UNIT 7 WHAT INSTITUTIONAL MECHANISMS ARE AVAILABLE FOR THE APPLICATION OF IHL?

Structure

7.1 Introduction

7.2 Objectives

7.3 Implementing International Humanitarian Law: From Law to Action

7.4 The Role of Judiciary: Indian Approach

7.4.1 Human Rights Commission

7.5 National Committees for the Implementation of International Humanitarian Law

7.5.1 The Purpose of National Humanitarian Law Committees

7.5.2 The Functions of a National Humanitarian Law Committee

7.5.3 The Composition of the Committee

7.5.4 The Role of the National Red Cross or Red Crescent Society

7.5.5 Setting up a National Humanitarian Law Committee

7.6 Implementing International Humanitarian Law

7.6.1 The International Humanitarian Fact-finding Commission

7.6.2 The Composition of the Commission

7.6.3 The Powers and Functions of the Commission

7.6.4 A Commission Enquiry

7.6.5 Report of the Commission

7.6.6 Recognizing the Commission’s Competence

7.6.7 Financing the Commission’s Activities

7.7 Ensuring Respect for International Humanitarian Law

7.7.1 National Implementation Measures

7.7.2 Punishment for Breaches

7.7.3 Enquiry Procedure

7.7.4 The International Fact-finding Commission

7.7.5 Protecting Powers

7.7.6 Reparations

7.8 Summary

7.9 Terminal Questions

7.10 Answers and Hints

7.11 Glossary

7.12 References and Suggested Readings
7.1 **INTRODUCTION**

National Implementation mechanism are envisaged under Geneva Convention (I, 48; I, 49; III, 128; IV, 145) and Additional Protocol I (AP I, 84). National legislation must be enacted to provide for appropriate penal sanctions of grave breaches on International law under Geneva Convention (I, 49-52; I, 50-51; III, 129-130; IV, 146-147) and Additional Protocol (AP I, 85-91). Further, the Legislative measures are required to prevent and suppress, at all times, misuse of the protective emblems under Geneva Convention (I 53-54; II 43-45).

7.2 **OBJECTIVES**

After reading this unit, you should be able to:

- explain Implementation of International Humanitarian Law; and
- discuss the functions of a National Humanitarian Law Committee.

7.3 **IMPLEMENTING INTERNATIONAL HUMANITARIAN LAW: FROM LAW TO ACTION**

International humanitarian law – also called the law of war – sets out detailed rules that seek to limit the effects of armed conflict in particular, it protects those who are not, or no longer, taking part in the fighting, and sets limits on the means and methods of warfare. Humanitarian law is a universal set of rules. Its main treaties have been accepted by nearly every State in the world. However, becoming party to these agreements is only a first step. Efforts must be made to implement humanitarian law – to turn the rules into action.

**What is implementation?**

The term implementation covers all measures that must be taken to ensure that the rules of international humanitarian law are fully respected. However, it is not sufficient merely to apply these rules once fighting has begun. There are also measures that must be taken in both wartime and peacetime. These measures are necessary to ensure that:

- Both civilians and the military personnel are familiar with the rules of humanitarian law;
- The structures, administrative arrangements and personnel required for compliance with the law are in place;
- Violations of humanitarian law are prevented, and punished when they do occur.

Such measures are essential to ensure that the law is truly respected.

**Who should implement?**

All states have a clear obligation to adopt and carry out measures implementing humanitarian law. These measures may need to be taken by one or more government ministries, the legislature, the courts, the armed forces, or other State bodies.
There may also be a role for professional and educational bodies, the National Red Cross or Red Crescent Society or other voluntary organizations.

Measures have also been taken at an international level to deal with violations of humanitarian law. An international Fact-Finding commission has been setup to deal with violations committed during the recent conflicts in Rwanda and in the former Yugoslavia. An international criminal court was created by the 1998 Rome Statute.

However, it is the States which continue to bear primary responsibility for effectively implementing the law, and which must adopt measures at a national level.

What needs to be done?

