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Article-3 of Geneva Convention: An Overview

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Abstract: Violation of human rights in any war period is a very common phenomenon. For instance, during the Second World War there was a mass scale violation of human rights done by the Nazis in various concentration camps run by them. Post World War 2, seeing the inhumane nature of war led to the formation of Geneva Convention. There can therefore be no doubt that the decision to draft the Geneva Conventions of 1949 was sealed by the tragedy of the Second World War and that the conventions were intended to fill the gaps in international humanitarian law exposed by the conflict. However, when stating the fact that this progress made in 1949 can only be explained on the background of the horrific sufferings incurred by the Second World War, we should not forget that improvements in the protection of victims of war in particular civilians had actually been under discussion well before the outbreak of war. The present research paper highlights mainly Article-3 of Geneva Convention 1949 in the changing world scenario.

Keywords: Second World War, Geneva Convention, ICRC, Human Rights.

Introduction: The Geneva Convention was formulated after the humans saw a large scale conflict in the form of World War 2 which led to a heavy casualty of civilians due to aerial bombardment. Civilians, had not paid such a heavy price for mankind's warmongering since the Thirty Years' War. Since the early 1920s, the ICRC (International Committee of the Red Cross) had considered various projects - one of which was designed to protect the civilian population against the effects of war, in particular aerial warfare. The Committee had also drafted a convention offering protection to civilians in enemy hands. This draft, which came to be known as the Tokyo Draft since it was presented at the International Conference of the Red Cross of 1934 in the Japanese capital, was to be the subject of a future diplomatic conference convened by Switzerland. As with the Diplomatic Conference of 1929, during which the Convention on Prisoners of War was adopted, hopes within the ICRC were high of

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seeing another demonstration of States' goodwill, this time towards civilians. Yet it was not to be. A lack of enthusiasm on the part of governments meant that Switzerland was not able to announce the diplomatic conference until June 1939 – and it was scheduled for early 1940.

Formation of the Geneva Convention: Post World War, the Red Cross proposed are vision of the two already existing Geneva Conventions, on the “wounded and sick" and "prisoners of war". The main motive above all was to prepare a new convention on the condition and protection of civilians in times of war. The government experts supported the ICRC’s proposals, including that of a new idea of applying the Conventions in all cases of armed conflict, including internal ones. Emboldened by this support, the ICRC informed the Swiss authorities of its wish to convene another diplomatic conference. Meanwhile, the participants of the 17th International Conference of the Red Cross in Stockholm in 1948 declared themselves in favor of revising and adapting the Geneva Conventions. The diplomatic conference opened on 21 April in the presence of representatives from 64 countries, covering almost every State in the world at that time. According to various eye-witness accounts, no conference had ever been so well prepared. Nevertheless, it took almost four months to complete its work, which surprised the public and made the conference much longer than anticipated. However, there was a positive feeling at the meetings, even perhaps a sense of camaraderie and frank discussion, even while the world had just entered the Cold War. The following four conventions were adopted as a result of these proceedings:

- Geneva Convention relative to the Protection of Civilian Persons in Time of War.
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- Geneva Convention relative to the Treatment of Prisoners of War.

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Article 3 of Geneva Convention: Most of the scholars agree to the fact that international humanitarian law got a significant boost due to the four above mentioned laws. However, it can be stated that Article 3 which is common to the four Geneva Conventions proved to be a significant victory. It helped in extending the principles of the Geneva Conventions to non-international armed conflicts. Moreover, it swept aside certain obstacles of national sovereignty. According to common Article 3, the parties to an internal armed conflict commit to respecting people's fundamental rights. Understandably, common Article 3 was the subject of the most intense and drawn-out discussions of the whole conference.

