



A Comparative Study of Humanitarian Law and Human Rights in Creating International Peace and Security

Alireza Mohammad Rezaei¹, Maryam Moradi^{2*}, Abu Mohammad Asgarkhani³

¹Ph.D. Candidate in Public International Law, Department of Law, Faculty of Law, Islamic Azad University of Gheshm, Gheshm, Iran

^{2*} Assistant Professor, Department of Law, Faculty of Law, Islamic Azad University of Gheshm, Gheshm, Iran

³Department of Political Science and International Relations, University of Tehran, Tehran, Iran

Received: 22 March 2022 ; Accepted: 8 June 2022

Abstract:

International peace and security are one of the values and aspirations of humanity in the world, and for all human beings, regardless of ethnicity, race, religion or nationality, enjoying a life of peace and security is a vital value. This common sense, the study of the history of human life, tells of bitter events and bloody wars that have disrupted the order of the international community and endangered peace and security. All factors have led to the implementation of any rules related to the public interest of the international community to solve this problem; International humanitarian law and human rights are part of international law that builds peace and security. They communicate internationally and exchange and coordinate with each other for the sake of international peace and security. This article will provide a comparative study of humanitarian law and human rights in the context of international peace and security and will answer the question of how human rights and humanitarian law contribute to international peace and security.

Keywords: International Security, Humanitarian Law, Human Rights, International Peace

Introduction

The right to peace is indirectly enshrined in Articles 194, 1, 12, 13, 15, 25, and particular Article 28, of the 1948 Universal Declaration of Human Rights. Article 28 of the Declaration states: "Everyone is entitled in full equality to a fair and public hearing by an independ-

ent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Concepts of human rights and institutions that aim to monitor and enforce human rights are to some extent a system of public order. The

human rights system complements the community of states as a public order. Under Article 26 of the Universal Declaration of Human Rights, nations have a duty to promote peace education and to expand UN peacekeeping activities. This obligation is similarly reiterated in Article 4 of the Convention on the Elimination of All Forms of Discrimination against Education, adopted in 1960, as well as Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 29 of the Convention on the Rights of the Child.

Peace

Peace has been one of the oldest human ideals and because it has been endangered more than any other value, human beings have always sought peace and coexistence in the form of treaties and agreements. The value of peace and security is evident not only in treaties and treaties but also religions. Various have also emphasized the importance of peace and security. Important treaties and treaties in the field of international peace and security include the Charter of the League of Nations and the Charter of the United Nations. According to the Charter for the maintenance of international peace and security is entrusted to the Security Council. The Security Council is a body that maintains peace and, by issuing recommendations, imposes sanctions or uses force; But the powers of the Security Council are not absolute, and there are limitations, including the principle of non-interference, to human and humanitarian rights. In fact, today with the political and legal developments that have taken place in international forums and especially with the expansion of the concept of international peace and security by The Security Council has repeatedly called for humanitarian intervention, and the principle

of non-interference in the internal affairs of States has changed considerably over the centuries. It can be said that respect for the fundamental principle of human rights has weakened internal sovereignty in some cases and, in case of violation of human rights, protection of human principles, has made human rights universal; And one of the important tools at the disposal of the Security Council to maintain peace is the authorization for humanitarian intervention in cases where human rights abuses have become widespread. In fact, the defense of human rights is one of the goals of the UN Charter and international cooperation in resolving international issues that have an economic, political or humanitarian character is one of the ways to excel human rights

