

“THE MYTH OF INTERNATIONAL HUMANITARIAN LAW FROM AN EARLY STAGE TO CONTEMPORARY CHALLENGES”

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1. Introduction

“International humanitarian law is a part of the body of international law that governs relations between states. It aims to protect persons who are not or are no longer taking part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities¹. When considering the relevancy of the law, it is important to control and minimize the damage which is caused by the current and future armed conflicts.

The Humanitarian law has developed from a law of war up to a law with a humanitarian touch. This is a historical development and there are many factors which assisted the progress. This paper’s expectation is to identify the ancient concept of a Law of War and how much the present situations and the Contemporary International Humanitarian Law reflects these principal.

2. History of law of war

When considering at historical conflicts anyone can identify the primary methods used to control the unnecessary effects of the hostilities and the means and methods of warfare. These can mostly be customs and the Treaties between the States. When looking closely it is clear that these Customs and treaties have being applied by different parts of the world in different situations and to guide the States to control the effects of wars at all times'

Sassoli and Bouvier articulate that this global phenomenon proves two things: a) a common understanding of the necessity to have some kind of regulations even during wars; b) the existence of the feeling that under certain circumstances, human beings, *friend or foe*, deserve some protection.² International Humanitarian Law, as the *jus in bello* is currently described, is imbued with a particular sense of its history. The orthodox history of international humanitarian law tells the following story.

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¹ Sandoz Y, 1998 ‘The International Committee of the Red Cross as Guardian of International Humanitarian Law’ available at www.icrc.org/eng/resources/documents/misc/abo

ut-the-icrc-311298.htm <Accessed on visited 30 November 2019>

² *Ibid*

Laws of war have always existed to limit the destruction of war.³

The founders of the IHL considered the effect of imperialism undergone by many nations, humanitarian concerns and the military requirements of the State when they regulations to govern the evolving means and methods of warfare. Somehow when considering the reason for a law to exist to control the destruction and ensure safety and dignity for the people who are effected by the consequences of the war. In ancient days armed conflicts created great destruction and dangerous, unkind impact to the mankind. This itself lead the laws of war to develop and to govern situation with an humanitarian effect.

Addressing the main notions of Humanitarian aspect, Kings of Babylonia (1728 – 1686 BC) which was a the era of the Sumerian Civilization were the creators of civilization. In fact, the prologue captures these concerns of justice and public order aptly. It highlights that *Code of Hammurabi* was “to make justice prevail in the land, to abolish the wicked and the evil, to prevent the strong from oppressing the weak”⁴

³ Alexander, A “A Short History of International Humanitarian Law” *The European Journal of International Law* Vol. 26 no. 1p.109

⁴ H.E. Judge Peter Tomka, President Of The International Court Of Justice, On The Occasion Of The Unveiling Of The Stele Of Hammurabi On 28 April 2014 <https://www.icj-cij.org/files/press-releases/2/18312.pdf> <Accessed on 30.11.2019>

⁵ Dharma or the code of righteous conduct was evolved with the object of enabling an individual to establish control over his desires and senses and to be contended. The rules so formulated or

Indian History clearly shows that Indian civilization was the first to identify means and laws of law. During the early wars of India showed a humanitarian approach in greater extend. *Mahabharathaya*, *Ramayanaya* are such examples where it is shown that parties should always keep the concerns for the war under correct controlled levels until an armed conflict begins and the only solution identified was to act as per the religion and to follow the universally applicable principles of *Dhamma*.⁵ Dhamma with the influence of Philosophy of Hinduism was one identified as a code of righteous conduct. And these religious books confirm that what India has followed was similar to what the other countries have used during the same era.⁶

According to the *Code of Manu* Non-combatants and combatants were very well distinguished during these ancient Indian wars and all were to be protected and treated humanely under any circumstances. Also establishing a set of rules for the conduct of rulers toward their people and the obligations to treat all parties humanely and the prohibition of poisoned weapons were highly emphasized.⁷

evolved over a long period were meant to ensure peace and happiness to the individuals and the human society as well. They covered every sphere of human activity

⁶ Modh, Bhumika Mukesh, “International Humanitarian Law: An Ancient Indian Perspective.” Available at SSRN: <https://ssrn.com/abstract=1738806orhttp://dx.doi.org/10.2139/ssrn.1738806> <Accessed on 20 November 2019>