Here it is noteworthy that four new conventions were also signed by the 18 government around the same time. The other delegations had asked for some time so their governments could study the texts, so a second signing ceremony was held on 8 December 1949 in Geneva. On this occasion, government representatives signed the new Conventions on the same table which had been used to sign the 1864 Geneva Convention – a highly historic and symbolic gesture. The Geneva Conventions immediately had a huge success. They entered into force already on 21 October 1950 after the first two ratifications. They were ratified by 74 States in the 1950's and obtained a further 48 ratifications in the 1960's. The ratification steadily increased in the 1970's 20 ratifications and 1980's 20 ratifications. A wave of 26 new ratifications occurred in the early 1990's, resulting in particular from the breakup of the Soviet Union, Czechoslovakia and the former Yugoslavia. With the last few ratifications since the year 2000 the applicability of the Geneva Convention has today become universal, with 194 States party.

It is a well-established fact today that Geneva Conventions have helped in spreading international humanitarian law throughout the world. They contain the essential rules protecting persons who are not or no longer taking a direct part in hostilities when they find themselves in the hands of an adverse party. These persons are, as mentioned before, the wounded and sick, the shipwrecked, the prisoners of war and civilians, including those civilians living under occupation. The basic notion underlying the Geneva Conventions is the notion of respect for the life and dignity of the individual. Those who suffer in conflict must be aided and cared for without distinction. The Conventions also confirm and strengthen

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the role of the medical mission – medical personnel, medical units and transports must be respected and protected in all circumstances. This is an indispensable condition to be able to collect and care for the wound and sick. The principles on which these rules are based are as old as armed conflict itself. It is on the basis of the rules of the Geneva Conventions that the ICRC can carry out its work in the field, including its visits to detainees. The purpose of these visits is to prevent enforced disappearances, extra-judicial executions, torture and other cruel, inhuman or degrading treatment or punishment, to monitor the material conditions of detention and to restore family links i.e. through the exchange of Red Cross messages. Thus Geneva Convention has helped people around the globe to uphold their human rights in the areas of conflict around the world.

Salient Features of the Article 3: The Geneva Conventions cover almost all provisions of the international humanitarian law in case of an armed conflict. Indeed, common Article 3 of the Geneva Conventions deals with any armed conflict not of an international character. That is to say that any armed conflict that it is not an inter-State conflict falls within the scope of common Article 3 of the Conventions. Although this is just one provision, it contains the essential rules in a nutshell. These are as following:

1. It states that all enemies should be treated humanely, regardless of how they may be legally or politically classified or in whose custody they may be. As a result, no one may be placed or treated outside of common Article 3, bereft of all protection.

2. It requires that the any enemy who is wounded, sick and shipwrecked should be collected and provided proper medical treatment.

3. It grants the ICRC the right to offer its services to the parties to the conflict. On the basis of common Article 3, the ICRC systematically requests access to persons deprived of their liberty in connection with non-international armed conflicts, and such access is generally granted.

4. Finally, it recognizes that the application of these rules in no way affects the legal status of the Parties to the conflict.

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Therefore, this shows that the Article 3 is not just an ordinary article, in fact it is a mini-Convention within the Conventions. The International Court of Justice has called common Article 3 a reflection of "elementary considerations of humanity". In the light of the prevalence of non-international armed conflicts, it remains a provision of utmost importance. As a result, with respect to non-international armed conflicts the Geneva Conventions remain extremely relevant today. Because of their universal acceptance, common Article 3 is applicable in any armed conflict not of an international character anywhere in the world.

In order to fully appreciate the relevance of the Geneva Conventions today, they have to be looked at in the proper perspective. They must not be viewed in isolation. Since their conclusion in 1949, they have been supplemented and developed by three Additional Protocols. The first two were adopted in 1977, more than 30 years ago, and the third more recently in 2005 introducing a new protective emblem, the Red Crystal. The 1977 Additional Protocols were drawn up essentially as a response to changes in warfare, most notably the expansion of guerrilla warfare, and the increased suffering of civilians in armed conflict due in part to developments in weapons technology. They introduced essential rules relating to the conduct of hostilities and the methods and means of warfare, the aim of which was to strengthen protection for civilians. In particular, they formulated the important principle of distinction between civilians and combatants and between civilian objects and military objectives. They have also expanded the list of fundamental guarantees applicable to all persons in the power of an adverse party. The 1977 Additional Protocols were also a response to the proliferation of internal armed conflicts. Indeed, Additional Protocol II was the first treaty ever devoted exclusively to the protection of the victims of such conflicts elaborating upon the protection provided in common Article 3.While the 1949 Geneva Conventions have been universally ratified, the Additional Protocols have not. At present, 168 States are party to Additional Protocol I and 164 States to Additional Protocol II. Although this places the 1977 Additional Protocols among the most widely accepted legal instruments in the world, we cannot be satisfied with this situation. The rules on the conduct of hostilities and the fundamental guarantees enshrined in the 1977 Additional

