



Bravo Zulu: A Long Way Ahead **International Humanitarian Law's Application in India's Military Justice System**

- Anuradha Lawankar (I B.A.LL.B.)

India, over a period of 5000 years, has devised her own principles of combat and protection of the civilian population. She has derived significant inspirations from the ancient scriptures and has appropriated it seamlessly with the modern day international humanitarian law.

A dualistic character is pursued, requiring the distinction between international and domestic law. For an effective application of international law, it must be transformed into the municipal realm. India's efforts to align its legal framework with global norms are evident through acts like the Geneva Conventions Act of 1960, the Chemical Weapons Convention Act of 2000, and the Weapons of Mass Destruction Act of 2005. However, despite its history of conflicts, contemporary India faces criticism for not fully embracing its international law responsibilities, particularly in terms of implementing International

Humanitarian Law (IHL) effectively. Although India is a party to the universally-ratified Geneva Conventions of 1949, it has yet to accede to the Additional Protocols to these Conventions. While Article 51(c) of the Constitution provides guidance on respecting international law, it lacks a robust enforcement mechanism.

In *Rev Monterio v State of Goa*, a local resident contested his deportation, asserting Goa's continued status as "occupied territory" under the Fourth Geneva Convention. The major effort of the Supreme Court (SC), in this case, was to define occupation and verify the existence of 'occupation' during the issuance of the deportation order. The Court considered the definition given in Article 42 of the Hague Regulations 1907, as the Geneva Conventions did not have a definition for 'occupation.' It considered the laws of 'belligerent' occupation and the protection under the Geneva Conventions which applied only during the conflict. The Court distinguished between 'true' annexation and 'premature' annexation and held that annexation establishes territorial title once conflict ends.

News at a Glance

Japan will begin their operation to release "contaminated" radioactive water which has been stored in the region since the Fukushima nuclear power plant suffered from a devastating tsunami in 2011. The plan has been approved by Japan's nuclear regulator, as well as the International Atomic Energy Agency. However, The Pacific Island Forum earlier this year expressed concerns regarding long-term ramifications for the environment and public health, as well as setting a precedent for other nations disposing of nuclear waste. For more information, see [here](#) and [here](#).

Canadian news publishers and broadcasters filed an application with the Competition Bureau of Canada requesting an investigation into Meta's conduct. The complaint centers around Meta's recent decision to block news content from its platforms in Canada, raising concerns about the company's dominant position in the online advertising market. For more information, see [here](#).



Another notable case is Jagjit Singh Arora v. Union of India, which revolves around 54 prisoners of war (POWs) from the 1971 conflict, presumed dead by India but allegedly still detained in Pakistani jails. The SC faced two contentions: the treatment of the prisoners as alive for benefits and urging the government to engage the International Court of Justice (ICJ) to ensure Pakistan's compliance with repatriation obligations under a treaty (Shimla Agreement). The Government opposed the decision to direct the matter to the (ICJ) citing the country's consistent policy of bilateral dispute resolution with Pakistan. The ICJ's jurisdiction could be invoked through special agreements or compromissory clauses in treaties upon breach of treaty's terms.

Two other major problems in IHL implementation in India are the lacunae in the IHL implementing legislation. Individuals do not possess the right to approach courts under any of the three Acts, and courts can only take cognisance after obtaining permission from the central Government. Additionally, the Geneva Conventions Act, 1960 does not apply to military personnel

governed by service-specific acts. Courts have, at times, overlooked the essential requirement for the proper application of IHL, this underscores a notable deficiency in expertise and comprehension of IHL within the Indian legal system.

India must establish a national-level IHL Committee and promote seamless integration and transformation of international domestic law. Simultaneously, we should develop a comprehensive military law manual incorporating IHL provisions and promoting its awareness, while demanding greater accountability from military jurisprudence.

The Rann of Kutch Arbitration

- Devansh Bhatt (IV B.A.LL.B.)

On this auspicious day of celebrating the 77th anniversary of Indian independence, let us take a look into the Rann of Kutch Arbitration - one of the first steps taken by independent India towards making an impact on international law and relations.

The Rann of Kutch, falling in the western region of Gujarat in India and a part of it in the Islamic Republic of Pakistan, possesses a

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US Attorney General Merrick Garland announced that the US Department of Justice will begin to help Ukraine with its ongoing Russian war crime investigations and assist the International Criminal Court (ICC). This is a major policy reversal, as the Department of Defense previously blocked cooperation with the ICC. For more information, see [here](#).