International peace and security

The actions of the international community, which took the form of the founding of the United Nations, are a major step towards maintaining human and international peace and security; But the study of the state of the world community after 1945 did not paint the picture as the United Nations had hoped. On the international stage, there have been many wars that have disrupted world public order and violated common human values. According to the principles set out in the Charter of the United Nations, the United Nations was incapable of punishing the perpetrators of these crimes, as it could only guarantee military and civilian executions in the form of Article 39 of the Charter against various countries. Individuals as perpetrators of these violations went unpunished. This situation made the international community feel the need for another institution through which to punish global criminals; Because the international community has long sought to maintain international peace and security,

it has made many efforts at different times, one of which has been the establishment of the International Criminal Court. These courts were established, sometimes through the victorious countries and sometimes by the Security Council. These courts play their role by prosecuting and punishing criminals and, as a result, by laying the groundwork for the rule of law. If there is no peace, it is the result of injustice, which in turn leads to the destruction of peace. As a result, we need inclusive peace to administer justice, and we need inclusive justice to maintain peace.

Objectives of the International Criminal Court

In general, the conflict between peace and justice has been seen in the goals of the Criminal Court. Given that the International Criminal Court (ICC) has only dealt with criminal matters, it appears that one of the Court's deliberations on international peace and security relates to the Nikolic case, which made a statement recognizing the harm suffered by the victims. Private issued.

In the Celebici case, the International Court of Justice rejected punishment for the former Yugoslavia as the sole criminal purpose. Accordingly, the former Yugoslavia stated that retribution would not in itself establish justice. Punishment should be more deterrent to achieving peace. However, the criminal purpose cannot be considered simply and exclusively. More broadly, another dilemma may be considered and despite the fact punishment is considered, most of the implementation of peace and justice is considered.

Justice without war

The idea that crimes against humanity affect international peace and security has been endorsed. For example, war will cause con-

cern for women and children, and support for Security Council peacekeepers has been important, so these factors are delaying these issues. In addition, the use of force, whether legal or illegal, has a profound effect on international judicial intervention. In the 1990s two court courts

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTY) were tried to prevent punishment. Even in the texts of the International Criminal Court, the requests of the Security Council have been used as the best option to reduce violence. Judging crises may also, over time, create particular incentives for international law. For example, the International Court of Justice did not apply to the former Yugoslavia against Kosovo bombing troops. Having said that, the relationship between the International Criminal Court It becomes more complicated about violence. Over time, criminal justice has created conditions that reinforce the traditional notion of peace (non-use of force, crime against humanity, or war crime) among its members; But is peace not possible without justice? Does war happen without justice? Can criminal justice hide its violence? Even if the judgment is correct? To what extent have governments and the Security Council suppressed the use of force? And do they see it as a threat to peace? In this regard, there are three ways to solve:

The first hypothesis is that the International Criminal Court implicitly or explicitly encourages the use of force to facilitate its operation. However, it may seem right that there is no justice without peace, or that it is difficult to imagine justice without peace. Accordingly, a criminal court cannot be established for Nuremberg or Tokyo without war. World War II created the conditions for

the collapse of the international system and allowed the International Criminal Court to act. In addition, the pursuit of justice will intensify the damage and punishment. In fact, the international criminal courts have not benefited from the wars themselves and have only benefited from the weak sovereignty of the countries that have jurisdiction over their cases; They therefore tend to implicitly perpetuate social conditions and for international courts to continue their efforts to facilitate detention. There is a possibility that the International Criminal Court needs a war to succeed. For example, the International Criminal Court works best in cases of change of government through civil or international war; But in the absence of a war, it was difficult to pursue individuals in all circumstances and it did not work effectively. The same procedure applies to specialized international courts. In such circumstances, international criminal courts lack the necessary conditions; And they have never acted in a way that uses their help to achieve their goals. The NATO bombings in Bosnia and Herzegovina, for example, preceded the Dayton Accords in 1995, forcing Serbia to cooperate with alcohol denominations. Although neither Serbia nor NATO did not immediately facilitate the work of the International Court of Justice for the former Yugoslavia, which eventually paved the way for the normalization of political life in the former Yugoslavia.