Under international humanitarian law – that is, the 1949 Geneva Conventions, their Additional Protocols of 1977 relating to the protection of victims of armed conflicts, the 1954 Hague Convention on Cultural Property and the letter’s Second Protocol of 1999 a range of measures must be taken. The main ones are:

1) to have the conventions and Protocols translated into the national language(s);
2) to spread knowledge of their provisions as widely as possible both within the armed forces and the general population;
3) to repress all violations listed as such in the above-mentioned instruments and, in particular, to adopt criminal legislation that punishes war crimes;
4) to ensure that persons, property and places protected by the law are properly identified, marked and protected;
5) to adopt measures to prevent the misuse of the red cross, the red crescent and other symbols and emblems provided for in the Conventions and Protocols;
6) to ensure that protected persons enjoy judicial and other fundamental guarantees during armed conflict;
7) to appoint and train persons qualified in international humanitarian law, in particular legal advisers within the armed forces;
8) to provide for the establishment and/or regulation of:
   - National Red Cross and Red Crescent Societies and other voluntary aid societies,
   - civil defence organizations,
   - National Information Bureaux;
9) to take account of international humanitarian law when selecting military sites and in developing and adopting weapons and military tactics;
10) to provide for the establishment of hospital zones, neutralized zones, security zones and demilitarized zones.

The treaty provisions that could or do require such measures are set out in the table below.

Some of these measures will require the adoption of legislation or regulations. Others will require the development of educational programmes, the recruitment and/or training of personnel, the production of identity cards and other documents,
How is IHL Applied at the National Level?

the setting up of special structures and the introduction of planning and administrative procedures.

All these measures are essential to ensuring effective implementation of humanitarian law.

How can this be done?

Careful planning and regular consultation is the key to effective implementation. Many States have established national humanitarian law committees or similar bodies for this purpose. They bring together government ministries, national organizations, professional bodies and others with responsibilities or expertise in the field of implementation. Such bodies have generally proved to be an effective means of promoting national implementation.

In some countries, the National Red Cross and Red Crescent Societies may also be able to offer assistance with implementation.

Through its Advisory Service on International Humanitarian Law, the International Committee of the Red Cross provides advice and documentation to governments on national implementation. It can be contacted through the nearest ICRC delegation.

7.4 THE ROLE OF JUDICIARY: INDIAN APPROACH

Generally a person can approach the court when there is a violation of his rights. Even in cases of humanitarian violations a person can seek the assistance of the court. The Supreme Court, the highest in the country, may issue writs under Article 32 of the Constitution for enforcement of Fundamental Rights and under Articles 139 for enforcement of rights other than Fundamental Rights, while High Courts, the superior courts of the States, may issue writs under Articles 226. 'Writ' is eminently designed by the makers of the Constitution, and in the same way it is developed very widely and efficiently by the courts in India. The Constitution broadly provides for five kinds of "prerogative" writs, namely, Habeas Corpus, Certiorari, Mandamus, Quo Warranto and Prohibition. This is one of the mechanisms available for people to seek justice. Other than this an aggrieved person can approach the National Human Rights Commission and State Rights Commission.

7.4.1 Human Rights Commission

The Human rights Act of 1993 provides for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights. Under this Act, Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The victims of human rights violations can seek the assistance of National Human Rights Commission and State Human Rights Commission. One of the important functions of the National human rights commission is that it can take up suo moto complaints and help the victims who are deprived the opportunity to seek the assistance of courts. Other than this the Commissions have various powers to help the aggrieved person.
7.5 NATIONAL COMMITTEES FOR THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

The Geneva Conventions of 1949 and their Additional Protocols of 1977 are the principal treaties governing aid to and protection of the victims of armed conflict. In order to secure the guarantees provided by these instruments, it is essential that the States implement their provisions to the fullest possible extent. Implementation requires the States to adopt a number of internal laws and regulations. They must, for example, establish rules on the punishment of violations, the use and protection of the Red Cross and Red Crescent emblems and the fundamental rights for protected persons. In addition, the States are obliged to spread knowledge of the Conventions and Protocols as widely as possible. Owing to the broad range of issues associated with these responsibilities, comprehensive implementation of the rules of international humanitarian law (IHL) requires coordination and support from all the government departments and other entities concerned.

7.5.1 The Purpose of National Humanitarian Law Committees

To facilitate this process, some States have created either national interministerial working groups, often called committees for the implementation of IHL or national humanitarian law committees. Their purpose is to advise and assist the government in implementing and spreading knowledge of IHL. Setting up such committees is recognized as an important step in ensuring the effective application of IHL, and has been advocated by the International Committee of the Red Cross, the Intergovernmental Group of Experts for the Protection of War Victims and the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995).
7.5.2 The Functions of a National Humanitarian Law Committee

The organization and objectives of a national committee must be determined by the State at the time of the committee’s formation. However, since its purpose is to further the implementation and promote knowledge of IHL at the national level, the committee should have the following characteristics:

1) It should be able to evaluate existing national law in the light of the obligations created by the Conventions, Protocols, and other instruments of IHL.

