

## TRACING HUMANITY IN WARFARE: AN EXPOSITION OF THE EVOLUTIONARY TREND OF INTERNATIONAL HUMANITARIAN LAW

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**ABSTRACT:** *The article examines the trend of development of international humanitarian law (IHL) right from antiquity. It shows that application of humanitarian considerations in armed conflict was not systematic during the days of early society. While during the middle ages, the development of IHL was slow because of the integration of war with religion, thus belligerents fighting just war need not to comply with the laws of armed conflict. The article discloses that the notion of just war has stagnated the growth of humanity in warfare, but after its declined, IHL developed rapidly as a result of the dichotomization between state and religion around the seventeen century, which paved way for the application of humanitarian rules in armed conflict regardless of the justness of a war. The article further examines the period of codification of the laws and customs of war, and it shows that the era has greatly enhanced and assisted the development of modern day IHL conventions and the Protocols. The article reveals that IHL has followed certain stages in its development and each of these stages has its peculiar feature, which either assisted or disrupted the growth of the law. It recommends to those disseminating IHL the need to always consider the stages of the development of the law including Islams' contributions and that will give further clarity in understanding the law and its objectives.*

**KEYWORDS:** Humanitarian Consideration, Just War, Codification, Armed conflict, IHL

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### INTRODUCTION

IHL is the law of armed conflict which regulate the conduct of belligerents in time hostilities. Right of antiquity, the early society used to regulate their conduct in warfare, but not in a systematic way. Various civilizations have attempted to control the means and methods of warfare in their own way by prescribing certain acts as lawful and proscribing others as unlawful. Around the period of the middle ages, humanitarian considerations in armed conflict were not observed, particularly when the belligerents were fighting a religious war which was known as a 'just war'. However, the trend of 'just war' began to dwindle and eventually diminished by the emergence of the idea of secularization of war and the subsequent dichotomy between state and religion. To a larger extent, after the declined of the concept of just war, laws and customs of war began to receive codification, which later gave birth to several IHL treaties. In terms of the modern IHL, it has strong affiliation with the battle of Solferino that instigated the development of relief organizations and conventions dealing with armed conflicts.

Therefore, the article discusses briefly the meaning of IHL and its relationship with *jus ad bellum* in order to avoid confusing the two regimes. It discusses the beginning of humanitarian rules in

armed conflict, which dates back to the period of antiquity and points out the peculiar features of the period. It further discusses the historical antecedent of IHL during the middle ages, which was characterized by notion of just war. The article discusses the stage of the decline of the notion of just war and the subsequent codification of the laws and customs of armed conflict. It equally discusses the period of modern day IHL, which traces its root from the battle of Solferino.

### Meaning of International Humanitarian Law

IHL is a branch of public international law that concerns with the choice of means and methods of warfare to be employed by parties to an armed conflict by making their choice not unlimited. It deals with the protection of victims of armed conflict and those rendered *hors de combat* as a result of injury, sickness or capture, as well as the protection of persons charged with the responsibility of protecting the wounded and sick.<sup>1</sup> IHL could also be regarded as a branch of ‘international public law which owes its inspiration to a feeling for humanity and which is centered on the protection of individual’ during armed conflict.<sup>2</sup> Thus, IHL is a law that regulates the conduct of belligerents in armed conflict in order to ameliorate the plight and suffering of human beings affected or likely to be affected by an armed conflict.<sup>3</sup> Therefore, the whole aim of IHL lies on the notion that the right of parties to an armed conflict to choose the means and methods of warfare of their choice is unlimited, and that individuals who are not or no longer fighting as well as those charged with the responsibility of their care are not legitimate target in hostilities.<sup>4</sup>

According to International Committee of the Red Cross (ICRC), IHL is defined as:

*‘a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice.’<sup>5</sup>*

<sup>1</sup> McCoubrey, H., *International Humanitarian Law The Regulation of Armed Conflicts* (Dartmouth Publishing Company Limited, Aldershot, 1990) P1. Kaczorowska, A., *Public International Law*, 3<sup>rd</sup> ed. (Routledge Cavendish, Oxon, 2008) P475. Hamid, A.G., *Public International Law A Practical Approach*, 3rd ed. (Sweet & Maxwell Asia, Malaysia, 2011) P443. Draper G.I.A.D., “Humanitarianism in the Modern Law of Armed Conflict” in Meyer, M.A., *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention* (British Institute of International and comparative Law, London, 1989) P5

<sup>2</sup> Pictet, J., *Humanitarian Law and the Protection of War Victims* (Henry Dunant Institute, Geneva, 1975) P1

<sup>3</sup> Dinstein, Y., *The conduct of hostilities under the Law of International Armed Conflict* (Cambridge University Press, Cambridge, 2004). Jan, M.N.I., *Principles of Public International law A Modern Approach* (IIUM Press, Malaysia, 2001) P428

<sup>4</sup> McCoubrey, H., Op. cit., P1. Accordingly, humanitarian law seems to merge two different ideals and values that are quite distinct in character i.e. law and morality. Pictet, J., Op. cit., note 2, P1. IHL is the body of law which ‘defines the conduct and responsibilities of belligerent nations, neutral nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning civilians.’ Goel, V., ‘An Introduction to Origin, Evolution and Development of International Humanitarian Law’ in *International Humanitarian Law- An Anthology*, edited by Doswald-Beck, L., et al, (India: LexisNexis, 2009) P15. See also Harland, P., “The Domestic Implementation and Application of international Humanitarian law Norms” ICRC Advisory Service on IHL, Geneva, Switzerland (ND) P4

<sup>5</sup> ICRC, “International Humanitarian Law and International Human Rights Law: Similarities and differences” (2003) Advisory Service on International Humanitarian Law, P1. See also Bouvier, A.A., “International humanitarian Law and the Law of Armed Conflict” (2012) Peace Operations Training Institute, Williamsburg, P13 available at [www.peaceopstraining.org](http://www.peaceopstraining.org) (accessed 20th February, 2013); Turns, D., “The Law of Armed Conflict (International humanitarian Law)” in Evans, M.D., Ed., *International Law*, 3rd Ed. (Oxford University Press, Oxford, 2010) P814.

