UNIT 3 WHAT IS THE ROLE OF UN IN THE APPLICATION OF IHL?

Structure

3.1 Introduction
3.2 Objectives
3.3 The Role of UN Peace-Keeping Force
   3.3.1 The Applicability of IHL
   3.3.2 Use by the United Nations of Humanitarian Law: A Case Study
   3.3.3 The Present Position
3.4 Role of the ICJ in the Application of the IHL
3.5 Role of the Human Rights Bodies in the Application of the IHL
   3.5.1 When are they Applicable?
   3.5.2 Who is Bound by these Bodies of Law?
3.6 Summary
3.7 Terminal Questions
3.8 Answers and Hints
3.9 Glossary
3.10 References and Suggested Readings

3.1 INTRODUCTION

One of the primary responsibilities of the UN is to maintain international peace and security. It is not directly concerned with the implementation of international humanitarian law. However, some of its actions may have a bearing on ensuring that this law is respected. Persistent violation of international humanitarian law may lead to a threat to international peace and security. Hence, it is possible for the UN to call upon parties to a conflict to respect international humanitarian law. The Security Council can also impose economic sanctions to ensure this. The UN interest in international humanitarian law became evident after the Tehran Conference on Human Rights which addressed the issue of respect for human rights in armed conflicts. Although the UN approach to international humanitarian law issue has been via human rights, it is necessary to maintain the distinct identity of these two areas of law. However, at the same time, it must be acknowledged that protection of human rights in armed conflicts has the effect of ensuring respect to some of the basic norms of international humanitarian law. In view of this limited convergence, the UN system can be of some use of ensure respect to international humanitarian law. As a matter of fact a number of resolutions of the UN Security Council on the situation in the Middle East, Iraq-Kuwait conflict, former Yugoslavia, Rwanda closely deal with ensuring respect to international humanitarian law.

One of the purposes of the United Nations is to promote and respect Human Rights. This objective has spurred the UN to helpin the conclusion of a number of Conventions on Human Rights. Four Geneva Conventions which form the genesis of International Humanitarian Law, were also concluded in 1949 after the
United Nations was established. Today these Conventions have been ratified or adhered to by 185 States and have become part of the customary rules of International Law and indeed, part of jus cogens. The Additional Protocol I of 1977 which is an extension of the Geneva Conventions has been ratified or adhered to by 135 States. Therefore, it looks little strange to inquire whether the United Nations Peace-Keeping Forces are bound by International Humanitarian Law or not.

3.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the Role of the UN Peace-Keeping Forces for the Protection and applicability of International Humanitarian Law;
- explain how General Assembly, ICJ, and NGOs are working for the Application of IHL; and
- discuss a Case Study in which Humanitarian Law has been made applicable.

3.3 The ROLE OF UN PEACE-KEEPING FORCES

The United Nations Peace-Keeping Forces were first introduced in 1948 with the establishment of UNTSO in the Middle East. Since then, such forces have been sanctioned as and when the necessity has arisen. Of late, there has been a spurt in peace-keeping operations with the result that there are 17 such ongoing operations involving 69,356 military personnel with a total budget of around 3.5 billion dollars.

The United Nations Peace-Keeping Forces started as a buffer force between two warring parties which have ceased hostilities and hope to negotiate for peace or solution of dispute between them. It is a military force without a military mandate. In practice, it has more diplomatic than military functions. Normally, it is not supposed to use force except in self-defence. One would therefore find these forces with light weapons. This explains for the few fatalities since 1948—till Dec. 994, there have been only 1194.

However, things have tended to change. Peace-Keeping Forces have intermittently become peace-enforcing where warring parties have either violated cease-fire agreements, shelled protected areas or sought to block humanitarian assistance activities of international humanitarian agencies like the International Committee of the Red Cross or United Nations High Commissioner for Refugees. In rare cases, such as in Korea in 1950 and in the Gulf War in 1991, combat duties were assigned. These were exclusively peace-enforcing exercises authorized by the United Nations. Technically, these were not United Nations operations but individual or coalition exercises under national command of an individual country unlike other United Nations operations.

In today’s world, the UN Peace-Keeping Forces have been assigned different missions depending upon different situations, sometimes, invoking chapter VI and sometimes chapter VII and at other times both the chapters. The Congo operations were to provide assistance to Congo until the latter was ready enough to mobilize its forces to fulfill its tasks. It was termed as technical assistance by the UN Secretary-General. In Cyprus in 1964, the UN role was to contribute to the
maintenance and restoration of law and order and to help it return to normal conditions. In Somalia in 1992, it was to establish secure environment for humanitarian operations, to feed the starving, protect the defenceless and prepare the way for political, economic and social reconciliation.

In 1993 the UN forces in former Yugoslavia were empowered to take all means necessary to ensure the delivery of humanitarian relief by international agencies and protect the United Nations safe areas.