2) It should be in a position to make recommendations for further implementation, to monitor the law and ensure it is applied. This may involve proposing new legislation or amendments to existing law, coordinating the adoption and content of administrative regulations, or providing guidance on the interpretation and application of humanitarian rules.

3) The committee should play an important role in promoting activities to spread knowledge of IHL. It should have the authority to conduct studies, propose activities, and assist in making IHL more widely known. The committee should therefore be involved in instructing the armed forces in this domain, teaching it at various levels of the public education system and promoting the basic principles of IHL among the general population.

7.5.3 The Composition of the Committee

Given its functions, a national humanitarian law committee requires a wide range of expertise.

The committee must include representatives of the government ministries concerned with implementing IHL. Precisely which ministries are relevant will depend on the committee’s mandate, but they are likely to include Defence, Foreign Affairs, Internal Affairs, Justice, Finance, Education and Culture.

It may also be useful to have representatives of legislative committees, members of the judiciary and personnel from the headquarters of the armed forces. It is important that such a committee include other qualified persons. These may be individuals not associated with government ministries but who are appointed for their legal, educational, communications or other expertise. The committee should therefore consider inviting IHL specialists from universities (especially law faculties), humanitarian organizations and possibly the electronic and print media.

7.5.4 The Role of the National Red Cross or Red Crescent Society

It is likely that the national Red Cross or Red Crescent Society will already be involved in some of the activities and functions mentioned above.

The National Society often possesses valuable knowledge and experience, which can help achieve the committee’s objectives. In some States where such committees exist, it was the National Society that requested its setting up and hence was instrumental in its formation. In many States, the National Society provides the committee’s secretariat.
Considering the position and experience of a National Society, it is important that a national committee include representatives of the Society.

7.5.5 Setting up a National Humanitarian Law Committee

A national committee for the implementation of IHL need not have a specific structure. The process by which it is set up will depend on the structure and procedures of the State concerned. Generally, the executive power will have authority to establish such a body.

7.6 IMPLEMENTING INTERNATIONAL HUMANITARIAN LAW

Creating a national committee can be a useful and indeed decisive step in ensuring the comprehensive implementation of international humanitarian law. It represents a commitment to securing the essential guarantees laid down for the victims of armed conflict, demonstrating that the State is taking steps towards fulfilling its fundamental obligation to respect and ensure respect for IHL.

Neither the Geneva Conventions nor their Additional Protocols require such a committee to be set up. It is therefore entirely up to the State concerned to determine how it is created, how it functions, and who its members are.

As a result, there is considerable flexibility as to the role and characteristics of such committees. Some of the most important features have been outlined above, but any State is free to add others.

It is important to emphasize that the full implementation of IHL is an ongoing process and is not completed solely by passing laws and issuing regulations. Comprehensive implementation involves monitoring the application and promotion of the law, as well as keeping informed of and contributing to its development. It is therefore recommended that a national humanitarian law committee be a permanent and not an ad hoc body.

It is also recommended that, once created, the committee establish relations with other national committees and the International Committee of the Red Cross. Representatives of the national committees should meet regularly and share information concerning current activities and past experiences. This is particularly important among States within the same geographic region or with similar political or legal systems.

Through its Advisory Service on international humanitarian law, the International Committee of the Red Cross works on a regular basis with national committees for the implementation of IHL. It also stands ready to assist and provide further information to States interested in forming committees.

7.6.1 The International Humanitarian Fact-finding Commission

In an effort to secure the guarantees accorded to the victims of armed conflict, Article 90 of the Protocol I Additional to the Geneva Conventions of 1949 (Protocol I) provides for the establishment of an International Fact-Finding Commission. The Commission was officially constituted in 1991 and is a permanent body whose primary purpose is to investigate allegations of grave breaches and other serious violations of international humanitarian law. As such, the Commission
How is IHL Applied at the National Level?

is an important means of ensuring that international humanitarian law is both applied and implemented during armed conflict.

