



International humanitarian law: A study on the Rwandan genocide

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Abstract

There has been a major debate regarding the issue of armed conflicts in the recent history of International Humanitarian Law. Several organisations are yet to make a much clearer interpretation when it comes to distinguishing between International Armed Conflicts and Non-International Armed Conflicts. Various decisions have been made in regards to this law but have failed immensely in applying it justly and proportionately. The issue has become more of a dormant one in the past few years especially since the massacre in Rwanda which the paper will majorly cover. Although now there is a clearer picture in regards to Non-International Armed conflicts, a lot of it still needs some changes. The paper has focused on the atrocities faced during the Rwandan Genocide when several international organisations such as the United States and the United Nations failed to judge this situation more crucially. The paper also addresses the loopholes in International Humanitarian Law (IHL) regarding the issue of Armed Conflicts. It further assesses whether the Rwandan Genocide was an International Armed Conflict or a Non-International Armed Conflict. We must discuss the necessary changes that need to be made to address this issue to avoid any further conflict similar to the one in the discussion.

Keywords: Rwanda genocide, armed conflict, international, Non-International, ICTR, humanitarian law, RAF, RPF

Introduction

From 1990 till 1994, the Rwandan Population suffered from one of the most devastating scenarios the country as ever seen. To say the least, several civilians were sacrificed because of the gruesome warfare between two ethnic groups namely, the Hutus and the Tutsis. The year 1994, Hutu powered government atrociously killed several civilians to capture different regions of the country basically to claim power over the Tutsis and spread their agenda. When the Tutsi led Rwandan Patriotic Front took back the control, several thousands of people were killed in what is regarded as one of the most gruesome civil wars. In the meantime, the response of the International Community was incompetent. After withdrawing the peacekeeping force United Nations Assistance Mission for Rwanda (UNAMIR) in April 1994, the civil war broke again and by the time more troops could be sent in force, the war was already dormant. The establishment of ICTR was also an immense failure. Since the United Nations (UN) quoted the warfare as a Non-International Armed Conflict, several aspects of Humanitarian law weren't considered, leaving the whole decision absurd and unjust. Problems such as delay of the trials for several years was also a major issue. Major improvements have been proposed ever since but not much has been implemented to make sure a conflict like that doesn't happen again.

Furthermore, the paper would separate its course onto discussing and stating three-pointers: Brief overview of Rwandan Genocide, Issue of Armed Conflicts and the Legal Background.

Rwandan genocide

The Rwandan Civil War was fought between two ethnic groups, the Hutus and the Tutsis. Rwandan Armed Force (RAF), representing the government of Rwanda, was created by the Hutus and the Rwandan Patriotic Front (RPF)

was created by the Tutsis. The conflict between them has been prevalent ever since the 1960's revolution when the Hutu republicans toppled the Tutsi monarchy and took control over the country. This led to the created to the creation of RPF under the leadership of Paul Kagame. Their first attempt to take over control of the country was a failure as the RAF were able to defeat them. The second attempt was much better and this led to guerrilla warfare. This resulted in several killings and protests that made the Rwandan president then sign the Arusha Accords final to bring back the peace to the country. By mid-1993, the UN created a peacekeeping mission for Rwanda UNAMIR and deployed to maintain peace within the two groups. The Hutu power took advantage of that and assassinated President Habyarimana, thus creating a clear path in spreading their dominance over the Tutsis. This resulted in the killing of Tutsis and Hutus, and the estimated number of loss of lives was between 5,00,000 to 10,00,000. It caused an international stir when 10 Belgian soldiers were also killed by the Hutu power. The RPF then included themselves into the power and began implementing a plan to stop the Hutu terror. They eventually captured the capital, Kigali and that forced the war to end. The RPF took over the control of the country and established programs to provide justice to people, create a stable economy and create peace between the two groups. The growth is still going on and the people of Rwanda are still scarred by the events of the war.