Simply put, IHL is the segment of law that ‘restrict[s] the rights of parties to a conflict to use whatever methods and means of warfare they might choose, and seeks to protect people and property affected, or liable to be affected, by the conflict.’<sup>6</sup> To crown it all, IHL seeks to offer protection to victims of war and combatants who are no longer fighting, as well as ‘to restrain the parties to an armed conflict from wanton cruelty and ruthlessness, and to provide essential protection to those most directly affected by the conflict.’<sup>7</sup>

Worthy of note is the fact that IHL is considered as the *Jus in bello* rules which deals with norms that regulate actual conduct of hostilities and not rules guiding the right to resort to use of force (*Jus ad bellum*). The right of parties to use force against each other is regulated under the United Nations Charter, which deals with the right to go to war and it determines the legality or otherwise of the use of force by a state.<sup>8</sup> Thus, IHL applies ‘to all victims of war, regardless of which side they are on, the reasons for the conflict or its legality, or the justness of their cause.’<sup>9</sup> Therefore, *Jus in bello* should be respected without any reference to the argument as to the legality or illegality of a war and it has to be completely distinguished from *jus ad bellum*.<sup>10</sup> The question arises as to how does the law evolve with time, was such distinction between *jus ad bellum* and *jus in bello* in existence right from antiquity or it is just a contemporary notion?

### **IHL in the Early Society**

The idea for a need to protect human beings against the destructive evils of war and arbitrary treatment has been an old struggled between those who desire to preserve and liberate mankind and those who strive hard to dominate and enslave people.<sup>11</sup> In time of war, enemies are made to be killed since war is not a chess game,<sup>12</sup> but killing has to be in a humane manner in such a way that ‘[e]ven wars fought against evil men to stop them from committing further evil had to be done

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All the definitions of IHL are concerned with caring for civilians, wounded soldiers and persons taking care of the wounded, and the regulation of means and methods of warfare that are indiscriminate in their usage or effect. Therefore, the fact that IHL restricts itself to regulation of conduct of hostilities does not mean that the branch of law glorifies armed conflict but rather, states accept the compelling need to impose certain limitations on belligerents when armed conflict occurred. McCormack, T., “The Use of Force” in Bly, S., et al, eds. *Public International Law An Australian Perspective*, 2<sup>nd</sup> ed. (Oxford University Press, Oxford, 2006) P247

<sup>6</sup> Sandvik, K.B., “International Human Rights and Humanitarian Law in the Global Legal Order” (2012) PRIO Policy Brief, P3 available at [www.prio.org](http://www.prio.org) (accessed 15<sup>th</sup> February, 2013)

<sup>7</sup> Kalshoven, F., et al, *Constraints on the Waging of War An Introduction to International Humanitarian Law* (ICRC, Geneva, 2001) P12

<sup>8</sup> Greenwood, C., “The Relationship between Jus ad Bellum and Jus in Bello” in Gardem, J., Ed. *Humanitarian Law* (Dartmouth Publishing Company Limited, Aldershot, 1999) P221

<sup>9</sup> ICRC, *Exploring Humanitarian Law IHL Guide- A Legal Manual for EHL Teachers* (ICRC, Geneva, 2009) P7 (Hereinafter referred to as ICRC Guide)

<sup>10</sup> Ibid. According to Bouvier “Any past, present, and future theory of “just” war only concerns *jus ad bellum* and cannot justify (but is in fact frequently used to imply) that those fighting a “just” war have more rights or less obligations under IHL than those fighting an unjust war.” Bouvier, A.A., Op. cit., P21

<sup>11</sup> Pictet, J., *Development and Principles of International Humanitarian Law* (Martinus Nijhoff Publishers, Dordrecht, 1985) P5

<sup>12</sup> It is true that “[w]ar is not a chess game. Almost by definition, it entails human losses, suffering and pain....The law of international armed conflict can and does forbid some modes of behavior, with a view to minimizing the losses, the suffering and the pain.” Dinstein, Y., Op. cit., P1

in a way that did not reduce the enemy to an outlaw.<sup>13</sup> Thus, it is principle of humanity and the major role accorded to it in war that enhances the development of the law of armed conflict coupled with the gradual avoidance of codes based solely on Knighthood, chivalry etc.<sup>14</sup> Consequently, many nations and civilizations employed certain number of restraints in conduct of their armies which are tailored toward the protection of children, women, sick persons and religious clerics during armed conflict.<sup>15</sup> As such, it is obvious that right from antiquity, law of war is a significant portion of the law of nations and has been the first rules of international law to be codified.<sup>16</sup>

The notion about legal rules in warfare has been nurtured long time ago and has preceded the modern international law. History has shown that different people of different ages and civilizations have tried to control conduct of hostilities or ameliorate the sufferings of human beings in armed conflict. This can be traced back to the practices of the early society. For instance, in 538 BC, during the taking of Babylon, King Cyrus of Persia made a firm order to his army regarding respect for sanctity of shrines and the humane treatment of defeated people.<sup>17</sup> Likewise, the Code of Manu in India prohibits the use of scorching arrows, poisoned spears and the butchery of wounded or sleeping men.<sup>18</sup> Similarly, when Alaric I took Rome, he spared Christian churches and people who took refuge in temples were spared, they were not dragged out nor taken into captivity.<sup>19</sup> In the same vein, “[t]he ancient Egyptian culture was marked by considerations for one’s fellow beings even in times of armed conflict. The ‘seven works of True Mercy’ instructs its readers to ‘feed the hungry, give water to the thirsty, clothe the naked, shelter the traveler, free the prisoners, treat the sick, bury the dead’.”<sup>20</sup>

<sup>13</sup> O’connell, M.E., *International Law and the Use of Force Cases and Materials*, 2<sup>nd</sup> ed. (Foundation Press, USA, 2009) P162