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Protocols are an absolute necessity. Their recognition and application is needed, now more than ever. Therefore, the ICRC believes that the ratification of the Additional Protocols should be a priority. The universal ratification of the Geneva Conventions, together with their Additional Protocols, would establish a firm legal framework for the protection of war victims, wherever or whoever they may be. The problem with the present scenario is that ratification by a few countries means that these protocols are applicable selectively in some areas of conflicts while others are out of their jurisdiction.

Role of Geneva Convention in International Armed Conflicts: The importance of Geneva Convention can be further clarified by looking at its relevance in areas of armed conflicts. In the course of the conflict between Eritrea and Ethiopia, the ICRC visited, in the year 2000 alone, over 1,000 Ethiopian POWs and 4,300 civilian internees. In addition, we exchanged 16,326 messages between Ethiopian and Eritrean POWs and their families. The ICRC also organized safe passage across the front lines for 12,493 civilians of Ethiopian origin. In cooperation with the Eritrean Red Cross, the ICRC distributed aid to over 150,000 civilians affected by the conflict and provided surgical supplies to treat 10,000 war-wounded, in cooperation with the Ministry of Health. In Iraq, the ICRC visited 6,100 POWs and 11,146 civilian internees and detainees held by the occupying powers between April 2003 and May 2004. In addition, over 16,000 Red Cross messages were exchanged. Even in the fairly short conflict between Russia and Georgia in 2008, a number of POWs benefited from the protection and status conferred upon them by the Third Geneva Convention. On the basis of this Convention, the ICRC was able visit the POWs in question. But not all the positive effects of the Geneva Conventions can be reflected in concrete figures. The real value of the Conventions lies not alone in the good they help to achieve, but maybe even more so in the yet greater evil they have helped to prevent. For example, we know from experience that the distinctive emblems of the Red Cross and Red Crescent have protected countless hospitals, medical units and personnel as well as innumerable wounded and sick. In the context of Indo-Pak conflicts, India has appealed in the International Court of Justice to provide councilor access to Kulbhushan Jadhav under the provisions of Geneva Convention. However, the verdict of the ICJ is yet to be delivered. Similarly, whenever pilots were

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captured behind the enemy lines, under the provisions of Geneva Convention, they were to be handed over to a team of ICRC to transfer them back to their home country.

However, in the last few decades there have also been multiple violations of both the distinctive emblems and the medical mission. Without the rules contained in the Conventions the situation would be far worse. Worse for the victims and far more difficult for those who try to assist and protect. Therefore that the Geneva Conventions have served well over the past 60 years and that they remain highly relevant and this certainly in situations of international armed conflicts, including in situations of occupation. From a phenomenological perspective it is undoubtedly true that these types of conflicts that are pre-dominant today. It is these conflicts varying greatly in shape and form that we have to generally deal with these days. They can be traditional internal civil wars, but they can also spill-over into other States. They can pitch the government against armed groups but they can also consist of armed groups fighting among themselves. They can involve third States or multinational forces fighting side by side with the government. The situations that come to mind include, for example, the Darfur region in Sudan, Colombia, Eastern DRC or today's Afghanistan, Iraq, and Somalia.

Conclusion: To conclude, it can be stated that there is still a need for all the countries to ratify the Geneva Convention to create a worldwide framework of international humanitarian law. However, to resolve this issue, the Red Cross has identified certain sets of basic customary humanitarian law that shall be applicable everywhere irrespective of the fact that the country has ratified the Geneva Convention or not. However, a lot needs to be done as customary law cannot replace the legal certainty gained by ratification of treaties. Therefore, it is the need of the hour that ratification of Geneva Convention shall be made mandatory for all countries through political and social pressure by its citizens.

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