Russia passed a new law allowing courts to strip foreign owners from hostile countries of stakes in key Russian entities, in a purported attempt to protect strategic companies from foreign influence. According to the text, the purpose of the new law is to protect the rights of Russian citizens and entities, ensure national defense and security in the face of hostile actions by the US and its allies. For more information, see [here](#).



unique geographical characteristic. India has always maintained it to be land, while Pakistan stuck to the argument that the Rann was a marine feature. It is to be pointed out that the Rann, for half of the year, remains a dry salt desert while, for the rest of the year, is flooded with water. Pakistan claimed the north-western part of the region, while India had its claim over the entire region. The Kutch carries a historical importance for India as the traces of people from the Indus Valley civilization, as old as 3500 BCE appear to be present in the region. This not only carries significant historical importance, but is also one of the most significant archaeological exploration sites in India. The Rann of Kutch, especially during the Rann Utsav, has also become a popular tourist destination. Even for Pakistan, the salt flats in the Rann of Kutch offer economic potential for salt extraction.

This led to an outbreak of offensive hostilities in April 1965. A mediation attempt was made by the then Prime Minister of the United Kingdom, Harold Wilson, and both States agreed to resolve the conflict through peaceful

mediation in the midst of a cease fire.

The Indo-Pakistan Western Boundary Case Tribunal was constituted to decide the case. Following the constitution of the Tribunal, multiple delegations from the countries inspected the documented evidence and records. The Tribunal was independent of the United Nations (UN), but the oral hearings began in the UN premises after an invitation by the Secretary General.

The Indian case and evidence were based around three grounds. The first being, that there were certain assertions made by the Rao of Kutch (ruler) that the Rann fell under his territory and these were not challenged by the British government for a period of 75 years prior to the date of Independence. The second ground being, that over an extended period of time (over 75 years) Great Britain as Paramount Power in the region, took its decisions and actions while acknowledging the fact that the Rann of Kutch was actually a territory which fell under the Kutch, i.e. India. The third ground being, that from the start of the 20th century till the time of

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The Asian Forum for Human Rights and Development issued a statement calling for an end to the systemic killing of Shia Hazaras in Afghanistan in order to prevent a possible genocide under Taliban rule. Recently, legislative bodies in the UK, Canada, Australia, and Sweden have opened groups to support and seek accountability for the plight of Shia Hazaras, as an example of such awareness campaigns. For more information, see [here](#).

Amnesty International released a report documenting alleged war crimes being committed in Sudan during the ongoing conflict between the Rapid Support Forces and Sudanese Armed Forces. The report details how the spiraling conflict in Sudan has resulted in the deaths and grievous injury of thousands of civilians since fighting broke out in April. For more information, see [here](#).



Indian independence, the actions of the British government in India led to the precise depiction of boundaries of the regions of Kutch and Sind. The region between Sind and other states of Western India and the region along the northern part of Kutch, were much in accordance with India's claim on the disputed region. Pakistan refers to statements of officials in the Sind Administration and others to the effect that either the Rann itself is the boundary, or that the boundary lies in the middle of the Rann. Statements of the Rao of Kutch in 1854 and 1866 are also relied upon by Pakistan as containing admissions by him to the same effect.

The Tribunal concluded that the boundaries between the British-controlled region of India and the region which lay under Indian states within the British empire, were international bodies and were subject to international law. As far as the Sind-Kutch boundary was concerned, there was no formal existence of any express agreement to determine its definition. It was concluded and determined through mutual agreement and mutual recognition. Thus, the Tribunal

determined a boundary, recognizing roughly 90% of the disputed territory to be a part of India, and the remaining to be a part of Pakistan.

This arbitration had broader implications for India's position in international law and relations. It showcased India's commitment to peaceful resolution of disputes, adherence to international legal processes, and engagement in diplomatic negotiations. The willingness to submit to arbitration and respect the Tribunal's decision highlighted India's maturity as a responsible member of the international community. This event marked a milestone in India's engagement with international law and set a precedent for future diplomatic endeavors in addressing territorial and legal disputes on the global stage.

India's Position on the 1951 Convention on Refugees

- Sana Kulkarni (III B.A.LL.B.)

The 1951 Convention on the Status of Refugees ("Convention") was the foremost comprehensive attempt to define refugees and create a detailed guideline for host

News at a Glance

Ukraine's Office of the Prosecutor General announced it would investigate whether recent Russian attacks on Odessa and other Black Sea ports constitute war crimes, according to a report from Reuters. The ports are major exporters of grain, a key food source for some of the world's poorest countries. For more information, see [here](#).