3.3.1 The Applicability of IHL

The question of the applicability of IHL to Peace-Keeping Forces first arose in 1950 during the Korean conflict. While the UN (United States) Commander had instructions to abide by humanitarian principles and Article 3 common to the Geneva Conventions of 1949, he would not ensure responsibility as a sovereign nation would do. This was perhaps not a right approach. One may mention here that the Geneva Conventions had been concluded a year earlier in 1949 and was not in force. The United States of America did not ratify the Conventions until 1955. It may be interesting to note that the United States Commander in Korea then was General Mc Arthur who would not even listen to his President.

The International Committee of the Red Cross which has the mandate to look after humanitarian activities in respect of victims of war has often emphasized on observance of IHL by the forces placed at the disposal of the United Nations for peace-keeping operations. Such memorandums were given in 1950 and again in November, 1961. The Committee also expected the States contributing their troops to the UN contingent to issue instructions to its troops to observe the Geneva Conventions, to which they are a party, in their interaction with the warring groups. This was endorsed at the Red Cross Conference in Vienna in 1965. In 1978, the ICRC expected the UN Forces to facilitate its activities. In a 1978, the ICRC expected the UN Forces to facilitate it activities. In a statement at the 47th Session of the UN General Assembly on 13th November, 1992, the ICRC observed that given the nature of the organization, rules pertaining to prisoners of war and penal sanctions could not apply to it, although rules pertaining to methods and means of combat, categories of protected persons and respect for recognized signs could be applied to it. Prof. Schindler has also observed that the UN Forces are bound by customary rules of IHL.

However, the UN’s attitude with respect to the applicability of IHL to its Peace-Keeping Forces has been rather equivocal. It claimed that it is neither a Party to the conflict nor a power under the Geneva Conventions. Its position has been that whenever the UN Forces use weapons they should abide by the principles and spirit of IHL. In October, 1978 the UN Secretary-General wrote to governments contributing their troops to the UN forces that they instruct the forces that they conduct themselves according to the principles and spirit of IHL while using weapons.

Keeping in view the multiplicity of UN peace-keeping operations, these could broadly be divided into three categories. These are:


2) Operations in Cyprus, Cambodia, former Yugoslavia, Somalia, Rwanda and Haiti.

3) Traditional operations just as in the Middle East and elsewhere.
1) The UN operations in Korea and in the Gulf War were essentially to repel or vacate aggression in the two theatres. These could not be called peacekeeping operations; at the most they may be labeled as peace-enforcing operations under the UN authorization but conducted by coalition forces not under the UN command but under National command. In both cases, the parties were bound by IHL including the third Geneva Convention of 1949 relating to prisoners of war, besides methods and means of combat, protected personnel and respect for Red Cross installations. One may recall that it was in the Korean conflict that prisoners of war had to be screened to determine for themselves whether they would like to be repatriated to their parent State or not.

2) Today, the UN Peace-Keepers are engaged in a variety of activities. They disarm opposing factions, monitor human rights, perform a wide range of administrative functions, supervise elections, and help render humanitarian relief. They assist in national reconciliation and aid in the restoration of the democratic set up.

The most important functions in this scenario are to remain neutral and act impartially and gracefully. Just as Caesar’s wife should be above suspicion, there should be no doubt about the neutrality and impartiality of UN Peace-Keepers. This is essentially a law and order problem which does not involve much of IHL. Peace-Keepers have to carry out their mandate in such a way that no finger is raised against their neutrality or any irregularity. It is more of a police action.

The UN Peace-Keeping Forces were faced with some problems in Bosnia where ethnic animosities run deep and there is mutual suspicion between Bosnian Muslims and Serbs. Recent NATO air strikes against Serbs in May, 1995 to force them to deposit heavy weapons resulted in the capture of about 400 French and British peace-keepers who were shackled and handcuffed. The UN peace-keepers cannot be taken as hostages and used as human shield against NATO air-strikes.

Bosnia has been a problematic theatre of war for the UN Peace-Keeping Forces who have suffered the highest number of causalities in any UN peace-keeping operations due to sniper shooting at those who are mandated to protect Sarajevo airport, safe areas and to facilitate the international agencies’ rendering of humanitarian relief. Taking of peace-keepers as hostages by the Serbs is a new development and is a violation of Article 23 of the Geneva Convention III of 1949. All combat situations would invoke IHL.

3) Monitoring cease-fires and remaining as a buffer force between opposing armies are traditional functions of the UN Peace-Keeping Forces ever since the force was established in 1948. These forces are very lightly armed for purposes of self defence. They play truant to both the armies with their humour and tact. Not much IHL is involved in such situations.