The relationship between criminal justice and maintaining international peace and security

The Yugoslav Tribunal for the Jurisdiction of National Courts was established by the Security Council in accordance with Chapter VII of the Security Council to assist in the maintenance of international peace and secu-

urity through the administration of criminal justice. Security Council Resolutions 808 and 827, as well as the Secretary-General's report, all indicate that the Security Council used its powers to establish an international tribunal in Chapter VII of the Charter. In fact, the International Criminal Court (ICC) established an international tribunal to address this threat and punish the perpetrators of these crimes after the Security Council declared widespread human rights abuses in the former Yugoslavia a threat to international peace and security. This decision has been taken in accordance with Article 41 of the Charter. According to this article, "the Security Council may decide what measures it is necessary to take to implement its decisions which do not involve the use of military force; And may call on the members of the United Nations to take such action. "These measures may include the cessation of all or part of economic relations and the communication of rail, sea, air, post, telegraph, radio and other means of communication, as well as the severance of political relations."

Pursuant to Article 9 2 2 of the Yugoslav Statute: At any stage of the proceedings, the court may request the national courts to refer the proceedings to that court in accordance with the Statute of the Court and the Rules and Procedure of the Court.

In the Tadic case, the tribunal retains its independence from the Security Council, stating that the Security Council has no right to form a court embryo. It requires a ladder and a review of the actions of the Security Council, and this tribunal is not a pillar set up for this purpose, and therefore declares itself incompetent. did not have. Nevertheless, this argument ignores this fact Recognizes that the work of the tribunal may still be necessary to maintain international peace

and security. Or the Security Council should legitimately accept this view. In addition, to assess the role of the tribunal in achieving the objectives of Chapter VII of the Charter, it is necessary to address only the situation in the former Yugoslavia. Nevertheless, it seems that the Security Council can decide not to act for the purpose for which it was created, or that peace and security can be better achieved by ending the work of the tribunal. This possibility is foreseen in the report of the Secretary General of Article 28. Even if we accept Tadic's view that the powers of the Security Council are not unlimited under Chapter VII, the branch believed that these powers and the extent of the council's discretion were very broad. The result is that, as the Taric Appeals Chamber stated, the dissolution of the tribunal before its completion is within the powers of the Security Council. In addition, an important document explicitly states the relationship between crime, peace, security and well-being.

Justice is a reason for the end of wars.

The purpose of establishing the Court of Criminal Justice was to develop global security or autonomy, and thus to provide partial support for international order and security. Ideas and theories about the development of the International Criminal Court on fundamental and legal developments were somewhat slow. However, all the activities to develop what should be criminalized were only to prevent war; And the advent of the International Criminal Court has been a boost to lasting peace and has predicted world peace.

Human rights are a tool to strengthen peacekeeping.

Human rights rules and human rights treaties are one of the best tools for maintaining and

strengthening international peace and security, but it seems that unrealistic changes and developments in the world are increasing violence and jeopardizing the administration of justice. Turns. When human rights are considered as a tool to strengthen the maintenance of international peace and security, not only one aspect of human rights should be considered, but also all generations of human rights such as civil and political rights, socio-economic rights and cultural rights.

Horizontal discrimination and inequality between religious groups and other demographic groups restrict freedom of expression, violate human rights, and threaten international peace and security.

Human rights and positive peace

Human rights strengthen the bond between individuals and societies. In fact, there is a strong link between peace and human rights; Serious human rights violations are therefore seen as a threat to international peace and security.

Right to life

One of the inalienable rights is the right to life, which must be respected in times of war and peace. According to Article 6 of the Covenant on Civil and Political Rights, "The right to life is an inherent human right. This right must be protected by law and no person can be arbitrarily deprived of life." This article considers the right to life an inherent right to be protected by law. Be. The importance of the right to life in humanitarian aid to victims of natural disasters and similar emergencies has led the UN General Assembly to declare: "Leaving victims of natural disasters and similar situations to their own devices is a threat to their lives." Also, any phenomenon that causes humiliation of human beings can damage his status and dignity. Ignoring the survivors of natural

disasters and similar situations who need various food, medical and medical assistance will definitely damage their human dignity. The General Assembly has also placed great emphasis on this.