<sup>14</sup> Draper G.I.A.D., *Op. cit.*, P6-7

<sup>15</sup> Detter, I., *The Law of War*, 2<sup>nd</sup> ed. (University of Cambridge Press, Cambridge, 2000) P151. Draper, G.I.A.D., *Op. cit.*, P6. O’connell, M.E., *Op. cit.*, P163. Cf. Neff observes that “...the reality of medieval warfare was woefully different. It was an age of pillage, rapine, destruction and cruelty, best exemplified in the Hundred Years War between England and France in the fourteenth and fifteenth centuries. Perhaps the most apt picture of this combination of extremes was the conquest of Jerusalem in 1099, when the Christian Knights indulged in a horrible massacre in liberating the tomb of their savior, who had urged all men to turn the other cheek when smitten.” Neff, S.C., *War and the Law of Nations A General History* (Cambridge University Press, Cambridge, 2005) P11

<sup>16</sup> Gardam, J., *Op. cit.*, P xii

<sup>17</sup> Herczegh, G., *Development of International Humanitarian Law* (Akademiai Kiado, Budapest, 1984) P13

<sup>18</sup> Detter, I., *Op. cit.*, P151

<sup>19</sup> Herczegh, G., *Op. cit.*, P14. Other practices include the Roman prohibition of the use of poisonous weapons and there is evidence certain ancient civilizations forbade and restricted methods of warfare, for example, an agreement was concluded on the treatment of prisoners of war in Egypt around 1400 BC. Detter, I., *Op. cit.*, P151. . Y. Diallo made it explicit that humanitarian considerations and moderation to enemy in armed conflict is a tradition in the people of Black Africa. Herczegh, G., *Op. cit.*, P15.

<sup>20</sup> Pictet, J., *Op. cit.*, note 18, P7. Cf. Bouvier observes that “Although these ancient and often very rudimentary rules were not established for humanitarian reasons, but rather for purely economic purposes, their *effect* was humanitarian. For example:

- The prohibition against poisoning wells (reaffirmed in 1899 in The Hague) was originally made in order to permit the exploitation of conquered areas;
- The first reasons for the prohibition against killing prisoners (reaffirmed and developed in the Third Geneva Convention of 1949) were to safeguard the lives of future slaves or to facilitate the exchange of prisoners.” Bouvier, A.A., *Op. cit.*, P13

Moreover, some 1400 years back, Islamic norms of warfare have made a significant contribution toward integrating humanity into warfare. Muslims are commanded to feed a captured slave even though they personally need the food for themselves. In the Holy Qur'an, Allah says: 'And they give food, in spite of their love for it, to the poor, the orphan and the captive.'<sup>21</sup> Thus, Islam encourages Muslims to feed prisoners of war and give them good treatment. The Prophet (PBUH) and his companions have issued several commands to Muslim army forbidding the killing of children, women, monks, old people, sick and the bearers of flags of truce. They should not destroy houses, places of worship or mutilate the vanquished nor poison wells, burn down trees or crops etc.<sup>22</sup> In the light of these rules, '[i]t is said that the first systematic code of war was that of the Saracens and was based on the Koran.'<sup>23</sup> Because, when crusaders took Jerusalem in 1099 enormous blood was shed and the entire community was massacred, but when Salah al-Din entered Jerusalem, his Saracens soldiers did not hurt or maltreat a single individual. To ensure compliance with the rules of warfare, Salah al-Din establishes a special patrol team to protect Christians and he freed rich prisoners for ransom and the poor ones were released freely.<sup>24</sup> He equally permitted doctors from the enemy side to visit him and treat their wounded victims and return back to their own camps.<sup>25</sup>

The peculiarity of this period can be seen from the fact that IHL was not treated in a systematic manner, it was characterized by the epileptic application of its norms because it was not part of any specific law of the people during that civilization. Save for the Islamic law position, which considers humane treatment of the prisoners as a norm forming part of the provision of the most authoritative and primary source of its law i.e Quran.<sup>26</sup> In addition, Prophetic traditions and teachings of the companions of the Prophet decreed the humane treatment of non-combatants and prohibits certain means and methods of warfare that are treacherous in nature,<sup>27</sup> which equally form part of the authoritative primary source of Islamic law.<sup>28</sup>

### **IHL During the Middle Ages**

During the middle ages, cruelty in war was seldom restricted, but a number of leaders and commanders on a battlefield imposed certain minimum standard of conduct to be observed by their

<sup>21</sup> Qur'an 76 Verse 8, Translated by Ali, A.Y., *The Holy Qur'an Text, Translation and Commentary* (Dar al Arabia Publishing, Printing and Distribution, Lebanon, 1968) P1656

<sup>22</sup> Pictet, J., Op. cit., note 18, P16. During the reign of the Caliphs, there were many treaties entered with the Eastern Empire which provided for humane treatment of prisoners of war and their release upon payment of ransom.

<sup>23</sup> Roger, A.P.V., Op. cit., P1

<sup>24</sup> Pictet, J., Op. cit., note 18, P17.

<sup>25</sup> Ibid

<sup>26</sup> Tafsir Ibn Kathir, Abridged by a Group of Scholars Under the Supervision of Al-Mubarakpuri, S.S., 1<sup>st</sup> Edition, Vol.1, (Riyadh: Darussalam Publishers and Distributors, 2000), Pp 527-8

<sup>27</sup> Ruxton, F.H, *Maliki Law, Being a Summary from French Translations of the Mukhtasar of Sidi Khalid*, (Cairo: El-Nahar Press, 2004) p74; Imam Malik, A., *Al-Muwatta (the Approved)* (Translated by Hibah G.A., Vol.I, Dar Al-Kotob AL-Ilmiyah, Lebanon, 2007) P229; Aduly, M., (ed) *Bulug Al-Maram Min Adillat Al-Ahkam, Attainment of the Objective in Conformity With Evidence of the Legal Judgment*, Translated by Hibah, G.A., (Lebanon: Dar Al-Kotob Al-Ilmiyah, 2008) Hadith No 1313; Imam Malik, A., *Al-Muwatta Malik*, Book 21, Hadith 21: 3: 10. See also Zuhili, W., 'Islam and International Law' (2005) Vol. 87, No. 858, International Review of the Red Cross, p282