7.6.2 The Composition of the Commission

The Commission is composed of 15 individuals elected by those States that have recognized its competence. Commission members act in a personal capacity and do not represent the States of which they are nationals. Each member must be of high moral standing and established impartiality. Elections take place every five years and States have an obligation to ensure that all regions of the world are fairly represented.

7.6.3 The Powers and Functions of the Commission

The Commission is competent to:

a) Enquire into any facts alleged to be a grave breach or other serious violation of the Geneva Conventions or Protocol I;

b) Facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and Protocol I.

The principal task of the Commission is to enquire into facts. It investigates only whether or not a grave breach or other serious violation of the Geneva Conventions or Protocol I have in fact occurred.

The Commission is an investigative body and not a court or other judicial body: it does not hand down judgments or address questions of law in relation to the facts it has established. Its enquiry must involve grave breaches or other serious violations of the above-mentioned treaties. Consequently, it does not enquire into minor violations.

The Commission is also authorized to facilitate, through its good offices, an attitude of respect for the Conventions and their Protocol I. Generally, this means that it may, in addition to communicating its conclusions as to the facts, make observations and suggestions to promote compliance with the treaties on the part of the warring parties.

Though the Geneva Conventions and Protocol I are applicable only to international armed conflicts, the Commission has expressed its willingness to enquire into alleged violations of humanitarian law arising from non-international armed conflicts, provided that the parties involved consent to this.

7.6.4 A Commission Enquiry

In order for the Commission to begin an enquiry there must be a request for it to do so. Only States that have recognized the Commission’s competence are entitled to make such a request. and may do so regardless of whether they are themselves involved in the conflict concerned. Private individuals, organizations, or other representative bodies do not have such authority, nor does the Commission have the power to act upon its own initiative.

Enquiries are generally not conducted by the Commission as a whole. Unless otherwise agreed, they are conducted by a seven-member Chamber consisting of five members of the Commission itself plus two ad hoc appointees. Each party to the conflict nominates one ad hoc member, but no member of the Chamber may be a national of a party to the conflict.
During the course of the investigation, the warring parties are invited to assist the Chamber and are given an opportunity to present and challenge evidence. In addition, the Chamber is authorized to conduct its own investigations. All evidence is disclosed to the parties and to any other States that may be concerned, all of whom have the right to make observations.

7.6.5 Report of the Commission

The Commission submits a report to the parties, based upon the findings of the Chamber. The report contains the Commission’s findings regarding the facts, together with any recommendations. The Commission does not disclose its conclusions publicly unless requested to do so by all parties to the conflict.

7.6.6 Recognizing the Commission’s Competence

One of the most important characteristics of the Commission is that it may conduct an investigation only with the consent of the parties involved. A State does not automatically recognize the Commission’s competence by signing or ratifying Protocol I, but only by separately affirming that recognition. A State may make a comprehensive declaration, thereby permanently recognizing the Commission’s competence, or it may consent to the investigation of a particular dispute.

1) Comprehensive Declaration

A comprehensive declaration can be made when signing, ratifying, or acceding to Protocol I, or at any subsequent time.

By making such a declaration, a State authorizes the Commission to enquire into any conflict that may arise between itself and another State that has made the same declaration. No additional approval is then required for the Commission to act. It goes without saying that by accepting the Commission’s competence, a State obtains the right to request an enquiry regarding conflicts between States that have likewise accepted that competence, regardless of whether it is itself involved in the Conflict.

2) Form of a Comprehensive Declaration

While there is no standard form, the State must unambiguously announce that it recognizes the competence of the International Fact-Finding Commission as set out in Article 90 of Additional Protocol I to the Geneva Conventions of 1949. The declaration must be submitted to the depository, i.e. the Swiss Confederation.

Both the Swiss government and the ICRC Advisory Service on International Humanitarian Law have drafted model declarations of recognition, which States are free to make use of.

3) Ad hoc Consent

A party to an armed conflict that has not made a comprehensive declaration may accept the Commission’s competence on a temporary basis, that acceptance being limited to the specific conflict in which it is involved. This form of recognition does not constitute permanent acceptance of the Commission’s competence.

Any party to a conflict may ask the Commission to conduct an enquiry. If a party which has not given its consent is the object of a complaint, the Commission will convey the allegation to that party and ask it to consent to an enquiry. If consent
How is IHL Applied at the National Level?