The Human Rights Committee has also established a close link between this right and the prohibition of propaganda of Article 20 of the Covenant in General Interpretation No. 10; Because he considers war as one of the main factors in violating human life.

The right to enjoy physical and mental health
Article (12) of the Covenant on Economic, Social and Cultural Rights states: "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health" During the Libyan war, health facilities were severely restricted. Many people were seriously injured in direct attacks by the Gaddafi regime. Some referees and medical facilities were in short supply.

Freedom of expression

Although the right to freedom of expression is an inalienable right of individuals, it is absolute and inviolable. The article states: Everyone is subject to the restrictions imposed on him / her by the exercise of his / her rights and freedoms, which are imposed by law, exclusively for the purpose of ensuring the recognition and observance of the rights and freedoms of others. 3. These rights and freedoms may in no case be exercised contrary to the corruption and principles of the United Nations. Including a) Respect for the rights and dignity of others. B) Supporting national security and public order; and c) Ethics and public welfare. Article 2 of the Covenant also imposes other restrictions on the exercise of the right to freedom of expression: (a) Any propaganda for war is prohibited by law. B) Any incitement to national or racial or religious hatred which is inciting b) Any incitement

to national or racial or religious hatred which incites discrimination or strife or the use of force is prohibited by law. The European Convention on Human Rights also imposes extensive restrictions. Article 1 (b) of the Convention states: "The exercise of this kind of liberty is subject to certain duties and responsibilities; they may be subject to formalities, conditions, restrictions and penalties; "In the interests of national security, territorial integrity, territorial integrity, public welfare to prevent the disorder of the crime to protect the dignity or other rights, to prevent the disclosure of confidential information received or to maintain the authority and impartiality of the judiciary".

Right to work and livelihood

Article 6 Commits the economic, social and cultural rights of the Member States to recognize the right to work, including the right of everyone, to self-determination by means of which he or she chooses to earn a living and to take appropriate measures to protect They have this right.

Human and humanitarian rights in the maintenance of international peace and security

Human rights and humanitarian law are closely intertwined and complementary; Because human rights and modern humanitarian law are both legal systems and part of public international law, they share important moral elements and customs. These two international legal systems often have the same goals and aspirations. Its primary goal is to develop and protect human rights in all situations in all forms of conflict. Human rights and humanitarian law should work together to support victims of conflict, rather than competing or playing conflicting roles. Take US operations in

Haiti, for example. Although the Geneva Conventions were not applicable to the operation, US forces in Haiti were bound by the United States' obligations under the International Covenant on Civil and Political Rights. Or if in a situation of hypothetical conflict the provisions of the Covenant have been suspended as a result of its deviation, irrevocable protection of humanitarian instruments must continue to apply. As stated, human rights and humanitarian law have similar and similar principles and roots; Human dignity can be considered the most important foundation of the international human rights system and the rights enshrined in humanitarian law. In other words, on the most important basis, we see an important commonality between human rights and humanitarian law. If the human rights that exist in the international human rights system are justifiable on basis of human dignity, it is precisely on basis of this human dignity that the rights contained in humanitarian law are justified, and therefore human dignity in international human rights instruments and Humanitarianism has been repeatedly emphasized. Some thinkers emphasize that the idea of human dignity is the basis of the idea of human rights and humanitarian law; Human dignity is an absolute and inviolable right that is violated in any way; Neither in the name of public order nor under any other pretext can it be considered permissible. It is even superior to the right to life because the right to life is an exception, just as killing someone in a state of legitimate defense does not lead to responsibility; But the right to human dignity and dignity is not an exception and its violation is not allowed in any case; For example, torturing a person whose dignity is an insult is not legitimate, neither in

time of peace nor in time of war. The principle of human dignity has been emphasized in numerous international instruments on human rights and humanitarian law; The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international human rights instruments emphatically emphasize human dignity and urge member states to uphold and uphold this human and human rights principle. Put. Similarly, in the four Geneva Conventions, which are the most important international instruments in the field of international humanitarian law, Article 3 of these conventions, common denigration of persons, degrading and degrading treatment, torture and other acts that violate human dignity It is forbidden to harm its dignity and human dignity.

