

RUSSIAN BOMBING OF CHECHNYA: TOWARD AN EFFECTIVE MONITORING SYSTEM OF VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW BY THE UNITED NATIONS. *

1.1 INTRODUCTION

The bombardment of Chechnya by Russian forces paves a new dimension to the question for peaceful settlement of disputes by members of the international community and poses a crucial challenge to both international law and the United Nations Charter. It is pertinent to state that from the provision of all the legal regimes dealing with the conduct of hostilities¹ there is no justification of the bombing going on in Chechnya by the Russian forces. Although Russian government claims that its action is directed against Islamic militants which Russia termed as terrorists to which extent Russia views its action as justified from the perspective of international law and the need to demobilize terrorists where ever they may be with a view to bringing them to book.

Whatever may have informed the action of Russia in Chechnya, there is need on the part of Russia which is the aggressor to conform with the fundamental rules of international humanitarian law relating to the concept of rationality and proportionality in the conduct of armed conflict.² There is the absolute need for Russian to exercise caution in the bombardment raid that is taking place in Chechnya under Russian's control. Terrorism in all its ramification is an act which must be fought from all dimensions, but in doing so the rules of the game must be adhere to. In this regard therefore, the claim by Russian that what they are doing in Chechnya is simply an attempt to bring Islamic militants to book is not tenable from the indiscriminate bombardment of civilian settlements³ and the manifest attacks on members of the civilian population which invariably includes attacks on civilian objects.⁴ This is a clear derogation from the fundamental rules of international humanitarian law applicable in armed conflict. It is important to note that there is humanism in war. War is not fought in isolation of the rules dealing with the conduct of hostilities.

It is instructive to note that Russia's affront in Chechnya is illegal within the contents of the provisions of Articles 2 (3) and (4) of the UN Charter. Article 2 (3) is to this imperative effect:

All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

The action embarked upon by Russia against the people of Chechnya on the 22nd of September, 1999 just on the eve of a new millennium is an outright breach of international law, the United Nations Charter and the rules of international humanitarian law.⁵ The international community and the UN must intensify its efforts towards rendering humanitarian assistance and intervention to the people of Chechnya in order to protect members of the civilian population such as innocent women, old people, children and

those rendered hors de combat.⁶ The activities of Russia in Chechnya could best be described as a serious issue of genocide against a whole population. There is therefore, the urgent need on the UN to call Russia to order. The international community must come to the rescue of those Chechnya's and other people residing in Chechnya who have been made refugees and internally displaced as a result of Russia's irrationality.

Use of force under international law is not within the context of the UN Charter. In this light, it is essential to state the import of Article 2 (4) of the UN Charter in order to buttress the desirability of peaceful settlement of international disputes and the consequent need to refrain from threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The United Nations Charter has made it explicitly clear that the use of threat to force and actual use of force in resolving international conflicts between independent nations is not within the purview and purpose of the Charter and that states shall refrain from adopting military action in attaining international peace and security.⁷ Peace cannot be achieved by coercive process, it can only be attained through diplomatic processes. To this end it can be stated without fear of contradiction that Russians resort to use of force by means of Air strikes in Chechnya is not in conformity with the objectives of the UN in its search for amicable peaceful mechanisms for settling disputes.

There is need for humanitarian intervention by both the United Nations and the international community to arrest the drifting situation of refugees and persons internally displaced as a result of Russians aggression in Chechnya. In this context, there is the fundamental need on the part of the UN to promote and disseminate information concerning the application of the rules of international humanitarian law applicable in armed conflicts.⁸

International humanitarian law is part of universal international law whose purpose it is to forge and ensure peaceful relations between peoples. It makes a substantial contribution towards maintenance of peace in that it promotes humanity in time of war. It aims to prevent or at least to hinder mankind's decline to a state of complete barbarity. From this perspective, respect for international humanitarian law (IHL) helps lay the foundation on which a peaceful settlement can be built once the conflict is over.⁹

It is instructive to note that the central theme of IHL is basically to mitigate the rigours of war victims and at the same time to limit the choice of means and methods of condition of warfare with special regard to military operations. IHL is primarily concern with the protection of human beings who are subjected to the extreme situation of war. It seeks to safeguard human dignity and protect their persons. IHL seeks to mitigate the consequences of war or armed conflict as between combatants and to alleviate its impact on the civilian population.¹¹

International humanitarian law affords protection for all victims of armed conflicts. It provides for the immunity of all civilians, without discrimination based on sex, from any

attack and respect for persons who have fallen into the hands of the enemy.¹² Men and women are thus equal before the law. Nevertheless, the law also recognized that women have certain specific need arising from their biological role as mothers and for the particular consideration which is due to their sex. For example, the principle of respect for the life, dignity and physical integrity of the individual is embodied in specific measures in favour of women, such as the assignment of separate living quarters and sanitary facilities to women internees.¹³