Armed conflict

There are two types of Armed Conflicts stated under Common Article 2 and 3 of the Geneva Conventions, International Armed Conflicts and Non-International Armed Conflicts. The major distinction between the two comes at the recognition of the actors involved in the conflict. Non-international armed conflicts are internal conflicts within the boundaries of the State, fought between the state and a rebel

group or between two rebel groups. International Armed Conflicts are fought between two different International actors. Whereas the definition of International conflict was settled under the Geneva Conventions common article, the definition of Non-International Conflict remained uncertain until the drafting of Additional Protocol II to the Geneva Conventions, 1949. The above Protocol created more uncertainty as now the Non-International Armed Conflicts also had to be branched into two types, some under Common Article 3 and the others under the Additional Protocol II. It also failed to clearly explain the difference between International Armed Conflict and Non-International Armed Conflict. Although in modern times the law has grown and its widely accepted that international law applies to the Non-International Armed Conflicts, there is still no proper explanation regarding the difference between the two conflicts.

Legal background

IHL governs the laws surrounding Humanitarian violations by providing a legal framework for genocide, violence and torture against humanity. The ICTY's have developed over the years and helped in distinguishing between the two armed conflicts. There is a major confusion regarding the necessity of human intervention during a particular conflict. Taking the case of the Rwandan Genocide, it wasn't given much importance since it was quoted a Non-International Armed Conflict. Here is when the UN has two contradictory pillars in its system. Articles 2(4) and 2(7) of the UN Charter particularly state that there is no right adjudicated towards anyone towards humanitarian intervention. But Chapter 7 of the Charter also states that a legal sanction of implementing humanitarian intervention during major abuses. To mitigate a difference between the two conflicts, International Criminal Tribunal for the former Yugoslavia (ICTY) presided over the judgement in the Tadic case. This decision was crucial as it stated that a particular conflict can be quoted as an International Conflict if a foreign state takes over control of a non-state party. It also further stated that there is no need for specific instructions and overall control will also come under an International Conflict. The overall control test became a mandate for ICTY in several other decisions. But the same wasn't looked upon by the ICTR in the Rwandan Genocide case. Instead, the issue was quoted as a Non-International Armed Conflict. The reason why the ICTR included the genocide as a non-international conflict was because the involvement of the UN was only limited to peacekeeping and overall well-being of the people of Rwanda. The ICTR also doesn't include the whole of Geneva Conventions and relies on the report of experts assessing the situation. The Overall Test was overlooked by the courts which could've determined a crucial end to the massacre. As Theodore Roosevelt quoted, "*Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found against the wrong*". In this case, justice was negligent and the right or wrong was never found.

Research Methodology

The purpose of the paper is to understand the Rwandan Genocide in detail and analyse whether it was an International Armed conflict or a Non-International Armed conflict. The paper will also proceed to understand the system of Armed conflicts and what more can be introduced

to it. The research methodology is a combination of doctrinal and non-doctrinal research. Through the doctrinal method, various articles and other resources have been analysed. Through the non-doctrinal method, a google survey was undertaken to understand what the general public feel about the Rwandan Genocide and whether they are aware of the massacre and the gruesome nature of the conflict. The movie 'Hotel Rwanda' was also a great insight into the situation. The author was also fortunate enough to interview a Rwandan citizen, who is a student in India and he gave a modern perspective about it. Putting all the research gathered through different methods, the author was able to prepare the paper. The method adopted in the preparation of the paper is both analytical and descriptive.

Significance of the Paper

We live in a very different world from what was witnessed in the WWI & WWII, yet there have been many circumstances where there has been agony and violence. A most prominent example of it is the Rwandan Genocide. Especially the way all the international authorities handled the situation was appalling. Ever since then, there have been changes made to the laws surrounding armed conflicts but there has been the poor implementation of the laws in the current scenario and the past. To prevent such a conflict to occur again, this paper helps in analysing what went wrong with the handling of the matter by the International Criminal Tribunal for Rwanda (ICTR). The paper briefly summarizes the war and educates the readers about the atrocities that took place. It is significant to know why was the conflict termed as a Non-International conflict and not an International Conflict. All these questions will be answered in the paper.