German prosecutors announced that a Syrian national accused of crimes against humanity and war crimes through torture and enslavement between 2012 and 2015 has been arrested. Prosecutors alleged that the defendant operated within a pro-government militia that performed torture, killings and extortion in Syria. Prosecutors say that the militia was responsible for the 2013 Tadamon Massacre, a mass execution of at least 41 people in Damascus' Tadamon neighborhood. For more information, see [here](#).



countries to ensure the appropriate protection of the rights of refugees. The 1967 Protocol further expanded its scope, and removed the Refugee Convention's temporal and geographical restrictions so that the Convention would apply universally. The fundamentals of the Convention is non-refoulement, according to which a refugee should not be returned to a country where they face serious threats to their life or freedom. The document prescribes the basic minimum standards for the treatment of refugees so they can lead a dignified life.

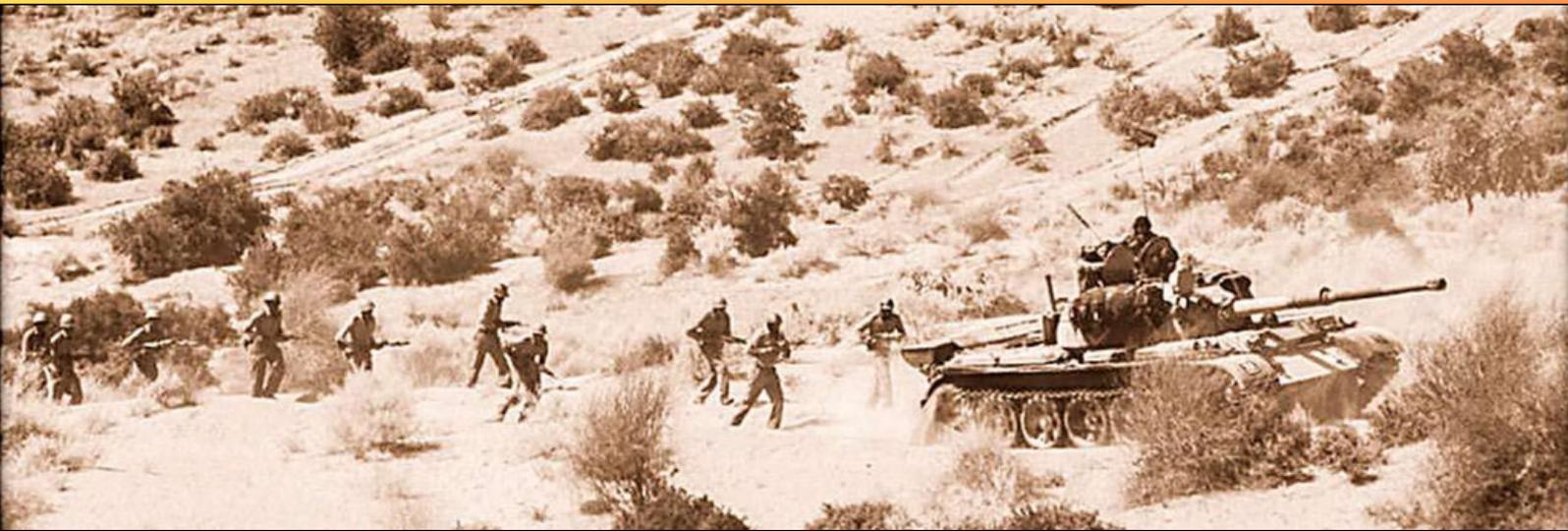
India neither signed the 1951 Convention nor its 1967 Protocol, leading to a persistently paradoxical situation. While decolonized India confirmed its recognition of the key principles of universal human rights in its Constitution, it refused to be a signatory on the problem of refugees. At the same time, India also failed to outline a domestic legislation on the issue. Refugees in India are classified as "aliens" and are at the mercy of political

and administrative authorities. People can be prosecuted for violating India's Foreigners Act, 1946, despite being considered refugees under international law. India held the Convention to be euro-centric and feared that policies towards refugees theoretically inculcated by humanitarianism would lead to chances of occidental intervention in its territory. The Indian government also stated that migration was a matter of bilateral and not multilateral relations.

India has been selective in its treatment of refugees. Tibetan or Tamil refugees from Sri Lanka are welcomed. Tibetan refugees even receive support from the government and in several states, small businesses owned by Tibetan refugees have become tourist attractions. Some Hindu migrants, who fled Pakistan, have been granted identity certificates, and promised a package of 2,000 crore rupees and voting rights. In comparison, India is antipathetic to providing shelter to Rohingya refugees, who are Muslim. Thousands of Afghan refugees, who have been living in India, have been denied refugee status as well, with many of them being sent into

News at a Glance

The US announced that it sanctioned four officials in Bosnia and Herzegovina for actions it says undermines the Dayton Peace Agreement. This comes after the Republika Srpska National Assembly passed a law saying decisions from Bosnia and Herzegovina's constitutional court were null in the Republika Srpska, one of the two states that makes up Bosnia and Herzegovina. US officials condemned the actions of the people sanctioned, arguing they contributed to instability in the region and undermined the decades-old Dayton Peace Agreement by supporting separatist and nationalist legislation. For more information, see here.



