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Common Humanity Law Provisions in International Areas

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Abstract

International humanitarian law, also known as the law of war, law of armed conflict or the jus in Bello, is the body of international law that applies in armed conflict. Human law accepts that parties to an armed conflict will need to use force to 'win the war' and that this will likely result in some death and destruction. To minimise this likely harm, human law regulates how wars are fought. At its essence, human law seeks to strike a balance between two fundamental principles: military necessity and humanity.

Keywords: Human rights; Intensity; State; Navy; Public; Law

Introduction

The principle of military necessity permits a party to an armed conflict to use that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources. The principle of humanity forbids the infliction of suffering, injury, or destruction not actually necessary for the accomplishment of legitimate military purposes. The specific rules of human law reflect this balance. Human law protects certain people and objects and limits the methods and means used to wage war. Human law is a non-politicised, neutral body of law, and does not consider the legitimacy of why an actor has resorted to violence. Human law applies to all parties to a conflict, regardless of the reasons leading to the conflict or the political affiliations of the actors concerned [1]. Human law has a practical focus: it assists the military to know what actions it can lawfully take during armed conflict. Human law applies only in the context of an armed conflict, although it creates certain obligations for states to perform in peacetime. Human law is a distinct body of law from international refugee law, international human rights law and international criminal law, although human law will often apply along-side these bodies of law [2]. Human law also applies alongside national law, in particular constitutional law, criminal law and military law. This is particularly important regarding non-international armed conflicts. Human law is not concerned with the circumstances leading to the armed conflict itself or the legality of the armed conflict. Another area of international law, the law on the use of force or jus ad bellum, answers these questions. The rules on the use of force are set out in the charter of UN, 1945 and supplemented by customary international law [3]. While the primary rules are clear, there is some uncertainty concerning the application of the rules and possible exceptions that may exist. Provisions apply only to the use of force by states. They do not apply to the use of force by non-state actors. Issues concerning the legality of the use of force by states are increasingly finding their way into parliamentary, political and public debates. However, it is important to distinguish between the legal justification for why a state enters an armed conflict in the first place and what that state is permitted to do while conducting military operations. Human law largely does not regulate how a party to a conflict treats its own forces. Instead, human law is concerned with protecting those who come within the power of the enemy. National law and, as relevant, human rights law regulate obligations toward a state's own forces. For example, human law does not regulate claims that a state has not provided adequate food or equipment for military personnel during conflict or that troop has been the victim of friendly fire. Members of the nigerian navy ship unity approach canadian ship kingston for a joint maritime exercise during operation projection in 2018.we find human law in treaties between states, customary international law and in certain non-binding instruments, known as soft law [4]. The core human law treaties are the four geneva conventions of 1949 and their two additional protocols of 1977. There are also other treaties that deal with specific aspects of human law, for example, regulating the use of certain weapons, protection of specific objects such as cultural property and establishing international courts for the prosecution of war crimes. information as to when a treaty entered into force for that state and whether the state has filed any reservations or interpretative declarations to a treaty can be found online, a treaty will normally create obligations for a state, which may require adoption of legislation depending on whether your system requires implementing legislation to give effect to treaties in national law.

Discussion

Later sections of this manual consider implementation of human law in national law. We should become familiar with the procedures relevant to when and how your country becomes a party to a treaty, and the roles of the government and parliamentarians in this process. We should familiarise yourself with how your country implements international legal obligations in national law and the role of parliament in this process. We also find human law in rules of customary international law. Customary international law consists of rules that have generally developed over time. It is created through the actions of states that are undertaken out of a sense of legal obligation and through official statements. Importantly, unlike treaties which only bind states that are parties to them, customary international law binds all states, even those states that have had no part in its formation. Customary human law may also bind actors other than states, in particular members of an organised armed group. Customary human law rules may develop in parallel with treaty obligations. In this case, the formulation of the relevant customary human law rule is essentially the same as the treaty provision. Customary human law may also develop separately from treaties, particularly where there is no treaty that addresses a particular issue [5]. For example, given the scarcity of treaty provisions applicable, customary human law has developed to