Research questions

- Was Rwandan genocide an international armed conflict or a non-international armed conflict?
- Whether there should be different laws governing the two conflicts or the same law?

Analysis

The incompetence of ICTR in the Rwandan context is always looked as a lack of clarity regarding the concept of armed conflicts. There is a sense of disagreement to this point since in the Tadic case, the ICTY differentiated between the two armed conflicts and stated when they can be considered separate from each other. International Humanitarian Law was designed for the fact that these violations to humankind witnessed in the above genocide don't happen, and if they do happen justice should be rightly served. It is important to analyze whether the Rwandan Genocide was a Non-International Conflict because treatment of Non-International Armed conflict cases is different from the International Armed conflict as its less stringent. The crimes witnessed in Rwanda were violent and frightening, to say the least. Justification of the reasoning behind the judgement passed by the ICTR was insufficient. Therefore, the paper focuses on grasping a viewpoint on the above issue. It is also important to target the laws established to differentiate the two conflicts so that something similar doesn't happen in the future. The paper will also what changes could be made for better functioning of the International Laws for analogous cases in the future.

Was rwandan genocide an international armed conflict or a non-international armed conflict?

The Rwandan Genocide was termed as a Non-International Armed Conflict by the ICTR since it involved warfare between two ethnic communities. But there were several international aspects also attached to this war which the authorities failed to consider. One of the most notorious ones was the killing of Belgian soldiers. The first issue to be covered is the involvement of Uganda as an international actor in instigating the tension between RAF and RPF. It was claimed by the Rwandan government that Uganda was providing the RPF forces military equipment's and were also assisting them in military actions. This was placed before the ICTR so that the genocide can be termed as an International Armed conflict. Since the Security Council didn't give that title, no overall test could be applied in analysing the case by the ICTR. But looking at the Tadic case, the paper discovers whether the issue raised by the Rwandan government comes in the validity of an International Armed Conflict. Although the overall control test states that any involvement of a state in another state internal war in the form of providing military equipment or strategies can be considered as an international conflict, the evidence provided to the Security Council was not enough. It is further stated that the Ugandan government didn't involve themselves intentionally into the conflict therefore their assisting/providing of equipment didn't cause the war. The second issue is more alarming which the Security Council and the ICTR failed to consider. It was observed that 10 Belgian soldiers were killed while they were on a peacekeeping mission. It is a fact that a war was declared between UNAMIR and Rwandan Troops, which was running parallel to the already existing conflict between the ethnic communities (RAF & RPF). Belgium claimed that the soldiers were sent for peacekeeping mission by the UN, but the forces used weaponry against them and they became part of the conflict. Both the parties in question are governed by the guidelines of the Geneva Convention and Additional Protocols (both). Findings proved that other than the Belgian soldiers, soldiers of different nationalities were also present. But only the Belgian troops were targeted. This further demonstrates the motive behind starting the conflict. As the control test, itself states that there needs to be an intention specified in terms of being part of the conflict, in this case, the intention to kill the Belgian soldiers was established and therefore it cannot be claimed that their association as an international actor wasn't there. There is still a lot of ambiguity about differentiating between the two conflicts but the fact of the matter is that the Rwandan Genocide should have been considered as an International Armed conflict. Another opinion that was not considered by the authorities was the involvement of French troops as well. Although even they went as part of the peacekeeping mission, it is a known fact that France has been supportive of the Hutu regime and this could potentially help in pushing for more agitation. Since there wasn't much evidence on this track, no findings proved the significant point.

Whether there should be different laws governing the two conflicts or the same law?