⁷ *Ibid*

It is to be pertinent to note that there is a significant historical strand in Hindu ethics that suggested that the only truly ethical behavior is that which moves beyond considerations of good and evil, pure and impure.⁸ Professor H. H. Wilson calls the ancient Indian laws of war are very chivalrous and humane, and prohibit the slaying of the unarmed, of women, of the old, and of the conquered⁹

Emperor Ashoka was the one among the greatest who was expanding his empire using with high military strength. During his expansion of the Mauryan Empire the war led by the Ashoka was one of the most brutal wars in history. But with the influence of Buddhism he was transformed and his concerns were more focused on morals, social concerns and religious tolerance Ashoka represents the earliest incarnation of the principle of non-use of force in international relations that is now enshrined in Article 2, paragraph 4, of the United Nations Charter¹⁰

In “Buddhism and Humanitarian Law” (Handbook of International Humanitarian Law in South Asia 3, 2007), the Sri Lankan jurist Christopher Gregory Weeramantry¹¹ (1926–2017) comments regarding Buddhism:

“In a system where the institution of war is not recognized [as truly valid]

⁸ *Ibid*

⁹ *Ibid* H. H. Wilson, *Essays and Lectures on the Religions of the Hindus*, Vol. II, Trubner & Co., London, 1861, p.

¹⁰ *Ibid*

¹¹ Professor C.J Weeramantry was Judge of the ICJ from 1991 to 2000, and Vice-President of the Court from 1997 to 2000

there will naturally be little or no discussion of actual conduct in warfare. The applicable principles will need to be worked out with reference to its general principles regarding the dignity and sanctity of human life, its general principles relating to the treatment of and attitudes towards other human beings, its respect for nature and life-support systems and its concepts on proper behaviour in general.”¹²

A host of Buddhist ethical principles concerning minimizing suffering and loss of life in armed conflict between states can be gleaned from the *Jātaka* stories, which mentions kings who were very skilled in warfare, thereby defeating the enemy with little loss of life. These stories demonstrate that power should be used in the most skilled manner so that injury done to life can be minimized.¹³

Even in Sri Lanka there are fascinating facts revealed about the application of The Humanitarian law. Even though the word Humanitarian law was not used the influence was identified and practiced from long time back when ancient Kings used armed conflicts to control the parties. Buddhist philosophy again has played a main role in directing the nation to treat all mankind same and righteously. Sri Lanka has depended on the principles of the IHL

¹² The First Circular Announcement “Reducing suffering during conflict: the interface between Buddhism and International Humanitarian Law (IHL)” International Conference: Dambulla, Sri Lanka, 4–6 September 2019. https://www.icrc.org/en/download/file/89892/exploratory_position_paper_on_buddhism_ihl.pdf

¹³ *Ibid*

and ancient texts like *Mahawanshay*, *Chulawanshaya* and other ancient texts prove the same. War between the *King Dutugemunu* and *Elara* was a good example where the parties have used the concepts, to limit the destruction and suffering caused by armed conflict.

Islam, has made an immense contribution to the development of international humanitarian law. The rules formulated by Islam to make the conduct of war more humane are binding injunctions of God and His Prophet which have to be followed by Muslims in all circumstances, irrespective of the behaviour of the enemy.¹⁴ In the *Holy Quran* and *Hadith* many provisions of modern IHL have elaborately been discussed and these rules were practiced by the Muslims in many wars. Islamic laws of war sought to humanize armed conflict by protecting the lives of noncombatants, respecting the dignity of enemy combatants, and forbidding deliberate damage to an adversary's property except when absolutely required by military necessity.¹⁵ Islam provided many of the chivalric ideal that permeated Christian Europe, and a core source of those concepts was the Koran¹⁶

¹⁴ Marsoof, S. (2003) "ISLAM AND INTERNATIONAL HUMANITARIAN LAW" (2003) 15 Sri Lanka JIL 23 Hyder Gulam "Islamic War And Law" https://www.academia.edu/32579701/Islam_law_and_war and Vijapur, A.P. (1989) "The Islamic concept of Human Rights and the International Bill of Human right, The dilemma of Muslim states" https://www.academia.edu/6711619/Abdulrahim_P._VUAPUR_THE_ISLAMIC_CONCEPT_OF_HUMAN_RIGHTS_AND_THE_INTERNATIONAL_BILL_OF_RIGHTS_THE_DILEMMA_OF_MUSLIM_STATES_INTRODUCTION