On many occasions the various delegations of the international committee of the Red Cross on both sides of the conflict have drawn attention of the air raids and the terrible losses they have cause among so many innocent people, particularly women and children.¹⁴

To this end, the law of armed conflict contains protective provisions which seek to safeguard, the interest of non-combatants particularly women and children. Such category of persons are jealously protected by the legal regimes on the law of armed conflict.¹⁵

2.2 STATES ENTITLEMENT TO TAKE ACTION TO ENFORCE INTERNATIONAL HUMANITARIAN LAW

The ultimate objective of dissemination of and compliance with the fundamental rules of international humanitarian law (IHL) is to mitigate the effects of armed conflict and provide the best possible protection for its victims, at the same time IHL fosters, wider acceptance of the ideals of humanity and peace between peoples.¹⁶ The relation between IHL, the struggle for peace and the prohibition of the use of force is becoming ever clearer as the realization grows that lasting peace, development and peaceful international cooperation can be achieved only on the basis of compliance with international law and respect for human life and dignity.¹⁷

However, violations of those fundamental rules of international humanitarian law, of that self same prohibition of the use of force, are common practice in numerous armed conflicts today. Moreover, the development of first strike nuclear capability and "star wars" weapon is setting the scene for their total disregard. States have a duty to ensure proper and adequate respect and compliance with the rules of international humanitarian law. There is an explicit obligation on states party to protocol additional to Geneva convention of 1949 to ensure adequate provisions for legal advice to members of the armed forces; note that such an obligation is also implicit in the 1949 Geneva convention if these provisions are to be implemented effectively, this requirement would substantially promote the fundamental rules of international humanitarian law (IHL) within the armed forces. If members of the armed forces are knowledgeable in the law of war, it will go along way in shaping their perception during armed conflicts.¹⁸

The diplomatic conference at Geneva sin 1977 drew adequate attention to the important of dissemination of knowledge of international humanitarian law, and though

the adoption of resolution 21, urged upon states party to the conventions and to protocol 1 their obligation to undertake disseminatory activity. In essence, resolution 21 urges states to encourage the teaching of international humanitarian law at all levels, but especially to the armed forces and administrative personnel, academic training in the subject in universities and secondary schools is also encouraged.¹⁹

3.3 THE OBLIGATION OF STATES TO “ENSURE RESPECT” FOR INTERNATIONAL HUMANITARIAN LAW

When large scale violations of international humanitarian law occur, the first responses must be a redoubling of efforts to make it operative, whatever the difficulties involve.

For this purpose it is fundamentally essential to speak with the parties to a conflict in order to obtain their commitment to respect their obligations under international humanitarian law, and to find practical solutions to urgent problems such as access to populations in need or to defenseless prisoners. The use of instruments provided by implementation in particular, the designation of protection powers or recourse to the international fact finding commission, must also be encouraged.

This indispensable dialogue is no longer sufficient however, if grave breaches of international humanitarian law nonetheless persist, belligerents are accountable for their acts to the entire international community, as the states party to the Geneva convention have undertaken to respect and to ensure respect” for the present conventions in all circumstances”²⁰

According to the terms of this provision, all the states party to the Geneva conventions are under the obligation to act, individually or collectively to restore respect for international humanitarian law in situations where parties to a conflict deliberately violate certain of its provisions or are unable to ensure respect for it.

Lastly, there are situation in which total or partial failure must be admitted despite all efforts to ensure application of international humanitarian law. While these must certainly be maintained, violations are of such magnitude that their very continuation would represent an additional threat to peace within the meaning of article 39 of the united Nation charter.

It is then the responsibility of united National security council to make such an assessment and recommend or decide on what measures are to be taken in accordance with Article 42 of the Charter.

The sates party to the 1949 Geneva conventions are obliged to suppress all acts contrary to the provisions of those instruments and to repress any grave breaches. provision must be made in peace time for the repression of breaches of the rules of international humanitarian law; this has a dissuasive effect and therefore constitutes an important preventive measure.²¹

However, the repression of breaches is also considered one of the emergency. measures which smut be taken in situations where international humanitarian law is violated on a massive scale.

The parties to the Geneva conventions are obliged to repress grave breaches of international humanitarian law or to hand over the presumed, as long as this party can prefer substantial charges in accordance with the principle of universal jurisdiction. The obligation to repress grave breaches is independent of the nationality of the perpetrators and the place where the acts were committed.

The decision of the United Nations Security Council to set up an international tribunal to try persons responsible for grave breaches of international humanitarian law committed on the territory of the former Yugoslavia since 1991, must, for this reason be considered an important attempt at fulfilling the obligation to punish war criminals.²

4.4 THE PENAL REPRESSION OF VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN INTERNATIONAL ARMED CONFLICTS

In the traditional sense, international law is the law between states, sanctions, which are effected only within the dimension of international relations and in accordance with the rules governing those relations.

