

Research Report

General Assembly

Sixth Committee (Legal)

Modifications to the Geneva Conventions to
encompass modern warfare



MUNISH



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Forum	General Assembly 6
Issue:	Modifications to the Geneva Conventions to encompass modern warfare
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Introduction

In 2013, cyber warfare is regarded as a bigger threat to the US than terrorist. The Geneva Conventions are a compilation of four treaties and three supplementary protocols that outline the rights and responsibilities of both military personnel and civilians during wartime, in the aim of protecting human rights and reducing violence worldwide. The Geneva Conventions are the present legal constitution for international human rights during wartime. Among many other precepts, it affirms the principles of banning the killing and torture of prisoners of war, demanding aid for wounded personnel regardless of which side they are fighting for, and protecting civilians in times of war.

The Geneva Convention were first conceived of in June 1859, when Swiss, Henry Dunant happened upon the aftermath of a battle ground in Solferino and determined to aid the wounded soldiers who would have otherwise been left to suffer and perish on their own. This moving experience prompted him to organize a voluntary relief system that would assist the hurt, in times of war. This movement was first referred to as The Red Cross. It symbolized a national relief unit with the purpose of following a determined code during war. It became part of the rules of war. In 1864, an assembly was held with national representatives, to create an agreed upon relief protocol during wartime. It was then that the Geneva Convention was first passed, regarding only wounded soldiers in time of war. Since 1864, three other conventions have been included in the convention, including those that deal with the treatment of wounded and sick soldiers at sea, regulations regarding prisoners of war, and the protection of civilians during wartime.

The Convention has been regarded as the cornerstone for legal matters in international human rights during wartime, and is upheld in the highest legal courts globally, including the ICC (International Criminal Court). It has thus been signed and ratified by all members of the United Nations, although the additional protocols are far less supported as of

yet. Regardless of its wide influences in the international legal community, there are still difficulties in implementing the conventions.

Among many obstacles in the Conventions is the lack of consideration for modern warfare. Modern warfare refer to the style of warfare that has been used since The Second World War. Military successes are no longer as dependent of sheer manpower or the opposing military group as they used to be. They now consider a nation's technological capabilities, political aims, strengths and weaknesses, and use intelligence in combat. The evolution of proxy wars, battle on civilians, and political agendas has become increasingly evident. Therefore, it is imperative to discuss the role of modern warfare in The Geneva Conventions.

Definition of Key Terms

Convention

A convention can either refer to the generic term used to encompass all international agreements and can be used synonymously with treaty. However, in this particular case, the UN (United Nations) refers to a convention as a formal multilateral agreement made by a wide range of different parties. It is not binding in and of itself, but rather instills its own regulations to ensure signatories and implementation, including methods such as political pressure, economic sanctions, terms of other contracts. Therefore, the Geneva Conventions are essentially a compilation of agreements that pertain to varied topics regarding laws of warfare that have been signed and ratified by a number of states.

Modern Warfare

Modern warfare refers to the changing methods of combat that could not have been foreseen at the time that the Geneva Conventions were created. Some such modern issues include the war on terrorism, drones, ballistic missiles, the use of technology, and defining “armed combatants” or “participating civilians”. There is no official list of resources or practices that are considered modern warfare. In fact, there is no definition of modern warfare which is in part contributing to the issue of including it in the Conventions.

Proxy Wars

Proxy wars are a method of warfare that have recently become much more popular. They are a form of opposition that occur without the actual opposing parties to physically engage with each other. This translates into powerful states using other states or parties to fight their adversaries, in the aim of avoiding full-on war. Proxy wars hardly ever remain stringent to their plan once put into action, as the interests of the fighting party often conflicts with those of the patron. This style of warfare allows for powerful nations to participate in war while remaining protected from any harm.

General Overview

The Geneva Conventions are a compilation of four treaties and three protocols that set the standards for legal rights and action in war. They started as a single treaty that called “for the Amelioration of the Wounded and Sick in Armed Forces and Field”. This initial base still remains, however many additions have been installed to accommodate for the ever changing needs of the world. As of presently the Geneva Conventions dictate a code for:

1. The Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
2. The Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
3. The Treatment of Prisoners of War
4. The Protection of Civilian Persons in Time of War

Additional Protocols

1. The Protection of Victims of International Armed Conflicts
2. The Protection of Victims of Non-International Armed Conflicts
3. The Adoption of an Additional Distinctive Emblem

The Geneva Conventions provide the base for international law during conflict times. The question at hand deals with the, “Modifications to the Geneva Conventions to encompass modern warfare”. While this issue has essentially been debated and acted upon before, modern warfare refers to what is current, and as such the issue needs to constantly be re-assessed.