<sup>28</sup> kamali

army.<sup>29</sup> For instance, in 333 BC Alexander the Great ordered his army not to attack civilian population of defeated nations and prohibited them from intentional destruction of religious temples, and during the siege of Jerusalem in 70 BC, Titus the Roman commander also ensured that his soldiers allowed the safety passage of children and women.<sup>30</sup> St. Augustine convinced the pacific early Christian to believe that it is in consonance with Christian values to use restricted force in a just cause. His doctrine helped the Christians in tackling cases of marauders and justified the use of force in response to wide-range of aggressions.<sup>31</sup> The legacy left behind by Augustine influenced Christians to believe in just war and the need to convert the whole world into Christianity in order to establish peace and fighting would end. This belief led to the Holy Roman Empire that lasted up to the signing of Peace of Westphalia in 1648.<sup>32</sup>

However, during the period of the Holy Roman Empire many scholars of that time did not relent on their effort in developing the idea of just war. For example, Thomas Aquinas who is one of the famous proponents of just war has built on Augustine's doctrine. He set three requirements to determine a just war- declaration of war by an authority concerned, a just cause and right intention by those waging the war.<sup>33</sup> Thomas Aquinas developed a new notion on how war should be prosecuted by expressing that war must pursue the general interest and common good.<sup>34</sup> Therefore, the works of Augustine and Aquinas have their roots in religion and 'one of the criteria of both Augustine and Aquinas concerned the justice of the intentions'<sup>35</sup> that influenced subsequent success of limitation in hostilities which largely centered on the degree of religious faith of the leader at that time.<sup>36</sup> In essence, Christianity and rules of chivalry have enormous influence on some leaders who imposed certain norms of warfare on their soldiers. Take for instance, the case of King Richard II of England in 1386 who published the Ordinance for the Government of the Army which was meant for the domestic use of his soldiers. The ordinance designated some acts

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<sup>29</sup> Roger, A.P.V., Op. cit., P1. Indeed in the early society, they fought their wars with all vigor, warriors had to win or die but cannot surrender. However, even at that time especially among the sedentary peoples there was desire to attenuate the horrors of hostilities and the wounded were cared for. Pictet, J., Op. cit., note 16, P6

<sup>30</sup> Kaczorowska, A., Op. cit., P475.

<sup>31</sup> O'connell, M.E., Op. cit., P118

<sup>32</sup> Elias, T.O., *New Horizons in International Law*, 2<sup>nd</sup> ed. (Martinus Nijhoff Publishers, Dordrecht, 1992) P137. The Peace of Westphalia not only provided formal principles on peace but also provided for mechanism for enforcement. The peace forbade a state from use of force meant to dominate others. The members of the Empire may join alliances. Where there is dispute resort to war should not be made but should submit their cause to panel or regular proceedings of justice. If after three years the parties are unable to resolve, all parties to the treaty shall take up arms against the offender with a view to overcoming the offender. O'connell, M.E., Op. cit., P126

<sup>33</sup> O'connell, M.E., Op. cit., P126. After Thomas Aquinas, scholars formulated a long list of just cause which includes inter alia breaches of treaty, violations of territorial sovereignty, breaches of diplomatic immunity etc.

<sup>34</sup> Ibid

<sup>35</sup> Wells, D.A., *War Crimes and Laws of War*, 2<sup>nd</sup> ed. (University Press of America, Maryland, 1991)

<sup>36</sup> Pictet, J., Op. cit., note 18, P13. See also O'connell, M.E., Op. cit., P33. According to Augustine, "natural order is a reflection of divine order. A legitimate sovereign has the power to establish and maintain order. Since the end justifies the means, acts of war carried out for the cause of the sovereign are exempt from sin. The war is declared to be a just war; it is a war desired by God; the adversary is therefore the enemy of God, and cannot possibly wage any but an unjust war". Pictet, J., Op. cit., note 18, P13

as capital offences such as destruction of Churches and burning of houses, violence against women and unarmed cleric.<sup>37</sup>

The middle ages period was characterized by the notion of ‘just war’. Religious doctrine of Christianity on just war has greatly influenced the integration of humanitarian considerations in war with the idea of fighting a just cause. The scholars of the time were more concerned and tilted toward non-applicability of humanitarian norms in a situation where people are fighting a religious or Gods’ war, because it was believed that they are waging a just war. In other words, the period considered just war as the basis for non observance of humanitarian precepts and permitted unrestricted right to belligerents to resort to use of any means and methods of warfare provided that they are fighting a religious war.

### **The Declining Period of Just War**

Thereafter, many scholars from the sixteen and seventeen centuries who have expressed different ideas about just war and its determination, and conducts permitted and forbidden in and after a war began to emerge.<sup>38</sup> One of the notable and influential among the scholars was Hugo Grotius who wrote on the law of war and peace.<sup>39</sup> He argued that all inter state relations and war must be subject to the rule of law of nations and further reiterated that conception of law made by man which includes both international and municipal was premised on the law of nature (including law of arms should be made for the benefit and interest of human beings).<sup>40</sup> He separated law of God from law of nature and the religious believe that those who are fighting just war with God behind them are not bound by restrictions in war has diminished.<sup>41</sup> This Grotius idea has secularized the notion of just war thereby removing the religious impediment that hinders restrain in just war.<sup>42</sup> He argued that in conduct of hostilities belligerents are bound by equal obligation to respect the limits set by law in terms of choosing the means and methods of warfare to be employed whether they are fighting a just or unjust war.<sup>43</sup> Grotius’ work has indeed established the basic humanitarian principle for the treatment of civilians during armed conflict and sets restrictions on the manner in which hostilities should be conducted between parties to an armed conflict.<sup>44</sup>

As time goes on, humane practices and norms in the various codes and orders given by rulers coupled with the work of scholars such as Augustine, Aquinas and Grotius have actually recorded

<sup>37</sup> Kaczorowska, A., Op. cit., P477. The Ordinance promulgated by King Richard has enjoyed patronage and has influenced different leaders to adopt similar provisions in their codes such as Ferdinand of Hungary in 1526, King Gustavus II Adolphus of Sweden in 1570 and Emperor Maximilian II in 1570.

