INTERNATIONAL HUMANITARIAN LAW

UNIT CODE GPR 313

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PURPOSE

- To introduce the students to the concept, history, development, classifications and the role of IHL in our world today

OBJECTIVES

At the end of the course, the student should be able to:

- Define international humanitarian law (IHL)
- Explain the various stages of its development
- Demonstrate knowledge of the International Humanitarian Law and how it functions today
- Be able to define and classify the International Crimes and where they are applied citing legal sources
- Understand and appreciate the role of IHL
- Develop knowledge on key principles and concepts of IHL
COURSE DESCRIPTION

The course seeks to explain the concept, nature and history of the International Humanitarian Law in such a manner that the student shall be familiar with its operations in the International Law. Some concrete Case Studies shall be included to help the student fully understand the core concept of the IHL. This part of the course is considered Part I since it is meant for LLB students. Part II is for post graduates whose emphasis shall be in the International Criminal Law (ICL) and how it develops). This part is concerned with the basic knowledge of the discipline without getting into critical discussions and intricate cases.

GENERAL INTRODUCTION

The elective course on International Humanitarian Law is meant to introduce the student to the bellic law or rather the law dealing with war or better the law applied during conflicts, both armed and un-armed. Its historical development until the Geneva Conventions and Protocols as we know them today. It will require a better understanding of the nature and development of the Public International Law and good amount of knowledge about the States and their acts.

The society of human beings has ever had conflicts whether in small capacity or in larger capacity. War has ever been there from time immemorial and its practice keeps on changing with time. Yet we can ascertain the beginning of the International law of war or International Humanitarian Law (IHL) and its evolutions with time. Our interest here is the law regulating conflicts.

The bedrock of IHL is the 4 Geneva Conventions of 1949 and the two Additional Protocols of 1977 and the Protocol of 2005. The ICRC being the implementer of the IHL shall be included in our course thematic areas. Also included shall be the Kenya National Red Cross and International Federation of the Red Cross.
Remember that the ICRC promotes also the education of IHL at academic institutions including our University. There shall be Moot Competition even this academic year and students are free to participate.

On 8th of May 2013 - Legal experts from the ICRC Nairobi shall present public lecture at our university and all law students are expected to attend. This is a unique opportunity for all students to meet and interact directly with international IHL lawyers - Prof. Umesh and Linda.
COURSE OUTLINE

1. THE HISTORY OF THE INTERNATIONAL HUMANITARIAN LAW
   1.1. GENERAL INTRODUCTION AND KEY NOTE PRESENTATION
   1.2. NATURE OF WAR / CONFLICTS – HUGO GROTIUS 1625
      1.2.1. History and evolution
      1.2.2. HISTORY OF THE GREAT WORLD WARS
      1.2.3. Peace Treaty of Westphalia 1648
      1.2.4. Napoleonic Wars in Europe
      1.2.5. Congress of Paris 1815
      1.2.6. First World War and the formation of the League of Nations
      1.2.7. Second World War and the formation of the United Nations
      1.2.8. Evolution in the concept of war – civil war – internal conflicts; Guerrilla warfare in Africa; Civil war in Congo – international terrorism – transnational terrorism
   2. Law of The Hague – 1899, 1907 Jus in bello and Jus ad Bellum
   3. Law of Geneva / Red Cross Law – International Red Cross Committee (Red Cross Societies)
      3.1. Historical Background of the Red Cross
      3.2. Geneva Conventions as part of customary international law
      3.3. 2 Protocols of 1977 and 1 Protocol of 2005
      3.4. ARTICLE 3 COMMON TO ALL 4 CONVENTIONS
      3.5. CIVILIAN POPULATION
      3.6. CONCEPT OF CONFLICTS
      3.7. CONCEPT OF NEUTRALITY / UNIVERSALITY / HUMANITY / IMPARTIALITY
   4. THE IMPLEMENTATION OF THE INTERNATIONAL HUMANITARIAN LAW ICRC
      4.1. THE ROLE OF THE UNITED NATIONS – SECURITY COUNCIL
      4.2. PEACEFUL SETTLEMENT OF DISPUTES
      4.3. SECURITY & SAFETY
      4.5. PEACE & SECURITY – UNGA Resolution: OCHA (UN Office of the Coordinator for Humanitarian Affairs)
5. ROME STATUTE – FROM THE LAW OF HAGUE TO ICC (ICL)

5.1. HISTORICAL DEVELOPMENT OF THE INTERNATIONAL CRIMINAL COURT

5.2. THE ROME STATUTE – read Appollos Machira
   5.2.1. State Parties
   5.2.2. International Crimes are defined
   5.2.3. Crimes of War
   5.2.4. Crimes against humanity

5.3. THE COURT AND HOW IT FUNCTIONS (ICL)
   5.3.1. Its structure and fundamental organs
   5.3.2. The procedures
   5.3.3. How it works within the UN framework
   5.3.4. Why it is important
   5.3.5. Current criticisms

