchants detained in the ports are given certain facilities.

b. Those merchants and persons who have reached the ports because of their lack of knowledge of war have also been provided certain facilities.

c. Maritime rules of International law provides the immunities in regard to the mail-box and mail-bags. On the basis of the experience of world war-I, states have entered into treaties in this connection and have agreed to provide certain protections and immunities to mail-boats and mail-bags.

2. Merchant ships of enemy:

Merchant ships of enemy can be destroyed during the maritime warfare.

3. The crew of the ship:

As pointed out earlier, the enemy ships can be destroyed during the naval warfare. However, it is provided that while sinking or destroying the ships, proper and necessary steps should be taken to provide the lives of the crew of the ship the passengers and necessary paper etc on the board of the ship.

Such crew and the passengers of the ship can't be attacked unless and until they resist the valid right of the belligerent state visit and search the ship.

4. Right of self-defense:

Merchant ships are entitled to defend themselves against the attack of the enemy.

5. Conversion of merchant ships into warships:

During the maritime warfare, merchant ships can't be converted into warships. According to the practice of Britain, the conversion of merchant ships into warships can be made by the belligerent state in its own port. It can't be made in a neutral port.

6. Bombardment of Coastal cities:

According to the Hague Convention, the Coastal cities can be bombarded or otherwise attacked during the maritime warfare but bombardment of un-defended cities has been prohibited and this could be done only when the local inhabitants resist the supply of materials and other essential supplies to the enemy.

7. Bombardment of other places:

Ordinarily, only the places of military importance can be bombarded. Other places can be bombarded only when they are necessary for the achievement of military objectives.

8. Contact mines:

It is laid down in the Hague Convention that the laying of anchorless contact mines is contrary to International law or against International law. As regard the laying of floating mines under the Sea, it is provided that it should not be laid indiscriminately. It is the duty of the belligerent states to intimate the area where such mines have been laid to the neutral and other states.

Geneva Convention of 1949 on wounded, ship wrecked members of armed forces at Sea:

The Geneva Convention of 1949 has formulated a number of rules relating to the wounded, ship wrecked members of the armed forces. These rules mostly resembles the rules of land warfare. These rules are as follow;

- i. The wounded and ship wrecked members of the armed forces at Sea should be looked after and humanitarian treatment should be made with them.
- ii. If they are made POWs, they should be treated in the same way as the POWs of the land warfare are treated.
- iii. The hospital ships and the ships carrying POWs can't be attacked or destroyed.
- iv. During the naval warfare, the ships of the enemy can be sunk but before doing this, it is the duty of the belligerent state to ensure the security and safety of the crew of the ship.

Laws of Submarine Warfare:

Following are the rules relating to submarine warfare;

I. It is laid down in the "**Treaty of Washington 1922**" that the use of submarine to destroy merchant or commercial ships was against International law and hence it was prohibited.

II. Another important treaty that laid down the rules relating to the submarines is "**London Naval Treaty of 1930**", which was signed by US, UK, France, Italy and Japan. Under the **Article #22**, of this treaty, it is provided that the rules of International law relating to the surface vessels would also apply submarines particularly in respect of the attack on merchant ships.

Thus, a submarine could not be sunk without ensuring the safety of its crew and papers of the ship.

III. The "**London Submarine Protocol of 1936**" signed by US, UK, France, Italy and Japan in London. This treaty incorporated the provisions of the "London Naval Treaty of 1930."

IV. The “**Nyon Agreement of September 1937**” which deals with the suppression of attack by submarines against merchant vessels.

However, all the above mentioned rules were completely violated during World War-II.

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TOPIC-3

LAWS OF AERIAL WARFARE

In the modern times, the importance of aerial warfare has been greatly increased. Aircrafts were used in large scale for the first time during world war-1 and since then the aircrafts have been used in all the major wars that have taken place so far. The increased use of aircrafts in war necessitated the formulation of definite rules of International law to regulate their use during war.

Bombing by aircrafts cause excessive loss of public and private property. In order to regulate the use of aerial warfare, many Conferences have been called from to time to time and many rules have been formulated.

According to Baxter,

“The law pertaining to the use of aircrafts in war, notably that concerning aerial bombardment is the most primitive of the three bodies of law. There is no general multilateral agreement relating specially to aerial warfare and it is possible to do no more than to lay down general principles that govern bombardment by land and naval forces.”