The Catholic Philosophy also is another vital religious directive toward the growth of the Humanitarian law. The ethics driven through Biblical phrases like "Love Thy Neighbour" itself prove the religious believe in the IHL. Individual rights to live peacefully is highly supported within the Catholic religion and many moral principles have being led in directing any State which is a party or effected by an armed conflict. War was not recommended for gaining commercial advantages or to maintain the "balance of power" or to prevent the difficulties faced by a country¹⁷

Historical chivalry's origins are intertwined with the rise of Christianity and Islam. Durant nicely describes the theory and reality of knightly conduct¹⁸ Core medieval chivalric virtues included loyalty, courage, skill, mercy, trustworthiness, courtesy, justice, and generosity.' According to medieval scholars, the ideal knight embodied all of these virtues.¹⁹

What has evolved from the past into current elements of chivalry are five elements, some of which overlap with international humanitarian law, and all of which squarely reflect their noble forbearers.²⁰ As one of

¹⁵Islamic Law and International Humanitarian Law <https://www.icrc.org/en/document/islamic-law-and-international-humanitarian-law> <Accessed on 21.11.2019>

¹⁶ Evan J. Wallach Pray Fire First Gentlemen of France': Has 21st Century Chivalry Been Subsumed by Humanitarian Law? <https://harvardnsj.org/wp-content/uploads/sites/13/2012/01/Vol-3-Wallach.pdf> <Accessed on 21.11.2019>

¹⁷ Barrick,W.D. THE CHRISTIAN AND WAR <https://www.tms.edu/m/tmsj11k.pdf>

¹⁸ Supra n21

¹⁹ *Ibid*

²⁰ *Ibid*

the basic chivalric elements Mercy was at the core of modern attempts to regulate the battlefield²¹ and evolved into much of what has become modern IHL²² in the context of limitations on means and methods of warfare,²³ proportionality²⁴ and military necessity,²⁵

As Meron has argued, the legal rules of IHL are undergoing a process of humanization. While traditional concepts of reciprocity continue to play an important role in some conflicts, they are of far less relevance in others, particularly when non-state actors who believe that they have little to gain from reciprocity are involved.²⁶ Furthermore he has identified a fusion of law of war and human rights law into IHL but recognizes that "it must be noted that neither regime will entirely subsume the other to some extent different rules will always apply to war and peace."²⁷

The law of war has always contained rules based on chivalry, religion, and humanity designed for the protection of non-combatants, and especially women, children and old men, presumed incapable

of bearing arms and committing acts of hostility. It also contained rules protecting combatants (in matters such as quarter, perfidy, unnecessary suffering).²⁸

3. Geneva Conventions & Development of Modern Ihl

The book written by Henri Dunant in the year 1859, *A Memory of Solferino*²⁹ which was relating to the highly devastating experience of a Battle which took place in the middle of the 19th century and the *Lieber Code*³⁰ (1863) which was established as a result of the American Civil War, were the first steps and shed more light to the exact principles of modern concepts of IHL it instigated the adoption in 1864 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

After several considerable attempts the Geneva Conventions, which came to be known as 'Geneva law'. Certain protections in wartime were expressly extended to

²¹ Kearns P, (2001) 'Bloody Constraint: War and Chivalry in Shakespeare', *Journal of Conflict and Security Law*, Volume 6, Issue 2, Pages 293–294, <https://doi.org/10.1093/jcsl/6.2.293>

²² Supra n 23

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Clapham, A (2006) 'Human rights obligations of non-state actors in conflict situations' *International Review of the Red Cross* Volume 88 Number 863 September 2006 https://www.icrc.org/en/doc/assets/files/other/irrc_863_clapham.pdf

²⁷ Theodor Meron, Fo Meron, T. (2011-07-01). *Human Rights Law Marches into New Territory: The Enforcement of International Human Rights in International Criminal*

Tribunals (Marek Nowicki Memorial Lecture). In *The Making of International Criminal Justice: The View from the Bench: Selected Speeches.*: Oxford University Press. <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199608935.001.0001/acprof-9780199608935-chapter-17> <Accessed on 30.11.2019>

²⁸ Supra n.26

²⁹ See D. Schindler, "International humanitarian law: Its remarkable development and its persistent violation", *Journal of the History of International Law*, Vol. 5 (2003), pp. 165 et seq

³⁰ The Lieber Code promulgated as General Orders No. 100 by President Lincoln. The Code (1863) provides detailed rules on the entire range of warfare.

civilian populations and objects by Geneva Convention IV of 1949, as indicated by its full title came in to operation and the *the Lieber Code* provided the foundation for the 1899 and 1907 Hague Conventions dealing with methods and means of warfare.