5.4. THE INTERNATIONAL CRIMINAL TRIBUNALS (ICL)
   5.4.1. DESCRIBE THEM AND HOW THEY ARE FORMED AND FUNCTION

6. MAJOR CONCERNS OF THE IHL IN ARMED CONFLICTS (Read the book of Appollos Machira)

6.1. INTERNATIONAL AND NON INTERNATIONAL CONFLICTS

6.2. APPLICABLE RULES CONCERNING COMBATTANTS DURING CONFLICTS

6.3. PROTECTION OF CIVILIANS

6.4. HUMANITARIAN CORRIDORS

6.5. VICTIMS OF WAR / CONFLICTS AND PROTECTION OF THEIR HUMAN RIGHTS

7. INTERNATIONAL ORGANIZATIONS – UN SPECIALIZED AGENCIES (IMPLEMENTATION OF THE IHL THROUGH THE ICRC AND THE UNITED NATIONS)

7.1. COMMISSION FOR HUMAN RIGHTS – GENEVA OFFICE

7.2. HIGH COMMISSION FOR REFUGEES – GENEVA

7.3. UN PEACEKEEPING MECHANISM AND HOW IT WORKS (BLUE HELMETS)

8. LAW OF GENEVA – THE RED CROSS SOCIETY AS INDEPENDENT ENTITY (LAW OF THE ICRC)

8.1. INTERNATIONAL COMMITTEE OF RED CROSS & HOW IT RELATES TO THE UNITED NATIONS

8.2. DISTINGUISH IHL AND THE HUMAN RIGHTS LAW


8.4. EXAMINATION – QUESTIONS – CAT – ASSIGNEMENTS
BIBLIOGRAPHY


www.icrc.org


Key Note Introduction

Whenever we hear of war our mind runs to hostility, violence and inhumane acts that involve killing, injury, maiming and immoral acts. Yet the existence of war has ever occupied the minds of nations from time immemorial. It is clear that even in the Old Testament that is the time Before Jesus Christ was born we hear of terrible conflicts between populations of different backgrounds. It therefore appears that war is in the nature of mankind and there is no time in history without war or people fighting or nations in combat. Such situation is expressed in the term belligerency. Ruling out the total elimination of war we can think of humanizing it.

Perhaps it would make more sense to you to speak about the period of time that is historical in order to conceptualize the meaning of war (belli). The most terrible war in history lasted for 80 years that covered both the Eastern and Central parts of Europe in the Medieval time known as war of religion...jihad. Holy war became sacrosanct as people with dissenting faith would go murdering the opposing faith and the other would act in revenge. Such war was the worst war since there was no specific target of combatants. It ended with the Peace of Westphalia in Germany in 1648, something that we cannot forget.

It did not last long before the emergence of King Napoleon Bonaparte of France who wanted to revolutionize the whole of European States and make himself the King of Europe. No matter how crazy he was, the wars caused by him made Europe suffer a great loss and damages. Yet the idea of war was declared war. It was a fight between the forces (military) who were in uniform and armed. The loser would give in to the victor. The war would end with one winning or surrendering the war. Revenge, vendetta and reprisal were frequent conducts of ancient wars.

DEVELOPMENT & THE CONCEPT OF THE IHL

The Nation - States that emerged with the ideology of imperialism in the 18th Century became powerful. Powerful States would offend the weaker ones or even occupy their territories by force or colonize their populations. All this started in Europe immediately after the French Revolution and growth of economy. With belligerent attitude nations would resort to hostility and
war against other nations. The need for world congress or a club of nations and formation of alliances was high.

In 1815, the treaty of Paris that settled the Napoleonic conflicts brought about the need for world Congress. In 1917, World War I broke out with Nations turning against each other. Superior weapons were under development. It was no longer a simple fight as warring States would switch to heavy weapons that were destructive... canons, artilleries, tanks and guns. Science and technology were adding more taste to war as nations would engage in research and inventions of superior weapons and very lethal chemicals to destroy the enemy.

It was the hostility and act of aggression involved in such wars that gave birth to the Geneva Law. War was very inhumane and disastrous to human life. In 1949 the Geneva Conventions were initiated with intention to humanize the war and make them less barbaric. The need to have laws to regulate war was growing high as many nations were becoming hostile to one another.

Law of War can be traced back to the work of Hugo Grotius in 1625 in his most quoted work - developed from the idea of Jus in Bello as opposed to Jus ad Bellum- the former is the right in war and the latter is the right to war. Jus in bello is the law regulating conduct in war and the jus ad bellum is the right to resort to war. Law of armed conflicts or law of war develops gradually from the two concepts. The treatise of Grotius De Jure Belli ac Pacis libri tres makes the whole concept even clearer and more acceptable. Grotius realized that the problem was not war but peace and added the word peace in his famous work. From this theory we get to the concept of the settlement of disputes by peaceful means as we know it in the UN Charter of 1945. He introduced into the laws of war, the law of humanity.

