Humanitarian Law And International Ad Hoc Tribunal: Former Yugoslavia And The Special Court For Sierra Leone

Introduction

I would like to begin with a brief overview of international humanitarian law. After which i will briefly describe the context in which the ICTY and SCLA Court was created, its jurisprudence, the court's role in bringing peace to the area and then, most importantly, the role and limitation of adhoc international criminal tribunals in the enforcement of International humanitarian law.

International humanitarian law (IHL) also known as the law of armed conflict (LOAC) or law of war, are set of rules specifically intended to limit the suffering caused by war by shielding and supporting its sufferers as much as they can. It controls only the portions of the conflict which are of humanitarian concern. It limits the rights of the parties to a war to use approaches of warfare of their choice and protect people and property affected or likely to be affected by the fight. It defends persons who are not or no longer partaking in conflicts and limits the approaches used for fighting. The law therefore deals with the fact of a con?ict without looking at the reasons for or legitimacy of using force. Its requirements relate to the fighting parties no matter the reasons for the con?ict and whether or not the cause supported by either party is just.

In the case of international armed con?ict, it is usually difficult to find out which State is responsible of breaching the United Nations Charter. The use of humanitarian law does not include the condemnation of parties' responsible as that would likely stir controversy and weaken execution of the law, since each opponent would claim to be a target of violence. Moreover, IHL is meant to protect war sufferers and their basic rights, irrespective of which party they belong.

International humanitarian law sets certain bounds to the use of force against an adversary. It determines both the relationship of the parties to a conflict with one another and their relationship with neutral states. Certain provisions of international humanitarian law are also applicable in the relationship between the state and its own citizens Apart from the general rules which apply to all types of warfare, special rules apply to the law of land warfare, the law of aerial warfare, the law of naval warfare, and the law of neutrality (Fleck, 2009).

The Ad Hoc Criminal Tribunals For The Former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia (ICTY) was the global community's reaction to the violence that took place during the numerous tribal conflicts that followed the splitting of the Socialist Federal Republic of Yugoslavia, which started in 1991 when two of its six constituent republics, Slovenia and Croatia, announced independence, with Bosnia and Herzegovina and Macedonia joining subsequently. By late 1992 reports were coming out of gross abuses of international humanitarian law which included ethnic cleansing, such as mass deportations, murders and rapes, and the use of concentration camps.

The UN Security Council informed the Secretary-General to select a Commission of Experts to probe these accusations, and the Commission's provisional report of February 1993 –confirming many murders –caused public outcry. The Commission suggested that the Security Council think about establishing a temporary war crimes court, to which the Security Council instantly accepted. The International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) was convened by the Security Council resolution no. 827 (1993). In line with the ICTY Statute of 25 May 1993, the Court shall have the power to indict persons liable for severe abuses of international humanitarian law committed in the province of the former Yugoslavia since 1991. Articles 2-5 outlines infractions falling under the Court’s control, namely grave violations of the Geneva Conventions of 1949, breeches of the laws or customs of war, genocide and crimes against humanity.

The judges were appointed in August that year and the first prosecution given in late 1994. To achieve the aim of finishing its work as soon as possible after the initial goal of 2010, the Tribunal was asked to concentrate on “the most senior leaders suspected of being most liable for crimes within the ICTY's jurisdiction”, and to handover other cases to national courts. By the end of 2014 over 160 individuals had been charged for “severe violations of international humanitarian law” – grave violations of the 1949 Geneva Conventions, breeches of the laws or customs of war, genocide and crimes against humanity.

The Special Court For Sierra Leone (SCSL)

SCSL was established on the works of earlier international tribunals to form a novel hybrid model of international criminal justice, which offered great potential for future prosecutions. With the tribunal rested the expectation that the faults of past international courts could be rectified, thus furthering the state of international criminal justice while empowering Sierra Leone’s domestic legal system and cheering Sierra Leoneans to have confidence in their justice system.

The Special Court for Sierra Leone was instituted by treaty between the United Nations and Sierra Leone in 2002, to try “persons who hold the greatest responsibility for serious abuses of international humanitarian law and Sierra Leonean law caused in the province of Sierra Leone since 30 November 1996” – the peak of the country's decade-long (1991–2002) civil war.

The special court for Sierra Leone began operations in 2002 and has delivered sentences against high level members of the warring parties: the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), and the Civil Defense Forces (CDF).

The court had a combination of Sierra Leonean and international judges and tried ten persons before it came to an end in 2013, the most prominent sentence being of Charles Taylor, the President of Liberia, for crimes against humanity, abuses of Common Article 3 and Supplementary Protocol II, and other severe abuses of international humanitarian law, namely recruiting child soldiers. The Taylor trial is the only SCSL case to be tried outside the country—in The Hague, the Netherlands—due to fears that having his trial in Sierra Leone would be a danger to security in the West African region

In 2013 the SCSL locked its doors, thus becoming the first global court since Nuremberg to finish its mandate. The residual work of the Court changed to the Residual Special Court for Sierra Leone (RSCSL), which was founded to handle the SCSL’s ongoing legal obligations,

including witness protection, supervision of prison verdicts, and controlling of the SCSL files among others.

The Role And Limits Of Adhoc International Tribunals In The Enforcement Of IHL

The adhoc international court has helped in the instituting impartial trial standards for local and international trials, and through rulings outlining the scope of disclosure commitments and evidentiary requirements. It is clear that the different international criminal organizations have gone a significant way to ensure that violations of IHL are scrutinized and repressed. International criminal tribunals helped to explaining a great number of IHL norms making this area of international law clearer. Among others the following views were simplified: ‘civilian population’, ‘widespread or systematic attack’, or ‘nexus between crimes and an armed conflict’. The specific crimes falling under the authority of the ICTY were also defined. Wald 2007 The ICTY has significantly widened the interpretation of IHL involving to sexual violence. The Tribunals have made massive progress just by recognizing the role of sexual violence in ethnic cleansing and genocide, and by convicting defendants of individual acts of rape and assault Jurisprudence of the Tribunals contributed to ‘interaction, interpretation, and internalization’ (Bingham 2006) of IHL. At the same time the judicial mechanisms of the Courts provoked the interest of the public opinion and academics in IHL and in this way partly formed atmosphere satisfactory to the formation of the ICC.

Some challenges that limited the ICTY tribunal in the enforcement of IHL were the lack of state collaboration in the enforcement of the Court's actions .The Tribunal, unlike national courts, does not have an enforcement mechanism of its own and therefore depends entirely on States. Their collaboration and judicial support is vital for collecting evidence and generating indictments, as well as for obtaining custody of indicted persons. Jalloh, 2011 also mentioned the following as some of the challenges that limited the SCSL: excessively narrow interpretation of “greatest responsibility’, selective prosecutions, limited support for the defense office, and inequality of arms between the prosecutions and defense.

In conclusion, the Court is a seed that needs to be watered if we want it to blossom; therefore all member states must fully cooperate to make it work.

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