<sup>38</sup> Kennedy, D., *Of War and Law* (Princeton University Press, Princeton, 2006) P48

<sup>39</sup> Grotius in his treatise *De iure belli ac pacis* which means Constraint in the Waging of War where he recommended “respecting the ‘rule of rights’ and refraining from certain modes of acting ‘ on higher grounds and with greater praise among good men’.” He expounded moral order that are today part of the rules of IHL through *temperamenta belli* i.e. moderation of war.

<sup>40</sup> Draper, G.A.I.D., Op. cit., P6

<sup>41</sup> Pictet, J., Op. cit., note 18, P20

<sup>42</sup> Kennedy, D., Op. cit., P48. Meyer, M.A., Op. cit., P7. Grotius has went ahead to set out list of those who should not be killed even in cases of just or lawful war. They include clergy, women, children, academics, farmers merchants, elderly and prisoners of war. O’connell, M.E., Op. cit, P167

<sup>43</sup> Draper, G.I.A.D., Op. cit., P7

<sup>44</sup> Kaczorowska, A., Op. cit., P476

some influence on the perception of war and its conduct.<sup>45</sup> A century later, during the Age of Enlightenment, a major change in the practice and understanding of warfare was recorded.<sup>46</sup> The new development was attributed to Jean-Jacques Rousseau famous work *Le Contract Social* where he categorically disclosed the relationship that exists among state, its soldiers and civilian population, and further reiterated that war is fought between armed forces of states as enemies, but not as citizens.<sup>47</sup> Kaczorowska quoting Rousseau states thus:

*'War then is a relation, not between man and man, but between state and state, and individuals are enemies only accidentally, not as men, nor as citizens, but as soldiers... The object of the war being the destruction of the hostile state, the other party has a right to kill its defenders while they are bearing arms; but as soon as they lay them down and surrender they become once more merely men, whose life no one has any right to take.'*<sup>48</sup>

It is obvious that this statement portrays the relevance of restricting hostilities to armed combatant engaged in a war which may quite serve the purpose of the war and weakening the enemy forces, and certainly killing of civilians in hostilities will confer no military advantage. Thus the Rousseau's work has paved the way for fundamental humanitarian norms into conduct of hostilities through his philosophy of rationalism and sensibility.<sup>49</sup>

The period is peculiar for the declined in notion of just war. The period has severed the link between religion and war, and has made war a secular phenomena which may not necessarily be religiously inclined. This means the period has greatly influenced the development of humane principles in armed conflict because since that period, belligerents were expected to observe humanitarian rules in waging war in all conflicts whether they are fighting a just war or unjust war. Indeed, it was the period that IHL was aptly advanced and paved the way for subsequent humanitarian development.

### **The Period of Codification**

After the declining of the period of just war, around the end of the eighteenth century, technological advancement has begun to impact negatively on both civilians and soldiers alike during armed conflict, thereby necessitating the need for more protection in times of war. This period witnessed the first move towards codification of practices and norms of war.<sup>50</sup> Precisely, in 1863, a set of instructions prepared by Francis Lieber<sup>51</sup> for the United States army in the American Civil War

<sup>45</sup> These scholars with the exception of Grotius have through their theory of just war assert the need for war to be just at both its ends and means. They contributed the idea that means of war must be proportionate to its ends and reiterate the protection of persons who are not fighting. Wells, D. A., op. cit., P5-6

<sup>46</sup> Draper, G.I.A.D., Op. cit., P7

<sup>47</sup> Pictet, J., op. cit., note 18, P21

<sup>48</sup> Kaczorowska, A., Op. cit., P476. Draper has equally quoted Rousseau where he states "sometimes one can extinguish a state without killing a single member of it; moreover, war confers no right to other than that which is necessary for its purpose. These principles are not those of Grotius, are not founded upon the authority of poets, but they flow from the nature of things and are founded upon reason." Draper, G.I.A.D., Op. cit., P8

<sup>49</sup> Draper, G.I.A.D., Op. cit., P8

<sup>50</sup> Roger, A.P.V., Op. cit., P1

<sup>51</sup> Francis Lieber is a German-American international law Professor in Columbia University hitherto Columbia College. He fought in Europe after which he emigrated to US. He has three sons one of them died fighting for the

was issued by President Lincoln.<sup>52</sup> The set of instructions prepared by Francis Lieber is known as Lieber Code and was the first attempt to put together in a single code customs and laws of war for soldiers in the field.<sup>53</sup>

Notwithstanding the fact that Lieber Code was a municipal document for United States, it laid down principles that served as the background to subsequent development and codification of the law of war.<sup>54</sup> In addition, it is considered as customary law of war that was adopted as the primary source for the growth of the Hague Conventions of 1899 and 1907 which eventually influenced later developments of humanitarian law.<sup>55</sup> The Code was the foundation of the work of Brussels Conference of 1874 and the basis for Oxford Manual of the Institute of International Law which were equally seen as the groundwork to the Hague Conventions.<sup>56</sup> The instructions contained in the code give detailed rules on every sphere of land warfare such as conduct of war proper, treatment of the wounded, civilian population, prisoners of war etc.<sup>57</sup>

Subsequently, more attention was given to codification of the norms of war in a treaty form, beginning with Geneva Convention of 1864.<sup>58</sup> After a few years later, explosive rifle projectile was developed which proved to be deadly and dehumanizing because it was more effective than a normal rifle bullet.<sup>59</sup> Therefore, the need to address the problem of projectile rifle leads to the St. Petersburg Declaration in 1868 where it categorically stated that ‘the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy... this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable.’<sup>60</sup> The declaration was subsequently followed by the Hague Convention of 1899 prohibiting dum-dum bullets and the Hague

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confederacy. Lieber Code was published by the war department as General Orders No. 100 in 1863. O’connell, M.E., Op. cit., P168

<sup>52</sup> Dinstein, Y., *The International Law of belligerent Occupation* (Cambridge University Press, Cambridge, 2009) P9

<sup>53</sup> O’connell, M.E., Op. cit., P168

<sup>54</sup> Gardam, J.G., *Non-Combatant Immunity as a Norm of International humanitarian Law* (Martinus Nijhoff Publishers, Dordrecht, 1993) P17

<sup>55</sup> Doswald-Beck, L. and Vite, S., “Origin and Nature of Human Rights Law and humanitarian Law” in Gardam, J., *Humanitarian Law* (Dartmouth Publishing Company Limited, Aldershot, 1999) P460

<sup>56</sup> Gardem, J.G., Op. cit., P17

<sup>57</sup> Kalshoven, F., et al, Op. cit., P19-20. For instance, Article 14 of the Code provides that “military necessity as understood by modern civilized nations consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usage of war.” it further provides in Article 16 thus “military necessity does not admit of cruelty- that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district...” Article 22 of the Code provides that “Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honour as much as the exigencies of the war will admit.”