Conferences regarding the rules of aerial warfare:

i. Brussels Conference of 1874:

Brussels Conference laid down the following rules;

- a) Bombardment of undefended cities, villages and towns was prohibited.
- b) Bombing of buildings and works relating to art, science, religion, culture and philanthropic works was prohibited.

c) It was also laid down that the buildings of public utility should not be destroyed during aerial warfare.

d) Bombing of hospital and medical units etc were completely prohibited.

ii. Hague Convention of 1899:

The Hague Convention of 1899 approved the rules formulated in the Brussels Conference (1874) and also laid down the following additional rules;

a) Bombing of civilian people and their property, without just an appropriate cause was prohibited.

b) Bombardment for the realization of money or things have declared illegal.

c) It was laid down that bombardment should be laid only for the achievement of military purpose.

d) Bombardment of those cities and villages which are away from the war area was also prohibited.

iii. World War-I (1914-18):

During the World War-I, FOR THE VERY FIRST TIME, AERIAL WARFARE TOOK PLACE. It appeared for the time being as if there were no rules of aerial warfare and world war-I turned into a total war in this regard of all rules or regulations of war.

iv. Washington Conference (1922):

The use of aircrafts during world war-I has made it clear that the rules of aerial warfare formulated so far were not in the conformity with the changing facts and circumstances in order to amend these rules and to frame certain rules, a Conference was called in Washington in 1922, which is popularly known as "Washington Conference of 1922."

This Conference was attended by US, Britain, France, Italy, Japan and other nations. This Conference laid down the following rules;

a) Arming of private Aircrafts with weapons for self-defense was prohibited.

b) Bombardment for the realization of money and things was declared illegal.

c) Bombardment to frighten civilian population was illegal.

d) Only those factories of military importance could be destroyed through aerial bombardment.

e) Those villages, towns and buildings which are Un-Connected or are away from the war area should not be destroyed.

f) Ordinarily, civilian areas cannot be bombarded. Such areas can be bombarded only when they are very essential for the achievement of military objective but this could be done only after given prior warning.

g) Buildings connected with religious, scientific, culture or philanthropic works cannot be destroyed.

h) Hospitals and other places where the patients are treated cannot be destroyed by the aerial bombardment.

i) It was also laid down that a belligerent state violated the above mentioned rules would be liable to pay compensation for the same.

v. Hague Rules of Air warfare:

The states which participated in the **Washington Conference of 1922**, agreed to appoint a Commission of jurists to prepare a **Code of Air-Warfare Rules**. The Commission prepared the code of air warfare rules and presented the proposed rules in **1923**. However, these rules were not ratified. But these rules were important because it was an authoritative attempt to clarify and formulate rules of law governing the use of air craft in war.

Further, the main object of the Hague Rule Air-warfare was to propose a regal regulation of the special problems raised by the air-warfare.

vi. Geneva Protocol (1925):

In Geneva Protocol (1925), the gas and poisonous substances were prohibited during the aerial warfare.

vii. Disarmament Conference (1932):

It was convened under the auspices of the LON in 1932. Its main objective was to achieve disarmament and thereby to reduce the devastating effects of war. Under this Conference, it was laid down that aerial bombardment over the civilian people of cities and villages was completely prohibited.

viii. World War-II (1939-45):

In World War-II, all the above rules formulated in different Conferences were violated. During the war, the German bombers and Japan ruthlessly destroyed cities and villages and caused incalculable and unprecedented loss and damages to the people at large.

In reaction to this, US, Britain, Russia also resorted the same tacts. The most unfortunate incident of W.W-II was however, the dropping of atomic bomb over the two cities of Japan; Hiroshima and Nagasaki, which resulted in the death and excessive sufferings of millions of people.

US gave two reasons for her action;

- a) To end the war immediately
- b) It was an act of reprisal

However, both reasons were not justified and satisfied.

ix. *International Convention for the protection of cultural property:*

In this convention, emphasis was laid that during the aerial warfare, cultural property and building connected with it could not be destroyed.

Legality of atomic or nuclear warfare:

With the attack on Hiroshima and Nagasaki, the world became aware of the nuclear warfare and its horrible destruction. The use of atomic bombs was a clear violation of International law relating to the aerial warfare and cannot be justified on any reason i.e, to end the war and for reprisal.

In 1963, the Tokyo District Court decided a case "**Shimoda and others versus State**". In this case, five citizens of Hiroshima and Nagasaki filed a case against the state to claim compensation for the damage caused to them by atomic bombs. The Tokyo District Court did not grant relief to them on procedural grounds but it gave its verdict on the validity of dropping of atomic bombs.

The court observed that "the dropping of atomic bombs was a hostile act taken by USA, which was taken in a state of war with Japan and was illegal act of hostility contrary to the positive International law of that day."

In the modern times, some treaties have been concluded in order to check the spread of nuclear wars and experiments. The most important are as following;

- a) Nuclear Test Ban Treaty (NTBT) of 1963
- b) Nuclear Non-Proliferation Treaty of 1968
- c) Treaty on the prohibition of emplacement of nuclear weapons in Seabed and Ocean floor (Sea Bed Treaty) of 1971