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address gaps in protection. Judgments of national and international courts, while not sources of human law themselves, may help us to identify the content of customary human law. similarly, the military manuals of armed forces in several countries can contain detailed statements as to that states understanding of human law principles and rules and can be considered evidence of state practice for the purpose of identifying customary human law. Some states will play a particularly important role in the formation of customary human law. These states are those that are specially affected by the rule because they play an important role in the area that the law addresses. For example, states that perform a large amount of maritime activity or naval missions will be specially affected states in the context of customary rules of naval warfare. The behaviour and views of these states have greater weight in determining whether a norm has achieved customary human law status. Conversely, some states may object to a particular norm becoming a legal rule. Where a state objects persistently, it may not be required to comply with the newly formed law. A set of customary human law rules, which draws on an extensive study of state practice, updated regularly. However, that some states have expressed objections to the study, both as to its methodology and the content of specific rules. Soft law refers to a type of instrument that, although it may appear to be legal in nature, is not legally binding and cannot be enforced against the parties. this manual refers to several examples of soft law that supplement treaty based and customary human law, for example, the montreux document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict. As a parliamentarian, you can avoid politicising matters relating to the development of human law and seek cross-party support for initiatives, wherever possible [6]. familiarise yourself with how your state enters into treaties, the respective roles of the executive and the legislature, relevant national processes and whether treaties will have direct effect in national law or will require implementing legislation. Identify which human law treaties your state is a party to, when a particular treaty entered into force for your state, the key obligations contained in that treaty, whether your state entered any reservations or declarations to that treaty and which ministry is responsible for adopting legislation. Understand why your state is not a party to any human law treaties. This may include asking questions in parliament to determine why your state has not become a party, and if there are any legal, political, practical or financial barriers to it doing so. We may encourage your state to become a party to a particular treaty, for example, by asking the government to start the process towards becoming a party. Where your state has signed but not ratified a treaty, determine why, and see if the reasons for delay can be overcome. If a challenge to ratification is the need for legislation or parliamentary time to consider draft legislation, explore the possibility of introducing a member's bill or using other parliamentary procedures [7]. Encourage the relevant national authorities in your state to participate in negotiations for draft treaties and to discuss their proposed national position on key provisions. Engaged in parliamentary debates or review processes on ratification or accession to a treaty and on necessary domestic legislation. Carefully consider whether any reservation or interpretative declaration to a treaty proposed by the national authorities is appropriate to and permitted by the treaty and should be supported by parliament. Where they are not, use parliamentary processes to challenge their inclusion [8]. Periodically reassess previously entered reservations to determine if the justification for their inclusion remains and, if not, encourage the government to withdraw them. Make sure that where certain treaties provide for the option of making specific declarations, those declarations are made on ratification or accession to the treaty. Where your state may be considering withdrawal from a treaty, engage in discussion with government officials to understand the reasons for withdrawal and, if appropriate, ensure that the proposed withdrawal is subject to parliamentary scrutiny [9]. The application of human law to a particular situation depends upon: whether there is, in fact, an armed conflict; and, if so, which type of armed conflict it is. Human law does not apply to situations of violence and internal disturbances that do not amount to an armed conflict. National law and human rights law apply to these situations, not human law. Human law applies different rules depending on what type of armed conflict exists. The rules concerning are more extensive than the rules that apply in niac. Human law recognises international armed conflict, an international armed conflict arises whenever one or more states resort to the use of military force against another state or states [10]. There is no minimum level of force required so any violence between states will engage the rules of human law. There is no need for a formal declaration of war. This may include, for example, the situation where one state detains soldiers from a neighbouring state who have inadvertently crossed a border.

Conclusion

A non-international armed conflict is any armed conflict that is not between two or more states. This means at least one of the parties to the conflict will be a non-state oag. This requires looking at the level of organisation of an armed group, for example, whether the organisation has formed itself into a military-like structure with defined units and insignia and has an established command structure and an internal disciplinary system. Unlike an international armed conflict, there is a minimum threshold of intensity of violence for a niac to exist and for human law to apply.

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Conflict of Interest

None

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