In this respect international humanitarian law (IHL) is an exception as it provides for individual penal responsibility of the state agent guilty of certain violations. Hence, in a situation of international armed conflict, failure to comply with the rules of conduct laid down by IHL entails a series of legal consequences prescribed by international law and designed to bring the guilty party to judgement. These legal consequences constitute an almost fool proof system for the penal repression of certain violations of IHL.

First and foremost, it must be pointed out that not all violations of IHL involve international penal liability. The Geneva conventions of 1949 and additional protocol of 1977 list the acts, which according to them incur penal sanctions.

Qualified as "grave breaches", they come within the category of war crime.

In listing these grave breaches the IHL instruments specify the forms of conduct involving international penal responsibility. They thereby follow the lines of penal law, making a veritable indictment of acts that constitute war crimes.

According to the first, second, third and fourth Geneva conventions (Article 50, 51, 130 and 147 respectively), the following acts constitute grave breaches of IHL.

- a) Breaches specified in all four Geneva conventions
- Willful killing
 - Torture
 - Inhuman treatment,
 - Willfully causing great suffering
 - Causing serious injury to body or health,
 - Destruction and appropriation of property not justified by military necessity (with the exception of Art. 130 of the third convention).
- Article 130 of the third Geneva Convention is to this effect
Grave breaches to which the preceding article relates shall be those involving

any of the following acts, if committed against persons or property protected by the convention:

Willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this convention.

b) Breaches specified in both the third and fourth Geneva conventions:

- Compelling a prisoner of war or civilian protected by the fourth Geneva Convention to serve in the armed forces of the hostile power.
- Willfully depriving a prisoner of war or a civilian protected by the fourth Geneva Convention of the right to fair and regular trial, prescribed in the third and fourth Geneva conventions.

c) Breaches specified in the fourth Geneva convention:

- Unlawful deportation or transfer,
- Unlawful confinement,
- Taking of hostages.

The acts listed above constitute grave breaches only if they are committed against persons to whom the legal definition of protected persons in the terms of any one of the Geneva conventions applies, to qualify as a protected person requires having the nationality at least of a foreign state, if not of an enemy state. This point must be borne in mind by any one wishing to transpose to non-international armed conflicts the IHL system applicable in international armed conflicts.

Under Article 85 Additional protocol 1, to which 97 states are party, grave breaches are:

(a) The following acts, when committed willfully and causing death or serious injury to body or health:

- Making the civilian population the object of attack,
- Launching of an indiscriminate attack, or an attack against works or installations containing dangerous forces in the knowledge that such an attack will cause excessive damage to civilian objects in relations to the military advantage anticipated,
- Making non-defended localities and demilitarized zones the object of attack
- Making a person the object of attack in the knowledge that he is hors de combat,
- Making perfidious use of the protective emblem of the red cross or red crescent.

b) The following acts, when they are committed wilfully and in violation of the conventions or protocol:

- The transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory,
- Any unjustifiable delay in the repatriation of prisoners of war or civilians.
- Practices of apartheid and other inhuman and degrading practices based on racial discrimination,

- Attacking and causing large-scale destruction of clearly recognized historic movements, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and which are under special protection.
- c) Acts constituting grave breaches of the Geneva conventions, when committed against:
 - Persons in the power of an adverse party, protected under Articles 44, 45 and 73 of the protocol,
 - The wounded, sick or aliens belonging to the adverse party who are protected by the protocol,
 - Medical or religious personnel, medical units or medical transport which are under the control of the adverse party and are protected by the protocol.

It is essential to note that international penal responsibility is inconceivable without an obligation for the states party to the said IHL treaties to bring the perpetrators and authors of acts constituting grave breaches before their own courts.

For this purpose the Geneva conventions make it mandatory on states to enact national legislation providing for “effective penal sanctions”¹¹ Second, third and fourth Geneva conventions respectively.

Protection of Civilian Population:

The dictionary of the international law of armed conflict defines civilian population thus:

Civilian population is made up of civilian persons. In international armed conflicts, the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. Appropriate rules protect the whole population of party to a conflict without any adverse distinction. Both in international and non-international armed conflicts, the civilian population and civilian persons enjoy general 1 protection against the dangers of military operations.

5.5 CONCLUSION

The protection of members of the civilian population is indispensable precisely because civilians are regarded as forming part of the vulnerable groups that needs protection during armed conflict. Therefore, the quest for the protection of members of the civilian population during armed conflict is an imperative pre-requisite of conforming with the fundamental objective of international humanitarian law.²³

It is consequential to note that Russia’s action in check clearly violate the fundamental rules of international humanitarian law dealing with the conduct of armed conflict. This is because majority of the objects destroyed are civilian objects and civilian settlements which by and large falls under the protection of the law

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