This second body of law came to be known as ‘Hague law. Dealing with topics such as the opening of hostilities,³¹ the laws and customs of war on land,³² bombardment by naval forces in time of war,³³ and the rights and duties of neutral powers in naval war,³⁴ Hague law focused on the conduct of armed hostilities and their regulation.³⁵ The treaties of IHL protect particularly vulnerable categories of persons from abuse of State power as well. However, unlike human rights agreements, which contain general rules applicable at all times, the protective rules and mechanisms of IHL are applicable only in time of war,³⁶

The issue of the protection of civilians in an armed conflict was one of the fundamental concept in both the 1907 Hague Regulations and the 1949 Third Geneva Convention and Additional Protocols. The concept of protection of civilians and civilian objects is reflected in the principle of distinction, which prohibits directly

targeting civilians and civilian objects but the obligation to protect extends beyond the conduct of hostilities.

With the establishment by the Security Council of the International Criminal Tribunal for the Former Yugoslavia (‘ICTY’) and the International Criminal Tribunal for Rwanda (‘ICTR’), the entry into force of the International Criminal Court (‘ICC’) and the development of ‘hybrid’ tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, which have had a tremendous impact both on the development of international humanitarian law and on its humanization.

Extending the principles of IHL enshrined in Common Article III to the Geneva Conventions, which relates to armed conflicts not of an international character, stipulates that all parties to an armed conflict must distinguish between persons engaging in hostilities and persons who are not, or no longer, taking part in them. The latter must be dealt with humanely and, in particular, they must not be maltreated, taken hostage or summarily sentenced or executed. The sick and wounded must be cared for.³⁷

³¹ Convention Relative to the Opening of Hostilities (Hague III), 1907), http://avalon.law.yale.edu/20th_century/hague03.asp .

³² Convention Respecting the Laws and Customs of War on Land (Hague IV), 1907, http://avalon.law.yale.edu/20th_century/hague04.asp .

³³ Convention Concerning Bombardment by Naval Forces in Time of War (Hague IX), 1907, http://avalon.law.yale.edu/20th_century/hague09.asp .

³⁴ Convention Concerning the Rights and Duties of Neutral Powers in Naval War (Hague XIII),

1907, http://avalon.law.yale.edu/20th_century/hague13.asp.

³⁵ Wilson, P, (2017) The myth of international humanitarian law, *International Affairs*, Volume 93, Issue 3, May 2017, Pages 563–579, <https://doi.org/10.1093/ia/iix008>

³⁶ Gasser, H.P. ‘International Humanitarian Law’ <http://icrcndresourcecentre.org/wp-content/uploads/2016/03/EnglishTotal.pdf>

³⁷ Fanner, T.P, (2005) Asymmetrical warfare from the perspective of humanitarian law and

Meron came to the conclusion that a range of factors was moving international humanitarian law away from its roots in strict reciprocity and towards a system based more on humane values and human rights law.³⁸ He finishes his article with a warning, however, that law alone can only take this project so far. While humanitarianism has gained the upper hand in rhetorical and legal terms, the reality of warfare on the ground is still cruel and often involves serious atrocities.³⁹

During the first era the above discussed aspects such as heart consciousness, patience, compassion, humanity and chivalry was considered while the modern developments are based on practical realities in the battle field.

4. Modern application of contemporary IHL rules & challenges

As discussed above the basic concepts relating to law of war in history such as Chivalry and principles of humanity have now being excluded when identifying new laws. Nevertheless, in recent conflicts where wars are increasingly fought against civilians, chivalry is often ignored. Tension between military necessity and restraint on the conduct of belligerents is the hallmark of the law of armed conflict.⁴⁰

However, the weight assigned to these two conflicting factors has been shifting. The principle of humanitarian restraints has

been of growing importance, especially in normative developments and in the elaboration of new standards, but, regrettably, less in the actual practice in the field, which remains cruel and bloody, especially in internal conflicts.⁴¹

4.1 .The new war

“The new wars”⁴² are main challenge in implementing IHL concepts. The traditional mood of war was a battle between certain parties within a certain territory and aiming certain expectations and victories. But in an asymmetric war there is no same level of military power or the techniques are not of the same level. The less powerful tend to use the illegal weapons or unauthorized weapons to defeat the powerful. As a result even the stronger party tend adapt according to the opponent and act against the general rules to defeat the party with an unlimited choice of methods and means of warfare.