Major Parties Involved and Their Views

International Committee of the Red Cross (ICRC)

Established in 1863, the ICRC is an independent humanitarian organization that provides aid to people affected by conflict and/or armed violence and promote regulations that protect victims of war. The Organization is run primarily by two main components, voluntary donations made to the national Red Cross and Red Crescent bodies. Not only does the ICRC affirm the same principles as the Geneva Conventions but its foundation is inextricably linked with that of the Geneva Conventions. It's mandate is in effect the Geneva Conventions, and embedded in its mission statement is an affirmation to direct and organize the Geneva Conventions, along with a few other organizations. The ICRC is the largest international supporter of the Geneva Conventions and as such should be considered when debating modifications to the convention.

United Nations (UN)

The United Nations is a non-governmental international organization that aims to promote peace through the world by providing a platform for non-violent exchanges between nations where conflicts and issues can dealt with. The UN fights for equality and peace, including elimination and regulation of violence. Therefore, the UN as a body, will facilitate discussions and implementations of "Modifications to the Geneva Conventions to encompass modern warfare". However, it must be noted that the UN earns its power through the member states that support its endeavors, and as such its views on the issue will be primarily directed by the views of the member states.

Member States

Member states are all the parties taking part in an international organization. In this particular case, the international organization being the United Nations. Member states represent the views of all members of the UN and so their views on the issue will be extremely variant, however they are essential in the implementation of any modifications done to the Geneva Conventions as they have the voting power in the United Nations, and will be the ones where change is going to be primarily undertaken.

International Criminal Courts (ICC)

The ICC is an independent international organization that was the first permanent, treaty based international criminal court. Unlike the Internal Court of Justice, the ICC deals with international issues concerning individuals a well as states. While it is not a body of the

United Nations, it is heavily funded and supported by the UN, along with many other voluntary donations from member states, and other international organizations. It is a major implementer of the Geneva Conventions, as it aids in the persecution and controlling of those that do not uphold the Convention. It should be noted that the ICC will have to implement any modifications to the Conventions and as such, their perspective should be considered when debating any alterations.

Timeline of Events

Date	Description of Event
24 June, 1859	Battle of Solferino; Henry Dunant witnesses atrocities of victims of war being left to perish.
17 February, 1863	International Committee of the Red Cross (ICRC) with the aim of providing international relief to injured combatants in memory of the Battle of Solferino.
22 August, 1864	The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field is adopted as the first convention in what will be known as the Geneva Conventions.
6 July, 1906	The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies at Sea is added to the Convention.
12 August, 1949	The Geneva Conventions as we know it today, with four conventions were created and signed and ratified.
2 August, 2006	The Geneva Conventions s finally universally accepted, as all 194 states agree upon the Conventions. This is the first time in modern history that an international treaty has reached universal acceptance.

UN involvement, Relevant Resolutions, Treaties and Events

The United Nations is the largest body working towards non-violence in the world, and as such it has made previous attempts to address the need for parameters in war. Not only has it formulated several documents outlining proposals for non-violence but it has taken action to promote the ideals that the Geneva Conventions represent. It is difficult to measure the direct success of The Geneva Conventions as a means of preventing war crimes. However, it can be noted how the Convention has provided the justification for persecution of many nations and individuals.

There have been several instances where the rule of law broke down and infringement ensued such as with Malmedy during The Battle of Bulge when 84 prisoners of war were massacred for reasons unbeknownst to this day. There was also the use of mustard gas in 1936 when Italy attacked Ethiopia in Abyssinia, as the use of chemical weapons is expressly forbidden. However it was misused yet again by Iraqi's against Iranians more recently between 1978-1991. While these offenses may seem alarming, and there are a multitude of them to be recalled, there are also far fewer than there would have been, had the convention not been put into place, such as with the Iraqi-Iranian war. Although for over ten years chemical weapons were being used, there had been two previous attempts offenses during the 1970's. These actions were quelled due to the regulations set in place by the Geneva Conventions.