In a conflict involving parties that have not made the comprehensive declaration, a warring party will not be bound by a previous consent: it is up to that State to decide whether to reaffirm the Commission's competence should it become the object of a complaint. Obviously, the request for an enquiry must come from a State that has also recognized the Commission's authority.

7.6.7 Financing the Commission's Activities

The administrative expenses of the Commission are covered by the States that have recognized the Commission's competence in advance, and by voluntary contributions.

Expenses arising from a Chamber (i.e. an enquiry) are borne by the parties involved: the party requesting an enquiry must advance the necessary funds to cover the Chamber's expenses, but up to half of this advance will be reimbursed by the party that is the object of the enquiry. However, the Commission has indicated that there is considerable scope for flexibility in financing enquiries, other financial arrangements being possible by agreement of the parties.

7.7 ENSURING RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

The States party to the Geneva Conventions of 1949 and to Protocol I undertake to "respect" and "ensure respect" for the provisions of those treaties. The International Fact-Finding Commission is a key mechanism in achieving those objectives.

By recognizing the Commission's competence, on a permanent or ad hoc basis, a State contributes significantly to the implementation of international humanitarian law and to ensuring compliance with it during armed conflict. By depositing a declaration of recognition, a State therefore takes an important step in securing the fundamental guarantees laid down for the victims of armed conflict.

7.7.1 National Implementation Measures

To ensure the international humanitarian law is applied in situations of armed conflict, the entire range of implementation mechanism provided for in the law itself must be used to the full, including in peacetime. National measures to implement humanitarian law arise from the pledge given by states party to humanitarian law treaties to respect those treaties and ensure that they are respected. This duty is made explicit in a series of provisions that oblige states to take particular implementation measures. Moreover, like all international treaties, the humanitarian law treaties call for a number of measures to be incorporated in national legislation, if this is not already the case.

The general obligation to take 'measures for execution' is laid down in Article 80 of Protocol I, which states that parties 'shall without delay take all necessary measures for the execution of their obligation under the Conventions and this Protocol'. Among the numerous measures set out in the Geneva Conventions and the Protocol additional thereto, two types of national measures are particularly
important, namely the adoption by states of national laws to ensure that the treaties are applied, and measures relating to dissemination and training.

National implementing legislation is necessary for treaty provisions that are not self-executing and therefore require a legislative act for them to become applicable. Apart from the general obligation to ensure that the treaties are applied through primary and secondary legislation, the four Conventions and Protocol I provide for states to adopt any necessary legislative measures to determine appropriate penal sanctions for grave breaches of international humanitarian law. Finally, legislation is needed to be able to prevent or punish misuse of the emblem and distinctive signs at any time. However, various attempts to strengthen the treaty-based obligations to prevent violations of international humanitarian law have failed. For example, a proposal to introduce an obligation for states to report to an international commission on the way national measures are applied was rejected.

To put the law into effect and give effective protection to people affected by armed conflict, widespread knowledge of the law and training of those who will have to apply it are indispensable. Dissemination activities must be stepped in war time, and to include study of these in military and if possible in civilian instruction programmes, so as to ensure that the armed forces and the entire population are familiar with their content. International Humanitarian Law is largely made up of obligations with which armed and fighting forces must comply, and must therefore form an integral part of their regular instruction and practical training. Yet despite their importance, the rules of war often feature only marginally in the military instruction programmes of most states.

The implementing measures required in peace time to back up the obligation to spread knowledge of the Geneva Conventions and the Protocols thereto ‘as widely as possible’ are the training of qualified staff, the deployment of legal advisers in armed ‘forces, emphasis on the duty’ of commanders and special instruction for the military and authorities who may be called upon to assume relevant responsibilities.

7.7.2 Punishment for Breaches

Several articles of the Geneva Conventions and Protocol I specify the breaches that are to be punished by the states party to those instruments. All other violations constitute conduct contrary to the Conventions and Protocol and should be dealt with by means of administrative, disciplinary and criminal measures that the contracting parties are required to take to punish the perpetrators. Grave breaches are expressly listed; their distinguishing feature is that the parties to a conflict and the other contracting parties have an obligation to prosecute or extradite the perpetrator of such a breach, regardless of his nationality and the place of the breach, in accordance with the principle of universal criminal justice. Grave breaches are considered war crimes. Punishment of violations at national level immediately upon outbreak of a conflict and while it continues are particularly important if a negative spiral of serious and repeated violations of the law is to be avoided. A system of penalties must be an integral part of any coherent legal construct, from the point of view of deterrence and of coercive authority.