<sup>58</sup> Roger, A.P.V., Op. cit., P1

<sup>59</sup> Kalshoven, F., et al, Op. cit., P20. Doswald-Beck, L., “The Value of the 1977 Geneva Protocols for the Protection of Civilians” in Meyer, M.A., ed., *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons convention* (British Institute of International and Comparative Law, London, 1989) P141-2

<sup>60</sup> Ibid

Conventions of 1907 which address various aspects of warfare.<sup>61</sup> This period witnessed the beginning of the codification of laws of war which subsequently give birth to the modern day IHL conventions and protocols.

### **The Beginning of Modern Era**

Modern day IHL can be traced back to the battle of Solferino that took place in June 1859 where a war was fought between Austrian and Franco-Italian forces which left about 6,000 soldiers dead and 36,000 wounded.<sup>62</sup> The deaths were not gathered and the wounded were left unattended for several days, the war was described as one of the bloodiest battles in history. After the battle, a young Swiss merchant called Henry Dunant who was on his way to visit Emperor Napoleon III arrived at a neighboring town and witnessed the suffering of the wounded dying soldiers lying on the battlefield, a significant number of them died as a result of lack of prompt medical attention.<sup>63</sup> Dunant was terrified by the horrible scene and he immediately devised an interim medical relief team from the ordinary civilians and women who assisted by supplying water and using women's clothing as bandage to dress the wounded.<sup>64</sup>

Immediately after the incident, Dunant was deeply touched and affected by the horrible experience he had from the battle of Solferino, he retired back home from active business life and wrote down his experiences in a book titled *Un souvenir de Solferino* meaning 'A Memory of Solferino'.<sup>65</sup> The book was published in 1862 and it has made a remarkable impact throughout Europe particularly within the elite circle thereby stirring a significant change in the existing situation.<sup>66</sup> Dunant recommended in his book 'the establishment in each country, of a national private aid organization to assist military medical services in a task they were insufficiently equipped to perform'<sup>67</sup> and 'that States should conclude an international convention in support of the operation of those relief societies.'<sup>68</sup> These recommendations were given immediate attention which resulted to the formation of International Committee of the Red Cross (ICRC) in Geneva and other National Red Cross/Crescent Societies committed to relief services during armed conflict.<sup>69</sup> In addition, in

<sup>61</sup> Starke, J.G., *Introduction to International Law*, 10<sup>th</sup>ed., (Butterworths, London, 1989) P552-3. Detter, I., Op. cit., P153. The Hague Conventions of 1907 are: Convention for the Pacific Settlement of International Disputes; Convention Respecting the Limitation of the employment of force for the Recovery of Contract Debts; Convention Relative to the opening of Hostilities; Convention respecting the laws and customs of war on Land; Convention respecting the Rights and Duties of Neutral Powers and persons in war on Land; Convention Relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities; Convention Relative to the Conversion of Merchant-ship to Warships; Convention Relative to the Laying of Automatic Submarine Contact Mines; Convention Concerning Bombardments by Naval Forces in time of War; Convention for the Adaptation of the principles of the Geneva Convention to Maritime War; Convention Relative to Certain restrictions on the Exercise of the Right of capture in Maritime War; and Convention Respecting the Rights and Duties of Neutral powers in Maritime War. See Herczegh, G., Op. cit., P35

<sup>62</sup> Pictet, J., Op. cit., note 18, P25

<sup>63</sup> Herczegh, G., Op. cit., P21. Draper, G.I.A.D., Op. cit., P9. Kalshoven, F., et al, Op. cit., P26

<sup>64</sup> Draper, G.I.A.D., Op. cit., P9

<sup>65</sup> Kalshoven, F., et al, Op. cit., P26

<sup>66</sup> Herczegh, G., Op. cit., P21.

<sup>67</sup> Kalshoven, F., et al, P27

<sup>68</sup> Herczegh, G., Op. cit., P21

<sup>69</sup> Draper, G.I.A.D., op. cit., P9. Building on Dunant's initiative, "a five-member committee was set up in Geneva on 17 February 1863. This committee of five, which was called *comite international et permanent de secours aux blesses*

August 1864 on invitation of Swiss Government, a diplomatic conference was convened in Geneva which led to the adoption of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.<sup>70</sup> By the year 1967 nearly all the major powers with exception of USA had ratified the convention which is essential for its authority up till date.<sup>71</sup>

Afterward, 'States have agreed to a series of practical rules, based on the bitter experience of modern warfare'<sup>72</sup> and several treaties were negotiated and existing conventions were revised with a view to improving the rules of armed conflict through the previous experience. The principles necessary for the protection of individual remain essential alongside military realities and effectiveness of the protection. In with this development, ICRC through the support of some international experts drafted a proposal which later served as the revision of the Geneva Convention of 1906.<sup>73</sup> In 1929, another revision of the Geneva Convention was made which considered development of medical aviation and it removed the provision that restricts the application of the convention to only belligerents who are signatories to the convention.<sup>74</sup> The convention further gave Muslim countries the right to adopt symbol of Red Crescent instead of Red Cross as their humanitarian emblem and a clear prohibition of reprisals against prisoners of war was introduced.<sup>75</sup>