The principles governing humanitarian law make clear how the principles of humanity and human protection are the ultimate basis of the commitment of this legal system; The principle of prohibition from pursuing military goals and inhumane methods in war, the principle of segregation, the principle of proportionality, the principle of precaution and the principle of limitation of weapons or the principle of prohibition of the use of weapons that produce unnecessary suffering; For women and children, humane treatment of prisoners of war, etc., is one of the principles and rules of humanitarian law that have been enacted to protect human beings and humanity and have required the parties to armed conflict to abide by it. Similarly, human rights standards have been designed and identified to protect human beings and their fundamental freedoms, which can be eloquently observed and studied in all international human rights instruments.

Conclusion

What has been examined in this article is a comparative study of humanitarian rights and human rights in the establishment of international peace and security. And has achieved the following results.

Observance of human rights and humanitarian law rules and interactions for the establishment of international peace and security. That is, in some cases, human rights have led to the development of humanitarian law, and in some cases, vice versa. For example, the principle of the right to life and non-discrimination and the right to education have been incorporated into the four Geneva Conventions under the influence of the teachings of the Universal Declaration of Human Rights. Also, the prohibition of torture, the prohibition of arbitrary detention, which has entered the world of humanitarian rights from the International Covenant on Civil and Political Rights; One of the effects of humanitarian teachings on the development of human rights is the prohibition of crimes against humanity, which was developed following the experiences of World War II and entered into human rights instruments; Also, the prohibition of genocide, which in the past was considered a wartime crime but later developed and was committed even in peacetime, is a crime. Therefore, observance of the rules and regulations of human rights and humanitarian law have a great role and influence on the establishment of international peace and security.

References

- Additional Protocol I to the Geneva Conventions (1949).
- Branley, Ian, (2004). International law in the last years of the twentieth century. Saleh Rezaei Pish Rabat, translator. Tehran: Office of Political and International Studies.
- Convention Against Discrimination in Education (1960).
- Decision of 10 August (1995). (Trial chamber II) the Prosecutor V. Dusko TADIC, defense Motion on jurisdiction.
- General Framework Agreement for Peace in Bosnia and Herzegovina (1996).
- Geneva International Treaties (1949). Article 3 Joint.
- Ghorbannia, Nasser. (2008). Human rights and humanitarian. Tehran: Mizan Publications
- Lepard, B.D. (2003). Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions.
- OHCHR. (2008). "Frequently Asked Questions on Economic, Social and Cultural Rights"
www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf.
- OHCHR. (2016). "Early Warning and Economic, Social and Cultural Rights"
www.ohchr.org/Documents/Issues/ESCR/EarlyWarning_ESCR_2016_en.pdf.
- Relating to the Protection of Victims of International Armed Conflicts (1977). (Additional Protocol I)
- Rezaeinejad, Iraj. (2001). The idea of freedom of expression in the international human rights system. No. 8. Tehran: Advocacy.
- Tavernier, Paul. (1997). the Experience of the international criminal Tribunals for the Former Yugoslavia and Rwanda, international Review of red Cross UN, Doc. A / 43 / 131,1988.
- Warner, Daniel, (2003). Human rights and humanitarian law. Salaleh Habibi

Amin, translator. Tehran: Publications of the Faculty of Law and Political Science, University of Tehran and the United Nations Development Program.

Yes, Simmons. (2016). Can the International Criminal Court Deter Atrocity? 70 International Organization 1948 Universal Declaration of Human Right