As the system of universal criminal jurisdiction had largely been left in abeyance by states, there was previously no effective prosecution and punishment of these types of crimes. However, international mechanisms such as ad hoc criminal tribunals for the former Yugoslavia and for Rwanda, set up by the UN security
How is IHL Applied at the National Level?

Council, and in particular the international criminal court, have given as impetus to prosecutions at national level. International criminal law and its application by the International Courts and tribunals is playing an increasingly important part in the interpretation and enforcement of international humanitarian law and in individual criminal liability for war crimes, as well as crimes against humanity and genocide often committed during armed conflicts. The role of the International Criminal Court is complementary to that of national justice systems. It will investigate or prosecute only where the state is ‘unwilling or unable genuinely to carry out the investigation or prosecution’.

The credibility of International Criminal Court and its ability to perform its role of punishing international crimes depend on the adherence of as many states as possible to it. The fact that a number of influential states and some states currently involved in armed conflicts have not ratified the Rome Statute indicates a double standard in the implementation of international criminal law. This undermines its credibility to some extent and tends to confirm that political considerations carry the day even where international crimes have been perpetrated. Moreover, the international legal apparatus which aims mainly to punish the perpetrators can often only act years after the end of a conflict and cannot replace non-judicial means,” although the creation of international courts and tribunals has strongly promoted recourse to that avenue for enforcing international humanitarian law.

7.7.3 Enquiry Procedure

An enquire procedure is provided for under the Geneva Conventions, but to date has never been used since its inception in 1929. Its dependence on the belligerents’ consent is doubtless one of the reasons why this mechanism as not been put to the test.

7.7.4 The International Fact-finding Commission

Article 90 of Additional Protocol I was an attempt to systematize the enquiry process by instituting an International Fact-finding Commission. This Commission is competent to ‘enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violations’ thereof and to ‘facilitate, through its good offices, the restoration of an attitude of respect for the conventions and this Protocol’. In particular, the idea was that the activities of the Commission should help to prevent polemics and violence from escalating during a conflict. It is doubtful, though, whether it could achieve this in practice without an operational arm on the ground and the necessary rapid-response capacity.

The Commission is competent to find facts and not to decide on points of law or to judge, but even if it were to limit itself to finding to fact, their pronouncement would often lead to their legal categorization and the elucidation of responsibilities. Under Article 90, paragraph 5, the Commission is required to submit a report to the parties concerned on its findings of fact, with such recommendations as it deems appropriate. This article further specifies in sub-paragraph(c) that the commission shall not report its findings publicly, unless all the parties to the conflict have requested it to do so. The fact that its conclusions must remain confidential is reminiscent of the ICRC’s modus operandi, but confidentiality is not really an appropriate way for an international commission to work.

In principle, the International Fact-finding Commission can undertake an enquiry only if all the parties concerned have given their consent, but there is nothing to prevent a third state from requesting an enquiry by the commission into a grave
breach or serious violation of humanitarian law committed by a party to conflict, provided that the party concerned has also recognized the commission’s competence. This possibility arises out of the obligation to ‘ensure respect for’ the law of armed conflict.

Though established in 1991, the Commission has not yet been activated, nor is it likely to be unless it is enabled to undertake an enquiry on its own initiative or at the request of only one party to conflict, or by virtue of a decision by another body (e.g. the UN Security Council). In practice, the enquiry commissions set up and foisted even on unwilling states by the UN Security Council are better placed to meet the international community’s expectations.

7.7.5 Protecting Powers

A protecting power is a neutral state mandated by a belligerent state to protect its interests and those of its national’s vis-à-vis an enemy state. Its role is two fold; it can conduct relief and protection operations in aid of victims, and can at the same time supervise the belligerents’ compliance with their legal undertakings. The Protecting Powers’ tasks are huge and varied in view of the needs of persons protected for instance by the Third or Fourth Geneva Convention.

Since the Second World War, this system has very rarely been set in motion and the chances of its being used successfully in future are slim, given the politically delicate role a state would have to play to discharge its responsibilities as a Protection Power. Article 5 of Protocol I, which assigns the ICRC a new role, allows it to tender ‘its good offices to the Parties to the conflict with a view to the designation without delay of Protecting Power to which the Parties to the conflict consent. However, the ICRC has acted more as substitute, for it has in effect assumed the great majority of the humanitarian tasks assigned to Protecting Powers. It has done so without prejudicing its other expressly recognized activities, but restricting itself to humanitarian activities in accordance with its mission.