Chemical weapons are one such form of modern warfare that, while it is considered in the Convention, it is not explicitly tackled and as such is subject to vagueties and misinterpretations. As the International Committee of the Red Cross (ICRC) noted, one major issue when creating and implementing the Convention is that, "Defining the legal nature of a situation is a legal matter. Unfortunately, this often becomes a political exercise. Thus, the essential problem regarding that definition is to be found neither in the legal nor the humanitarian realm but rather in the political arena. It would therefore be unfair to make a humanitarian organization bear the burden of full responsibility for the legal definition of a situation. That task belongs above all to States" (ICRC, 1998).

Additional treaties that deal with the restraining of violence of war

- 1. United Nations Convention Against Torture,
- 2. Ottawa Convention Against Anti-personnel Landmines,
- 3. Convention on Cluster Munitions,

- 4. United Nations Convention Against Genocide,
- 5. Universal Declaration of Human Rights.

Resolution on the ICRC's involvement with modern warfare as a current issue of great importance:

International Humanitarian Law and New Weapon Technologies, 34th Round Table on current issues of international humanitarian law, San Remo, 8–10 September 2011

Evaluation of Previous Attempts to Resolve the Issue

The Geneva Conventions is a work in progress and has always been considered as such. Therefore due to the flexible nature of modern warfare, the Convention has been susceptible to constant change. Due to the advancements in modern warfare, particularly in the use proxy wars, asymmetrical war tactics where there is a prominent imbalance in the sides, and civilian toll, modifications were put in place. The Hague Conventions of 1899 and 1907 was updated to account for these developments and the Protocol I, II and III were all a product of reforming the Geneva Conventions to accommodate for this modern warfare. However, as “modern” is constantly changing, the previous attempts were effective for the time period they were enacted in, but are in need of further adaptation.

There have been slight permanent alterations to the initial Conventions, such as the provision for the Red Crystal as an emblem of war relief and the symbol for the ICRC, in accordance with several member states who found the Red Cross and Red Crescent to be of some controversy. The Conventions is open to change, and while the previous attempts are valid solutions, with this changing world, comes a need for revolutionizing legal actions against violence during conflict times.

Possible solutions

One of the primary discrepancies with this issue is the lack of clarity in regards to what is defined as “modern warfare”. There are examples of what it constitutes such as ballistic missiles, chemical weapons, and nuclear weapons. However, a conclusive list of all that modern warfare encompasses has not been agreed upon as of presently. It would be highly advisable to compile a universal acceptance for what is considered modern warfare. Nonetheless, the nature of the word “modern” indicates its fluid and ever changing manner,



and such poses difficulties when attempting to regulate it, due to its ambiguity and constant development.

Vagueness of definition is an issue of great delicacy and importance that should be regarded as such. There are certain issues with Geneva Conventions that have been highlighted by ICRC such as, “Article 6 of the Fourth Convention specifies the point at which its application ceases. In situations other than occupation, defining that point is sometimes a matter of interpretation. Depending on that interpretation, serious consequences from a humanitarian viewpoint may be inflicted on those who are supposed to be protected by the Fourth Convention. Experience shows that armed conflicts rarely stop from one moment to the next. A period of neither war nor peace can go on for years. Though provisional agreements are sometimes concluded during that time, individual freedom of movement continues to be limited, internally displaced people and refugees are slow in returning to their homes, and detainees continue to be held” (ICRC, 1998). These obscurities leave much room for interpretation which is often not productive to the ideals of the Convention. Therefore, it is critical that clearness of definition be deliberated prior to and during modifications of the Convention.

Furthermore, The interconnectedness of issues of wartime cause for potential redundancy of agreements. There many examples of modern warfare which already have treaties or codes that regulate their use such as *The Hague Code of Conduct* (HCOC) for ballistic missiles, *The Chemical Weapons Convention* (CWC), and *The Treaty on the Non-Proliferation of Nuclear Weapons* respectively. Therefore, all previous resolutions on the topic of wartime regulations should be considered prior to adjustments of the Geneva Conventions, as the efficiency of the Convention is highly dependant on its directness and on its acceptance.

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Appendices

I. <http://www.army-technology.com/features/feature115500> -Here is an interesting article on how modern warfare is being shaped, and the pop culture demand for the Geneva Conventions.

II. <http://www.icrc.org/eng/assets/files/review/2012/irrc-886-kellenberger-spoerri.pdf> -Here is the resolution referred to in the report, International Humanitarian Law and New Weapon Technologies, 34th Round Table on current issues of international humanitarian law, San Remo, 8–10 September 2011.