

Collective Punishment under the Law of War

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Introduction

This article explores the concept of Collective Punishment, which contravenes the principles of International Humanitarian law by serving as a means to penalize individuals for actions they did not individually commit. Based on this article, it is evident that accountability should be considered completely individual and cannot be attributed to the whole population. The origin of the prohibition of collective punishment may be traced back to the 1907 Hague Regulations, which are widely recognized as a part of Customary international law.

1.1 What is Collective Punishment ?

Collective punishment is defined as "a form of sanctions imposed on persons or a group of persons in response to a crime Committed by one of them or a member of the group (Shane D. Darcy, 2014,p4)

This kind of penalties is imposed on a group for acts allegedly perpetrated by a member or members of that group, which could be an ethnic or political group or just the family friends and neighbors of the wrongdoer. that means the punished group may often have no direct association with the perpetrator other than living in the same area and Cannot be assumed to have control over the perpetrator's actions.

The prevailing quality that binds armed conflicts together is the inclination of armed forces, insurgent factions, and occupying armies to participate in acts of communal retribution and enforce penalties upon specific factions of people, without considering the assignment of culpability for specific deeds. These measures are utilized with the intention of suppressing opposition and ensuring obedience.

1.2 Historical Survey of collective Punishment ;

The historical survey shows many examples of Collective Punishment being imposed in response to individual acts from the World Wars, as well as from more recent conflicts. During the Second World War, the German army conducted a "punitive expedition in continuous operation" against the Russian Papulation, involving mass executions of civilians and destruction of property (R. Lemkin,1994, 236-237)

The Nuremberg judgement ales provides an example of an extreme Nazi Germany Collective punishment Policy, where by the responsibility for all acts of sabotage is attributed not only to individual perpetrators. but to the entire Czech population)

Colonial - era Conflicts also featured punitive measures taken in response to acts of resistance. (AW. B, 2001, 1062-1064)

The British practice in Malaya, where "food was withheld from villages judged guilty of sheltering insurgents" is another instance of Collective punishment. (1. J. Pilger, 1999, p. 24)

Another example is that of the blockade of Gaza.. in June 2007, which is imposed by Israel and included the restriction of food, fuel cooking gas and medical supplies for more than one million Palestinians living there causing serious humanitarian consequences for the civilian population of Gaza, therefore the situation constitutes a collective punishment for acts they bear no responsibility.

The more recent instance is that of Israel's strikes on Gaza which amount to Collective punishment because Israel had resorted to indiscriminate military attacks against the already exhausted Palestinian People of Gaza. This indiscriminate Violence that targets innocent civilians are prohibited under international Law and amounts to a war crime.

2.1 The Prohibition under the Hague Convention

The law of war or as known (International Humanitarian Law [The body of international Law applicable during armed conflicts that regulates how War's are fought, including rules that minimize harm to civilians and civilian structures and fighters (Richard Desgagné, 20201)

Prohibits collective punishment since the Preparatory work to the Geneva Conventions which reveals strong support for the inclusion of a rule against this kind of Punishment in the proposed civilians Convention. The prohibition under IHL is encapsulated in two norms. The first is that one person cannot be punished for the acts of another which means any individual may be punished for his acts or omissions. Second is that mass penalties are prohibited. (Shane Darcy, p4)

This restriction harkens back to the ancient and esteemed Hague Convention (II) of 1899 (Art 60), where the annexed Hague Regulations eloquently declare that no universal repercussion, be it monetary or otherwise, shall be imposed upon the citizenry. In light of the deeds committed by individuals, those who cannot be deemed collectively and individually accountable shall not suffer the consequences.' .

This article illustrates that responsibility should be individual and it cannot be placed upon the shoulders of the entire population(R. Provost, 2002, p. 188)

The implication here is that the methods of control should not target the general population unless they were collectively responsible for or allowed the hostile actions to occur. As a result, isolated actions would never result in the imposition of punishment on the entire group. (Darcy, 2010, p32)

According to the International Committee of the Red Cross, the Hague Conventions of 1899-1907, besides their historical importance, are regarded as Customary international law by virtue of which they impose legal obligations on states that have not ratified them..