7.7.6 Reparations

In an international armed conflict, the warring parties can be held responsible for breaches of international humanitarian law. An obligation to pay compensation for violations of international humanitarian law is laid down in Article 91 of Protocol I, and even as early as Article 3 of the 1907 Hague Convention. According to the general international law of state responsibility, compensation is to be understood more broadly as reparations and encompasses a range of measures, including non-monetary means of restitution (re-establishment of the situation before the wrongful act was committed), satisfaction (acknowledgement or apology) and/or rehabilitation (including medical or psychological claim, or legal and social rehabilitation), and guarantees of non-repetition.

Even in situations where large numbers of people have been victims of violations, those who have suffered direct or indirect personal harm as a result thereof are entitled to reparation. However, purely monetary compensation could easily constitute an excessive burden in view of the limited resources available, the significant war damage and the enormous task of reconstruction after a conflict and require both an individual and a collective assessment, taking the scope and extent of any damage into account. Rulings on reparations in individual cases can take account of the collective dimension of certain violations and can lead to wider settlements for larger communities.
It is, however, disputed whether an individual right to reparations is recognized or not by international humanitarian law. Despite ‘an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparations directly form the responsible State’, it does not yet form part of customary law. Preclusion by a peace settlement, sovereign immunity or the non-self-executing nature of the right to reparations under international law mostly rules out successful individual claims. Victims can thus only approach their own government, which may submit their complaints to the party or parties that committed the violation - a procedure that depends on relations between states, which have often both committed violations. In non-international armed conflicts, there is no treaty rule obliging states or non-state armed groups to make reparations for violations of international humanitarian law.

The possibility for an individual victim to claim reparations for a violation of international humanitarian law can nonetheless be inferred from Article 75 of the Statue of International Criminal Court. More importantly, human rights treaties require states to provide a remedy for violations. At a regional level, both the Inter-American and the European Court of Human Rights have ordered reparations for victims of human rights violations that were simultaneously violations of international humanitarian law. They have done so in both international and non-international armed conflicts, e.g. in relation to Turkey, Cyprus, Chechnya, Guatemala, Colombia, Peru, and Bosnia and Herzegovina. Reparation has also been provided directly to individuals via different procedures, in particular through mechanisms set up by the Security Council, inter-state agreements and unilateral acts such as national legislation, or in response to requests submitted directly by individuals to national courts.

Nevertheless, broader international and/or national reparations schemes and especially those implemented via transitional justice mechanism (including truth and reconciliation commissions) can and should complement this rather selective legal regime. It is difficult to resolve claims on a case-by-case and the mere use of the term ‘reparation’ presupposes a violation of international law. This approach leaves out all the victims of armed conflicts who are not victims of violations and in particular all those affected by – lawful – collateral damage. Only a wider definition for victims including all persons affected by – lawful – collateral damage, will allow for ‘victims’ interests to be met more satisfactorily, and dealing with past conflicts requires much broader societal measures than just individual reparations.

### 7.8 SUMMARY

- In this unit, we discussed the meaning of implementation and the various bodies which implement the IHL norms.
- Further we have discussed the role and functions of the national committees in the implementation of International Humanitarian Laws.
- We have discussed the powers and functions of International Fact Finding Commission.
- We also have discussed about the various institutional mechanisms available for the applications of IHL.
- Explain the role of national committees in the implementation of IHL.
7.9 TERMINAL QUESTIONS

1) Explain the various provisions under the Geneva Conventions dealing with national implementation mechanisms.

2) What do you understand by the term Implementation of IHL? What are the Obligations of States Parties in this Connection under the Geneva Conventions, 1949?

7.10 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Sub-section 7.4
2) Refer to Sub-section 7.5.1

Terminal Questions

1) Refer to Section 7.3
2) Refer to Section 7.3 and 7.4

7.11 GLOSSARY

Implementation: The act of implementing (providing a practical means for accomplishing something) carrying into effect.

Amendment: A statement that is added to or revises or improves a proposal or document (bill or constitution).

7.12 REFERENCES AND SUGGESTED READINGS

1) Geneva Conventions I, II, III & IV
2) Additional Protocol I.