Since in history the parties who are not participating in hostilities were protected as the combatants were within a certain area and the respective measure were easily taken against the non-combatants. But in present the target areas are not specified and to improve the gravity of the conflict the less powerful party tend to use human shields. Therefore the civilians who are directly affected or are not even within the same territory are not secured against an existing armed conflict.

humanitarian action Volume 87 Number 857
March 2005 International Review of the Red
Cross
https://internationalreview.icrc.org/sites/default/files/irrc_857_8.pdf

³⁸ Meron, T, (2000) ‘The Humanization of Humanitarian Law’ Vol 94 American Journal of

International Law pp 239-278 The Humanization of Humanitarian Law

³⁹ Supra n.25

⁴⁰ Supra n.44

⁴¹ Supra n.34

⁴² Supra n.43

The protection measures for the civilians are at a risk and there is no distinguishable margin between the combatants and non-combatants. Even though the principle in IHL was to place the attack solely against the legitimate military target, it does not happen in present war affairs. One of the best example for this is the incident which occurred on 21st of April in Sri Lanka. The origin and the reason were international but the target was outside the respective State which gives limited opportunity to protect the civilians. Purely around 260 general civilians were directly killed while the whole country shook with unproductiveness as the civilians had no idea or any expectation on a day they were celebrating religiously.

However, it is true that in an asymmetric conflict respect for IHL is endangered to a certain degree. If in a symmetric conflict there is a greater chance that humanitarian law is respected, this is at least partly out of the fear that the adversary may retaliate in kind to any violations of the law. Some observers go so far as to say that in asymmetrical wars, “the expectation of reciprocity is basically betrayed and the chivalrous ethos is frequently replaced by treachery”⁴³.

⁴³ Reisman, W. M. (2003) “Aftershocks: Reflections on the Implications of September 11”, *Yale Human Rights and Development Law Journal*, Vol. 6 (2003), p. 81

⁴⁴ Supra n.43

⁴⁵ Sassoli, M (2007) ‘The Implementation of International Humanitarian Law : Current and Inherent Challenges’. *Yearbook of International Humanitarian Law*, vol. 10, pp. 45-73

⁴⁶ *The 1979 Hostage Convention* specifies that it does not apply during times of armed conflict as defined in the Geneva Conventions and its

It is also pertinent to note that the concomitant chivalry in battle is in fact still demanded by many provisions of international humanitarian law. In asymmetrical wars, the expectation of reciprocity is basically betrayed and the chivalrous ethos is frequently replaced by treachery.⁴⁴ Also in “Asymetric warfare” it is easy to use force against the weaker party by the powerful, therefore the general civilians are used and they even not being part of the situation becomes the victims of the armed conflict. They are used as Human shields against their will to deter attacks of military and this is highly forbidden through the concepts of IHL.⁴⁵

4.3 Terrorism

The question of the relationship with IHL remains one of the obstacles for the adoption of a comprehensive convention on international terrorism. This begs the question of how the main treaties deal with this issue. Many of the earlier treaties remain silent in this respect, presumably because they prohibit activities that do not regularly occur during an armed conflict, such as, for example, the hijacking of an aircraft. Those who do, including the three most recent conventions⁴⁶, tend to exclude

Additional Protocols insofar as these are applicable to a particular act of hostage taking, and in so far as State parties are bound under these conventions to prosecute or extradite the hostage take *the 1997 Terrorist Bombing Convention and the 2004 Nuclear Terrorism Convention* both exclude ‘the activities of armed forces during an armed conflict, as those terms are understood under International Humanitarian Law, which are governed by that law. The *1999 Convention on*

acts governed by IHL.⁴⁷ Most terrorist acts are committed against civilians who are not in the hands of the terrorists or indiscriminately against civilians and combatants. 25 in both international and non-international armed conflicts, '[t]he civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited'⁴⁸

When considering the practical application of the Humanitarian Law there are many debatable challenges faced and the development of the technology and the modern changes to the characteristics of armed conflicts has slowed the process of applicability of the rules of the IHL. Therefore the need to identify a correct approach for the modernized need of a better law with a humanity aspect is essential. It has to be strong and a law which can assist all aspects identified for the breaches under the Humanitarian Law. Also identifying an international approach is a must as a severe damage is done to the world through interstate armed conflicts.