The principle of Individual responsibility is one of the most important in law. In its Conference in Stockholm in 1948, the ICRC proposed The punishment of any individual who is under protection cannot occur if they are not directly responsible for committing the offense. The imposition of penalties on a collective group is strictly prohibited. Any form of retaliatory action against individuals under protection or their belongings is strictly forbidden. The destruction of movable property or real estate is prohibited unless it is deemed absolutely necessary due to military operations. Additionally, any acts of intimidation or terrorism are strictly forbidden.

2.2 The prohibition Under the Geneva Conventions and

The prohibition of collective punishment is found in GC III with respect to prisoners of war (pows) in article 26/6 The prohibition of collective disciplinary measures that impact food is strictly observed, as stated in the insightful pictet commentary. This directive carries immense importance and should be carefully taken into account alongside the Provisions regarding disciplinary Sanctions, as it represents just one aspect of the whole. Under no circumstances shall a Sanction be implemented that would deprive prisoners of war of the absolute minimum necessary for their overall well-being. This interpretation is further supported by the conclusive paragraph of Article (89)., which prohibits any disciplinary punishments that pose a risk to the health of prisoners of war (Jean S. Pictet, 1949, p200). This prohibition is also articulated in Article (87), which asserts that "Collective Punishment for individual acts.....are forbidden." According to the commentary provided by Pictet, collective Punishment, initially banned by the 1929 Convention, became necessary due to grave abuses that transpired during the first world war. The Camp Commanders administer Collective punishments that target the innocent rather than striving to identify the individuals responsible (Jean S. Pictet, op.cit, p 932).

The fourth GCS provision marked an improvement on its Huage predecessor the prohibition of collective punishment in article (33), provides that "no protected person may be punished for an offence he or she has not personally committed. Collective penalties and similar measures of intimidation or terrorism are strictly forbidden. Throughout the preparatory work of the 1949 Conventions, the international Committee of the Red Cross advocated for the inclusion of this rule. They emphasized that the first paragraph of this article explicitly prohibits collective penalties. It is important to note that this prohibition does not pertain to punishments imposed by the criminal justice system, such as sentences handed down by a court following due process. Instead, it pertains to any form of penalties inflicted upon individuals or entire groups in violation of fundamental principles of humanity. These penalties are imposed for actions committed by these individuals..

Article (33) is an artistic offspring of article (50) of the Hague regulations, articulating that no universal punishment, be it monetary or otherwise, shall be inflicted upon the populace as a result of the deeds of individuals for which they cannot be held accountable both collectively and individually. The wording, which was harmoniously embraced in Geneva in 1949, largely resembles the draft proposed by the International Committee of the Red Cross (Pictet, 1949, p225). The prohibition of collective punishments, which unjustly impact both the guilty and the innocent, is firmly grounded in principles of humanity and justice. Consequently, this prohibition is closely intertwined with the prohibition of any forms of intimidation or terrorism against individuals who are under protection..

3. The prohibition According to additional protocols of 1977

The prohibition y Collective punishment is supplemented by the rules in the Additional protocols y 1977 of GC1999. These protocols treat the rule against this Kind of punishment as a fundamental guarantee and highlight the importance of the rule on individual responsibility in the context y penal proceeding. [Shame Darcy, p2]

The additional Protocols both contain rules against Collective punishment and affirm that any punishment must be based on individual responsibility.

Article (75/4/b), states that "No one shall be convicted of an offence except on the basis of individual penal responsibility. Article (75/2/d), also sets out that The implementation of

collective punishments and the act of making threats to carry them out are strictly forbidden at all times and in any location whatsoever.