Subsequently, with the occurrence of a landmark event in the history of mankind i.e. World War II coupled with the Spanish Civil War, the international community deemed it necessary to eliminate war in international relations.<sup>76</sup> This was followed by the United Nations Charter in 1945 requiring Member States to 'refrain in their international relations from the threat or use of force against territorial integrity or political independence of any state, or in other manner inconsistent with the purposes of the United Nations.'<sup>77</sup> Without defying the effectiveness of the United Nations Charter prohibiting the use of force, Geneva Conventions of 1949 were signed into force after a diplomatic conference instigated by ICRC and convened at the invitation of the Swiss

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*militaries*, was later to grow into international committee of the Red cross. Its recommendations were discussed by experts from 16 different countries between 26 and 29 October 1863. This procedure is still practiced today by the [ICRC] when it prepares its draft conventions on the protection of victims of war." Herczegh, G., Op. cit., P21

<sup>70</sup> Kalshoven, F., et al, Op. cit., P27. The Geneva Convention of 1864 was the first treaty based law dedicated to humanitarian concerns and it is often referred to as Red Cross treaty. Henderson, C.W., *Understanding International Law* (Wiley-Blackwell, United Kingdom, 2010) P215

<sup>71</sup> Pictet, J., Op. cit., note 18, P31. United States of America ratifies the convention in 1882.

<sup>72</sup> Harland, P., op. cit., P5

<sup>73</sup> Pictet, J., op. cit., note 18, P31

<sup>74</sup> Article 25, Geneva Convention 1929

<sup>75</sup> Kalshoven, F., et al, Op. cit., P28. Pictet, J., Op. cit, P32

<sup>76</sup> Factsheet No 13, International Humanitarian Law and Human Rights available at [www.unhcr.org/.../category.REFERENCE\\_OHCHR...4794773a5.0.ht](http://www.unhcr.org/.../category.REFERENCE_OHCHR...4794773a5.0.ht) (accessed 20<sup>th</sup> April, 2013) Herczegh, G., Op. cit., P42

<sup>77</sup> Article 2 (4), United Nations Charter, 1945. There are basically two exceptions to the use of force by a state which serve as restrictive interpretative guide to Article 2 (4). The exceptions are the use of military force in self defence as permitted in Article 51 (2) and use of military force authorized by the United Nations Security Council as contained in Chapter VII of the United Nations Charter. For detail discussion of use of force in international relations, see Jan, M.N.I., *Use of Force in International Law* (The Malaysian Current Law Journal Sdn Bhd, Malaysia, 2011), Dekker, I.F., et al, eds., *The Gulf War of 1980-1988* (Martinus Nijhoff Publishers, Dordrecht, 1992), Gray, C., *International Law and the Use of Force*, 2<sup>nd</sup> ed. (Oxford University Press, Oxford, 2004), Gazzini, T., *The Changing rules on the Use of Force in International Law* (Manchester University Press, Manchester, 2005)

government.<sup>78</sup> The Geneva Conventions of 1949 substituted the previous conventions by enhancing the existing rules through filling their *lacunae* and general development of the law of Geneva, however the conventions did not contain rules relating to conduct of hostilities.<sup>79</sup> Prior to the adoption of the conventions, '[s]tarvation of civilian was a permissible method of warfare in certain circumstances, and was usually associated with blockade and siege. The fourth Geneva Convention of 1949 was adopted in the aftermath of the second world war (sic) and in many respects, reflects that experience.'<sup>80</sup> Therefore, it is obvious that '[a]ll the conventions are based, as it should be, on practical and realistic considerations, striking...an equilibrium between the cruel necessities of war and humanitarian ideals.'<sup>81</sup> The four conventions are as follows: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field;<sup>82</sup> Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea;<sup>83</sup> Convention Relative to the Treatment of Prisoners of War;<sup>84</sup> and Convention Relative to the Protection of Civilian Persons in Times of War.<sup>85</sup>

As time goes on, in 1955 and 1956 ICRC have forwarded a draft rules covering area where the Hague Law was apparently inadequate, but the proposal yielded no result as many governments at that time were unwilling to engage in issues pertaining to regulation and restriction on certain means and methods of warfare particularly aerial bombardment.<sup>86</sup> After a decade later, in 1965, ICRC in 20<sup>th</sup> International Conference of Red Cross and Red Crescent held in Vienna succeeded by making the delegation to adopt a resolution to the effect 'that all Governments and authorities responsible for action in armed conflict should conform at least to the following principles: that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited; that it is prohibited to launch attacks against the civilian populations as such; that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible; that the general principles of the Law of War apply to nuclear and similar weapons.'<sup>87</sup> Thus, 1965 served as the beginning of convergence of The Hague and Geneva Laws into a single main stream and it has paved way for the development of IHL in light of the contemporary phases of warfare.<sup>88</sup>

<sup>78</sup> Kalshoven, F., et al, Op. cit., P28

<sup>79</sup> Ibid

<sup>80</sup> Meyer, M.A., "Development of the Law Governing Relief Operations" in Meyer, M.A., ed., *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons convention* (British Institute of International and Comparative Law, London, 1989) P210

<sup>81</sup> Kunz, J.L., "The Chaotic Status of the Laws of War and the Urgent Necessity for Their Revision" in Gardam, J., *Humanitarian Law*, ed. (Dartmouth Publishing Company Limited, Aldershot, 1999) P59

<sup>82</sup> Came into force Oct. 21, 1950, 75 U.N.T.S. 31 (hereinafter 'Geneva Convention I')

<sup>83</sup> Came into force Oct. 21, 1950, 75 U.N.T.S. 85 (hereinafter 'Geneva Convention II')

<sup>84</sup> Came into force Oct. 21, 1950, 75 U.N.T.S. 335 (hereinafter 'Geneva Convention III')

<sup>85</sup> Came into force Oct. 21, 1950, 75 U.N.T.S. 267 (hereinafter 'Geneva Convention IV'). For a more detailed on the Geneva Conventions of 1949, see Wallace, R.M.M., and Martin-Ortega, O., *International Law*, 6<sup>th</sup> Ed. (Sweet & Maxwell, London, 2009) P325