The Geneva Conventions and the Additional Protocols have separate definitions for the two conflicts. An International Armed conflict occurs when two high contracting foreign

parties engage in war according to the convention. For example, the short-lived conflict between Egypt and Libya is considered to be an International Armed conflict. A Non-International Armed conflict takes place within the boundaries of a state, fought between the domestic actors according to the convention. For example, the internal conflict in South Sudan. The way both the conflicts are looked at is completely different from each other even though the violations that take place are alike. Just like what happened in Rwanda, one can say that the conflict was not an International Armed conflict. The ICTR declared it as a Non-International Armed conflict and sanctioned lesser punishments as compared to International Armed Conflict. The view of the ICTY and ICTR is irrational and should be changed with immediate effect. This will further create more chaos in the future when dealing with situations similar to the one like Rwanda conflict. There should be a simple one body legal structure governing both the conflicts. The difference shouldn't be based on whether one is International or Non-International. There should be one uniform law governing both the conflicts. The difference should be assessed on the degree of violence/crime committed during the conflict. There have been some changes made to the international laws regarding the system but the same issue continues to persist. A growing effort hasn't been made in the global community in providing a less complex structure. Most of the guidelines are still outdated and haven't been changed with ever-evolving circumstances. It defeats the whole purpose of having judicial authorities when justice is extremely rigid and not based on the circumstantial facts of the case. Even the overall control test hasn't been improved and upgraded. It continues to state there needs to be an involvement of two high contracting parties to declare a conflict as an International Armed Conflict. In the Rwandan Conflict, also there wasn't a high contracting party, so the applicability of this test would still fail. Many current conflicts such as the conflict over Kurdistan can be overlooked as a Non-International conflict, despite indirect involvement of foreign parties. Also, the nature of violence is overlooked by the authorities just because it is claimed to be Non-International. Therefore, it will be better if the UN makes certain changes to the existing protocols so that it such incompetence in providing justice doesn't continue to exist in the future. The most effective way is to make a uniform law guiding the two principles and differences to be made based on the violence of the conflict, how much regional and global effect it caused and even carefully assessing the indirect involvement of other high contracting parties (USA's involvement in Afghanistan).

Conclusion & Suggestions

As we have seen so far in the analysis there is still a lot that can be done with the changes regarding the laws governing the Armed Conflicts. The Rwandan conflict would have seen a different picture had the laws been established and simplified in the early stages of its implementation. More emphasis should be made in changing the laws so that something like this doesn't take place in the future. The Tadic case should have been taken as an example to improve upon the existing laws other than providing the overall control test for differentiating between the two conflicts. Similar crimes are not given the same importance just because one of them happened in a Non-International

Armed conflict. For example, the violence and disturbance caused to Rwanda and other neighboring countries were so damning that it could be compared to any International conflict, yet the ICTR took a different view just because of a set of rigid laws. They failed in their duty to modify the code and give proper justice to the people of Rwanda. Some conspiracists might say it is a first world countries agenda against third world countries and others would say that it is difficult to predict the future hence we should stick with the same laws. But the fact of the matter is that there was suffering from human lives at large scale. Keeping aside the agendas, the whole purpose of international Humanitarian Law is to protect human lives and restrict conflicts or maintain them at the lowest level. Unfortunately witnessing the scenario in the past and the present not much has changed. To make things simpler, the UN should adopt a uniform code of law to govern both the conflicts. Along with they should add special clauses to differentiate between the conflicts based on the level of violence, loss of human lives and other factors directed towards human lives. In 1999, Kofi Annan, then secretary-general of the United Nations, acknowledged the failure to prevent or halt the Rwandan genocide in 1994, claiming that “of all my aims as Secretary-General, there is none to which I feel more deeply committed than that of enabling the United Nations never again to fail in protecting a civilian population from genocide or mass slaughter”. Therefore, it is a responsibility of the UN towards the global community to enhance and modify the structure of laws presently in the gazette so that a situation like Rwanda doesn’t happen again and conflicts as such shouldn’t reach a level of absolute destruction along with excessive loss of human lives.

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