3.3.2 Use by the United Nations of Humanitarian Law:
A Case Study

A review of UN Security Council resolutions concerning the situation in Bosnia-Herzegovina in 1992 provides a glimpse into UN practice regarding reliance on humanitarian law. Throughout the first half of the year, Security Council resolutions
Who may apply IHL?

on the situation in Bosnia-Herzegovina (as well as Croatia) focused on cease-fire violations and the need for humanitarian assistance without emphasizing the role that humanitarian law might play in the ongoing conflict. Security Council resolution 764 (13 July, 1992), however, broke this pattern by expressly recalling the obligations imposed by international humanitarian law and reaffirming that “all parties are bound the comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August, 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches”.

Another Security Council resolution issued one month later, resolution 771, refined the broad declaration of the principle contained in resolution 764 in a detailed statement concerning the application of humanitarian law to the Bosnian situation. Resolution 771 begins by “expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina”. After reiterating resolution 764’s statement that the Geneva Conventions are applicable to the conflict and that they impose individual responsibility for violations, resolution 771 continues by condemning any violations of international humanitarian law, including those involved in the practice of “ethnic cleansing” and “demands that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law”. The resolution also demands that international humanitarian organizations, particularly the ICRC, be given unimpeded access to camps, prisons, and detention centres in the former Yugoslavia. Humanitarian organizations and states are requested to compile information concerning breaches of humanitarian law, “including grave breaches of the Geneva Conventions”, for submission to the Security Council. The Security Council expressly finds that “the Council will need to take further measures under the Charter” should the parties fail to comply with resolution 771.

The Security Council adopted one such further measure on 6 October, 1992 in resolution 780. It calls for the establishment of an impartial Commission of Experts to examine and analyze information submitted pursuant to resolution 771, “with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia”. Resolution 780 again expressed the Security Council’s “grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia” and reaffirmed the demand made in resolution 771 for all parties to cease and desist from all breaches of international humanitarian law.

The Security Council noted in resolution 787 of 16 November, 1992 that the Special Rapporteur’s report on the human rights situation in the former Yugoslavia had made it clear that “massive and systematic violation of human rights and grave violations of international humanitarian law continue in the Republic of Bosnia and Herzegovina”. Resolution 787 also again condemns all violations of international humanitarian law, including the practice of “ethnic cleansing” and “the deliberate impeding of the delivery of food and medical supplies to the civilian population”. Unfortunately, the Security Council has not regularly used human rights law as well as humanitarian law where both are applicable.
3.3.3 The Present Position

As a result of the efforts of the International Committee of the Red Cross (ICRC) in the last decade or so, the Secretary-General of the United Nations has issued a bulletin on 6 August 1999 on the ‘Observance by UN forces of IHL’, the broad parameters of which are:

- Internationals humanitarian law applies to UN operations whenever members of military units, whether acting under UN authority and control, or authorized to act by the UN, use force against, or are subjected to the use of force by, organized armed forces.

- Military and paramilitary forces shall be made aware of their obligations under IHL and human rights law by contributor states and by UN training units.

- Military personnel of the UN force violating IHL are subject to prosecution in their national courts.

- Protection of civilian population; distinction between civilian and combatants; and between civilian objects and military objectives. (Clearly violated by NATO in Kosovo.)

- No reprisals.

- Method and means of combat are not unlimited.

- Treatment of civilians and personnel ‘hors de combat’ humanely and without distinction.

- Treatment of detained persons in accordance with the provisions of the Third Geneva Convention of 1949.

- Protection of wounded, sick, medical, and relief personnel medical care, and suspension of combat to allow evacuation of dead and wounded, and

- Respect for Red Cross, and Red Crescent.

The directive of the UN Secretary-General thus explicitly reminds all forces participating in UN peace operations that they remain bound by international humanitarian law principles while performing duties on behalf of the UN.

Self Assessment Questions

1) What is the UN attitude in respect of the applicability of IHL to its Peace-Keeping Forces?

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3.4 ROLE OF THE ICJ IN THE APPLICATION OF THE IHL

International Commission of Jurists: Report on the Philippines

The International Commission of Jurists (ICJ) has used human rights and humanitarian law in a sophisticated and careful fashion on some occasions and has almost ignored humanitarian law on others. The ICJ’s study entitled The failed promise: human rights in the Philippines since the revolution of 1986, is an illuminating example of the potential for use of human rights and humanitarian law in reporting on human rights abuse in armed conflict situations.

Initially, the report recommends that both Article 3 common to the four Geneva Conventions and Additional Protocol II, should be declared applicable to the current conflict in the Philippines. Despite its ratification of the Geneva Conventions and Additional Protocol II, the Philippine government has not been willing to recognize their application to the non-international armed conflict going on within the country. Through a detailed analysis of criteria set forth in ICRC commentary, the report makes a convincing argument for the applicability of common Article 3 to the conflict. Application of Additional Protocol II is founded upon the more precise definition of “armed conflicts not of an international character” set forth in that document.