<sup>86</sup> O'Connell, M.E., Op. cit., P468. Kalshoven, F., et al, Op. cit., P32

<sup>87</sup> Kalshoven, F., et al, Op. cit., P32

<sup>88</sup> Ibid

In view of ‘the increased concern about armed conflicts that are solely or partly internal, such as civil wars’ and lack of adequate humanitarian principles in Common Article 3 to the Geneva Conventions which is applicable in non-international armed conflict coupled with the convergence of the Hague and Geneva Laws have led to the development of two protocols to the Geneva Conventions of 1949.<sup>89</sup> The first Additional Protocol codifies and develops rules regarding the protection of victims of international armed conflicts. In addition, ‘without modifying the text of the four 1949 Geneva Conventions-the universally accepted treaties on humanitarian law applicable in armed conflict-Protocol I updates and strengthens the “law of Geneva” i.e., the rules on the protection of the wounded, sick and shipwrecked, prisoners of war (POWs), civilian detainees and the civilian population.’<sup>90</sup> While, Additional Protocol II Relating to Protection of Victims of Non-international Armed Conflicts has objective of ‘safeguard[ing] what Common Article 3 had already achieved by providing that it would retain its own autonomous existence.’<sup>91</sup> History has shown that from then many treaties addressing specific issues of humanitarian concern were signed and laws of IHL has become well developed and covers a wide range of aspects of armed conflict, ‘offering protection to victims of war and limiting permissible means and methods of warfare.’<sup>92</sup> However, the bulk of the treaties do not apply to non international armed conflict with the exception of ‘Convention on Certain Conventional Weapons, as amended, the statute of the International Criminal Court, the Ottawa Convention banning anti-personnel landmines, the Chemical Weapons Convention, the Hague Convention for the Protection of Cultural Property and its second Protocol.’ Even those treaties that are applicable to non-international armed conflict, do not regulate in detail large portion of such armed conflicts despite the increase in the number and proliferation of such specie of conflicts.<sup>93</sup>

<sup>89</sup> Aust, A., *Handbook of International Law* (Cambridge University Press, Cambridge, 2005) P254

<sup>90</sup> O’Connell, M.E., Op. cit., P468

<sup>91</sup> Moir, L., *The Law of Internal Armed Conflict* (Cambridge University Press, Cambridge, 2003) P91. It was observed that there are three main objectives of the draft Protocol II made by ICRC. They are: to develop existing IHL of non international armed conflict with particular respect to conduct of hostilities and means and methods of warfare; to clarify the scope of IHL in non international armed conflict especially with respect to question of threshold; and to safeguard the achievement made by common Article 3.

<sup>92</sup> Henckaerts, J., *Customary International Humanitarian Law*, Vol.1: Rules (Cambridge University Press, Cambridge, 2005) Pxxviii

<sup>93</sup> Ibid. The bulk of the treaties include: 1954 Hague Convention (and Protocol) for the Protection of Cultural Property in the Event of Armed Conflict; 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980 Convention on CCW) which includes Protocol I on Non-Detectable Fragments, Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons; 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; 1995 Protocol IV to 1980 Convention on CCW on Blinding Laser Weapons; 1996 Revision of Protocol II to 1980 Convention on CCW on the Use of Mines, Booby-Traps and Other Devices; 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; 1998 Rome Statute of the International Criminal Court; 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; 2001 Amendment to Article 1 of 1980 Convention on CCW; 2003 Protocol V to 1980 Convention on CCW on Explosive Remnants of War; 2005 Protocol III additional to the 1949 Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem. See ICRC Guide, Op.cit., P10-11

So, Additional Protocol II and common article 3 contain only elementary rules in relation to conduct of hostilities, as such, it is necessary that rules and restrictions imposed in waging international armed conflict should equally be extended to non international armed conflict in order to fill in the gap.<sup>94</sup> In line with this need, ICRC have conducted a study that demonstrates ‘the extent to which State practice has gone beyond existing treaty law and expanded the rules applicable to non-international armed conflicts...the gaps in the regulation of the conduct of hostilities in Additional protocol II have largely been filled through State practice, which has led to the creation of rules parallel to those in additional protocol I, but applicable as customary law to non-international armed conflicts.’<sup>95</sup> The ICRC study outlined several humanitarian norms and practices that form the Rules of Customary IHL that are applicable to both international and non-international armed conflict. Finally, various treaties mentioned above underwent revision and changes together with the customary law have subsequently culminated into a developed set of rules regulating means and methods of warfare and protection of victims of armed conflict who are not or are no longer taking active part in hostilities.

## CONCLUSION

The evolution of IHL right from antiquity has been systematic with varying stages of development with each stage having its peculiar feature for the development or stagnation of the law. IHL at its early days was seen as mercy and privilege which can be conferred on individuals at the will and discretion of the leaders and commander in the battlefield. It was followed by the period of the middle ages, which was characterized by affiliation of humanitarian considerations in war with religious doctrine. Thus, during that period, belligerents who were fighting a just war popularly known as religious or God’s war, their right to choose the means and methods of warfare of their choice was unlimited. This means that those fighting a just war were not under any obligation to observe humanitarian norms in their military operations. Thereafter, the notion of just war began to decline, particularly with the influence of the work of Grocius. His work secularized war by detaching state from religion so that whichever cause a belligerent is fighting, humanitarian norms are to be observed, and issue of fighting a just war or unjust war has diminished. After the era, IHL witnessed codification of the laws and customs of war that subsequently led to the development of treaty based rules of IHL. In 1859, battle of Solferino sows the seed of modern IHL, which eventually led to the development of the Geneva Conventions, the Additional Protocols and Customary IHL. It is recommended that teachers and ICRC should encourage the understanding of the detailed evolution of IHL and the peculiarities characterizing each of the stages of the development in order to give clearer picture of the objectives of the law.

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<sup>94</sup> Therefore, it is observed that ‘Customary IHL thus fills many gaps left by treaty law because treaty rules governing non-international armed conflicts are limited in scope and in number.’ ICRC Guide, Op. cit., P10

<sup>95</sup> Ibid, Pxxix