UNIT 4 WHAT IS THE ROLE OF INTERNATIONAL COMMUNITY IN THE APPLICATION OF IHL?

Structure

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4.1 INTRODUCTION

In this unit we will acquaint ourselves with the role of the International Committee of the Red Cross (ICRC) in the area of international humanitarian law.

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

4.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the role of International Community in the application of the IHL;
- describe the Major Conventions and the steps taken by the ICRC; and
- discuss India's adherence to rules of humanitarian law.
4.3 ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

Modern international humanitarian law comprises of a fairly significant number of international instruments in the form of multilateral law-making treaties, supplemented by customary norms. It is generally agreed that contemporary international humanitarian law contains adequate rules to regulate armed conflicts with a view to mitigate suffering brought about by them and is steadily growing in response to changes and new developments in the international community. However, when it comes to ensuring respect to the prescribed norms, weaknesses in international humanitarian law are exposed. One of the greatest challenges for humanitarian law today is ensuring compliance with its rules and principles. As a matter of practice, compliance continues to fall far short of reasonable expectations, and the law itself is not well developed with respect to the promotion of compliance as it is with respect to the prescription of rules of the protection of war victims. It is possible to make international humanitarian law stronger provided there is a will on the part of the members of the international community to do so.

In the South Asian region, the ICRC has been facilitating implementation, ratification, and dissemination of international humanitarian law instruments. Most of these activities are conducted under the auspices of the ICRC’s Advisory Service on International Humanitarian Law. This unit of the ICRC was created following the recommendation of the Intergovernmental Group of Experts for the Protection of War Victims, held in Geneva in January 1995, so that the ICRC can strengthen its capacity to advice and assist states in their effort to implement and spread knowledge of international humanitarian law. The Advisory Service which has been integrated into the overall structure of the ICRC, both at the headquarters and in the field, became fully operational in 1996. Its purpose is to assist civilian and military authorities in the implementation of humanitarian law and to promote universal acceptance of humanitarian law instruments. The service provides technical assistance, for instance, in the following areas:

1) Translating the Geneva Conventions and their Additional Protocols into national languages;
2) Where necessary, incorporating international humanitarian law into national law;
3) Enacting legislation to ensure that war crimes are prosecuted and punished; and
4) Establishing National Information Bureaux.

From its Regional Delegation for South Asia in New Delhi and from country delegations in Nepal, Pakistan, and Sri Lanka, the ICRC has been conducting a variety of activities to promote international humanitarian law in South Asia. A brief review of the ICRC activities aimed at promoting national implementation and universalisation of international humanitarian law instruments, dissemination of international humanitarian law in civil society and in armed forces follows.

4.3.1 Promoting Ratification of Instruments

An international instrument which is widely accepted carries greater credibility and authority. Its provisions are taken seriously, given due respect, and they form the
Who may Apply IHL?

basis for subsequent legal developments as well. They may also gain the status of customary international law. The Geneva Conventions of 1949 undoubtedly fall into this category. The fact that the international community has attributed a paramount position to these conventions in the international legal regime by universally accepting them is very significant. Attaining universal acceptance is a long and steady process. It is also possible to facilitate universalisation of an international instrument.

The United Nations does it on a regular basis in respect of some instruments. The ICRC has taken up the task of facilitating universalization of international humanitarian law instruments since this will undoubtedly expand the safety net of humanitarian law so that there is greater and better protection to victims of wars and armed conflicts. The ICRC usually gets in touch with authorities responsible for dealing with ratification accession related issues. Often such issues are also taken up during seminars, roundtables, symposia, etc., in which representatives of academic circles, NGOs, various governmental departments, members of the legal profession, etc., are brought together for a discussion and dialogue on these issues. The ICRC considers it important to involve the civil society in the process of facilitating ratification of international humanitarian law instruments. A number of such activities were organized by the ICRC in various countries of South Asia on issues like the Additional Protocols of 1977, The Hague Convention on Cultural Property of 1954, Anti-Personnel Landmines and the International Criminal Court. Such events are usually organized by the ICRC in close collaboration with national Red Cross and Red Crescent societies or academic institutions. When issues concerning ratification of or accession to humanitarian law instruments are taken up by the Advisory Service with governmental authorities, the latter’s responses vary among the following positions:

1) That the government has considered the instrument but is reluctant to become a state party at least for the time being in view of certain provisions of the instrument which are not acceptable for certain specific reasons.

2) That the government has not considered the instrument but will look into it and come up with a decision whether or not to become a state party.

3) That the government has decided to become a state party and that the ICRC may provide technical support in dealing with all formalities.

In all the cases, the ICRC offers its services in various ways. Sometimes authorities are provided with extensive literature on a particular international humanitarian law instrument, including fact sheets, lists of existing states parties, ratification kits, factual information, reports of expert studies, etc. During the last five years, a number of states in the South Asian region have become states party to certain international humanitarian law instruments and some ratification/accession are on the way. In respect of some other instruments, in certain countries in-depth analysis is being done by the authorities.

4.3.2 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:

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• International 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 the civilian population; distinction between civilian and combatants; and between civilian objects and military objectives. (It is interesting to note, however, that the same has been 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) Explain the Role of ICRC for the promotion of the IHL.

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2) How ICRC is promoting the ratification of the Instrument of Geneva Conventions?

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4.4 SUMMARY

- In this unit, we discussed the role of ICRC for the promotion and protection of the IHL.
  - We further discussed that how the ICRC is helping to translate the instrument and making it more effective for the state parties.

- In this unit, we discussed the role of ICRC for the promotion and protection of the IHL. In the South Asia region, the ICRC has been facilitating implementation, ratification, and dissemination of international humanitarian law instruments. Most of these activities are conducted under the auspices of the ICRC’s Advisory Service on International Humanitarian Law. This unit of the ICRC was created following the recommendation of the Intergovernmental Group of Experts for the Protection of War Victims, held in Geneva in January 1995, that the ICRC strengthen its capacity to advice and assist states in their effort to implement and spread knowledge of international humanitarian law. The Advisory Service which has been integrated into the overall structure of the ICRC, both at the headquarters and in the field became fully operational in 1996. Its purpose is to assist civilian and military authorities in the implementation of humanitarian law and to promote universal acceptance of humanitarian law instruments.

4.5 TERMINAL QUESTIONS

1) Explain the Role of ICRC in the application of the IHL.

4.6 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 4.3.
2) Refer to Sub-section 4.3.1.
3) Refer to Section 4.3.

Terminal Questions

1) The Role of ICRC in the application of IHL.
   - Translating the Geneva Conventions and their Additional Protocols into national languages;
   - Where necessary, incorporating international humanitarian law into national law;
- Enacting legislation to ensure that war crimes are prosecuted and punished; and
- Establishing National Information Bureaux.

4.7 REFERENCES AND SUGGESTED READINGS


2) David L. Roberts and S. Subramanian in Handbook of IHL and Human Rights Law, Regional Delegation, New Delhi: ICRC.