After concluding that the conditions have been met for application to the conflict of common Article 3 and Additional Protocol II, the report demonstrates the import of that conclusion by enumerating the specific provisions of humanitarian law applicable to the situation. The standards of humanitarian law provide an additional template against which human rights abuses in the Philippines may be judged. For example, the report notes that forced displacements of civilians in the Philippines not only result in violations of human rights law but are themselves violations of Article 17 of Additional Protocol II.

Self Assessment Question

3) Explain the role of ICJ in the Protection and Application of the IHL.

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3.5 ROLE OF THE HUMAN RIGHTS BODY IN THE APPLICATION OF THE IHL

International Human Rights Law (IHRL) is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behaviour or benefits from governments. Human rights are inherent entitlements which belong to every person as a consequence of their being human. Numerous non-treaty based principles and guidelines ("soft law") also belong to the body of international human rights standards. IHRL’s main treaty sources are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984) and Rights of the Child (1989). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples’ Rights (1981). While IHL and IHRL have historically had a separate development, recent treaties include provisions from both bodies of law. Examples are the Convention on the Rights of the Child, its Optional Protocol on the Participation of Children in Armed Conflict, and the Rome Statute of the International Criminal Court.

3.5.1 When are they Applicable?

IHL is applicable in times of armed conflict, whether international or non-international. International conflicts are wars involving two or more states, and wars of liberation, regardless of whether a declaration of war has been made or whether the parties involved recognize that there is a state of war. Non-international armed conflicts are those in which government forces are fighting against armed insurgents, or rebel groups are fighting among themselves. Because IHL deals with an exceptional situation – armed conflict – no derogations whatsoever from its provisions are permitted. In principle, IHRL applies at all times, i.e., both in peacetime and in situations of armed conflict. However, some IHRL treaties permit governments to derogate from certain rights in situations of public emergency threatening the life of the nation. Derogations must, however, be proportional to the crisis at hand, must not be introduced on a discriminatory basis and must not contravene other rules of international law – including rules of IHL. Certain human rights are never derogable. Among them are the right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude and the prohibition of retroactive criminal laws.

3.5.2 Who is Bound by these Bodies of Law?

IHL binds all actors to an armed conflict: in international conflicts it must be observed by the states involved, whereas in internal conflict it binds the government, as well the groups fighting against it or among themselves. Thus, IHL lays down rules that are applicable to both state and non-state actors. IHRL lays down rules binding governments in their relations with individuals. While there is a growing body of opinion according to which non-state actors – particularly if they exercise government-like functions – must also be expected to respect human rights norms, the issue remains unsettled.
3.6 SUMMARY

- In this unit, we discussed the role of the IN Peace keeping Operations in the application of the International Humanitarian Law.
  - We discussed the role of the ICJ and various Human Rights Bodies where they are protecting the rights of the IHL affected persons.

- In this unit, we discussed the role of the UN Peace keeping Operations in the application of the International Humanitarian Law. The United Nations Peace-Keeping Forces were first introduced in 1948 with the establishment of UNTSO in the Middle East. Since then, such forces have been sanctioned as and when the necessity has arisen. Of late, there has been a spurt in peace-keeping operations with the result that there are on-going 17 such operations involving 69,356 military personnel and having a budget of 3.5 billion dollars.

- We also discussed the role of the ICJ and various Human Rights Bodies where they are protecting the rights of the IHL affected persons. The International Commission of Jurists (ICJ) has used human rights and humanitarian law in a sophisticated and careful fashion on some occasions and has almost ignored humanitarian law on others. The ICJ’s study entitled the failed promise: human rights in the Philippines since the revolution of 1986 is an illuminating example of the potential for use of human rights and humanitarian law in reporting on human rights abuse in armed conflict situations.

3.7 TERMINAL QUESTIONS

1) State the Role and importance of the UN Peace keeping operations for the protection and application of the IHL.

2) Explain in detail through case laws how ICJ has contributed for the protection of the IHL.

3.8 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 3.3.

2) Refer to Section 3.3.

3) Refer to Section 3.4.

4) Refer to Section 3.5.
Terminal Questions

1) The United Nations Peace-Keeping Forces started as a buffer force between two warring parties which have ceased hostilities and hope to negotiate for peace or solution of dispute between them. It is a military force without a military mandate.

2) The International Commission of Jurists (ICJ) has used human rights and humanitarian law in a sophisticated and careful fashion on some occasions and has almost ignored humanitarian law on others. The ICJ’s study entitled *the failed promise: human rights in the Philippines since the revolution of 1986* is an illuminating example of the potential for use of human rights and humanitarian law in reporting on human rights abuse in armed conflict situations.

3.9 REFERENCES AND SUGGESTED READINGS

1) Larry Maybee, *International Humanitarian Law: A Reader for South Asia*, ICRC.