The breaking of the Second World War made the need for peace and security be forceful not only on the warring nations but also on individuals especially the civilians that need protection. International Humanitarian Law develops from the need to humanize conflicts and to safeguard the human rights of individuals and groups.

The First Red Cross Convention was in 1864 with attention on the amelioration of the situation of the wounded and the sick during
combat. Second Geneva Convention in 1929 added to the first
treatment of the prisoners of war...the Treaty of Verseilles of
1929 declared war as a crime. It pushed for a law to discipline
war.

Conference of St. Petersburg 1868, human rights during warfare..
States were urged to use arms that would not cause unnecessary
sufferings.

PROGRESSIVE DEVELOPMENT OF THE INTERNATIONAL CRIMINAL LAW

The Hague 1899 – The Peace Conference at the Hague laws and
customs of war were adopted.

The Hague 1907 – Another Peace Conference held at the Hague law
of war established two principles – the Principle of military
necessity; and that of Humanity.

The Covenant of the League of Nations 1919 – The use of force
was denounced by Nations party to the Covenant.

THE LAWS RELATING TO ARMED CONFLICTS- INTERNATIONAL HUMANITARIAN
LAW

Development

The law in this area developed from the middle of last century.
In 1864, as a result of the pioneering work of Henry Dunant, a
Swiss national who had been appalled by the brutality of the
battle at Solferino five years earlier gave life to Geneva
Conventions or the law relating to armed conflicts. Geneva
Convention for the Amelioration of the Condition of the Wounded
Armies in the battle field was adopted. This was revised in
1906.

In 1868, the Declaration of St. Petersburg prohibited the use of
small explosives and incendiary projectiles.

In 1899 and 1907, at The Hague – The Conventions that codified
the rule of war were done... The so called the Hague Conventions.
At the Conferences a series of Conventions were adopted
concerning land and Sea warfare. It was emphasized that the
belligerents conform to the law of Nations.
In 1954, The Hague Convention on the Protection of Cultural Property in Time of Armed Conflict. Despite this, the law of war remained the way it was codified in 1907.

The law of Geneva deals with the rights of the wounded armies and prisoners of war. 4 Geneva Red Cross Conventions have summarized all this into an instrument of international law. Treatment of prisoners of war, the protection of civilians during war, treatment of the wounded and the ship-wrecked armies. (Attempt to humanize war).

Even in the strange manner of war, war has never been fully humanized and law abiding. Brutality, use of aggression, hostility and maiming have been there. Issues of rape, violence against the innocent civilians have been noted, despite Lieber Code (an American professor of law) that elaborated the codification of the law of war.

Red Cross society emerged in the Neutral State of Switzerland. With their flag of Cross in Red colour they are humanizing war and in the battlefield they enjoy the international immunity and protection. They are not the UN PeaceKeeping Mission – blue helmets. They are autonomous from the United Nations and operate as an International Corporation with No profit qualities. The Geneva Conventions contend that persons who do not participate in warfare must be treated humanely. Taking hostages, torture, illegal executions and reprisals against the persons protected by the Conventions are prohibited while provisions relate to more detailed points such as the standard of care of prisoners of war...

In 1977, Additional Protocol to the Convention of 1949 was adopted.

The Hague Conventions deal with the interstate regulation of warfare but the Geneva Convention is for the protection of the human rights of persons. The definition of the prisoners of war is found in the Protocol, Art. 4.

As from 1949, the use of Guerilla warfare spread to the Third World.

International Humanitarian Law has developed in the 19th Century from the concept of Jus Humanum – the idea of suffering that
Henry Dunant, a Swiss citizen felt at Solferino in his popular book, the Souvenir of Solferino back in 1864. He saw wounded army left to suffer from pain and inhuman treatment of those who were victims of the war. The idea that war was affected people who were not interested in the first person, and the army that act to defend their nations became the core seed that brought about the full development of the International Humanitarian Law as a branch of the Public International Law and based in the city of Geneva. Red Cross Society was founded to look into humanitarian aid meant for those who were involved in war and those who were caught up in cross fire.

The real element originates from French Revolution that dramatically changed the understanding of war. Instead of war the term conflict was adopted to involve all situations that engage in violence, hostilities and human loss even without declared war. The human suffering is great whenever there are conflicts. Typology of conflict is the next question to address.

Conflict may mean different things to different people. It often occurs when two or more parties believe that their interests are incompatible. Conflict is a dynamic process that takes various forms and keeps on changing tactics every now and then.

1. Latent stage of conflict – confrontations
2. Crisis / violence
3. Loss of life.

Two important differentiations:

a) Internal Conflicts (domestic conflicts

b) International Conflicts: combatants and non combatants

INTERNATIONAL HUMANITARIAN LAW (IHL)