The scope of application of the first additional protocol is broader than that of GCs, the rules or collective punishment are to be found amongst the fundamental guarantees of article 75, and apply to persons who are in the hands of a party to the conflict.

This means that all acts, amounting to Collective punishment directed against civilians in the hands of an adverse party is also Prohibited, because it runs counter to the principles of humanity and the dictates of the public conscience In his report presented during the 44th Session of the Human Rights Council, Michael Lynk expressed that the Israeli approach aimed at governing the Palestinian populace transgresses a pivotal principle that exists within nearly all contemporary legal frameworks: solely individuals proven guilty can be subjected to punishment for their actions, and exclusively following a just and equitable procedure. The blameless individuals can never be compelled to endure penalties for the misdeeds committed by others.

3.1 The prohibition during international armed Conflicts;

Regarding the circumstances surrounding non-international armed conflicts, the sole pertinent regulation is the provision stated in Common Article (3). The fundamental tenet of this article necessitates the compassionate handling of all individuals who are not actively involved in the hostilities..

The second protocol extends the prohibition of collective punishment under IHL to

NIACS. Article (6) on (penal prosecutions) states that 'No one shall be convicted of an offence except on the basis of individual penal responsibility. The inclusion of these rules in a protocol applying to situations of NIAC affirms the fundamental nature of the prohibition of collective punishment.

The implementation of NIACS exposes occurrences of collective retribution that contravenes the principles laid out in International Humanitarian Law (IHL). According to the findings of the Sierra Leone Truth and Reconciliation Commission, all armed factions engaged in the civil conflict employed a tactic of apprehending women and girls whom they suspected to have familial or affiliative ties to the adversary. The objective behind this strategy was to subject them to violation and punishment as a means of retribution for their alleged association with the opposing forces.

According to the esteemed UN Secretary General, transgressions of the universally acknowledged common article (3) of the Geneva Conventions, as well as the article (4) of additional Protocol II, that are perpetrated during a non-international armed conflict, have, for a considerable duration of time, been regarded as firmly established principles of customary international law.

Conclusion

Previously stated, it is of great significance to acknowledge that both the Geneva Conventions (GCs) and the Customary International Humanitarian Law (IHL) do not present a distinct elucidation for the concept of collective punishment.. Nevertheless, the prohibition of collective punishment remains a significant rule within the realm of IHL, applying to all armed conflicts. In order to establish the boundaries of this prohibition, certain elements can be employed to shed light on its scope. One such element is the connection to the principle of individual responsibility, which asserts that no individual should be convicted of an offense unless their individual responsibility is established. Consequently, it is deemed unacceptable to hold a group of individuals accountable for the actions of one or more individuals. Furthermore, this principle can

also be linked to the right to be presumed innocent until proven guilty in accordance with the law. Another element to consider is the absolute nature of the prohibition of collective punishment, meaning that it must be upheld even in times of emergency..

Both civilians and prisoners of war (POWs) are safeguarded against Collective punishment, and subsequent Legal developments have witnessed the Prohibition being extended to Non-International Armed Conflicts (NIACs) and designated as a punishable war crime under International criminal law. The legal frameworks of two international Criminal tribunals, namely the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1994 and the Special Court for Sierra Leone (SCSL) in 2000, delineate the jurisdiction over the war crime of Collective punishment. This Classification signifies a significant advancement in terms of the enforcement of International Humanitarian Law (IHL) principles. The primary objective of this prohibition is to prevent the arbitrary punishment of entire groups for actions they did not commit, irrespective of the underlying justifications. Actions that are arbitrary and non-discriminatory in nature are regarded as a manifestation of collective punishment, as they contravene the fundamental tenets of the laws of war, which seek to strike a balance between military necessity and humanity. It is important to underscore the prohibition of any form of collective retribution targeted at individuals and entities that fall under protection. The utmost priority lies in enabling humane and humanitarian principles to guide our actions, in consonance with the principles of justice and law.

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