In order for the principle of distinction to be upheld, it is essential that we are able to define who is a legitimate target and who is not. The concepts of civilian and combatant have become more blurred as warfare evolves, and therefore the desired approach is not to blur it further by introducing a third category of combatants, but instead to clarify the concepts of civilians who

directly participate in hostilities and the role of OAGs in NIACs. I believe that my proposals go some way to help in this regard.

In the light of the arguments outlined above is that the world is faced with a new kind of violence to which the laws of armed conflict should be applicable. According to this view, transnational violence does not fit the definition of international armed conflict because it is not waged among states, and does not correspond to the traditional understanding of non-international armed conflict, because it takes place across a wide geographic area. Thus, the law of armed conflict needs to be adapted to become the main legal tool in dealing with acts of transnational terrorism. The main concept of IHL is to address the rights of all the parties who are involved in an armed conflict similarly and protecting the rights of civilians who are not participating in the war. Presently the challenge is to apply the Humanitarian law effectively and therefore respected. So as rapid advances continue to be made in new and emerging technologies of warfare it is important to ensure of the Humanitarian Law application in such situation.

The main challenge faced is the fact that the no body shows much interest or they act sheepishly when applying Humanitarian law for the violating the same. At an armed conflict the parties are more concerned about defeating the opposing party and they do not value the expectations under the Humanitarian Law. For this parties break

Terrorism Financing includes the same safeguard clause

⁴⁷ *Ibid*

⁴⁸ Art. 51(2) of Protocol I, Art. 13(2) of Protocol II, and a corresponding rule of customary IHL (See Rules 1 and 2 of the ICRC Study, , Vol. I at p11.).

rules, act according to their own wishes and use Humanitarian Law in favour of them. That is in certain legal standards which are supportive to the parties are addressed favorably, and in rules that are disadvantaging the parties do not agree to abide. Sassoli, shows that “the situation they are confronted with is so new that the ‘old’ law cannot be applied; and to those who think that in exceptional circumstances the rules do not have to be complied with. All those people will not respect the rules. This is why relentless dissemination efforts are crucial⁴⁹

The basic problem about all such ideas is that they would only be accepted by states and could only actually function if states were willing to accept the rule of international law, including efficient third-party enforcement, in international society, which is as we all know not the case. If, however, it were the case, we would not need new mechanisms of implementation, because the existing ones could do the job perfectly.⁵⁰

5. Conclusion

When considering all these aspects it is very clear that the religious believes played a immense role in the development of Humanitarian Law. When identifying the rule of justice and human right concepts “Paul Gordon Lauren” states that “Ideas of

justice and human rights possess a long and rich history.⁵¹ They did not originate exclusively in any single geographical region of the world, any single country, any single century, any single manner, or even any single political form of government or legal system. They emerged instead in many ways from many places, societies, religious and secular traditions, cultures, and different means of expression, over thousands of years”⁵²

As discovered in the above discussion the religious believes were identified as the guiding principles for the war rules in history. Also the bad memories left over by the II World War directed the international law makers and scholars to consider human needs more than the victory of the war. This helped the law to focus more on humanity than face the consequences of war. It leads International Armed Conflicts and Non International Armed Conflicts to stick to the principles of Humanitarian concepts.

The history of IHL, both its actual development and the symbiotic narratives about its development, was shaped by a range of actors. Some of these actors were conventional practitioners of International Law, others less so. Some were particularly interested in the development of the law, others had more complex goals. Their propositions about IHL were accepted or dismissed for a range of reasons, including both their compliance with clear legal

⁴⁹ Sassoli, M (2007) ‘The Implementation of International Humanitarian Law : Current and Inherent Challenges.’ *Yearbook of International Humanitarian Law*, vol. 10, p. 45-73 Available at: <http://archive-ouverte.unige.ch/unige:864>

⁵⁰ Shelton, D, & Lauren, P.G, (2013). *The Foundations of Justice and Human Rights in Early*

Legal Texts and Thought. In *The Oxford Handbook of International Human Rights Law*. : Oxford University Press. <https://www.oxfordhandbooks.com/view/10.1093/law/9780199640133.001.0001/law-9780199640133-e-8>. <Accessed on 16.11.2019>

⁵¹ Ibid

⁵² Ibid

forms and more nebulous disciplinary commitments. Through their work, they were able to introduce, define, change and confirm international humanitarian law.

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