

INDIA'S WAR CRIMES

By

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It is true that the international legal order is on the decline and the West that indemnified the system for long is divided. Nonetheless, it is also true that some part of the international law transcends the extant realm of international law and pre-dates it; this part is called the International Humanitarian Law (IHL) better known by its earlier name 'the law of war'. The IHL unfolds a very unique area of law that deals with *jus in bello* (law in war) that sounds oxymoronic. The IHL is deep rooted in the customary international law and is buttressed by major religions of the world that find its principles of civilian protection, protection of women and children, necessity, distinction and proportionality as universal in nature and as shared values. All over the world, professional militaries get trained into this branch of law through the good offices of the International Committee of the Red Cross (ICRC) that has international mandate to disseminate it. Professional militaries imbue the principles of IHL in their trainings and operations. As of today, the customary international law of the IHL has largely been codified through treaty law resulting in Hague Conventions (that deal with the means and methods of warfare) and the Geneva Conventions and their Protocols (that primarily deal with protections). Most specifically, the violations of the IHL are called war crimes and crimes against humanity. The list of violations was expanded through the Rome Statute of International Criminal Court (ICC Statute) in 1998 and included the offences of aggression and genocide. The complementing part of the IHL is the *jus ad bellum* (law of war) that is largely political and is administered within the parameters of the UN Charter and by the UNO.

India used Pehelgam incident of 22nd April, 2025 as a *casus belli* (cause of war) to initiate an International Armed Conflict (IAC) against Pakistan. The categorization of the IAC has attracted the application of the IHL to the acts of India, hence, its illegal, unlawful and unilateral acts can be declared as international wrongs and war crimes. It goes without saying that it is a known fact that India is not a party to the ICC and cannot be prosecuted for these crimes; however, the purpose of the adumbration is to bring on record the war crimes committed by India and to state that criminal liability of the leadership of India is not abated or mitigated for want of a prosecution mechanism.

The major war crimes committed by India are:

First, India is using water as a means and method of warfare. It unilaterally, illegally and without reason or rhyme, opted out of the Indus Water Treaty (IWT) by putting it in 'abeyance', a phrase alien to the treaty and to the Vienna Convention on the Law of Treaties (VCLT). Besides disregarding the World Bank backed IWT, India violated article 54 of the Additional Protocol I to the Geneva Conventions (AP-I) that prohibited 'starvation of civilians as a method of warfare'. This prohibition was not merely declaratory, but was criminalized as a war crime (article 8(2) (b) (xxv) of the ICC Statute). It may be noted that the criminal liability is personal in nature and the officers/persons involved in committing the war crime of starving civilian population will be personally responsible for the war crimes committed.

Second, India violated article 2 of the UN Charter that obliged it to respect the principle of sovereign equality and to refrain from using force or threat to use force against territorial integrity of Pakistan. Article 2(3) of the UN Charter specifically required India to settle the dispute through peaceful means. On 7th May, 2025, it, however, by attacking nine worship places and by killing 26 innocent civilians including women and children violated the UN Charter and used force in such 'character, gravity and scale...' that it amounted to 'aggression' in terms of the United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974 (which was codified in article 8 of the ICC Statute as an international crime). India's 'bombardment' was violation of articles 48, 49, 50 and 51 of the Additional Protocol to the Geneva Conventions, 1977 (AP-I). The violation of attacking civilians has been criminalized by the ICC Statute in its article 8 as a war crime. Most of the 'locations'/places attacked are mosques/worship places. This is a clear violation of article 53 of the AP-I that prohibits attacking places of worship. The act of attacking religious buildings has been enlisted as a war crime under the ICC Statute, therefore, India can and should be blamed of committing this egregious war crime.

Third, the law of war clearly prohibits armed attacks against works and installations containing dangerous forces like dams/water reservoirs in article 56 of the AP-I. India's attack on Neelum-Jhelum Hydropower Project on the night of 7th May was a clear violation of this important provision that specifically prohibited attacking critical infrastructure that could endanger civilian populations.

Fourth, as many as twenty four drones were downed in one day in various urban areas in Pakistan. The unmanned drones striking at civilian populations including at cricket stadium in Rawalpindi on 8th May, 2025 exposed the illegality in the use of

drones by India as these were not directed to military targets and apparently did not use the principle of distinction. No precautionary steps as anticipated in articles 36 read with article 57 of the AP-I were taken. Article 36 of the AP-I required that the party to the AP-I (India signed and ratified the IHL instruments) when using new weapons (like drone in this case) should have made sure that no protection under the IHL laws was violated.

Finally, India has been offering all sorts of lousy justifications for its failure to meet the universally accepted principles of the IHL during its military actions since 7th May. On the killing of women and children on 7th May, India tried to hide behind the imaginary ‘collateral damage’ without showing what was the ‘direct or real damage’ that it intended to hit.

Using its right to self defence as provided under article 51 of the UN Charter, Pakistan responded at the military targets in India in line with the principles of the IHL. Pakistan reserves the right to ask for reparations for the damages caused by India in its latest aggression against Pakistan. It may, however, be noted that the impunity with which India is violating international law is not unprecedented as it is a copycat of Israel and the United States in many respects; however, it must be remembered that illegality breeds illegality and the rulebook of impunity can certainly be copied by all when the push comes to shove!