detention camps. The absence of national refugee laws and adherence to international conventions gives leeway for discrimination and partial treatment of the already-distressed refugee population. India's stance reflects its territorial insecurities, and raises queries about its responsibility both to its democratic fundamentals and its assertion to being one of the leading global powers today. India, having one of the biggest refugee populations in South Asia, should either ratify the 1951 Convention and incorporate it into domestic law or enact a uniform legislation specifically to treat refugees with dignity so that their fate is not left to the discretion of the judiciary and governments in power.

Global Criticism of the Indo-Pak Conflict of 1971

- Arya Mitkari (I B.A.LL.B.)

The conflict of 1971 or more popularly known as the Bangladeshi Liberation War has deep rooted history of genocide and bloodshed, which led to the upsurge of the Bangladeshi revolutionists.

Initially, the United Nations (UN)

played off the matter as that of internal jurisdiction. Pakistan accused India of unprovoked "aggression," described the East Pakistan crisis as internal and therefore "outside the Security Council's concern." Thus, India's intervention was frowned upon by the majority of the States. The fact that Articles 62 and 63 were not invoked did not help them any further. On this basis, India argued that the refugees arising from this situation affected the country and thus, subjective intervention, on humanitarian grounds was valid. They also argued that the situation had now evolved and the existence of millions of refugees made this a global problem.

When the question of Bangladesh was passed to the General Assembly, 104 countries voted in favour for a ceasefire, which according to the then Secretary-General was a "political and diplomatic defeat for India" and emphasised the isolation of India and the Soviet Union simply because of the reason that the Indian Bloc failed to acquire a majority in the UN.

The war was also a clear playfield for the two superpowers, USA-

Upcoming Activities

Nuremberg Forum "Legally Undeniable: Criminalising Genocide Denial" Conference

The International Nuremberg Principles Academy is organizing the international conference in hybrid mode from 19th – 21st October, 2023. The hybrid event allows interactive attendance and discussion. Experts address the topic genocide denial, by exploring it as a concept and in context, what it is, how it manifests itself and how to regulate it. For more information, see [here](#).

A Decolonial and Anti-Racist Approach to Legal Education and Pedagogy – Sharing Good Practice

This one-day hybrid conference on 8th November, 2023 is to build on the recent work on decolonising and anti-racist approaches to legal pedagogy. Delegates will be able to present their papers in-person or online. For more information, see [here](#).



backed-Pakistan and USSR-backed-India amidst the Cold War. Between 1954-65, Pakistan was supplied with arms worth \$2 billion; against this, India sought Soviet help. By then, USSR had become the largest Arms supplier of India by providing a \$780 million worth of tank, combat aircrafts, Missiles and submarines.

The United States declared India as the aggressor and deployed Task force 74 led by nuclear powered-USS Enterprise in the Bay Of Bengal. Declassified documents show that in addition to tilting towards Pakistan in its public statements, the U.S. also followed a pro-Pakistan line in the UN, in discussions with China, and on the battlefield as well. On top of that, the Nixon administration authorised transfer of US military supplies to Pakistan, despite the illegality of doing so. The South Asian episode of the Cold War reveals the striking failure of the Nixon administration in avoiding a large-scale loss.

Another country that was deeply invested in the South Asian conflict was China. The relations between Pakistan and China had been prospering since the 1962 Sino-

Indian border flare up, in all fields, political, economic, commercial and cultural. For China, Pakistan was a means to get direct access to the Muslim-dominated countries and supporting the largest Muslim State meant easier access to the Middle East. To strengthen the relations, China condemned the Indian attack and extended firm support to Pakistan in its official statement.

Most of the member States of the UN looked to maintain the status quo, whereas India, USSR, and Poland urged the Security Council to go for political settlement and consider the wishes of East Pakistanis. The role of the UN in the conflict was nothing more than that of a helpless observer, although it took responsibility for the millions of refugees coming into India, it failed to prevent the tragic happenings in East Pakistan. The war ended with the signing of the Instrument of Surrender that led to the formation of the People's Republic of Bangladesh. The surrender of 93,000 soldiers is the largest surrender in history since World War 2.

Upcoming Activities

2023 BIICL Annual WTO Conference: Technology and Trade – Challenges and Opportunities

This hybrid event will take place on 6th October, 2023. The Conference brings together experts from international organizations, the tech industry sector, practitioners and academics, at a one-day conference, to discuss these issues in three thematic panels. For more information, see [here](#).

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